

**DOCKETED**  
**11-AFC-02**

TN # 2930

MAR. 20 2013

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

In the Matter of the:	)	
	)	
Application for Certification	)	Docket No.
for the Hidden Hills Solar	)	11-AFC-02
Electric Generating System	)	
<hr/>	)	

DEATH VALLEY ACADEMY GYMNASIUM  
127 OLD STATE HIGHWAY  
SHOSHONE, CALIFORNIA

VOLUME II

WEDNESDAY, MARCH 13, 2013

9:00 a.m.

Reported by:  
Troy Ray  
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

David Hochschild, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Jim Bartridge, Advisor to Commissioner Hochschild

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Advisor for Siting

CEC STAFF PRESENT

Richard Ratliff, Staff Counsel IV

Kerry Willis, Staff Counsel

Mike Monasmith, Senior Project Manager

OFFICE OF THE PUBLIC ADVISER

Blake Roberts, Assistant Public Adviser

APPLICANT

Jeff Harris, Attorney  
Samantha Pottenger, Attorney  
Greggory Wheatland, Attorney  
Ellison, Schneider and Harris, LLP

Gary Kazio  
BrightSource Energy

John Carrier  
CH2MHill

Susan Strachan  
Strachan Consulting, LLC

INTERVENORS

Jon William Zellhoefer

Lisa T. Belenky  
Ileene Anderson  
Center for Biological Diversity

Richard Arnold

Brian Brown  
Bill Christian  
Donna Lamm  
Amargosa Conservancy

Dana Crom  
Randy Keller  
County of Inyo

Larry Levy  
Southern Inyo Fire Protection District

ALSO PRESENT

Rayetta Haskin

Eddie Jim

Darrell Lacy (via WebEx)  
Nye County Water District (NCWD)

Sarah Peterson (via WebEx)  
United States Department of the Interior  
Bureau of Land Management (BLM)  
Nevada State Office

Vivian Wilkinson

Deb Shook

Noel Ludwig (via WebEx)  
United States Department of the Interior  
Bureau of Land Management (BLM)  
California Desert District

Amy Noel (via WebEx)

Michael Garabedian (via WebEx)

Kelly Bradley

Jim Copeland, Superintendent  
Death valley Unified School District

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P R O C E E D I N G S

11:30 a.m.

HEARING OFFICER CELLI: Whoever has called in the phone, I am going to have to put you on mute. We will give you all an opportunity to make public comment later in the day. Actually in the evening, more like five or six o'clock tonight we will get to the public comment section.

MS. BELENKY: Officer Celli?

HEARING OFFICER CELLI: Good morning. Who spoke?

MS. BELENKY: Good morning.

HEARING OFFICER CELLI: Good morning, Ms. Belenky.

MS. BELENKY: Hi this is Lisa. I'm not sure if this is on.

Yes. I wanted to say I think we saw yesterday that sometimes the public comment relates to something that has happened earlier in the day and I am wondering if the Committee would consider having public comment at two stages, perhaps right before we break for lunch and then again at the 5:00 to 6:00.

HEARING OFFICER CELLI: That's not a bad idea. Time permitting I think that's a great idea. We'll do that just before each break, dinner and lunch.

I see that we have some concerned citizens from the local area. It's great to have you, thanks for coming in.



1           This morning -- one moment. There you go.

2           Okay, today, Wednesday, March 13th. We are going  
3 to begin with socioeconomics so I'd like to ask the parties  
4 to bring all of your expert witnesses to the expert witness  
5 tables here. I don't know if this is everybody.

6           MS. WILLIS: Mr. Celli, it isn't. Our witness is  
7 not here yet and we are going to have to go back to the  
8 hotel to try to call and find out where he's at.

9           HEARING OFFICER CELLI: Who would that be?

10          MS. WILLIS: Steven Kerr.

11          HEARING OFFICER CELLI: Okay. And is that staff's  
12 only witness?

13          MS. WILLIS: I believe so. Now with the fiscal  
14 impacts being resolved that would be the staff's only  
15 witness.

16          HEARING OFFICER CELLI: Okay. Boy, you know, do  
17 the best you can. We have WebEx, people can call in. And  
18 we are in an area where we are in a telephone-free zone. In  
19 the meanwhile --

20          MS. BELENKY: Mr. Celli, this is Lisa Belenky; I  
21 have another point of order. We have one piece of evidence  
22 that relates to socio and economic, which is growth-  
23 inducing.

24          HEARING OFFICER CELLI: Yes.

25          MS. BELENKY: As well as some testimony that

1 generally relates in that way that two silos can relate.  
2 It's really -- it was sort of under Cumulatives but it  
3 relates to how growth-inducing is being -- is being framed,  
4 I guess, in the document. And so I was just hoping that we  
5 don't have to have our witness sit at the witness table at  
6 the whole time just for that one exhibit.

7 HEARING OFFICER CELLI: You know, Ms. Belenky,  
8 first of all let me just ask all of the witnesses to scoot  
9 on down, please. I am going to have you, if you wouldn't  
10 mind sir, take the very first position there. And then when  
11 staff's witness comes -- we need to be able to see you, hear  
12 what you're saying.

13 You have one -- I want to make sure that -- okay.  
14 It is absolutely appropriate to hear growth-inducing impacts  
15 during Socioeconomics. We are also going to talk about  
16 environmental justice during socioeconomics this morning.

17 Was this piece of evidence something that you had  
18 already submitted, Ms. Belenky?

19 MS. BELENKY: Yes, it's been submitted.

20 HEARING OFFICER CELLI: What Exhibit number was  
21 it?

22 MS. BELENKY: Okay, I'll get that. Okay, so it is  
23 Exhibit number 535.

24 HEARING OFFICER CELLI: Okay.

25 MS. BELENKY: Which is an additional project that

1 we flagged as being part of the growth-inducing that was not  
2 mentioned in the cumulative or the growth-inducing chapters.

3 HEARING OFFICER CELLI: That's fine, just when --  
4 as you observed, the way we're doing this is we are going to  
5 be calling for exhibits at the close of the evidence on the  
6 topic of socioeconomics so you'll put it in at that time.

7 MS. BELENKY: Okay.

8 HEARING OFFICER CELLI: Thank you.

9 MS. BELENKY: That's fine. I just wanted to check  
10 because sometimes -- in San Diego the witness actually moved  
11 the document. Our witness is here, we can do that.

12 HEARING OFFICER CELLI: I appreciate that. In the  
13 Hearing Order what I said or what the Committee said in the  
14 Hearing Order was that basically we would dispense with such  
15 things as people's recitation of their qualifications and we  
16 weren't going to describe the exhibits since all of the  
17 exhibits are described in the exhibit list, which has been  
18 posted and distributed to all of the parties. So that's a  
19 time-saving thing and you don't need to do that.

20 Mr. Battles, you had a question?

21 MR. BATTLES: Again, I believe Call-In User number  
22 2 is our line and we are on mute right now.

23 HEARING OFFICER CELLI: Okay, you're right. So  
24 what I'd like to do is I am going to call that Shoshone Gym.  
25 Okay, so we are now the hearing line. Thank you.

1           Let me just take a quick look at the chats.

2           Okay. I am not engaged enough in WebEx to be  
3 looking at the chats very closely and so if people are  
4 sending me chats it may take a long time before I actually  
5 notice it's there.

6           MR. BATTLES: Ken, if they have something like  
7 that they need to send -- they can send directly to me. And  
8 if it's something technical I can take care of it.

9           HEARING OFFICER CELLI: Thank you. That was Mike  
10 Battles for anyone who is on the phone.

11          Now it appears, Ms. Willis, that you have all of  
12 your witnesses.

13          MS. WILLIS: I do.

14          HEARING OFFICER CELLI: Thank you. One more  
15 thing.

16          MR. HARRIS: Mr. Celli, Mr. Harris over here.

17          HEARING OFFICER CELLI: Good morning, Mr. Harris.

18          MR. HARRIS: I just didn't follow what CBD just  
19 requested. Lisa, sorry. Is Ileene part of the panel or  
20 not?

21          MS. BELENKY: Well that was what we were just  
22 discussing.

23          MR. HARRIS: And I wasn't clear on the outcome so  
24 could you --

25          MS. BELENKY: She doesn't need to be a part of the

1 panel because the growth-inducing issue -- we can also  
2 change it when we get to that issue if we think it's  
3 necessary. She is here and she can be part of the panel.  
4 But her testimony goes to the lack of the analysis, not a  
5 specific --

6 HEARING OFFICER CELLI: Ms. Belenky, you know  
7 what, it might be useful to have Ms. Anderson sit up in the  
8 expert panel just because as the discussion happens she may  
9 want to weigh in on certain things. We think that that  
10 might be valuable information that the Committee would like  
11 to hear.

12 MS. BELENKY: Okay.

13 HEARING OFFICER CELLI: I mean, I am not saying  
14 you have to, Ms. Anderson, but I'm just saying it might come  
15 up and you may have something of value to offer.

16 MS. BELENKY: Okay, that's fine.

17 HEARING OFFICER CELLI: And then I would like all  
18 of the witnesses to scoot to your right so that there are no  
19 empty chairs between you, please. Okay, now from my left,  
20 your right, your name, sir?

21 MR. BROWN: Brian Brown with the Amargosa  
22 Conservancy.

23 HEARING OFFICER CELLI: Oh, that's right, Brian  
24 Brown. I knew you looked familiar.

25 HEARING OFFICER CELLI: Next, ma'am, your name,

1 please?

2 DR. YUSUF: Fatuma Yusuf with CH2MHill.

3 HEARING OFFICER CELLI: Ms. Yusuf, I am going to  
4 need you, because you have a quiet voice, to speak right  
5 into that microphone when you are called upon to talk.

6 DR. YUSUF: Okay. Fatuma Yusuf.

7 HEARING OFFICER CELLI: Thank you. Mr. Moore,  
8 Christopher Moore. Next to you?

9 MR. BARTON: Matthew Barton, Director of Tax at  
10 BrightSource Energy.

11 HEARING OFFICER CELLI: I need you to grab a mic  
12 and speak right into it.

13 MR. BARTON: Matthew Barton, BrightSource Energy,  
14 I am the Director of Tax there.

15 HEARING OFFICER CELLI: Thank you, Mr. Barton.  
16 Ileene Anderson.

17 MS. ANDERSON: Ileene Anderson with the Center for  
18 Biological Diversity.

19 HEARING OFFICER CELLI: And next to Ms. Anderson  
20 is?

21 MR. KERR: Steve Kerr with the Energy Commission.

22 HEARING OFFICER CELLI: Okay. Now, I did have an  
23 opportunity this morning to read Exhibit 948, which was the  
24 agreement between the applicant and the County of Inyo. And  
25 I see that the County of Inyo has no experts sitting at the

1 table, I guess that's by design.

2 I am going to ask the staff to frame the issues  
3 that are left because I am not really clear what is still on  
4 the table with regards to socioeconomics. And again, at  
5 this point we are not talking yet about the environmental  
6 justice and we are not talking yet about the growth-inducing  
7 impacts section of socioeconomics. We'll to that, right now  
8 we are just talking about the costs to the county, et  
9 cetera.

10 MR. KERR: What I have left is mainly the  
11 environmental justice issue that I was going to talk about  
12 and so I am not sure what else the panel might like to  
13 address.

14 HEARING OFFICER CELLI: That's correct. I need  
15 Brian Brown, Fatuma Yusuf, Matthew Barton, Ileene Anderson  
16 and Steven Kerr to please stand and raise your right hand to  
17 be sworn.  
18 Whereupon,

19 BRIAN BROWN

20 FATUMA YUSUF

21 MATTHEW BARTON

22 ILEENE ANDERSON

23 STEVEN KERR

24 Were called as witnesses herein, and after being duly sworn,  
25 were examined and testified as follows:

1 HEARING OFFICER CELLI: Thank you. The witnesses  
2 are sworn, please be seated.

3 SOCIOECONOMICS PANEL

4 So, Mr. Kerr, you say there is just an EJ issue  
5 left. Are there any issues left with regard to things like  
6 costs to the county, fees, taxes, that sort of thing? Maybe  
7 Mr. Christopher Moore, you can tell us. Go ahead.

8 MR. MOORE: We don't believe so. We believe that  
9 the agreement that we put in place with the county addresses  
10 all of the issues of concern between the county and the  
11 applicant regarding socioeconomic issues.

12 HEARING OFFICER CELLI: Are there any experts on  
13 the panel that have a disagreement with that?

14 MR. MOORE: No.

15 HEARING OFFICER CELLI: Okay. Thank you, then I  
16 guess we are on to EJ issues. So Mr. Kerr, go ahead.

17 MR. KERR: Sure. I'll give a brief summary of the  
18 environmental justice issues because both Inyo County and  
19 Ms. MacDonald raised concerns in their testimony regarding  
20 staff's demographic screening methods and staff's  
21 determination that the population within the six mile buffer  
22 of the project site didn't constitute an environmental  
23 justice population.

24 In performing this analysis staff used the  
25 standard methodology that we use for all siting cases, which



1 consists of two parts. The first part is to review the  
2 percent of the population in the area that are minorities  
3 and the second part is to review the percent of the  
4 population that are living below the poverty level.

5           For the first part, staff used race and ethnicity  
6 data from the 2010 census to prepare Socioeconomics Figure  
7 1, which is up here. It shows the percent minority within  
8 the six mile buffer of the project site. And because the  
9 2010 census was a count of the total population we could  
10 look in detail all the way down to the block level and see  
11 that the percent minority in the area didn't constitute an  
12 environmental justice population in that sense.

13           But the second part, the poverty data, is no  
14 longer collected as part of the decennial census, it is now  
15 part of the American Community Survey, which is a survey  
16 done of a small portion of the population every year, so not  
17 the big one that is every ten years. The census bureau  
18 began collecting the ACS data in 2005. And for geographic  
19 areas with less than 20,000 such as Inyo County it took five  
20 years to collect enough data for a statistically significant  
21 sample size. Because the sample size is so small the census  
22 bureau staff recommends using data no smaller than the tract  
23 level and considers estimates with a coefficient of  
24 variation, which is a calculation of the reliability of the  
25 data. They say that if it's 15 percent or less it is not

1 very reliable data.

2           And so in its testimony Inyo County staff said --  
3 Inyo County said that staff should have used Tract 8 for our  
4 poverty data because it includes Charleston View. But the  
5 reason we didn't use Tract 8 was because the CV or  
6 coefficient of variation for that was about 24 percent,  
7 which is well over that 15 percent kind of reliability  
8 cutoff that the census bureau staff recommends. So we went  
9 out to the county level which had a CV of about 12 percent  
10 and that fit kind of within that range.

11           HEARING OFFICER CELLI: Can I ask you something?

12           MR. KERR: Sure.

13           HEARING OFFICER CELLI: Isn't it the case that,  
14 isn't the census the only actual count of members of  
15 households?

16           MR. KERR: Right, yeah. And this ACS data that  
17 they collect the poverty information in now is a survey that  
18 I think at this point each year when they do it, they're up  
19 to about like .5 of the population of all of the nation or  
20 of California and so it's a real small sample of everybody  
21 that's out there. And so in areas like this where there  
22 aren't a lot of people there aren't too many people that are  
23 getting that and, you know, replying to that survey and so  
24 it's hard to get numbers from it that are really  
25 representative of the community.

1 HEARING OFFICER CELLI: Okay. Just because we  
2 have people here I want to be clear. You said that the six  
3 mile radius, within a six mile radius of the project there  
4 was not a minority, a majority of a minority population. Is  
5 that the way we describe it?

6 MR. KERR: Right, it's about 23 percent of that  
7 population within the six mile radius was minority  
8 households.

9 HEARING OFFICER CELLI: All right, thanks. And  
10 then you were now talking about the low-income or poverty  
11 level.

12 MR. KERR: Right.

13 HEARING OFFICER CELLI: Okay. Continue with that,  
14 please.

15 MR. KERR: Sure. So the county had recommended  
16 that we use the census tract info. That wasn't reliable  
17 enough so we used the county.

18 Also, Ms. MacDonald's opening testimony said that  
19 the AFC was wrong in the conclusion that the people of  
20 Charleston View are not primarily comprised of low-income,  
21 disadvantaged or senior populations. But this wasn't a  
22 conclusion of the FSA. Like I said, there wasn't reliable  
23 enough ACS data available at the tract or block level for us  
24 to make those type of conclusions or assumptions about the  
25 Charleston View community. We had to look at the county as

1 a whole, it wasn't strong enough data to look just at that,  
2 you know, neighborhood community level.

3 HEARING OFFICER CELLI: You couldn't isolate  
4 Charleston View?

5 MR. KERR: Right. But on the other hand, in her  
6 rebuttal testimony Ms. MacDonald throughout this process  
7 provided -- and throughout the process she provided lots of  
8 insights about her own personal experiences in the area and  
9 explained that most of the people that she knew that lived  
10 in Charleston View were older, retired and on fixed incomes.

11 And she also provided photos showing that most  
12 residences in the community have very little disposable  
13 income to invest in their property outside of maintenance  
14 needs. And this is valuable information for consideration  
15 and staff sees the value of that information, which couldn't  
16 have been gleaned from census data alone and the staff is  
17 not contesting her testimony.

18 The demographic screening is one of the very first  
19 steps that we take after data adequacy and it provides some  
20 input to the makeup of the surrounding community, but the  
21 details of the conclusions that can be made from it are  
22 dependant on the reliability of the data. So that's why  
23 from there whether or not the screening, you know, kind of  
24 flags as an environmental justice population, we seek input  
25 throughout or process from local jurisdictions and encourage

1 community participation.

2           For example, the county told us early on about the  
3 challenges they face providing services in the area and  
4 concerns with adding this project to an already under-served  
5 community. Which led us to bring on Dr. Richard McCann to  
6 do the fiscal analysis report, a fiscal impact report.  
7 Which hopefully helped give the county and the applicant a  
8 better understanding of the fiscal impacts and aided in them  
9 kind of coming together for the agreement that was announced  
10 yesterday.

11           HEARING OFFICER CELLI: Mr. Kerr, let me ask you  
12 some detailed questions, if I may.

13           MR. KERR: Sure.

14           HEARING OFFICER CELLI: So when you said that the  
15 population of Charleston View is largely elderly on fixed  
16 incomes, I think is the way you couched it. How does that  
17 relate to thresholds of determinations of poverty or low-  
18 income status?

19           MR. KERR: It doesn't from the perspective of my  
20 analysis and the conclusions that I can gain, you know,  
21 looking at census data. But when we look at the map there,  
22 you know, we can tell that there is that community very  
23 close by. And from the photos and going out to the site,  
24 you know, can tell that it's not the most affluent area.

25           And so even though it didn't come up as an EJ

1 population, you know, throughout our process, we have worked  
2 really closely with the county and they have told us a lot  
3 about the area. And, you know, Cindy also gave us  
4 information that, you know, is worthy of consideration.  
5 It's not something that I could say my analysis based on the  
6 actual census data, it was an EJ population or not.

7 HEARING OFFICER CELLI: Okay, so let me sort of  
8 backtrack. The census didn't help you because you couldn't  
9 isolate Charleston View with regard to making a  
10 determination of the low-income condition, shall we say, of  
11 the residents of Charleston View. You went to the county.  
12 Did the county give you anything that you could actually  
13 call a factual basis for making a finding one way or the  
14 other?

15 MR. KERR: No, we don't have anything else, you  
16 know, beyond the census data for, for that screening.

17 HEARING OFFICER CELLI: Okay. And the record  
18 should reflect that Cindy MacDonald, who is one of our  
19 parties, is not here. In fact, let me just take this moment  
20 to acknowledge that we have the applicant, we have the  
21 staff, we have Ms. Crom from the County of Inyo, Richard  
22 Arnold is here, I have Jon Zellhoefer is here, Amargosa  
23 Conservancy by Mr. Brian Brown is here, Mr. Levy is here  
24 from the Southern Inyo Fire Protection District and we have  
25 Ms. Belenky from the Center for Biological Diversity is

1 here. So we are missing just Cindy MacDonald this morning,  
2 which is unfortunate because we could use her input on this.

3 MR. BROWN: I have a comment, if I may?

4 HEARING OFFICER CELLI: Who is that?

5 MR. BROWN: Brian Brown.

6 HEARING OFFICER CELLI: Mr. Brown, go ahead.

7 MR. BROWN: Yeah. I'm a little puzzled and I  
8 think a little disappointed perhaps that, I mean, a cursory  
9 drive through Charleston View would show anyone with a bit  
10 of common sense that it is, in fact, a low-income community.

11 It is mostly trailer homes and such. And that if ever  
12 there was a population, I think, that would qualify for  
13 environmental justice considerations, whatever those are,  
14 and I don't know a lot about that I'll say out loud, they  
15 would certainly qualify based on income alone, let alone age  
16 and then those types of things. So I just want to get that  
17 on the record that I think it --

18 HEARING OFFICER CELLI: So from the looks of  
19 things, trailer homes and the condition of the properties,  
20 you infer that this is a low-income area.

21 MR. BROWN: Yeah. I am more than inferring it, I  
22 am stating it out loud. With one -- I mean, there are a  
23 couple of handfuls of people who live out there. And with  
24 one notable exception I would say virtually everyone else  
25 probably is low-income if not below the poverty level.

1           PRESIDING MEMBER DOUGLAS: Is that also based  
2 on ---

3           MR. BROWN: That's the reality of the community.

4           PRESIDING MEMBER DOUGLAS: I was going to ask you,  
5 is that based on your personal knowledge of the community in  
6 addition to what one might see driving through?

7           MR. BROWN: Yes, it is, uh-huh. I know, I know  
8 many of the residents out there, I know, I know what their  
9 situation is. And again, just, you know, going through and  
10 making physical observations.

11          HEARING OFFICER CELLI: And Mr. Brown, where do  
12 you live?

13          MR. BROWN: Excuse me?

14          HEARING OFFICER CELLI: What town are you from,  
15 where do you live?

16          MR. BROWN: I live near Tecopa.

17          HEARING OFFICER CELLI: Okay, thank you.  
18 Ms. Yusuf, please.

19          DR. YUSUF: Yeah. I just wanted to add that --  
20 can you hear me?

21          PRESIDING MEMBER DOUGLAS: Yes.

22          HEARING OFFICER CELLI: Yes. Just speak right  
23 into it.

24          DR. YUSUF: Okay. So I wanted to add that it is  
25 not enough that we identify the presence of an environmental



1 justice community. We actually have to take it one step  
2 further and that is determine if there are impacts that are  
3 significant that remain significant after mitigation  
4 measures have put in place. And that once we determine  
5 those impacts are significant and have remained after  
6 mitigation measures have been implemented, then we need to  
7 determine -- then the third step is determine if those  
8 impacts, those significant impacts fall disproportionately  
9 on the minority or low-income population.

10 As far as our analysis is concerned, and I am  
11 speaking of behalf of the applicant, our analysis shows that  
12 there are no impacts that are significant. So there are no  
13 impacts that are significant after mitigation measures have  
14 been, have been implemented and so there are no  
15 disproportionate impacts on the EJ community.

16 HEARING OFFICER CELLI: Thank you.

17 DR. YUSUF: So it is not enough that we do  
18 identify, I mean, we don't. But it is not enough to just  
19 identify the presence of an environmental justice community.  
20 You have to take it one step further and show that there is  
21 a disproportionate impact to that community.

22 MR. HARRIS: Mr. Celli?

23 HEARING OFFICER CELLI: We do understand that  
24 process. Yes, go ahead, Mr. Harris.

25 HEARING OFFICER CELLI: Through the Chair. Could

1 I ask that she go back to the first step and explain her  
2 analysis to determine whether there is an environmental  
3 justice or a low-income --

4 HEARING OFFICER CELLI: We're getting, we're  
5 working on that.

6 MR. HARRIS: Because we kind of jumped to number  
7 three.

8 HEARING OFFICER CELLI: That's right. Ladies and  
9 gentlemen of the panel, the experts. It's a little  
10 troubling to talk about this because it's vague. We  
11 understand that if there's no impacts that -- we understand  
12 how the analysis is conducted.

13 I am troubled by the absence of evidence and the  
14 subjective drive through a neighborhood and say, it looks  
15 like it's not a high-income neighborhood because it's  
16 trailers and people aren't keeping up their lawns. I mean,  
17 you know, I'm exaggerating a little bit but I'm just saying,  
18 it would be nice to have a little more solid evidence, some  
19 factual basis. How many people are on food stamps, how many  
20 people are on government assistance, that kind of thing. Do  
21 we have any such evidence, staff or applicant?

22 MR. KERR: We don't know the -- you know, maybe  
23 that's something we could ask the county if they have that  
24 information. With the ACS data there's some standards with  
25 how just kind of privacy of, you know, saying who is or

1 isn't -- who is below the poverty line or not. And so I am  
2 not sure exactly what would be the best data source for us.

3 MR. HARRIS: Can we have Ms. Yusuf go through the  
4 data that is in the -- Dr. Yusuf, excuse me, go through the  
5 data that you used to determine whether there's an  
6 environmental justice minority or low-income population in  
7 Charleston View?

8 HEARING OFFICER CELLI: Do we already have that in  
9 the record?

10 MR. HARRIS: Well, you suggested there wasn't any  
11 evidence and I wanted her to point specifically to the  
12 record where that evidence is.

13 HEARING OFFICER CELLI: Okay, if you could  
14 summarize, please, the basis for your -- and I don't want to  
15 go beyond -- right now we need to make a determination as to  
16 whether there is an environmental justice community here or  
17 not. So if you can go to that, Ms. Yusuf, and isolate for  
18 us the basis for a determination of why it is or is not an  
19 environmental justice and I am talking specifically to  
20 Charleston View.

21 DR. YUSUF: Okay. Well, Charleston View is part  
22 of the county. So I understand that Charleston View is, you  
23 know, different from the overall county and that it's  
24 captured within the -- but it's captured within the county  
25 data.

1           And going back to what Mr. Kerr was saying, even  
2 if we -- even if we assume that, for instance, that the  
3 Census Tract 8 which contains Charleston View is, you know,  
4 the data that we get from the ACS, the American Community  
5 Survey, even if we assume that data did not have the issues  
6 that it has with reliability and we just looked at that data  
7 as it is, and Mr. Kerr can confirm or, you know, agree with  
8 me. That data does not show that Census Tract 8 is actually  
9 or actually has a low-income population.

10           So setting aside the reliability of the data  
11 that's available from ACS for the Census Tract 8 which  
12 contains Charleston View, we are still coming to the  
13 conclusion that there is not a low-income population. Now,  
14 anecdotal evidence may suggest that there are pockets of  
15 low-income population within the community but we don't go  
16 with anecdotal evidence, we go with government data that is  
17 verifiable, you know that's publicly available. And on the  
18 basis of that we determined that there isn't a low-income  
19 population and definitely not a minority population.

20           HEARING OFFICER CELLI: I have an exhibit -- oh, I  
21 am not able to -- if you look on the WebEx and if you look  
22 on the projection, ladies and gentlemen, you see a dotted  
23 line surrounding the Hidden Hills project site to indicate  
24 what the six mile radius is. And within that six mile  
25 radius you see Charleston View to the south and then what

1 looks like some portion of Pahrump up to the north. Are  
2 there any other communities within the six mile radius that  
3 were considered or that exist or is that it?

4 MR. KERR: That's it.

5 HEARING OFFICER CELLI: That's all, Mr. Kerr? So  
6 how or does the Pahrump population skew the numbers with  
7 regard to Charleston? Is Pahrump a more affluent community  
8 than Charleston View?

9 MR. KERR: Yeah, it changed the number. We --  
10 there is a chart in the AFC that shows just the California  
11 side and the addition of the Nevada side it changed it by  
12 about one percent. So I think just Charleston View was  
13 about 24 percent, adding in Pahrump made it 23 percent.

14 PRESIDING MEMBER DOUGLAS: When you say 24 percent  
15 you mean 24 percent low-income?

16 MR. KERR: Minority.

17 PRESIDING MEMBER DOUGLAS: Minority.

18 MR. KERR: This is minority.

19 PRESIDING MEMBER DOUGLAS: What about low-income?  
20 How does that break out for low-income?

21 MR. KERR: We don't know because there isn't data  
22 for that small of an area.

23 I can say that the -- you know, if we had to use  
24 the Census Tract 8 poverty information that the estimate  
25 from the ACS was that it was 17.4 percent of the population

1 was living below the poverty line. And that includes -- the  
2 tract data includes Charleston View and Tecopa and Shoshone.

3 HEARING OFFICER CELLI: And can you give us again  
4 what is, what is the description of below the poverty line?

5 MR. KERR: It's below the federal poverty level.

6 HEARING OFFICER CELLI: And what is the federal  
7 poverty level?

8 MR. KERR: I don't know what it is right now.

9 DR. YUSUF: Yeah, I think I have that number.

10 MR. KERR: It's pretty low.

11 DR. YUSUF: As of 2010 the federal poverty  
12 threshold level for a family of four was \$22,113.

13 HEARING OFFICER CELLI: Household income \$22,113?

14 DR. YUSUF: Yeah, a family of four, yeah.

15 HEARING OFFICER CELLI: A family of four?

16 DR. YUSUF: Yeah.

17 MR. RATLIFF: Mr. Celli, if I may. It appears  
18 that the testimony is that there is an absence of census  
19 data or statistical data that can establish whether there is  
20 a low-income community in Charleston View. And in the  
21 absence of data I think what I'm hearing is in the absence  
22 of such data you cannot make that determination.

23 And yet, you know, to add to the complexity of the  
24 issue, the EPA guidelines for environmental justice from  
25 which most of our efforts flow in terms of analysis,

1 acknowledge that within the statistical communities that you  
2 do have in the census data you also have or may have pockets  
3 of environmental justice and you have to recognize those  
4 pockets as well.

5           And that can only be done, so far as I know, on  
6 the basis of a more anecdotal kind of evidence, which is the  
7 kind of evidence I think that you are receiving today. And  
8 I am not trying to, I don't want to prolong the agony over  
9 this issue but I think there's only so much you can do with  
10 census data. I think that the testimony from Ms. MacDonald  
11 and from the county is that you have a pocket of a community  
12 that could very well be described as an environmental  
13 justice community.

14           HEARING OFFICER CELLI: Thank you.

15           MR. HARRIS: Mr. Celli?

16           HEARING OFFICER CELLI: Mr. Harris, go ahead.

17           MR. HARRIS: I keep coming back to the  
18 characterization that there is no data here. I think there  
19 are quibbles with the data. And I think the issue is, what  
20 do reasonable professionals in the environmental justice  
21 community rely upon to make their determination. We haven't  
22 gotten to that yet. And we are not doing direct testimony  
23 so I wasn't able to lead my witness through the questions of  
24 that but there is a methodology, three primary documents and  
25 three questions that are asked. That's what professionals

1 in this field do. And we haven't covered that yet and I  
2 think maybe it would be helpful, since I am not doing  
3 direct, if the Committee would ask one of the witnesses to  
4 explain those three primary documents and the type of  
5 information that professionals in this field rely upon to  
6 make an environmental justice determination.

7 HEARING OFFICER CELLI: Go ahead, Mr. Harris, why  
8 don't you elicit that information from Ms. Yusuf.

9 MR. HARRIS: Okay. Fatuma, you said there are  
10 three primary documents that people in your profession rely  
11 upon in doing an acceptable environmental justice analysis.  
12 Can you describe those three documents?

13 DR. YUSUF: Yeah. The first document is the  
14 Executive Order that was signed by President Clinton back in  
15 1994, that's Executive Order 12898. It's the one that  
16 established the evaluation of environmental justice as part  
17 of the NEPA process and in California we've adopted it as  
18 well. The second part is the CEC policy regarding  
19 determination of environmental justice as part of the AFC  
20 process. And the third part is the state of California EJ  
21 guidance from the Office of the California State Attorney's  
22 Office. This is as of -- dated July 2012.

23 MR. HARRIS: And those -- I'm sorry. Those three  
24 documents are described in your direct testimony; is that  
25 correct?



1 DR. YUSUF: Yes, I described those. And then  
2 based on -- so those three documents form our evaluation of  
3 protocol. And then on the basis of those three protocols we  
4 come up three fundamental evaluation measures that are --  
5 that we use to determine if an environmental justice  
6 community exists and if there is an environmental justice  
7 impact.

8 So the first one is to determine if there is an  
9 environmental justice population. So the screening level  
10 analysis that Mr. Kerr was talking about earlier is doing  
11 that demographic to see if there is a minority population or  
12 a low-income population. And how we determine whether there  
13 is a minority population or a low-income population flows  
14 from the Council on Environmental Quality guidance. And  
15 that one tells us that in order for you to determine that  
16 there is a minority population the minority population has  
17 to be 50 percent or more of the area that you're looking at.

18 The CEQ, the Council on Environmental Quality, also tells  
19 us to go ahead and use the census data and use the smallest  
20 area that we can possibly find within the census data that  
21 the census provides data for.

22 MR. HARRIS: Can I interrupt for a second?

23 DR. YUSUF: Yes.

24 MR. HARRIS: Can I ask, did you perform that  
25 analysis?

1 DR. YUSUF: Yes.

2 MR. HARRIS: Using that statistical information?

3 DR. YUSUF: Yes I did.

4 MR. HARRIS: And that's in your testimony?

5 DR. YUSUF: Yeah, I did. And when we did, when we  
6 filed the AFC back in 2011 the 2010 census was not available  
7 at that time so we used the 2000 census.

8 HEARING OFFICER CELLI: But you're talking about  
9 the presence of minorities right now, Ms. Yusuf.

10 DR. YUSUF: Right.

11 MR. HARRIS: Or low-income population.

12 HEARING OFFICER CELLI: No, no, no. We don't have  
13 that in the record so I want that in the record.

14 DR. YUSUF: Okay.

15 HEARING OFFICER CELLI: We want to focus on the  
16 low-income aspect of it.

17 DR. YUSUF: Okay. So the CEQ guidance are not  
18 very clear on exactly what level to use or what the  
19 threshold is for low-income. So professionals in the field  
20 what they typically use or what they use is the same  
21 threshold level for the determination of the presence of a  
22 low-income population. So the 50 percent threshold level is  
23 also used for the determination of the presence of a low-  
24 income population. So I did both parts of that using the  
25 2000 data. And then when the PSA came out I went back and

1 looked at my -- looked at the 2010 census and concurred with  
2 what the CEC staff had done in terms of determining the  
3 presence of an environmental justice community, or lack of.

4 MR. HARRIS: So let me punctuate that then.

5 DR. YUSUF: Yeah.

6 MR. HARRIS: You did use the 2000 data in your  
7 initial analysis; is that correct?

8 DR. YUSUF: I used the 2000 data because the 2010  
9 was not available at the time.

10 MR. HARRIS: And then when the 2010 --

11 DR. YUSUF: And then when it became available and  
12 when staff came out with their PSA I went back and looked at  
13 the 2010 census.

14 HEARING OFFICER CELLI: For low --

15 DR. YUSUF: For the minority and then I used the  
16 ACS, the American Community Survey data, similar to what  
17 Mr. Kerr did.

18 HEARING OFFICER CELLI: And what did that tell  
19 you?

20 DR. YUSUF: The same thing that he has just, you  
21 know, provided to the hearing. That the ACS data is survey  
22 data, it is not count data like the census data so we cannot  
23 really rely on it. It has a very high CV, coefficient of  
24 variation, like Mr. Kerr had indicated, so there is a  
25 reliability issue with the data.

1           But taking that aside like I indicated, just  
2 looking at the numbers without looking at the reliability  
3 issue of the numbers, we still think that Census Tract 8  
4 does not have a low-income population. That's our  
5 conclusion.

6           HEARING OFFICER CELLI: How do you reach that  
7 conclusion?

8           DR. YUSUF: Because the percentage of low-income  
9 population within Census Tract 8 is 17.4 percent.

10          MR. HARRIS: And again, that is based on the data  
11 that --

12          DR. YUSUF: The 2010. It's the 2006 to 2010  
13 American Community Survey data.

14          HEARING OFFICER CELLI: Does that Tract 8 include  
15 Shoshone and Tecopa?

16          DR. YUSUF: Yes.

17          HEARING OFFICER CELLI: How much of Inyo County is  
18 included in Tract 8?

19          DR. YUSUF: I can't speak right now to how much is  
20 included but it does include Charleston View, Shoshone and  
21 Tecopa.

22          MR. HARRIS: So is it within that six mile radius  
23 for sure?

24          DR. YUSUF: It is within the six mile radius.

25          MR. HARRIS: Because it's a subset of the larger

1 data set.

2 DR. YUSUF: Yes.

3 PRESIDING MEMBER DOUGLAS: So let me just make  
4 sure I have a couple of things clear. The threshold you are  
5 using for low-income is the federal poverty line; is that  
6 right?

7 DR. YUSUF: Right.

8 PRESIDING MEMBER DOUGLAS: Okay. And you've told  
9 us what that is for a family of four.

10 DR. YUSUF: I mean, it depends on the size of the  
11 family.

12 PRESIDING MEMBER DOUGLAS: Right, right.

13 DR. YUSUF: So for a family of four is the number  
14 that I have handy right now.

15 PRESIDING MEMBER DOUGLAS: That's right, that's  
16 right. And your conclusion that this project would not  
17 affect a low-income community is in part based -- your  
18 conclusion with regard to whether or not there is a low-  
19 income community present that could be affected by the  
20 project is based on looking at the ACS data and concluding  
21 that there is not -- you're using a threshold of 50 percent  
22 or 51 percent. If 51 percent of the people in this ACS  
23 survey were shown to be low-income that would tip the  
24 balance, in your view, to low-income, right, 51 percent?

25 DR. YUSUF: Yes, yes.

1           PRESIDING MEMBER DOUGLAS: All right. And the ACS  
2 data, however, includes Shoshone, Tecopa, Charleston View  
3 and some other units in there, it is not obviously isolated  
4 to Charleston View.

5           DR. YUSUF: No it's not.

6           PRESIDING MEMBER DOUGLAS: Right, okay.

7           DR. YUSUF: And just to add that. I also went  
8 back to look and see, not necessarily for the low income but  
9 just to kind of get a sense of what Charleston View's  
10 population was like. And Charleston View is not a census-  
11 designated place, it's not an incorporated community, so  
12 it's -- there is no data out there specific to Charleston  
13 View, publicly available government data out there.

14          PRESIDING MEMBER DOUGLAS: So you were unable to  
15 find publicly available government data on Charleston View  
16 that would help you with your determination.

17          DR. YUSUF: That is correct.

18          PRESIDING MEMBER DOUGLAS: What is the population  
19 of Charleston View?

20          DR. YUSUF: I couldn't even determine that.

21          PRESIDING MEMBER DOUGLAS: Does anybody on the  
22 panel know?

23          MR. KERR: Yeah, it's about 68 people.

24          PRESIDING MEMBER DOUGLAS: Sixty-eight people,  
25 about 68 people, okay. How did you know that?

1           MR. KERR: From the minority data, which goes down  
2 to the block level, the 2010 census goes down to the block  
3 level. That's a count of the whole population and so we  
4 could at least find out kind of the total population at that  
5 time.

6           PRESIDING MEMBER DOUGLAS: And you talked about  
7 the kind of -- the variability or the coefficient of  
8 variation on the ACS data. What is that again?

9           MR. KERR: It takes the -- when you pull up the  
10 census, the ACS data, it gives you the estimate and then a  
11 margin of error. And so you take the margin of error and  
12 calculate the standard error and then use that to calculate  
13 the CV. Another way I can explain it or kind of give a  
14 sense of this data that we do have is that for Census Tract  
15 8 the estimate of the people below the poverty level. You  
16 had asked how big is the area in Census Tract 8, the total  
17 estimate of the people in that tract is about 3200 people.

18          PRESIDING MEMBER DOUGLAS: Okay.

19          MR. KERR: It does include some more people beyond  
20 just Charleston View and Shoshone and Tecopa. But it's  
21 still pretty low.

22          PRESIDING MEMBER DOUGLAS: Okay. That's very  
23 helpful. I was also honing in on what areas are included in  
24 the ACS data because what I am understanding from this is  
25 you used census data for assessing the presence of a

1 minority population and you used the ACS data for low-  
2 income; is that correct?

3 MR. KERR: Right.

4 PRESIDING MEMBER DOUGLAS: All right. So in terms  
5 of the ACS sample size that you looked at or population  
6 size, what is that?

7 MR. KERR: The estimate for that Tract 8  
8 population is 3200 people. And of that the ACS data  
9 estimates that 557 are living below the poverty level and so  
10 that's where we get the 17.4 percent, you know, estimate of  
11 the population, that population that would be below the  
12 poverty level. And then the margin of error for that 557  
13 living below the poverty level is a plus or minus 220, and  
14 so that's where that calculation of the CV. You know, you  
15 look at saying 550 people are below the poverty level but  
16 that could go, you know, minus 220 or plus 220 and so that's  
17 where that calculation of the variability, you know, says,  
18 okay, that's not really the best data.

19 But in any case if you did take that 557 and took  
20 away the 220 or added them, that range is still between like  
21 11 percent and 25 percent, which is still well below the 50  
22 percent that Fatuma explained as kind of the cutoff for  
23 identifying it as an EJ population.

24 PRESIDING MEMBER DOUGLAS: Okay, so let me ask  
25 another question. Ms. MacDonald put into the record some



1 photographs of residences in Charleston View, we have one  
2 member of our panel who has spoken to some personal  
3 knowledge he has of residents in Charleston View and  
4 whether, at least, he views them as low-income based on what  
5 he knows, which could very well be a different threshold  
6 because he is not necessarily assessing, you know, a  
7 percentage of families who would meet the federal poverty  
8 criteria when he made his statement.

9 But if there were strong evidence -- this is a  
10 hypothetical question. If there were evidence in terms of  
11 just Charleston View that it was low-income what would that  
12 mean in terms of your analysis?

13 MR. KERR: In terms of our analysis if we had, you  
14 know, been able to have data that said it was an  
15 environmental justice population it really wouldn't have  
16 changed our analysis because the way we identify the impacts  
17 and then you go -- you know, as Fatuma was explaining, you  
18 would go back and look and see, you know, is this fair, is  
19 there a certain part of the population that's, you know,  
20 having an undue burden beyond the rest of the population.

21 And so everyone -- the way this project is, you  
22 know, everyone is kind of affected the same whether or not  
23 they're a minority or how much money they make. It's more  
24 of a proximity kind of a thing.

25 A lot of the idea of, you know, why we do

1 environmental justice screening is so we do it real early on  
2 and it's to kind of get an idea of who might be affected by  
3 the project and get people involved. And that's all kind of  
4 built into our process with the Energy Commission and, you  
5 know, our outreach to notice and let people know what's  
6 going on and our Public Adviser's Office and the opportunity  
7 that people have to intervene and --

8 PRESIDING MEMBER DOUGLAS: Okay, so I'm just going  
9 to, I'm just going to break in because it's a long answer  
10 and you're starting to get, you started to address it and  
11 then you started to get a little afield of what I was asking  
12 you. What I think I understood you saying, and correct me  
13 if I understood this wrong, is that if you were to have  
14 concluded, and you did not conclude this but if you were to  
15 have concluded that Charleston View was a low-income  
16 community, it still wouldn't have changed your analysis  
17 because you don't see it as being disproportionately  
18 impacted by the project; is that what you said?

19 MR. KERR: Correct.

20 PRESIDING MEMBER DOUGLAS: Okay.

21 ASSOCIATE MEMBER HOCHSCHILD: Just a couple of  
22 quick questions. And I get it you're all working within the  
23 constraints of these instruments that are beyond your  
24 control like the census and so on. How many people actually  
25 live within this circumference? I get that Charleston View

1 has 68 people but what is the total population within the  
2 six mile radius?

3 MR. KERR: It's 782.

4 ASSOCIATE MEMBER HOCHSCHILD: Okay. And then it  
5 was not clear to me, Census Tract 8 appears to include all  
6 of this area but also an area beyond that. How big is that?

7 I realize we don't have a map of Census Tract 8 but what  
8 would that look like? Is that twice the size of this circle  
9 or how big is that census tract?

10 MR. KERR: I am not exactly sure. It would only  
11 be within California, it wouldn't include that part of  
12 Pahrump.

13 ASSOCIATE MEMBER HOCHSCHILD: I see.

14 MR. KERR: Just the way they kind of map the  
15 tracts out. And then -- I don't have a map of it. We had,  
16 you know, looked at that data and decided that it wasn't  
17 reliable and so we were looking at the whole county.

18 ASSOCIATE MEMBER HOCHSCHILD: Okay.

19 MR. KERR: So I kind of brought the table for  
20 Census Tract 8 just as kind of anecdotal.

21 ASSOCIATE MEMBER HOCHSCHILD: Did you have it?

22 DR. YUSUF: Not on a map but I think it's within,  
23 within that circle and it's on the California side. How  
24 much of it is within the circle or all of it is contained  
25 within the circle, I'm not sure.

1           ASSOCIATE MEMBER HOCHSCHILD: Okay. But it's  
2 roughly the size of that semi-circle at least on the  
3 California side or?

4           DR. YUSUF: No, I don't think so.

5           MR. KERR: No, because Tecopa is down here in the  
6 corner and it includes Tecopa.

7           ASSOCIATE MEMBER HOCHSCHILD: Got it, okay.

8           MR. KERR: So it's kind of, it's probably most of  
9 kind of the white side there of the map.

10          MR. HARRIS: Can we help with that a little bit?  
11 And I'm going to let Ms. Pottenger.

12          MS. POTTENGER: I don't know about that, I'll do  
13 my best. Dr. Yusuf, will you look at Appendix 5.10-A in  
14 applicant's AFC, please, and turn to page five of that  
15 appendix.

16          HEARING OFFICER CELLI: And this is in Exhibit  
17 what?

18          MS. POTTENGER: Yes, this is in Exhibit 1.

19          HEARING OFFICER CELLI: Thank you.

20          MS. POTTENGER: And it's Volume II of the AFC.  
21 It's Appendix 5.10-A.

22          HEARING OFFICER CELLI: Thank you.

23          MS. POTTENGER: And it's our environmental justice  
24 analysis that was conducted on behalf of the AFC.

25          HEARING OFFICER CELLI: Okay, good, thank you.

1 MS. POTTENGER: Dr. Yusuf, can you explain to us  
2 what Table 5.10-A-2 represents?

3 DR. YUSUF: Yeah, that's the 2000 census low-  
4 income data by census block groups for all block groups  
5 within a six mile radius of the project.

6 MS. POTTENGER: And is that -- I'm sorry, I don't  
7 have extra copies of this. And can you turn to the figure  
8 that corresponds to those blocks, the census block groups,  
9 please.

10 DR. YUSUF: Yes.

11 MS. POTTENGER: And can you please describe what  
12 area is encompassed by Census Block Group 60270007001?

13 DR. YUSUF: That would be, that would be half of  
14 -- it's the other side of the circle.

15 MS. POTTENGER: Okay.

16 DR. YUSUF: On the California side.

17 MS. POTTENGER: Okay. So are you saying that the  
18 census block group that we just identified, 60270007001, is  
19 the census block group that is applicable to the California  
20 side of that six mile radius that is shown on that figure?

21 DR. YUSUF: Yeah, it would appear to be so. No,  
22 according to this number that's the 7001. The "7" indicates  
23 Census Tract 7. As of 2010 it's no longer Census Tract 10,  
24 it's 7, so it's Census Tract 8.

25 MS. POTTENGER: Okay. But from the 2000 data that

1 was the census block group that was available, correct?

2 DR. YUSUF: Yeah, right.

3 MS. POTTENGER: So in the AFC we had 2000 census  
4 data that identified the low-income data for that census  
5 block group; is that correct?

6 DR. YUSUF: Yes.

7 MS. POTTENGER: Okay. And can you please identify  
8 for the Committee, please, and this is going back to page  
9 five of that appendix, what that information is for that  
10 census block group in terms of low-income data?

11 HEARING OFFICER CELLI: Before you do,  
12 Mr. Battles, we are not seeing that diagram. There we go,  
13 now we see these -- oh, now it's just reverted back. We  
14 want to see those tables.

15 MS. POTTENGER: Okay. So, Mr. Battles, please  
16 turn to page five.

17 HEARING OFFICER CELLI: Of the appendix. There we  
18 go.

19 MS. POTTENGER: And can you plow that table up,  
20 please.

21 HEARING OFFICER CELLI: Zoom in, I think.

22 MS. POTTENGER: Blow it up, zoom it in, I'm not  
23 sure what the proper terminology is to use. Maybe blow it  
24 up isn't appropriate but I'll go with make it bigger.

25 HEARING OFFICER CELLI: There we go, thank you.

1 MR. RATLIFF: Mr. Celli, could I -- perhaps it  
2 would help if someone would tell us what the point is here.

3 I'm completely, this is completely Greek to me.

4 HEARING OFFICER CELLI: Ms. Pottenger, give us  
5 some context, please.

6 MS. POTTENGER: What I am going to ask Dr. Yusuf  
7 now is to walk us through this data. We have heard  
8 testimony that the 2010 data did not contain low-income  
9 information. But from understanding, based on the AFC --  
10 and I'll let Dr. Yusuf repeat this so it's not me testifying  
11 -- that the 2000 census data did contain some information  
12 regarding low-income populations.

13 HEARING OFFICER CELLI: Mr. Battles, you are going  
14 to need to scroll down to get that table in. There you go,  
15 thank you.

16 MS. POTTENGER: So Dr. Yusuf, so I am not the one  
17 who is testifying can you please walk us through this table  
18 and how it corresponds to the second figure.

19 DR. YUSUF: Yes. So this figure shows that for  
20 that census block group in 2000 there were 625 people living  
21 in that census block group and of those 79 were below the  
22 poverty level, which translates to 12.6 percent low-income.

23 MS. POTTENGER: Okay. And then Mr. Battles, if  
24 you could just please go to page 7, which is, I believe,  
25 what that figure is.

1 Dr. Yusuf, please explain what is that census  
2 block for that information that you just provided us?

3 DR. YUSUF: It's that area in the circle to the  
4 left of the border, it's the California area.

5 MS. POTTENGER: Okay, thank you. And for the  
6 Committee I just wanted to explain that there is some data  
7 on the California side representing the specific communities  
8 that you were discussing and concerned about so it answered,  
9 I believe, some of the questions that you were asking.

10 HEARING OFFICER CELLI: And to be clear, that  
11 Census Block 6 --

12 DR. YUSUF: Seven.

13 HEARING OFFICER CELLI: Seven.

14 DR. YUSUF: It's census block -- It's Census Block  
15 1, Census Tract 7.

16 HEARING OFFICER CELLI: Okay. Includes Charleston  
17 View, Shoshone, Tecopa.

18 DR. YUSUF: Yes.

19 HEARING OFFICER CELLI: Any other towns that we  
20 should know about that are included?

21 DR. YUSUF: We didn't identify any other towns.

22 HEARING OFFICER CELLI: Okay.

23 DR. YUSUF: But if I may add, so this is from the  
24 2000 census. And when we looked at the population growth  
25 for Inyo County and we looked at -- the population growth of



1 Inyo County wasn't that big compared to the rest of the, of  
2 the state. So even assuming that that population had grown,  
3 you know, barring any major event that would have resulted  
4 in a significant number of low-income population moving into  
5 Charleston View or moving into Census tract 8 now, it's no  
6 longer 7. The numbers from the 2000 census, what we expect  
7 to see from them, if the census had continued collecting the  
8 data in 2010 as they had done.

9 (Conversation heard over WebEx.)

10 HEARING OFFICER CELLI: One moment.

11 DR. YUSUF: Okay.

12 HEARING OFFICER CELLI: Mark Watte, we can hear  
13 you, I'm going to have to mute you. I'm sorry, sorry for  
14 that interruption. Go ahead, Ms. Yusuf.

15 DR. YUSUF: No, I was just saying that when we  
16 looked at the 2000 data we had 12.6 percent low-income for  
17 that census tract. That census tract now is Census Tract 8.  
18 It may not necessarily completely match up because the  
19 numbers don't seem to be matching up as much.

20 But what I am trying to say is that assuming that  
21 the population growth of the area is similar to the  
22 population growth in Inyo County, and assuming that, you  
23 know, there hasn't been an influx of low-income population  
24 into this area, I think we could project from the 2000  
25 census and say, looking at those numbers, that the numbers

1 that we see for the 2010 census seem to be reasonable.  
2 That's what I'm thinking and that's what I'm suggesting we  
3 look at.

4 MS. POTTENGER: So, Dr. Yusuf, in your  
5 professional opinion you can reasonably extrapolate from the  
6 2000 census data the low-income estimates for the 2010  
7 results as well?

8 DR. YUSUF: Yeah. And I wish, I wish the census  
9 had collected the data. But in the absence of that -- we  
10 typically don't see a huge swing in data, you know, from one  
11 census to another census.

12 MS. POTTENGER: And is it consistent with the ACS  
13 data that you tracked when you conducted your socioeconomics  
14 analysis?

15 DR. YUSUF: Right. The ACS data that when we  
16 checked -- when we were reviewing the PSA we checked the  
17 ACS's data; yeah, it is consistent. And it is -- I concur  
18 with what Steve has indicated previously.

19 MS. POTTENGER: Okay.

20 HEARING OFFICER CELLI: Thank you.

21 Mr. Zellhoefer, did you have a --

22 MR. ZELLHOEFER: Yes, I'd like to direct the Chair  
23 to the fact that we have Larry Levy here with the fire  
24 district. We have several people here who live in the area.

25 HEARING OFFICER CELLI: Yes.

1           MR. ZELLHOEFER: And we know that the area of  
2 Charleston View, Tecopa and Shoshone does not come close to  
3 3200 people. And I am concerned that the board is being  
4 misled by figures because you simply do not live here and it  
5 is very easy to take empirical data. But there are people  
6 in this room who can help you understand the population in  
7 our part of the county.

8           HEARING OFFICER CELLI: Thank you, Mr. Zellhoefer.

9           MR. LEVY: Mr. Celli? Larry Levy.

10          HEARING OFFICER CELLI: Thank you.

11          MR. LEVY: I was wondering if you could direct a  
12 question perhaps to Brian Brown who is most familiar with  
13 the area.

14          HEARING OFFICER CELLI: We are going to do that.

15          MR. LEVY: Okay. To put that Census Tract 8 in  
16 some perspective.

17          HEARING OFFICER CELLI: Thank you.

18          MR. LEVY: If it is within Inyo County in  
19 California I wonder if you could just ask him where --

20          HEARING OFFICER CELLI: We are going to do that.

21          MR. LEVY: Thank you.

22          MR. BROWN: I have a comment also.

23          HEARING OFFICER CELLI: One moment. Go ahead,  
24 Mr. Brown.

25          MR. BROWN: Again, I'm sort of -- this is

1 interesting. It seems to me that what's being said here is  
2 that since there is a lack of data we can't make a  
3 determination about it being an environmental justice  
4 community, therefore it's not an environmental justice  
5 community. If I have a chair in front of me that's painted  
6 red --

7 HEARING OFFICER CELLI: Sir, that would be  
8 argument.

9 MR. BROWN: Okay.

10 HEARING OFFICER CELLI: What we are interested in  
11 is the facts.

12 MR. BROWN: Okay.

13 HEARING OFFICER CELLI: The evidence that tells us  
14 what is the income, the mean income, the low income, the  
15 quality of this -- Charleston View is a low-income area or  
16 not, that's what we're interested in.

17 I know that we have residents of Charleston View  
18 here. Ms. Haskin, if I may ask you to please come forward  
19 to the podium and if you can tell us -- I see there's a  
20 number of other people here. I don't know who lives in  
21 Charleston View here besides Ms. Haskin.

22 MS. HASKIN: I don't see anybody.

23 HEARING OFFICER CELLI: Okay, come foreword. We  
24 need you to speak right into that microphone so we can hear  
25 you well.

1 MS. HASKIN: I said, I don't see anybody.

2 HEARING OFFICER CELLI: Thank you. You've heard  
3 this problem we're having trying to understand who lives in  
4 Charleston View, who these 68 people are and whether they  
5 would qualify as low-income. And I was hoping that perhaps  
6 you could shed some, from your own knowledge --

7 MS. HASKIN: Yes, sir.

8 HEARING OFFICER CELLI: -- some light on this,  
9 please.

10 MS. HASKIN: Yes, sir. There is one man who lives  
11 out there, he and his wife, he's a doctor. And there's a  
12 couple of other people out there that work that have, I'd  
13 say low middle incomes. And the rest of my neighbors for  
14 the most part I would say are, like 62 people are all on  
15 fixed incomes, social security or welfare recipients. Most  
16 people barely keep their car going, struggle to keep our  
17 well pumps going, struggle to keep our homes fixed.

18 We car-pool together to go do our shopping and  
19 things like that so that we can exist out there because it  
20 is -- our choices are Pahrump, which is 35 miles, or Vegas,  
21 which is 35 miles. And the only town that has any  
22 population close to Charleston View is on the Nevada side,  
23 which we are not talking about. There's a housing tract out  
24 there which is also a gun range where they train people to  
25 use guns and it's called Front Sight. You can look it up on

1 the computer.

2 Pahrump, as the crow flies, is approximately the  
3 lower area there but we have to drive all the way out to 160  
4 and into Pahrump to get to that population. It is all dirt  
5 between us. And the only other town in California near is  
6 where Mr. Brown lives, which is Tecopa.

7 HEARING OFFICER CELLI: So you said that there is  
8 a doctor that lives there, there's a couple that you  
9 characterize as low -- a couple of families or a couple as  
10 low to middle income?

11 MS. HASKIN: To my knowledge there's four people  
12 that work out there that would be considered either low-  
13 middle or middle income and the rest of the people are  
14 either on social security or welfare or they do odd jobs for  
15 income.

16 PRESIDING MEMBER DOUGLAS: Okay.

17 MS. HASKIN: We are -- there is one house, which  
18 the doctor owns, and there is another house that is built  
19 out of bricks that was built in the '80s and by no means  
20 would meet building code nowadays by any means. The bricks  
21 are not mortared in, they are not anything, they're filled  
22 with cinder rock and stuff. And the rest of us all live in  
23 mobile homes of some kind and most of our mobile homes you  
24 could purchase for anywhere from I'd say eight to a thousand  
25 dollars or less.

1           PRESIDING MEMBER DOUGLAS: You mean \$800 to  
2 \$1,000?

3           MS. HASKIN: Eight thousand to a thousand -- eight  
4 to -- one to eight thousand dollars, how's that?

5           PRESIDING MEMBER DOUGLAS: One to eight thousand  
6 dollars.

7           MS. HASKIN: And my one neighbor that lives next  
8 to me is a 30 year old single mom on welfare and she has a  
9 seven year daughter and she's living in a house, a mobile  
10 home that's 30 years old that the roof leaks and she has no  
11 way to even maintain it. So what's going on here is going  
12 to have a big effect on all of us because, you know, like I  
13 said, we don't have a lot of income.

14           HEARING OFFICER CELLI: So in your opinion as a  
15 resident, it seems to you that -- how would you -- would you  
16 describe Charleston View as a middle income, low income, how  
17 would you describe the population in terms of income?

18           MS. HASKIN: Extremely low.

19           HEARING OFFICER CELLI: Okay.

20           MS. HASKIN: Most of us probably live on probably  
21 I'd say \$8,000 to maybe \$13,000 a year for our families. I  
22 myself, my husband gets social security, he's disabled.  
23 He's 72 years old and that's all we have for income right  
24 now. So I fit into that poverty level too.

25           PRESIDING MEMBER DOUGLAS: Well thank you for

1 coming here, I know it's an effort to come here.

2 MS. HASKIN: No, it's fine.

3 PRESIDING MEMBER DOUGLAS: So we are going to give  
4 you an opportunity to make public comment. We wanted to ask  
5 you these questions because it was germane right now. And  
6 after we take the topic up if there's more you'd like to add  
7 we'll be happy to give you that opportunity.

8 HEARING OFFICER CELLI: I just wonder if there is  
9 anyone else who lives in Charleston View who is here today,  
10 Ms. Haskin, do you know?

11 PRESIDING MEMBER DOUGLAS: She said, no.

12 HEARING OFFICER CELLI: No one else from  
13 Charleston View?

14 MS. HASKIN: No.

15 HEARING OFFICER CELLI: Okay, thank you very much  
16 for that information.

17 PRESIDING MEMBER DOUGLAS: So I've got a couple  
18 more questions for the panel. This might be to Ms. Yusuf or  
19 Mr. Kerr. At one point Inyo County had suggested that the  
20 Committee consider using the California Attorney General's  
21 criteria to address or assess the environmental justice  
22 issue here. Could you talk to us about -- Ms. Yusuf, you  
23 referred to it as one of the guiding documents in the EJ  
24 analysis. Could you explain the nature of the attorney  
25 general criteria and how it's used?



1 DR. YUSUF: Okay. So the attorney general's  
2 guidance is not -- it's just, you know, saying -- it's not  
3 very specific on what to assume in terms of the threshold so  
4 it's just a general guidance on, you know, making sure that  
5 any projects that are, you know. When projects are being  
6 considered in California to make sure that those projects do  
7 not treat certain communities unfairly. Make sure that  
8 everybody is treated fairly. I have all -- I have the  
9 document here. Do you want me to read some aspects from it?

10 PRESIDING MEMBER DOUGLAS: Well I don't want you  
11 to read it to us.

12 DR. YUSUF: Okay.

13 PRESIDING MEMBER DOUGLAS: I guess I want you to  
14 say, I guess I want you to tell us in your view what does it  
15 suggest that you do and how did you therefore incorporate  
16 that guidance in your analysis?

17 DR. YUSUF: Well, it basically supports the  
18 Executive Order 12898, it's just California's stake on the  
19 state of California supporting that executive order. And  
20 it's suggesting that any projects that are evaluated in  
21 California should take into account the impacts that that  
22 project might have on communities that typically may be  
23 ignored or that may not have been in the past considered  
24 when those projects are being evaluated.

25 PRESIDING MEMBER DOUGLAS: Okay.

1 DR. YUSUF: But it doesn't provide any specifics  
2 on how to do it, how to evaluate that. It just says, make  
3 sure that projects are fair.

4 PRESIDING MEMBER DOUGLAS: Okay.

5 DR. YUSUF: That all individuals are treated  
6 fairly.

7 PRESIDING MEMBER DOUGLAS: Great, thank you.

8 MR. RATLIFF: Mr. Celli, Mr. Celli, there was an  
9 earlier question from the Chair regarding -- from the  
10 Presiding Member regarding --

11 PRESIDING MEMBER DOUGLAS: Mr. Ratliff, I'm going  
12 there now. I've got a follow-up and then let me see if  
13 you've got anything to add after that.

14 MR. RATLIFF: Okay.

15 PRESIDING MEMBER DOUGLAS: Mr. Kerr, I had asked  
16 you earlier to talk about whether if hypothetically it were  
17 established that Charleston View was a low-income community  
18 how would that affect your analysis, how would that change  
19 your analysis? And I just want -- after this discussion I  
20 want to go back there and make sure I understood your  
21 answer. Because my understanding of staff's visual impacts  
22 analysis, and I am just going to use visual as an example  
23 here, was that there was a significant visual impact that  
24 was not mitigable on the local community, essentially, let's  
25 say Charleston View.

1           And if I am mis-characterizing the staff's  
2 conclusions in visual please tell me. But if there -- if  
3 staff's conclusion is that there is a localized visual  
4 impact, and if we were to believe that Charleston View is  
5 low income, those are two ifs that you can maybe help me  
6 with, then is there or is there not, in your view based on  
7 the way you conduct an EJ analysis, a disproportionate  
8 impact?

9           MR. KERR: The process of -- it wouldn't change my  
10 analysis as a socio analyst. The portion of, you know,  
11 explaining EJ in the socio section is just showing how we  
12 pulled this information up. And it's provided to each of  
13 the analysts and they make their own determinations on what  
14 the impacts are and how those affect, you know, the  
15 populations or the environment around the project. And so  
16 that varies depending on what technical area.

17           You know, kind of like you were saying, the visual  
18 has an impact on the folks right nearby whereas, you know,  
19 like air quality might be different, it goes out however  
20 many miles. And so it depends on which technical section  
21 you're talking about and each analyst just takes -- we hand  
22 this information over and each analyst uses it to, to make  
23 their determinations or consider it in their own section.

24           PRESIDING MEMBER DOUGLAS: Okay, so what you're  
25 saying is that you didn't look at whether or not the project

1 might have a significant unmitigable impact --

2 MR. KERR: Each area.

3 PRESIDING MEMBER DOUGLAS: In the area, like  
4 within the six miles? Maybe I'm no longer clarifying  
5 things. Mr. Ratliff, what was the follow-up that you  
6 wanted?

7 MR. RATLIFF: I'm trying to actually be responsive  
8 to your question, I think. You asked if that changes his  
9 analysis. And I think -- and his answer was "no" and that's  
10 correct but I think it could make you misunderstand the  
11 process we go through. The determination that we make in  
12 socioeconomics is the nature of the population itself, which  
13 is obviously largely reliant on a statistical analysis based  
14 on the census.

15 But if there is a determination that there is an  
16 environmental justice population or may be, then this is  
17 supposed to be -- using the criteria and the steps that  
18 Mrs. Fatuma (sic) I think correctly described, you then  
19 analyze the resulting analysis also goes through whether  
20 there's a significant impact. And if you can determine that  
21 there is a significant impact and you determine that it is  
22 disproportionate to that environmental justice population,  
23 then that is your classic EJ situation as is sometimes  
24 described. Which then, you know, makes the issue of  
25 environmental justice one that is pertinent to the

1 Committee's consideration.

2 Now I think perhaps your question then also went  
3 to what are the legal implications of that and that's a far  
4 murkier kind of discussion. But typically I think, and  
5 Ms. Fatuma I hope will address this or Mr. Kerr as well, but  
6 typically if you look at the guidance from EPA on this it's  
7 to look at mitigation, which is something you do under CEQA  
8 in any case. Because under, you know, federal NEPA  
9 requirements you don't necessarily have mitigation and under  
10 CEQA you do.

11 And secondarily, it has sometimes been described  
12 as another finger on the scale in terms of determining what  
13 that mitigation would be or whether to license a project.

14 HEARING OFFICER CELLI: Thank you, Mr. Ratliff.  
15 Mr. Harris.

16 MR. HARRIS: Could we have -- it's Dr. Yusuf.  
17 Could we have Dr. Yusuf answer that question as well because  
18 I think she is prepared to do so.

19 PRESIDING MEMBER DOUGLAS: So, Mr. Harris, here is  
20 what I would suggest. I think the Committee has heard a lot  
21 on this topic. I think we have, given the nature and type  
22 of information that's been brought forward, heard enough on  
23 this topic. Now what we want to do is offer you the  
24 opportunity to ask Ms. Yusuf a couple of questions, do any  
25 kind of -- we want to give you an opportunity to bat last on

1 this topic. So go ahead, ask her a couple of questions,  
2 elicit whatever information you think we need at this point  
3 and we can move on.

4 MR. HARRIS: Thank you.

5 HEARING OFFICER CELLI: We basically want to wrap  
6 it up.

7 MR. HARRIS: Okay. So, Dr. Yusuf, I want you to  
8 assume a significant environmental impact. I know that's  
9 not what the CH2 folks found but assume that. Can you tell  
10 me as an environmental justice professional what is your  
11 next step of the analysis then?

12 DR. YUSUF: Okay. So once we assume that there is  
13 a significant environmental impact and this environment --  
14 human health and environmental impact, then the next step is  
15 to figure out if that impact falls disproportionately on  
16 low-income and minority population. Based on our analysis  
17 that was not the -- we did not determine that that was the  
18 case. So we assumed that there was not going to be an  
19 environmental justice impact because there was no  
20 disproportionately high and adverse impact on minority or  
21 low-income population within the area.

22 MR. HARRIS: And you said it had to be an effect  
23 on human health?

24 DR. YUSUF: Human health and environment.

25 MR. HARRIS: And the environment.

1           PRESIDING MEMBER DOUGLAS: And when you say  
2 "disproportionately" can you describe how you go about  
3 determining that?

4           DR. YUSUF: Yeah. So if you get to that point  
5 where now you are seeing impacts that are significant and  
6 that cannot be mitigated to below a significance level what  
7 you do is you look to see if that impact on the EJ  
8 population is two or three standard deviations higher on  
9 that population as opposed to the general population within  
10 the area.

11           So if there is -- and that is a statistical way of  
12 looking at it. If that is determined to be the case then  
13 you, you know, you come to the conclusion that there is an  
14 environmental justice issue in place. Like someone else  
15 suggested earlier, once you get to that point it's really  
16 murky, you don't know, you know. It's not very clear. The  
17 guidance isn't very clear what to do, you know, if you  
18 determine that there is an EJ issue.

19           HEARING OFFICER CELLI: Thank you very much.

20           DR. YUSUF: You're welcome.

21           PRESIDING MEMBER DOUGLAS: I'm sorry.

22           (Hearing Officer Celli and Presiding  
23 Member Douglas confer.)

24           PRESIDING MEMBER DOUGLAS: You said two to three  
25 standard deviations. What is that based on?

1 DR. YUSUF: Just general professional guidance.

2 MR. RATLIFF: Commissioner, if I could help. I  
3 think, and perhaps Ms. Yusuf will correct me if I'm wrong.  
4 But I think the notion of standard deviations comes, so far  
5 as I can tell, not from any of the guidance from the EPA or  
6 from CEQ but it actually comes from -- well, from EPA's  
7 Office of Civil Rights which has given fairly elaborate  
8 regulations for Title VI civil rights challenges and has  
9 similar criteria which apply to how to determine an  
10 environmental justice community for the purposes of civil  
11 rights violations.

12 And there is a suggestion of using standard  
13 deviations to determine if you have an environmental justice  
14 community. And the standard deviations, though, I think --  
15 and tell me -- Ms. Yusuf can correct me if I'm wrong but my  
16 understanding of how the standard deviations are used is to  
17 determine whether -- the standard deviations are used to  
18 determine whether the community differs from the greater  
19 community by a standard deviation. Which is, I think, the  
20 applicable criteria in determining whether or not you have  
21 an impact to a community within a community, which is an  
22 environmental justice community.

23 PRESIDING MEMBER DOUGLAS: All right. Although  
24 standard deviations versus 51 percent is different and I  
25 think that I am not entirely clear. Is this an issue that



1 can be clarified in briefs or is this factual?

2 DR. YUSUF: Yes.

3 PRESIDING MEMBER DOUGLAS: Go ahead.

4 DR. YUSUF: So the threshold of 50 percent is at  
5 the screening level. It's to determine if there is an  
6 environmental justice community present.

7 PRESIDING MEMBER DOUGLAS: Okay.

8 DR. YUSUF: That's before you do any of the  
9 analysis, any of the impacts. Once you've determined that  
10 there is an environmental justice community present in the  
11 area then you go ahead and check all your other resource  
12 areas to see if there is an impact that will remain  
13 significant after all mitigation measures have been  
14 implemented. So the first part, the 50 percent, is just to  
15 determine the presence. But then the standard deviation is  
16 to see if the impact to the EJ community is  
17 disproportionately high compared to the surrounding or the  
18 community within which that EJ community occurs.

19 PRESIDING MEMBER DOUGLAS: Okay. And in this  
20 case, of course, you didn't get there.

21 DR. YUSUF: No, we didn't get there.

22 PRESIDING MEMBER DOUGLAS: Okay.

23 MR. HARRIS: Can I just ask one more question too.  
24 I want to go back to the comments about murky because I  
25 think there is an answer there.

1           Isn't it true that if you reach the point where  
2 you've made the determination there is an environmental  
3 justice issue that the remedy is the type of community  
4 outreach that has already taken place in this process to  
5 date?

6           DR. YUSUF: Yeah, that's typically what happens,  
7 yeah.

8           MR. HARRIS: Can you elaborate on that a little  
9 bit.

10          DR. YUSUF: It's part of so it's -- as you are  
11 conducting a -- as you are, you know, evaluating a project  
12 as you are determining the impacts of the project. Part of  
13 the -- part of that evaluation process is to reach out to  
14 the community that is likely to be affected by the project.

15          And so reaching out in terms of, you know, making sure they  
16 know about meetings, making sure the community is aware of,  
17 you know, potential effects of the project.

18          Getting input from the community on, you know,  
19 what the community would perceive as an impact from the  
20 project and designing some of the mitigation measures. Some  
21 of the mitigation measures are taken, are designed to  
22 respond to community concerns. So that part satisfies for  
23 the most part the -- you know, what happens if there is an  
24 EJ issue.

25          MR. HARRIS: So the remedy would include maybe

1 publicly noticing a meeting, making it available on WebEx.

2 DR. YUSUF: Yes.

3 MR. HARRIS: Making them come to the community  
4 many, many times --

5 DR. YUSUF: Right.

6 MR. HARRIS: -- and sit in gymnasiums and --

7 DR. YUSUF: Sending out letters, putting notices  
8 in the newspaper. Yeah, any forum that you can reach out to  
9 the community, yes.

10 MR. HARRIS: Okay, thank you.

11 HEARING OFFICER CELLI: Thank you very much. I  
12 think we've exhausted the EJ discussion but we have not yet  
13 broached the question of the growth-inducing impacts in  
14 socioeconomics. So do we have all the panel we need for  
15 that subject? Is there anyone else we need to bring up as  
16 an expert for growth-inducing impacts?

17 MR. HARRIS: What is the pre-filed testimony on  
18 growth-inducing impacts?

19 HEARING OFFICER CELLI: I don't know off the top  
20 of my head.

21 MR. HARRIS: I don't know that there is any.  
22 There's one document, I think, that CBD has.

23 HEARING OFFICER CELLI: CBD mentioned one  
24 document.

25 MS. WILLIS: It's also in staff's assessment.

1 HEARING OFFICER CELLI: Okay. So let's have staff  
2 actually, if you can sort of get us into this topic by  
3 giving us the overview of what the issues are and how staff  
4 resolved them, if they did. Please, Mr. Kerr.

5 MR. KERR: Sure. The CEQA guidelines address  
6 whether projects which would remove obstacles to population  
7 growth could be growth-inducing and so in our analysis  
8 basically -- and I didn't write that portion of it, just to  
9 preface it, so I'm just kind of reading what's in the FSA  
10 here. The conclusion was that since the project is going to  
11 be generating electricity and that electricity is being sold  
12 to PG&E it is not being, you know, provided for use within  
13 the area. That it's not, you know, removing obstacles to  
14 growth in the area. And so it wouldn't be inducing growth  
15 in the area because it's, you know, electricity that is  
16 being provided for somewhere else.

17 HEARING OFFICER CELLI: Thank you. Now,  
18 applicant, do you have anything that differs or amplifies  
19 what Mr. Kerr said?

20 MR. MOORE: No, we would agree with that analysis.

21 HEARING OFFICER CELLI: Now let's hear from any of  
22 the parties. Does anyone have a differing view as to the  
23 impact of the project with regard to growth-inducing  
24 impacts?

25 MS. BELENKY: Before we go there, I was a little

1 confused that staff said he did not write that portion of  
2 it. Is he adopting that testimony?

3 HEARING OFFICER CELLI: No, he's just giving us a  
4 synopsis at this time.

5 MS. BELENKY: Well where is the staff person who  
6 made the analysis?

7 HEARING OFFICER CELLI: I don't know. But we have  
8 that documentary evidence.

9 Ms. Anderson, if you are going to speak I am going  
10 to need you to get that microphone right up to you. We'd  
11 like to hear if there is a differing point of view with  
12 regard to the impacts, potential impacts from this project  
13 with regard to growth-inducing.

14 MS. ANDERSON: Sure. Can you hear me okay?

15 HEARING OFFICER CELLI: Very well, thank you.

16 MS. ANDERSON: Yes. So my concern with regards to  
17 growth-inducing is the project is going to require a  
18 substation, which isn't a part of what you're reviewing but  
19 which I think is integral to the project moving forward  
20 along with transmission. And based on that issue I believe  
21 that there is -- at least there has been one application  
22 filed in Nevada fairly close to where this project is that  
23 intends to use that same substation, presumably it's both a  
24 concentrating solar power tower and a photovoltaic project.  
25 And so they'll also be needing gas just like this project

1 is going to need.

2 HEARING OFFICER CELLI: Is that that Sandy Valley  
3 project?

4 MS. ANDERSON: No, it's an Abengoa project and I'd  
5 have to look at the name actually, sorry.

6 (Several people spoke at once.)

7 HEARING OFFICER CELLI: I'm sorry, we had several  
8 people speaking at once.

9 MR. BROWN: Brian Brown here. The Sandy Valley  
10 project is yet an additional project that is planning to use  
11 that transmission line. So these will, in fact, generate --  
12 there is a whole queue of these things on the Nevada side  
13 waiting for the transmission line.

14 HEARING OFFICER CELLI: So Sandy Valley is in  
15 Nevada and then you had mentioned Abengoa.

16 MS. ANDERSON: It's the Pahrump Valley Solar  
17 Project and the project proponent is Abengoa.

18 HEARING OFFICER CELLI: Which is also in Nevada or  
19 in California?

20 MS. ANDERSON: Yes, it's in Nevada.

21 HEARING OFFICER CELLI: Thank you.

22 MR. BROWN: The Sandy Valley project also, it's  
23 kind of a misnomer because it's, in fact, the proposal is  
24 simply straight down the Tecopa Road about five miles on the  
25 right hand side in Nevada. It's not in Sandy Valley, it's

1     literally on the same highway across the road.

2                 HEARING OFFICER CELLI:   Okay.   So go ahead,  
3     Ms. Anderson.

4                 MS. ANDERSON:   So the reason that I introduced the  
5     information from the Nevada Public Utilities Commission was  
6     because it wasn't included in the cumulative impacts  
7     analysis in the FSA.   And wanted to, you know, make sure  
8     that the Committee is aware of this because it's my opinion  
9     that these projects are seeing an opportunity to get sited  
10    next to facilities to enable power to be moved out of the  
11    general area on the Nevada side.

12                HEARING OFFICER CELLI:   Thank you.   So anything  
13    further on the growth-inducing potential impacts of the  
14    Hidden Hills project?

15                MS. ANDERSON:   No, other than that they facilitate  
16    it by requiring a --

17                HEARING OFFICER CELLI:   Substation.

18                MS. ANDERSON:   -- a substation and transmission.

19                MS. BELENKY:    If I may?

20                HEARING OFFICER CELLI:   Ms. Belenky, please.

21                MS. BELENKY:    Thank you.   You did allow the  
22    applicant to cross-examine their witness and I am not quite  
23    sure what process we are using at this point.

24                HEARING OFFICER CELLI:   You mean direct?

25                MS. BELENKY:    Direct, sorry.   To elicit things

1 from their witness. In any case --

2 HEARING OFFICER CELLI: Go ahead. You have some  
3 questions for your --

4 MS. BELENKY: I am concerned that staff does not  
5 have the staff person here who actually whose testimony it  
6 was.

7 HEARING OFFICER CELLI: Whose testimony was it?

8 MS. WILLIS: Mr. Jim Adams actually wrote the  
9 testimony but Mr. Kerr is sponsoring that section.

10 HEARING OFFICER CELLI: Okay. And when you say,  
11 he is sponsoring, that means he is capable of speaking to  
12 it, defending it.

13 MS. WILLIS: Right. It's very short. It's almost  
14 a page and a half.

15 HEARING OFFICER CELLI: Okay.

16 MS. WILLIS: It's just regarding the transmission  
17 line and limitations on development.

18 HEARING OFFICER CELLI: Thank you. So  
19 essentially, Ms. Belenky, he is going to adopt Mr. Adams'  
20 testimony and so you can go ahead and ask him questions --

21 MS. BELENKY: Thank you.

22 HEARING OFFICER CELLI: -- as if he were  
23 Mr. Adams.

24 MS. BELENKY: Thank you. I just want to first  
25 say, yes, it is extremely short. The growth-inducing



1 section for the most part relies on other analysis that has  
2 not yet been done by the Bureau of Land Management on  
3 growth-inducing. And so I wanted to just clarify that that  
4 is why it is so short, because they don't actually do an  
5 analysis. There are specific proposed findings of fact that  
6 are in the evidence.

7 PRESIDING MEMBER DOUGLAS: Ms. Belenky?

8 MS. BELENKY: Yes.

9 PRESIDING MEMBER DOUGLAS: I just wanted to  
10 caution that some of what you're saying sounds more like  
11 testimony or argument. And just in terms of an evidentiary  
12 record, I think that we can probably take notice of the  
13 length of the section and that sort of thing but I don't  
14 want to belabor it.

15 MS. BELENKY: Thank you. I will ask staff's  
16 witness. Can you please explain proposed findings of fact  
17 number three.

18 HEARING OFFICER CELLI: And while he is looking at  
19 that why don't you read it into the record, Ms. Belenky.

20 MS. BELENKY: Proposed finding of fact number  
21 three says that those linears would be located on BLM-  
22 managed lands and would be analyzed in a DEIS scheduled to  
23 be released in December of 2012 or January of 2013.

24 MR. KERR: yeah, here he's explaining that they'll  
25 be analyzed as part of the BLM's analysis of the overall

1 project. And they're going to be looking at the  
2 infrastructure that is being put in on -- in Nevada.

3 HEARING OFFICER CELLI: Has that been done?

4 MR. KERR: No, I don't believe it's been --  
5 nothing has been published yet.

6 HEARING OFFICER CELLI: Does anyone have other  
7 information? Ms. Anderson, go ahead.

8 MS. ANDERSON: Yeah, I checked with the BLM  
9 yesterday and they don't expect the Draft EIS out until  
10 April or May, which generally with the BLM it would probably  
11 be May.

12 HEARING OFFICER CELLI: Okay. And Mr. Moore?

13 MR. MOORE: I would just like to offer that both  
14 of those linears that are being described are sized for this  
15 project only.

16 HEARING OFFICER CELLI: Okay. Ms. Belenky.

17 MS. BELENKY: Can I just add, until we see the  
18 Draft EIS we don't know that.

19 MR. HARRIS: I think we're getting into the legal  
20 issues here about the relationship in the Energy Commission  
21 process and the BLM process.

22 HEARING OFFICER CELLI: Yeah, let's do this.

23 MS. BELENKY: Okay. No, I --

24 HEARING OFFICER CELLI: If I may, Ms. Belenky, we  
25 are going to --

1 MS. BELENKY: No, it is not okay because I have  
2 not had --

3 HEARING OFFICER CELLI: Ms. Belenky, please stop  
4 talking. We want to limit this inquiry to facts that go to  
5 the question of growth-inducing impacts. We do not want to  
6 engage in argument, that'll show up in your briefs. But if  
7 you have certain facts, perhaps about the size of the  
8 linears or anything like that, let's get that information  
9 into the record. So go ahead.

10 MS. BELENKY: I believe that there was just a  
11 discussion among the panel about the size of the linears. I  
12 would ask staff if you have adopted -- if you have taken a  
13 position on what size the gas line and what size the  
14 electrical transmission line will, in fact, be?

15 MR. KERR: It looks like the gas is going to be a  
16 12 inch pipeline and the transmission lines are 230 kV  
17 transmission lines to the Valley Electric Crazy Eyes  
18 substation.

19 MS. BELENKY: May I ask a follow-up question?

20 HEARING OFFICER CELLI: Yes.

21 PRESIDING MEMBER DOUGLAS: Go ahead.

22 MS. BELENKY: Finding of Fact 2, can you please  
23 read what Finding of Fact 2 says.

24 MR. KERR: HHSEGS would require a 12 inch diameter  
25 natural gas pipeline.

1 MS. BELENKY: And is that, does that mean that  
2 that is the pipeline that will absolutely be approved/

3 HEARING OFFICER CELLI: If you know.

4 PRESIDING MEMBER DOUGLAS: You can answer if you  
5 know, if you don't know say you don't know.

6 MR. KERR: I am not sure.

7 MS. BELENKY: And you haven't -- I believe that we  
8 have already established as a fact, perhaps you could --  
9 that there is not yet the DEIS. So the finding of fact,  
10 proposed finding of fact as to the date of the DEIS would  
11 certainly have to be changed; is that correct?

12 MR. KERR: Right.

13 MS. BELENKY: And so the conclusion in number 4,  
14 which is a proposed finding of fact although it is a  
15 conclusion, can you read that, please.

16 MR. KERR: Number 3?

17 MS. BELENKY: Number 4.

18 MR. KERR: Oh, sorry. "The project's natural gas  
19 pipeline and electric transmission line would not induce any  
20 additional growth in the project area."

21 MS. BELENKY: And what is the basis for that  
22 determination by staff?

23 MR. KERR: That it is not adding infrastructure  
24 that would, you know, cause a population growth in the area  
25 of the project.

1 MS. BELENKY: What is the basis? But would it  
2 cause -- is inducing population growth of individual people  
3 the only basis for a determination of growth inducing, in  
4 your opinion, in your expert opinion?

5 MR. KERR: I am not sure. As far as I -- you  
6 know, from reading this here, what we have looked at is --  
7 yeah, that's what we were looking at.

8 MS. BELENKY: Thank you.

9 MS. WILLIS: Mr. Celli?

10 HEARING OFFICER CELLI: Ms. Willis.

11 MS. BELENKY: I do actually have several other  
12 questions.

13 MS. WILLIS: If I may, I just wanted to refer the  
14 Committee and Ms. Belenky to the Executive Summary, Table 3.  
15 It's on page 1.1-10. It does list -- it's a master list of  
16 all the cumulative projects that staff considered. Included  
17 is the PSI Amargosa PV Solar Project, which I believe is  
18 what you're referring to, not Abengoa. And also the Sandy  
19 Valley Project. So there is a master list that includes  
20 quite a -- almost two pages of projects that staff  
21 considered.

22 HEARING OFFICER CELLI: Okay.

23 PRESIDING MEMBER DOUGLAS: Ms. Allen was shaking  
24 her head.

25 HEARING OFFICER CELLI: Ms. Anderson, go ahead.

1           PRESIDING MEMBER DOUGLAS: Ms. Anderson.

2           MS. ANDERSON: I believe that the Pahrump Valley  
3 Solar is a different one, sponsored by Abengoa.

4           HEARING OFFICER CELLI: So Ms. Belenky, how many  
5 more questions do you have and where are we going with this?

6           MS. BELENKY: Well, the next set of questions  
7 actually are again an overlap area. Which is that the --  
8 another finding of fact in the FSA has to do with the  
9 constraints on development because of water. And that is a  
10 finding of fact that is made in the growth-inducing section.  
11 And I am not sure how the Committee would prefer to deal  
12 with this because --

13          HEARING OFFICER CELLI: I'll tell you what we  
14 would --

15          MS. BELENKY: It's presented as a fact.

16          HEARING OFFICER CELLI: Right. What I would like  
17 to do, I would like to get into that area. But I am trying  
18 to get away from and encourage more of is less communication  
19 from the attorneys, more information from the experts. And  
20 so that's why I'm trying to get a sense of the big picture.  
21 Where do we want to go? What is the issue, so that we can  
22 get the experts to talk about it.

23          MS. BELENKY: Well, the Committee could ask the  
24 panel whether they believe that -- whether in their opinion  
25 this would induce growth of other projects in the area.

1 HEARING OFFICER CELLI: The use of water?

2 MS. BELENKY: No, the project itself and all the  
3 linears.

4 HEARING OFFICER CELLI: Okay.

5 MS. BELENKY: The water is a separate question  
6 which I didn't think -- I thought you just said you didn't  
7 want to --

8 HEARING OFFICER CELLI: I don't understand how the  
9 water applies to growth-inducing impacts since they're an  
10 overcharge already, an overdraft.

11 MS. BELENKY: I can -- Again, I don't want to  
12 testify but it is presented as a proposed finding of fact in  
13 the staff assessment, the Final Staff Assessment as to  
14 growth-inducing impacts. And the --

15 HEARING OFFICER CELLI: Could you read that?

16 MS. BELENKY: I can certainly read it.

17 HEARING OFFICER CELLI: Read the finding.

18 MS. BELENKY: "The Pahrump Valley groundwater  
19 basin, which includes the Charleston View area, has  
20 experienced significant declines in groundwater levels  
21 during the past 100 years and staff believes that this is a  
22 serious constraining on any significant development.  
23 Current land use designations are an additional constraint  
24 on new commercial and residential development in the local  
25 area." So staff is making a finding of fact that the lack of

1 water is a constraint on development and it is part of their  
2 growth-inducing analysis.

3 HEARING OFFICER CELLI: Right.

4 MS. WILLIS: And, Mr. Celli, if I may.

5 HEARING OFFICER CELLI: One moment, let me just, I  
6 want to -- Ms. Belenky, I kind of -- that sounds like a  
7 pretty definite statement from staff.

8 PRESIDING MEMBER DOUGLAS: What is it about that  
9 statement that you want clarified or addressed by the panel?

10 HEARING OFFICER CELLI: And the reason, I think  
11 the reason for inquiry is that, I think from my reading at  
12 least of the FSA, it's pretty clear that the whole region is  
13 in a state of overdraft and that there is not more water  
14 coming into the area. And so staff is using that as a  
15 factor to support a finding that there would not be growth-  
16 inducing impact due to limitations on water.

17 I don't know if we have to go any deeper on that  
18 than that but why would we if we did? What would that show  
19 us? What do we need to know?

20 MS. BELENKY: If staff does not believe that the  
21 lack of water is a constraint on this project being  
22 developed then how can they say it is a constraint on other  
23 projects being developed?

24 HEARING OFFICER CELLI: Okay, that's fair enough,  
25 let's ask Mr. Kerr.



1           MR. KERR: I am not a water expert but I think the  
2 idea is that this project, you know, isn't -- is using water  
3 that they have shown is available in other types of uses.  
4 Who knows what they could --

5           MS. BELENKY: Objection.

6           MS. WILLIS: Actually I would like to make an  
7 objection. Mr. Kerr is not the water expert, that was what  
8 I was going to refer you to at the beginning on the  
9 limitations to development section. It says, as discussed  
10 in the water supply section of this FSA. Mr. Kerr is taking  
11 that information.

12          HEARING OFFICER CELLI: Right.

13          MS. WILLIS: That can be discussed later with our  
14 water panel.

15          HEARING OFFICER CELLI: Okay. We will talk about  
16 that some more in the water area. But I don't think that  
17 was -- I think that that was an appropriate question,  
18 actually, for growth-inducing impacts in terms of the  
19 limitation on it. But does anyone else have anything to  
20 shed on -- any light to shed on that, on this panel?  
21 Mr. Moore.

22          MR. MOORE: Could I add a commentary regarding the  
23 size of the linears that are being put in place?

24          HEARING OFFICER CELLI: Please.

25          MR. MOORE: In particular on the gas pipeline. We

1 are working with the owner of the gas pipeline and they --  
2 for us -- for us -- for them to get permission from FERC to  
3 build that pipeline they must have a contract from us for  
4 our usage and our usage only. And that's what allows them  
5 to get the certificate that will allow them to build that  
6 pipeline. And there is no one else that will be part of  
7 that certificate.

8 HEARING OFFICER CELLI: Thank you for that  
9 clarification. Ms. Belenky?

10 So I want to, I basically want to open up --

11 MS. BELENKY: That was not actual factual  
12 testimony either, that was testimony about a discussion he  
13 had about what are apparently legal issues.

14 HEARING OFFICER CELLI: Well, it sounds like there  
15 is a limitation on the size of the pipeline.

16 MS. BELENKY: But he is not -- first of all, the  
17 pipeline DEIS has not come out, we've established that fact.  
18 Is he an expert on FERC? What is his expertise that this  
19 is his testimony?

20 HEARING OFFICER CELLI: Well he's an expert for  
21 the applicant. Do you have personal knowledge of this  
22 contract, Mr. Moore?

23 MR. MOORE: Yes I do.

24 MS. BELENKY: Does he have personal knowledge that  
25 the pipeline cannot be any larger than his -- than the

1 contract that he is discussing?

2 HEARING OFFICER CELLI: Well that's a different  
3 question.

4 PRESIDING MEMBER DOUGLAS: Well let's start with  
5 Mr. Celli's question.

6 MS. BELENKY: That it absolutely cannot be. Is  
7 that his personal knowledge?

8 HEARING OFFICER CELLI: Well no, that's argument.

9 So do you have personal knowledge of the contract,  
10 you've read it?

11 MR. MOORE: Yes I have.

12 HEARING OFFICER CELLI: Okay.

13 MS. BELENKY: He has knowledge of the contract.  
14 He does not have knowledge of what size the pipeline will  
15 actually be approved, which has not happened yet.

16 MR. MOORE: I was personally involved in the  
17 conversations we had with the supplier of the gas pipeline.

18 HEARING OFFICER CELLI: Thank you; and that's  
19 clear. Okay. So what's left in terms of growth-inducing  
20 impact issues that we need to cover, Ms. Belenky?

21 MS. BELENKY: I don't believe that there are any  
22 facts that have been presented by any of the parties that  
23 actually address growth-inducing impacts and therefore what  
24 needs to be addressed is growth-inducing impacts.

25 HEARING OFFICER CELLI: What fact do you want to

1 elicit that hasn't come out yet?

2 MS. BELENKY: The fact that the staff says it will  
3 rely on BLM's future analysis which has not yet happened.

4 HEARING OFFICER CELLI: Right.

5 MS. BELENKY: That analysis needs to be in this  
6 record in order for growth-inducing impacts to be addressed.

7 HEARING OFFICER CELLI: It sounds to me like what  
8 you're discussing is the absence of evidence, really, rather  
9 than evidence. You want to -- which is something that  
10 you're going to point out in your brief. And your position  
11 would be probably that they didn't do a sufficient analysis  
12 because they don't have this fact or that fact or that this  
13 pipeline could be greater or smaller or different or  
14 whatever, right?

15 And so what I want to get to is, we have this  
16 panel of experts here and I want to know if there are  
17 questions that you would like to ask in terms of facts that  
18 support a finding of an impact with regard to growth-  
19 inducing impacts outside of what we've already heard.

20 We now know that there is a contract in place,  
21 although the DEIS has not come out, for a 12 inch pipeline,  
22 a gas pipeline; and we've heard that there are 230 kV  
23 transmission lines, both in Nevada as I understand it; and  
24 we've heard about the two potential other solar projects in  
25 the area, both in Nevada as well. Any other facts that we

1 need adduced at this time that you would like to hear the  
2 experts speak to?

3 MS. BELENKY: I would have liked to hear the staff  
4 expert on growth-inducing impacts speak to the growth that  
5 would be induced. But since we don't have that expert here  
6 I don't think they can speak to it.

7 HEARING OFFICER CELLI: Well I thought this expert  
8 said that there would be no growth inducement.

9 MS. BELENKY: Well, what the document says is that  
10 they are waiting for BLM to do their analysis and that BLM  
11 will do the analysis. That they did not do the analysis.  
12 That is what I think needs to be clear here.

13 HEARING OFFICER CELLI: Okay, that is clear.

14 MS. BELENKY: That the CEC staff and this record  
15 does not currently contain an analysis of the growth  
16 inducing impacts.

17 MS. WILLIS: Just for the record, Ms. Belenky is  
18 talking about the sections of infrastructure in Nevada.

19 HEARING OFFICER CELLI: Right.

20 PRESIDING MEMBER DOUGLAS: We understand.

21 HEARING OFFICER CELLI: Understood,  
22 Ms. Willis, that's understood.

23 Mr. Moore, did you have something? You were  
24 motioning?

25 MR. MOORE: No, thank you.

1 HEARING OFFICER CELLI: Okay.

2 PRESIDING MEMBER DOUGLAS: I've got one question  
3 on this point. Mr. Moore, would the gas pipeline be  
4 considered a common carrier pipeline such that it would be  
5 large enough to serve multiple projects? I think you said  
6 no but I just wanted to clarify.

7 MR. MOORE: That would be correct. My  
8 understanding is that unless there is a change in technology  
9 it would only have the capability to serve our project.

10 PRESIDING MEMBER DOUGLAS: All right, thank you.  
11 Okay, applicant.

12 HEARING OFFICER CELLI: Any questions from the  
13 applicant's side?

14 MR. HARRIS: No, we don't. We'd like to move our  
15 exhibits if we could, though.

16 HEARING OFFICER CELLI: Okay, what's the motion?

17 MR. HARRIS: I'd like to move in the applicant's  
18 exhibits on socioeconomics at this point. I'm sorry, I kind  
19 of forgot the topic, as read by Mr. Carrier.

20 HEARING OFFICER CELLI: Go ahead.

21 MR. CARRIER: Exhibit 1, Exhibit 4, 5, 7, 43, 47,  
22 54, 63, 70, 71 and 72.

23 HEARING OFFICER CELLI: Is that everything or is  
24 that just EJ or?

25 MR. CARRIER: That's socioeconomics, EJ and

1 growth-inducing all combined.

2 HEARING OFFICER CELLI: Okay. So the motion is to  
3 move exhibits marked for identification as Exhibits 1, 4, 5,  
4 7, 43, 47, 54, 63, 70, 71 and 72 into evidence. Is there  
5 any objection from staff? Ms. Willis, any objection?

6 MS. WILLIS: No objection.

7 HEARING OFFICER CELLI: Ms. Crom?

8 MS. CROM: Submit.

9 HEARING OFFICER CELLI: Mr. Arnold?

10 MR. ARNOLD: No objection.

11 HEARING OFFICER CELLI: Mr. Zellhoefer?

12 MR. ZELLHOEFER: No objection.

13 HEARING OFFICER CELLI: Amargosa Conservancy,  
14 Mr. Brown?

15 MR. BROWN: No objection.

16 HEARING OFFICER CELLI: Mr. Levy?

17 MR. LEVY: No objection.

18 HEARING OFFICER CELLI: Ms. Belenky?

19 MS. BELENKY: No objection.

20 HEARING OFFICER CELLI: Ms. MacDonald. Has anyone  
21 heard from Ms. MacDonald, by the way? Do we know?

22 MS. CROM: This is Dana Crom. I asked the Public  
23 Adviser to try to reach her and he has and we have not had  
24 any contact with her.

25 HEARING OFFICER CELLI: Okay, thank you for that

1 information.

2 Those Exhibits, 1, 4, 5, 7, 43, 47, 54, 63, 70, 71  
3 and 72 are received into evidence.

4 (The above-referenced documents, previously  
5 marked as Exhibits 1, 4, 5, 7, 43, 47, 54,  
6 63, 70, 71 and 72's were received into  
7 evidence.)

8 HEARING OFFICER CELLI: Staff, do you have a  
9 motion?

10 MS. WILLIS: Yes we do. We'd like to move in the  
11 section of socioeconomics in Exhibit 300 and Mr. Aaron  
12 Nousaine's declaration, résumé in Exhibit 325.

13 HEARING OFFICER CELLI: Any objection, applicant?

14 MR. HARRIS: I'm sorry, 325 is a declaration?  
15 What's 325, Kerry?

16 MS. WILLIS: Mr. Nousaine's declaration.

17 MR. HARRIS: Okay, no objection.

18 HEARING OFFICER CELLI: County of Inyo?

19 MS. CROM: Submit.

20 HEARING OFFICER CELLI: Richard Arnold?

21 MR. ARNOLD: No objection.

22 HEARING OFFICER CELLI: Mr. Zellhoefer?

23 MR. ZELLHOEFER: No objection.

24 HEARING OFFICER CELLI: Amargosa Conservancy?

25 MR. BROWN: No objection.



1 HEARING OFFICER CELLI: Mr. Levy?

2 MR. LEVY: No objection.

3 HEARING OFFICER CELLI: Ms. Belenky?

4 MS. BELENKY: We do object to the FSA to the  
5 extent that it relies on a document that has not yet been  
6 produced by BLM and that they are relying on facts that are  
7 not here and therefore this matter cannot be closed at this  
8 time.

9 HEARING OFFICER CELLI: Objection overruled as it  
10 relates to the admissibility of the document but you can  
11 make those arguments in your brief; so your objection is  
12 noted and preserved for the record.

13 Exhibits 300 and 325 are received.

14 (The above-referenced documents, previously  
15 marked as Exhibits 300 and 325 were received  
16 into evidence.)

17 HEARING OFFICER CELLI: Now County of Inyo. Did  
18 you move in, by the way -- I don't recall whether we  
19 actually moved in, was it 948 which was the agreement?

20 MS. CROM: 948 was moved into evidence.

21 HEARING OFFICER CELLI: Last night.

22 MS. CROM: And that's the only piece of evidence  
23 that the county would be introducing.

24 HEARING OFFICER CELLI: Thank you. Mr. Arnold, I  
25 don't believe you had any exhibits on this.

1 MR. ARNOLD: No.

2 HEARING OFFICER CELLI: Thank you.

3 Mr. Zellhoefer does not.

4 Mr. Levy does not on socioeconomics, right?

5 Ms. Belenky, you have a motion?

6 MS. BELENKY: Yes, we have Exhibit 500, which is  
7 Ms. Anderson's testimony, and we have Exhibit 535, which is  
8 the initial application for the Pahrump Valley Solar  
9 Project, which is the one that Ms. Anderson discussed.

10 HEARING OFFICER CELLI: And that's all?

11 MS. BELENKY: On socioeconomics that's all.

12 HEARING OFFICER CELLI: Thank you.

13 HEARING OFFICER CELLI: And Amargosa Conservancy,  
14 did you have anything on socio?

15 MR. BROWN: I don't believe we did.

16 HEARING OFFICER CELLI: Any objection from  
17 applicant to the admission of exhibits marked for  
18 identification as 500 and 535?

19 MR. HARRIS: No objection.

20 HEARING OFFICER CELLI: Staff, any objection?

21 MS. WILLIS: No objection.

22 HEARING OFFICER CELLI: County of Inyo any  
23 objection?

24 MS. CROM: Submit.

25 HEARING OFFICER CELLI: Mr. Arnold?

1 MR. ARNOLD: No objection.

2 HEARING OFFICER CELLI: Mr. Zellhoefer?

3 MR. ZELLHOEFER: No objection.

4 HEARING OFFICER CELLI: Mr. Brown?

5 MR. BROWN: No objection.

6 HEARING OFFICER CELLI: Mr. Levy?

7 MR. LEVY: No objection.

8 HEARING OFFICER CELLI: Okay, Exhibits 500 and 535  
9 are received into the record.

10 (The above-referenced documents, previously  
11 marked as Exhibits 500 and 535 were received  
12 into evidence.)

13 HEARING OFFICER CELLI: Then at this time we would  
14 close the topic area of socio.

15 MS. BELENKY: And again I want to restate our  
16 objection to closing socio and economics, the growth-  
17 inducing portion, because the analysis that is relied on in  
18 the factual findings by the staff does not yet exist and we  
19 have not seen that, it is not in the record and we want the  
20 record held open until that document exists and is provided.

21 HEARING OFFICER CELLI: Okay. So objection noted,  
22 I haven't ruled on it yet. Mr. Zellhoefer, did you want to  
23 say something?

24 MR. ZELLHOEFER: Yes, I have a question of fact  
25 that I need answered by the staff consultant. It was

1 mentioned under growth-inducing --

2 HEARING OFFICER CELLI: Why don't you ask the  
3 committee what the question is.

4 MR. ZELLHOEFER: Okay, I will ask it of you. It  
5 was indicated that there would be no power supplied to the  
6 area by the power produced at the solar plant. It was not  
7 clear to me, is the electricity being brought into the area  
8 also growth-inducing as the power plant will be using power  
9 at night? There is a net increase of power being delivered  
10 to the area, I think, and I'd like a clarification on that.

11 HEARING OFFICER CELLI: Can someone give him a  
12 quick talk about the parasitic load, please.

13 MR. MOORE: The project will be consuming power  
14 during, during the evening. But again, that's part of the  
15 interconnection process. I mean, so, to some extent there  
16 will be a net outflow of electricity from the project.

17 HEARING OFFICER CELLI: Okay, thank you.

18 MR. ZELLHOEFER: If the chair will --

19 HEARING OFFICER CELLI: Speak into the microphone,  
20 Mr. Zellhoefer.

21 MR. ZELLHOEFER: So again I would like you to ask  
22 the question, is new power which could be growth-inducing  
23 being brought into the Charleston View area as a result of  
24 this project? Very -- I just need to understand that.

25 HEARING OFFICER CELLI: Mr. Moore?

1 MR. ZELLHOEFER: Because right now they're short  
2 on power.

3 HEARING OFFICER CELLI: Mr. Moore?

4 MR. MOORE: I don't believe that power will be  
5 available to the general public, that power is for our  
6 project.

7 HEARING OFFICER CELLI: Thank you. So the answer,  
8 I guess, is no.

9 ASSOCIATE MEMBER HOCHSCHILD: And what is the  
10 nighttime load for the facility?

11 MR. MOORE: That would be a question I can't  
12 answer.

13 ASSOCIATE MEMBER HOCHSCHILD: Okay.

14 HEARING OFFICER CELLI: So I want to get back to  
15 Ms. Belenky's motion, which is a motion to leave the record  
16 open. We'll stay on the record but I just want to confer  
17 with the Committee for a moment.

18 (Committee conferring.)

19 HEARING OFFICER CELLI: Thank you. The objection  
20 itself is overruled but the order of the Committee is this.

21 If the DEIS or any analysis comes out from whichever  
22 agencies are doing the analysis that that evidence will be  
23 received into evidence. So the record will remain open  
24 limited to the receipt of that document.

25 MS. BELENKY: I'm sorry, I want to clarify. That

1 document and will the parties have a chance to respond to  
2 that document? This is a factual question, these are facts  
3 that are not in the record now.

4 HEARING OFFICER CELLI: Right. No, because unless  
5 that document comes out during the pendency of the  
6 evidentiary hearings then there will not be new evidentiary  
7 hearings on that document. That's extra-jurisdictional.

8 MS. BELENKY: I'm sorry, I just -- I realize this  
9 is a legal question but I feel that I need to put this  
10 objection right now in the record.

11 The Committee itself said in an order dated  
12 October 2nd, 2002 that growth-inducing impacts in Nevada  
13 that actually affect California will be considered. And  
14 those impacts could include from these multiple projects  
15 that are, we believe, being induced through this project.

16 And I realize that's not a fact and that's  
17 something in dispute, how much growth is being induced. But  
18 the kinds of impacts that would be felt also on the  
19 California side include wildlife impacts, air impacts and  
20 water impacts.

21 And the Center objects to those issues having not  
22 been addressed by this Committee in this document and under  
23 CEQA they have not been analyzed nor has avoidance nor  
24 mitigation been looked at. And I have to get that on the  
25 record at this hearing. And we would ask that the hearings

1 do be reopened at the time when more facts are in evidence  
2 and that they be opened to all of the parties at that time.

3 HEARING OFFICER CELLI: Your objection is  
4 preserved and is in the record.

5 MR. HARRIS: If I could, I think Ms. Belenky hit  
6 the nail on the head, this is a legal issue. You don't need  
7 to leave your record open to deal with a legal issue.

8 I disagree with the characterization that the  
9 staff relies on anything from the BLM, those processes are  
10 separate, NEPA/CEQA processes, and I make that as a legal  
11 argument as well.

12 I've got a practical problem. My only interest in  
13 this is I'd like to be able to make sure I can excuse my  
14 witnesses so they can make their planes. So I want to make  
15 sure that the record is closed and I can release my  
16 witnesses.

17 HEARING OFFICER CELLI: The record is closed on  
18 socio subject to the inclusion of the DEIR -- DEIS, rather.  
19 And with that you can excuse your witnesses. Thank you for  
20 your participation, panel, appreciate that, you are excused.

21 The time is 11:00, about 11:00 o'clock. We had  
22 said last night that we were going to allow the parties to  
23 workshop some traffic issues for today, traffic and noise.

24 We were set to resume at 1:00 o'clock for water  
25 supply and soil and water. So we will go off the record.

1 Well, before we go off the record -- we're not off the  
2 record yet but we intend to go off the record until 1:00  
3 o'clock when we would resume. And during that time would  
4 also include a lunch break for the parties.

5 Any matters we have to hear before we go off the  
6 record of any of the parties, applicant, staff? Any of the  
7 parties?

8 Okay. We do need to take quick public comment.  
9 Any members of the public who are present in the room who  
10 wish to make a comment please come to the podium.

11 PRESIDING MEMBER DOUGLAS: And if members of the  
12 public want to stay through the whole proceedings and want  
13 to comment later once you've heard everything that's fine  
14 too. This is just a convenience if somebody would like to  
15 come forward, make their comment now instead of later and go  
16 home. This would be an opportunity to do that.

17 All right, I don't see anyone running forward to  
18 speak so -- go ahead.

19 HEARING OFFICER CELLI: Go ahead, Ms. Haskin.

20 MS. HASKIN: I just have a question. When you're  
21 talking what this is going to do for growth impacting us,  
22 what are you including in that?

23 HEARING OFFICER CELLI: Well, we're including  
24 whatever the record contains so that's what we're asking  
25 for, what are the facts that people are going to give us.



1 We're concerned that anything that this project does would  
2 create, could create some sort of, if you will, a land rush  
3 or gold rush or people coming in changing the size and the  
4 character of the area and how the project itself would  
5 affect the local population.

6 MS. HASKIN: Would that include somebody who is  
7 buying property in order to build a housing tract or to  
8 further the businesses out there?

9 HEARING OFFICER CELLI: It would have to be tied  
10 directly into this project. So this project would have done  
11 something that would enable, say, that development that  
12 wouldn't have otherwise been enabled.

13 MS. HASKIN: If the housing tract is meant for the  
14 people that are going to work there would that be included?

15 HEARING OFFICER CELLI: Sure.

16 MS. HASKIN: Because that's what I was told  
17 yesterday by Mr. Bradley.

18 HEARING OFFICER CELLI: I don't know who  
19 Mr. Bradley is.

20 MS. HASKIN: Kelly Bradley is a man that works for  
21 a company called KEOL Development, which is part of the  
22 Wiley Estates family businesses, to my understanding. And  
23 he was telling me yesterday that BrightSource has purchased  
24 like 10,000 acres near our house. And then behind where the  
25 Charleston View development is, where I live, that they are

1 also bringing this road in from the Sandy Valley area to the  
2 back of where we live along the Kingstons and there's going  
3 to be like 400, 450 homes built back there.

4 HEARING OFFICER CELLI: This is the first I'm  
5 aware of it, I don't know.

6 MS. HASKIN: And I'm just saying that that's --  
7 when he told me that yesterday that's what I understood  
8 would be a direct impact on us. Because if you come in and  
9 build brand new homes where we live, it's definitely going  
10 to affect us. Four hundred and fifty is a lot of homes in  
11 an area where there is between 70 and 75 people.

12 HEARING OFFICER CELLI: Thank you.

13 Mr. Battles, I think -- my computer isn't --  
14 Anything else, Ms. Haskin?

15 MS. HASKIN: No, I was just trying to understand  
16 what you were saying, thank you.

17 HEARING OFFICER CELLI: Okay. So you understand  
18 what the inquiry is for the purposes of growth-inducing  
19 impacts.

20 MS. BELENKY (off mic): She wants to know why  
21 that's not in the record.

22 HEARING OFFICER CELLI: We don't know what -- are  
23 you speaking, Ms. Belenky?

24 MS. BELENKY: Yes, I am very concerned.

25 HEARING OFFICER CELLI: Then you need to pick up

1 your microphone.

2 MS. BELENKY: This is Lisa Belenky at the Center  
3 for Biological Diversity. I am very concerned with this new  
4 information. I am very concerned that staff did not address  
5 anything like this.

6 HEARING OFFICER CELLI: Well right now all we have  
7 is a commentor who --

8 MS. BELENKY: Yes, but the commentor --

9 HEARING OFFICER CELLI: -- based on some hearsay.

10 MS. BELENKY: Well.

11 HEARING OFFICER CELLI: And we don't know whether  
12 any of this is going to come to fruition or not. I  
13 understand your concern but this is now time for public  
14 comment. So thank you for raising that issue, Ms. Haskin,  
15 go ahead.

16 MS. HASKIN: Mr. Bradley is also the man that  
17 brought the St. Therese Mission to us. He is the one that  
18 sells the lots out there. And if you Google his name it  
19 will bring you back to all of this.

20 HEARING OFFICER CELLI: Thank you.

21 MS. HASKIN: You're welcome.

22 HEARING OFFICER CELLI: Any other members of the  
23 community who would like to come forward and make a --  
24 Mr. Jim.

25 MR. JIM: Yeah, Eddie Jim of the Pahrump Paiute

1 tribe. Mr. Bradley here I think worked for the applicant at  
2 one time because he handed me a business card with  
3 BrightSource's name on it. And also that Mr. Bradley -- you  
4 said there is no impact to the community of Charleston View.

5 Mr. Bradley during a field trip, I think put the applicant  
6 and BLM, that I was on, made a complaint, a lot of  
7 complaints about the area that people needed to clean their  
8 yards. If they're low-income, you know what happens when  
9 you get an ordinance to clean their yard. These people  
10 don't have money to clean their yards. They'll just put a -  
11 - they'll clean it for them and put a lien on it. So there  
12 is a lot of impact to that community if this project goes  
13 through. Thank you.

14 HEARING OFFICER CELLI: Thank you, Mr. Jim.

15 Any other members of the community who are here?

16 Mr. Blake, do we have any others? He is  
17 indicating no.

18 I have an apparent computer problem because my  
19 computer just went off and I can't -- maybe, Mr. Battles,  
20 can you give me back presenter rights? I don't know if you  
21 even can from yours.

22 MR. BATTLES: I came up right now just to see what  
23 you're listed as, I don't even see you on my list,  
24 Mr. Celli.

25 HEARING OFFICER CELLI: All right, so I'm going to

1 have to turn my computer back on and that means I am off  
2 WebEx. So, Mr. Battles, if you can from where you are  
3 unmute everybody so that we will be able to hear people on  
4 the phone.

5 MR. BATTLES: Actually it looks like we've got IT  
6 on the line and they said I can give you host rights back..  
7 Maybe a -- Matt, are you there?

8 HEARING OFFICER CELLI: I'm back, okay. It  
9 appears that I'm back, okay. I will take my host rights  
10 back. Okay, I've got it now. Computers. Okay.

11 Now I have Alana on the line, I have Aimee Howard,  
12 I have Andrea. I'm calling your name, if you wish to make a  
13 public comment please speak up. Casey. Darrell Lacy. Greg  
14 James.

15 MS. CROM: He's with the County.

16 HEARING OFFICER CELLI: Jane. Jeff Ogata, okay.  
17 Jim Stroh. Jay Leyva, she's with staff. Jonathan Fong.  
18 Karim Abulaban, Karim Abulaban. Keith Winstead, Keith  
19 Winstead, okay. Marianne B. Mark Silverston. Mark Watte.  
20 Mary Lou Taylor. Michael Garabedian. Noel Ludwig.

21 Okay, is there anyone on the phone who would like  
22 to make a public comment at this time? Anybody on the  
23 telephone?

24 MR. LACY: Yes, this is Darrell Lacy with the Nye  
25 County Water District.

1 HEARING OFFICER CELLI: Say your name again,  
2 please.

3 MR. LACY: Darrell Lacy.

4 HEARING OFFICER CELLI: Okay, you're a little --  
5 can you speak right into your phone but not yell.

6 MR. LACY: Yes. Can you hear me better now?

7 HEARING OFFICER CELLI: That's a little better, go  
8 ahead.

9 MR. LACY: Yes. This is Darrell Lacy, general  
10 manager of the Nye County Water District. I have more  
11 comments to make later in the water section, however there  
12 were statements made in the most recent group about  
13 overdrafting of the Pahrump Basin. The Nye County Water  
14 District has the best data and our opinion of this is that  
15 the -- the Nye County Water District submitted comments on  
16 this. The station is over-allocated. We have an overhang  
17 of water rights to the tune of, you know, tens of thousands  
18 of acre-feet. However the majority of these are not being  
19 pumped and at the current time the basin is basically in  
20 balance for actual pumpage versus the perennial yield.  
21 Thank you.

22 HEARING OFFICER CELLI: Thank you. And Mr. Lacy,  
23 you understand that at 1:00 o'clock when we resume we're  
24 going to be talking about water issues. You may want to  
25 tune in for that.

1 MR. LACY: Yes.

2 HEARING OFFICER CELLI: Thank you very much for  
3 your comments.

4 Are there any other people on the phone who would  
5 like to make a comment?

6 Okay, hearing none then we are off the record. We  
7 will resume at 1:00 o'clock.

8 (Off the record at 11:10 a.m.)

9 (On the record at 1:10 p.m.)

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A F T E R N O O N   S E S S I O N

1:10 p.m.

HEARING OFFICER CELLI: Ladies and gentlemen, it is ten minutes after one o'clock, welcome back from lunch. This is Hearing Advisor Ken Celli. The Committee is all here, the applicant is here, staff appears to be all here, the County of Inyo is here, we have Richard Arnold, we have --

MR. ARNOLD: May I ask a question real quick?

HEARING OFFICER CELLI: Mr. Arnold, go ahead.

MR. ARNOLD: I'm supposed to be on this panel here. But since they're almost wrapped around here do I need to go sit over there? You were saying that it was difficult to see because of the lighting and things.

HEARING OFFICER CELLI: You know what, you're fine where you are.

MR. ARNOLD: Thank you.

HEARING OFFICER CELLI: Just don't let us forget that you're an expert on this panel, okay.

MR. ARNOLD: I won't do that, I promise.

HEARING OFFICER CELLI: Mr. Zellhoefer is here. Now Brian Brown.

MR. ARNOLD: He just walked by.

SPEAKER FROM THE AUDIENCE: He just stepped out.

HEARING OFFICER CELLI: He's here, okay. But I



1 have other people here from Amargosa.

2 MS. LAMM: Yes, sir, Donna Lamm.

3 HEARING OFFICER CELLI: Donna Lamm, hello.

4 MR. CHRISTIAN: Bill Christian, sir.

5 HEARING OFFICER CELLI: Bill Christian, hello,  
6 nice to see you all in person, welcome. To your right I  
7 have Larry Levy from Southern Inyo Fire Protection District  
8 and to your immediate left is Ileene Anderson and Lisa  
9 Belenky from the Center for Biological Diversity.

10 Cindy MacDonald isn't here. This is a cause of  
11 great concern for everybody. She has been such a major  
12 player and her presence is very important and we are very  
13 worried about that. So if anyone knows anything or hears  
14 about anything please let us know immediately.

15 We have a panel at this time.

16 Before I get into that let me ask the parties.  
17 Because the only people who were interested in worker safety  
18 and fire protection was Southern Inyo Fire Protection  
19 District, staff has an interest in that, applicant has an  
20 interest in that and Cindy MacDonald even voiced an interest  
21 in that. And I am just wondering if we get finished early  
22 is that something we could tackle today? Would that work  
23 for you, Mr. Levy?

24 MR. LEVY: Our other witness is -- I have no idea  
25 whether he would be available even over the phone.

1 HEARING OFFICER CELLI: Just checking. I just  
2 thought maybe we could -- just trying to be efficient with  
3 our time use.

4 So with that we have a who new panel of people and  
5 I am just going to ask you, starting with you, ma'am, on my  
6 left.

7 MS. CHAINEY-DAVIS: My name is Carolyn Chainey-  
8 Davis.

9 HEARING OFFICER CELLI: Okay, all of you experts  
10 look at me. Look at me up here. I am demonstrating how you  
11 use these microphones. You notice that if I keep going  
12 forward I will swallow this microphone. That's the way you  
13 talk into this microphone. We can't hear you if you have,  
14 as these people do down at the end, I see there's two of you  
15 or three of you sharing a single microphone at that last  
16 table. You're going to have to physically pass it back and  
17 forth amongst you so that we can hear you. Because when  
18 someone goes "I agree" (said off mic), we don't hear that,  
19 that doesn't get into the record. And everything you're  
20 saying is being recorded and we want to have a complete  
21 record. So your name was Carolyn?

22 MS. CHAINEY-DAVIS: It's Carolyn Chainey-Davis,  
23 Energy Commission.

24 HEARING OFFICER CELLI: Ms. Chainey-Davis.  
25 Ms. Davis, next to you is?

1 MR. CONWAY: Mike Conway, Energy Commission.

2 HEARING OFFICER CELLI: Mike Conway. Next to  
3 Mr. Conway?

4 MR. MARSHALL: Paul Marshall, Energy Commission.

5 HEARING OFFICER CELLI: Paul Marshall. Next to  
6 Mr. Marshall.

7 MR. FIO: John Fio, Energy Commission.

8 HEARING OFFICER CELLI: John Fio. Next to  
9 Mr. Fio?

10 MR. YATES: Gus Yates, also Energy Commission.

11 HEARING OFFICER CELLI: Gus Yates. Next to  
12 Mr. Yates?

13 DR. JANSEN: John Jansen for the applicant.

14 HEARING OFFICER CELLI: So everyone up until now  
15 has been with the Energy Commission. Mr. Jansen --

16 DR. JANSEN: Yes.

17 HEARING OFFICER CELLI: -- is with applicant.  
18 Next to Mr. Jansen?

19 MR. THOMPSON: Tim Thompson with the applicant.

20 HEARING OFFICER CELLI: Thank you, Mr. Thompson.  
21 Who is next to Mr. Thompson?

22 MR. ROJANSKY: Michael Rojansky with the  
23 applicant.

24 HEARING OFFICER CELLI: How do you spell your last  
25 name, Michael?

1 MR. ROJANSKY: R-O-J-A-N-S-K-Y.

2 HEARING OFFICER CELLI: Oh, Rojansky, from  
3 yesterday. Welcome back. Next to you; sir?

4 MR. ZDON: Andy Zdon, Amargosa Conservancy.

5 HEARING OFFICER CELLI: Z-D-O-N?

6 MR. ZDON: Correct.

7 HEARING OFFICER CELLI: So Amargosa.

8 MR. BROWN: Brian Brown, also with the Amargosa  
9 Conservancy.

10 HEARING OFFICER CELLI: Welcome back, Brian Brown.  
11 Next to Mr. Brown?

12 MR. FRANCK: Matthew Franck with the applicant.

13 HEARING OFFICER CELLI: Matthew Franck. Next to  
14 Mr. Franck?

15 MS. ROSE: Kathy Rose with the applicant.

16 HEARING OFFICER CELLI: Kathy Rose.

17 DR. SPAULDING: Geoff Spaulding with the  
18 applicant.

19 HEARING OFFICER CELLI: Geoff Spaulding with the  
20 applicant. Next to Mr. Spaulding?

21 MR. LONG: Steve Long with the applicant.

22 HEARING OFFICER CELLI: So we have Richard Arnold.  
23 You're already under oath, I believe, Mr. Arnold, and I  
24 have Michael Rojansky has been sworn. So all of the  
25 remaining expert witnesses please stand.

1 MS. BELENKY: Was he introduced?

2 HEARING OFFICER CELLI: You have to speak into the  
3 microphone, I didn't hear any of that.

4 MS. BELENKY: Yeah, was Richard Arnold also listed  
5 in your list?

6 HEARING OFFICER CELLI: He's a witness.

7 MS. BELENKY: Okay, good. I couldn't tell because  
8 you went through and --

9 HEARING OFFICER CELLI: Does CBD have any  
10 witnesses for Water?

11 MS. BELENKY: No.

12 HEARING OFFICER CELLI: Okay. So we have all of  
13 the witnesses. Please raise your right hand.  
14 Whereupon,

15 CAROLYN CHAINEY-DAVIS

16 MIKE CONWAY

17 PAUL MARSHALL

18 JOHN FIO

19 GUS YATES

20 JOHN JANSEN

21 TIM THOMPSON

22 ANDY ZDON

23 BRIAN BROWN

24 MATTHEW FRANCK

25 KATHY ROSE

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GEOFF SPAULDING

STEVE LONG

Were called as witnesses herein, and after being duly sworn,  
were examined and testified as follows:

HEARING OFFICER CELLI: Thank you. All witnesses  
have been sworn; please have a seat.

SOIL AND WATER RESOURCES PANEL

HEARING OFFICER CELLI: Now, I have -- when we  
sent out our Hearing Order I have requested or suggested  
really that staff sort of take the lead on the framing of  
the issues, especially under circumstances as this where we  
have -- what do we have here, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 14, 15 expert witnesses testifying.

So we want to hear from everybody. We'd like to  
hear a robust discussion about water. But there seem to be  
so many issues regarding water that it would be helpful if  
staff perhaps could delineate what the issues are under  
their heading of Water. Are you prepared for that?

MR. CONWAY: We are.

HEARING OFFICER CELLI: Is this the one with the  
PowerPoint, do you have a PowerPoint presentation?

MR. CONWAY: The staff prepared a brief PowerPoint  
presentation.

HEARING OFFICER CELLI: Okay. So I have to hand  
it back over to Mike Battles.

1           Ladies and gentlemen on the phone. We are going  
2 to hand the presenting rights back to Mike Battles. I'm  
3 going to ask that if you're listening in on the telephone  
4 that you mute your telephone so that we don't get any  
5 background noise.

6           MR. HARRIS: Mr. Celli, Jeff Harris. We also  
7 would like after staff's summary an opportunity for a five  
8 to ten minute summary of the applicant's position. And as  
9 we talked about earlier, some of these more complex issues  
10 we think it will actually help save time to have a brief, I  
11 wouldn't call it direct, a summation, and we asked  
12 Mr. Jansen to do so.

13           HEARING OFFICER CELLI: Do your witnesses also  
14 have a PowerPoint?

15           MR. HARRIS: We have made a couple of documents  
16 that are already in the record available in case they're  
17 helpful ut I don't think we're intending to use those on the  
18 direct. We've got them keyed up with Mr. Battles but we are  
19 not planning to use it.

20           I would like to know a little bit more about the  
21 PowerPoint and they can explain what's coming down the road.  
22 I don't think this is an identified exhibit but I'm sure  
23 Mike is about to explain that.

24           HEARING OFFICER CELLI: I remember it coming in  
25 late in the day but it came in. Mr. Harris, I just want to

1 say that we will give you an opportunity after staff. So  
2 how many people are going to present at this time from  
3 staff's witnesses?

4 MR. CONWAY: Just one.

5 HEARING OFFICER CELLI: Okay. So when you're  
6 finished then, Mr. Harris, we'll hear from your expert.

7 MR. HARRIS: Thank you.

8 HEARING OFFICER CELLI: So, Mr. Conway, go ahead.

9 MR. CONWAY: Thank you. Good afternoon,  
10 Commissioners and everyone else in the room. This  
11 presentation is a quick summary of the analyses from the  
12 staff's perspective on the water supply issues of the  
13 project. And everything in this presentation is also in the  
14 record. Next slide.

15 As was requested of us we prepared just a short  
16 list of what is still in dispute in this case.

17 In general the staff and the applicant have  
18 resolved most of our issues actually. We really only have  
19 one condition where there is still some debate, at least  
20 between staff and the applicant.

21 Also still in dispute regarding this particular  
22 condition is how overdraft can be mitigated in the Pahrump  
23 Valley Basin and exactly what the project's contribution to  
24 that is.

25 There is also interest in other parties involved



1 in this case about the Amargosa River, even though both the  
2 staff and applicant concluded that there was no impact to  
3 the Amargosa River. There are still some interests in the  
4 Amargosa River. Next slide, please.

5 So I am just going to go through a really quick  
6 explanation of the hydrology of the Pahrump Valley, followed  
7 by a quick technical summary of both staff's analysis and  
8 the applicant's analysis. I am going to explain what  
9 conditions we have and what they predict, just briefly.  
10 Thank you.

11 So the Pahrump Valley has a long agricultural  
12 history here in the desert, really beginning around the  
13 early 1900s. It's situated to the east of Death Valley.  
14 It's about 20 miles up gradient as far as groundwater flows  
15 and also topographically from the Amargosa River.

16 In general the population in Pahrump is in the  
17 northern portion, which is in Nevada, and this project is  
18 located in the south, as you know, on the California side of  
19 the basin.

20 Also worth mentioning about this basin is, you can  
21 faintly see in the picture there, there is a green line that  
22 kind of shows the topographic border of the basin. And to  
23 the right side or the east side you see the Spring  
24 Mountains. That's where the water known to recharge the  
25 system, at least the upper aquifer system, is known to fall,

1 in the Spring Mountains. And that's the --

2 HEARING OFFICER CELLI: Mr. Conway, I just want to  
3 ask Mr. Ratliff or Ms. Willis, has this PowerPoint been  
4 identified with an exhibit number yet?

5 MR. RATLIFF: I don't know.

6 HEARING OFFICER CELLI: All right. If not, what  
7 I'd like to do just for the record --

8 MR. RATLIFF: Well, could we just finish it and  
9 then maybe we can give it an exhibit number if it needs one?

10 HEARING OFFICER CELLI: Well, because we're  
11 looking at it I'd like to say that -- the next in order is  
12 326. You haven't used 326 yet, right? Exhibit 326 would be  
13 the Water PowerPoint and that's how we will refer to it from  
14 here on out. I'm sorry for the interruption, go ahead.

15 (Exhibit 326 was marked for identification.)

16 MR. CONWAY: No problem. So worth noting in this  
17 picture is just that the Spring Mountains are on the eastern  
18 side of the valley. These mountains capture a lot of the  
19 rainfall and then recharge the valley sediments in general,  
20 at least for the upper portion.

21 Mike, could you go back just one more.

22 Also worth mentioning, you can see from the  
23 picture there's a bunch of little dots in the center of the  
24 basin. These are springs, either historic or modern, that  
25 were in or are in the Pahrump Valley today.

1           And also worth mentioning in general is that this  
2 basin is known to be an overdraft. So all the records we  
3 have show that this basis is an overdraft and that's not  
4 currently in dispute. Next slide.

5           The water rights system on the Nevada side of the  
6 basin is managed by the Nevada State Engineer. There's  
7 about 60,000 acre-feet of water rights total available,  
8 however, there's in the range of 13-19,000 acre-feet in use.

9       The difference between these two numbers is significant and  
10 what it shows is that there is an availability of water much  
11 higher than what's actually in use. And the records still  
12 indicate that the basin is in overdraft. And this basin is,  
13 in fact, designated by the Nevada State Engineer as being  
14 water-stricken and has given a high priority. There are no  
15 more water rights being issued in the area. So again the  
16 applicant and staff agree to this overdraft in this area,  
17 particularly as this applies to the northern portion of the  
18 basin. Next slide.

19           And here is the most comprehensive record we have  
20 of the water levels, primarily occurring in the northern  
21 portion of the basin spanning 1950 to 2000. And if you  
22 could, if you could kind of add up the general trend of all  
23 these water levels over this period you could see there is  
24 an average of about one foot decline per year. And again,  
25 this is generally representative of the northern portion but

1 thought to perhaps extend to some extent to the southern  
2 portion.

3 HEARING OFFICER CELLI: Is there any kind of trend  
4 with each individual? In other words, is it greater in the  
5 north and less in the south or something like that?

6 MR. CONWAY: True, true. There is a range of  
7 trends and in fact some of these, even though all these are  
8 generally downward some of them do show some recovery. But  
9 if you were to take averages of these, perhaps the range is  
10 from zero to, you know, maybe five or ten feet of decline  
11 per year. But on average, if you were to average it across  
12 the area which this represents, you're looking at about a  
13 foot per year.

14 HEARING OFFICER CELLI: I just meant  
15 geographically is there any part that shows more decline  
16 than another?

17 MR. CONWAY: In general, yes. The northern  
18 portion in Nevada is showing more decline than the south  
19 where the project is.

20 HEARING OFFICER CELLI: Thank you, that was the  
21 question.

22 MR. CONWAY: I'll try to illustrate it in my next  
23 slide. Or the slide after this one, actually.

24 This is a record just showing one example of how  
25 some springs in the northern portion of Pahrump declined

1 with the onset of agricultural pumping. It was almost  
2 immediate, as this slide indicates, with the onset of  
3 pumping in about 1913. These two springs, Bennett's and  
4 Manse Springs' decline immediately began in 1913 and these  
5 ones apparently stopped flowing somewhere between 1960 and  
6 1980. So this is just pertinent in that when we start  
7 talking about the southern portion of the basin we don't  
8 have a ton of data but we do have examples of where pumping  
9 in the valley has caused a spring reduction in the foothills  
10 above the valley. So this is just good background. Next  
11 slide.

12           We really don't have nearly as comprehensive of a  
13 data set from the southern portion of the basin but we do  
14 have about somewhere in the neighborhood of four or five or  
15 six wells, something like that, that have trends that are  
16 somewhat similar to this one with a very high degree of  
17 confidence. This particular well, the Orchard Well, is on  
18 the proposed project site. We have a bunching of data, as  
19 you can see, from the 2000s. When that's projected  
20 backwards through some historical data we find that it's --  
21 it matches up.

22           And this trend is fairly representative of staff's  
23 conclusion of the southern portion of the basin which says  
24 that in general water levels have fallen about a quarter-  
25 foot per year for as much record as we have. The other

1 records aren't as extensive as this but we at least have a  
2 modern record of decline in the mid to late-2000s. Next  
3 slide.

4           So in general how did the applicant analyze this  
5 project? It was initially analyzed considering the  
6 depositional environment of Southern Pahrump, the Playa  
7 deposits, Lacustrine deposits. And in general these are  
8 fine grain deposits that generally don't yield a ton of  
9 water.

10           The project proponent used a tested program called  
11 WinFlow to simulate relative changes in water level decline  
12 about the project and also to simulate the regional  
13 gradient. And again, that's the, as you can imagine, kind  
14 of the slope of the water table attributable to the  
15 mountains and the flow down the mountains; there is a  
16 general slope in the water table.

17           So this was all taken into account and this image  
18 here, which is also referred to as the cone of depression.  
19 And again just to be specific about what that is, it's a  
20 representation of the relative change in water levels at  
21 various distances from the pumping center. So these were  
22 the initial results. Next slide.

23           So then to confirm or deny some of the previous  
24 assumptions by the applicant to further aquifer test work  
25 performed. And through boring logs and aquifer tests some

1 of the previous assumptions were, in our eyes, actually  
2 confirmed. But what happened was the zone of impact was  
3 greatly reduced following this, this aquifer test and it was  
4 viewed to staff as being unrealistic. Next slide.

5           So how unreasonable is this in terms of scale? We  
6 constructed this simple example which I think is quite  
7 relevant. If you can imagine those previous cones of  
8 depression shown in a previous slide and imagine that they  
9 would be about 1500 feet in radius and in the neighborhood  
10 of 13 to 14 feet deep, but then imagine this cone has  
11 straight sides on it. If this cone was empty and had no  
12 sediment it could contain 757 acre-feet of water.

13           Now if were to put clean sand in these cones,  
14 which is not representative of the site, that would go down  
15 to about 25 percent of that original volume, 189 acre-feet.

16           Now if these cones were filled with something  
17 representative of what was on-site these cones may contain  
18 about 76 acre-feet each.

19           Now a real cone of depression actually has  
20 parabolic, concave inward sides, which actually  
21 substantially reduces the volume of the cone. So the volume  
22 contained in each of these really should be significantly  
23 less than 76 acre-feet.

24           So again, the contrast of that number to the  
25 volume needed for construction, then the volume needed for

1 operation, there is quite a difference in these. So our  
2 conclusion is that we weren't able to -- this representation  
3 doesn't account for all the water needed by the project.  
4 Next slide.

5 And just to explain the local aquifer setting.  
6 It's not a perfect flat or defined system. This is a cross-  
7 section taken from the applicant's analysis. This shows  
8 some blue areas and some orange areas, which all may  
9 represent upper and lower contributing layers to the main  
10 aquifer and you also see a mountain slope to the right, to  
11 the east, upstream from this.

12 The water, the water removed may manifest itself  
13 in many different shapes. It may not be spherical or in the  
14 shape of a cone but one this for certain, it will equal the  
15 volume pumped by the project. Next slide.

16 So what were the applicant's conclusions and how  
17 do we feel about them? The applicant states that rainfall  
18 in the Spring Mountains creates the groundwater gradient in  
19 the Pahrump Valley and staff agrees with that. The rainfall  
20 does, in turn, create the gradient in the Pahrump Valley.

21 The next point, though, the gradient keeps the  
22 impact of the project from expanding and this is simply not  
23 true. And the easiest way to explain this is that the  
24 amount of rainfall falling out of the sky is a fixed, at  
25 least a variable fixed amount. And no matter how much the



1 project pumps there will be no more or less rainfall coming  
2 out of the sky so that translates into no more or less  
3 contributing to the gradient that can limit the propagation  
4 of the cone. So in that sense the rainfall is not recharge  
5 the way we sometimes refer to it in hydrologic budgeting.  
6 There is no new water created by the rainfall that's  
7 contributing to the slope of the water table as we see it  
8 today.

9           Also stated by the applicant, that the aquifer  
10 system is leaky and the staff generally agrees with this.  
11 There is no problem with that. However, when you hear the  
12 word "leaky" you should think that the aquifer has multiple  
13 sources other than the primary aquifer being pumped. So  
14 this could be above, below, at some distance far away. So  
15 "leaky" just means that the aquifer has multiple sources  
16 from which it gets its water and so likewise the impacts  
17 should be proportioned between those sources and we don't  
18 see that in this analysis. So leaky, in our eyes, does not  
19 mean less impact, it just means a re-proportioning of  
20 impact. So what you saw in some of the previous slides was  
21 really just a piece of the total. Next slide, please.

22           So as I just stated, staff has some fundamental  
23 issues with this analysis and wants to reiterate that  
24 virtually all the water extracted from this project will  
25 come from saturated sediments in the aquifer system. And

1 again to remind everyone, one unit extracted and consumed  
2 equals one unit stored or flowing into the basis. These  
3 volumes must be equal.

4 Again, there is no recharge boundary in terms of  
5 hydrologic budget. There is no new water that will be  
6 created by this project, only the existing gradient and what  
7 will be supplied in the future from rainfall that this is  
8 steady. So again, we need to identify all the sources  
9 captured by the wells, not just a portion of it. Next  
10 slide.

11 So staff took this basic approach of quantifying  
12 the amount of water needed by the project is approximately  
13 700 acre-feet for construction and about 4200 acre-feet over  
14 a 30 year life span. So that's about 4900 acre-feet total  
15 or an average of about 151 acre-feet per year. Next slide.

16 So staff's analysis really looked very similar to  
17 the applicant's original analysis. It shows cone of  
18 depression. Again, a relative change in water levels that  
19 extend beyond the project boundaries some distance. This is  
20 sort of a worst-case scenario but at least you can see from  
21 the scale of this relative to the applicant's original  
22 proposal that one would expect it to extend beyond the  
23 project boundaries. Next slide.

24 The staff also acknowledged through some other  
25 analyses not shown here that there is the potential for some

1 faulting in the region to buffer how this propagation will  
2 occur that may change where it manifests itself. In the  
3 figures shown you see some red and green lines that  
4 represent inferred fault structures produced by the USGS.  
5 And also behind these fault structure you see the presence  
6 of vegetation stands in kind of the turquoisey color and in  
7 some cases there are some springs identified. It may just  
8 be that these faults allow the vegetation to grow in these  
9 areas and also create the spring in the first place.

10           So staff took this into account and proposed a  
11 condition that we believe we have general agreement on with  
12 the applicant as to how to protect these, these off-site  
13 resources and those being the mesquite and the springs to  
14 the east. We have constructed a condition that sets up  
15 triggers for -- that would require mitigation and monitoring  
16 and believe we have some general agreement about how to  
17 protect these resources. So that's not an issue right now.  
18   Next slide.

19           So we really have one unresolved issue and this is  
20 our Condition of Certification of Water Supply-1. In that  
21 condition staff is requesting a real water savings to the  
22 basin through some kind of a retirement of water rights  
23 perhaps or any other kind of real water savings in the  
24 Pahrump Valley that is equal to the project's pumping. And  
25 we lay out a couple of different options in the condition

1 without being exclusive of what could be used. And in  
2 general this is similar to what is being requested by Inyo  
3 County and also BLM.

4           The applicant is advocating that a paper right may  
5 be adequate to offset their pumping. And if you think back  
6 to some of our earlier slides you will remember that there  
7 is about a 40,000 acre-foot discrepancy between what is  
8 being used and what's available. So this is to mean that  
9 there is a fair amount of water available that could be  
10 purchased that is not directly linked to any current pumping  
11 in the basin. Next slide.

12           So again, we believe Water Supply-1 is appropriate  
13 as it's written. It's the only means staff has identified  
14 to actually mitigate the potential, potentially increased  
15 overdraft created by the project. And it is also worth  
16 mentioning that this is not a new idea being presented here  
17 today. It was first presented by the staff October 17th of  
18 2011 in the first three data requests asked by water staff.

19       The first one asked what water rights are currently  
20 available in Pahrump; the second one asked what alternative  
21 water savings are available in Pahrump in terms of perhaps  
22 retirement, irrigation improvement; the third one asked for  
23 how these records would be quantified and what they  
24 demonstrate. And following these data requests the  
25 applicant promised a water supply plan in January of 2012.

1 And this report wasn't produced but the need still exists.

2 Next slide, please.

3           So what you're left to decide is, even though  
4 despite some of the technical disagreements, we generally  
5 have concurrence on most of our conditions and we are happy  
6 with the outcome of them and think they're protective. But  
7 Water Supply-1 is written in such a way that it would  
8 require a real water savings. And we do believe a paper  
9 right alone would not prevent the increased overdraft in  
10 Pahrump or at least the project's contribution to it.

11           And again, it is also worth noting that with this  
12 real water savings staff is confident that the basin's  
13 current outflow, wherever it may end up, is maintained and  
14 without this the Pahrump Basin's outflow would be decreased  
15 to other sources downstream, wherever those may be. And  
16 again, this condition as it's written has the general  
17 support of BLM and Inyo County. Thank you very much.

18           MR. RATLIFF: Mr. Conway, one of the things, I  
19 think it would be helpful of you to explain would be the  
20 agreement, I think, that has been reached in terms of the  
21 monitoring that applicant and staff have agreed to thus far  
22 that would be protective of homeowners in the region as well  
23 as the BLM mesquite habitat that you discussed in your  
24 presentation.

25           MR. CONWAY: Okay. I kind of glazed over it but

1 we do have one very complicated condition, Water Supply-4,  
2 that mitigates potential impacts to both well owners in the  
3 area, particularly Charleston View, and also mitigates for  
4 potential declines in mesquite habitat directly to the east  
5 of the project.

6           And what this condition would do as at is written  
7 today and as is agreed upon so far between the applicant and  
8 the staff, this condition would at the eastern boundary of  
9 the project initially require a submittal of a geologic  
10 report if one-half of a foot of water level decline  
11 attributable to the project is detected at the eastern site  
12 boundary. So that's the point where staff becomes  
13 interested, everyone else becomes interested in the  
14 potential impacts of this project propagating beyond the  
15 project boundaries. This is an early warning, we want to  
16 get a report, we want to revisit the data and see what to  
17 expect for the near future.

18           If this decline progresses to the extent where it  
19 is equal to one foot of decline at the site boundary or one-  
20 half of a foot at some distance slightly beyond the site  
21 boundary where the first mesquite are, then we have a  
22 requirement that the project submit a report to the Energy  
23 Commission explaining how this will be offset. And it's the  
24 intent of this condition to restore the water levels above  
25 the pre-project pumping levels and the plan required by this

1 condition would require it.

2 MR. RATLIFF: Could you explain -- Mr. Conway,  
3 could you or perhaps Ms. Davis could explain the role of  
4 vegetation monitoring in relation to the thresholds that you  
5 just discussed in terms of the monitoring wells.

6 HEARING OFFICER CELLI: Can I just ask a question?  
7 I just wanted some clarification.

8 So staff and applicant came to agreement on what  
9 the levels, the triggering levels are; is that correct?

10 MR. CONWAY: That's correct.

11 HEARING OFFICER CELLI: Okay. And it's .5?

12 MR. CONWAY: Sure. I have a slide , actually,  
13 that explains this if you think that would be helpful.

14 HEARING OFFICER CELLI: I just want to know what  
15 the -- there were two numbers you gave for triggering.

16 MR. CONWAY: Sure, it's kind of a two-tiered  
17 system. There's an initial checkpoint at a half a foot at  
18 the site boundary and then the next level is more  
19 consequential and does require mitigation if it's  
20 attributable to the project and there is a decline in  
21 habitat. And that one is one foot at the site boundary or  
22 half a foot in the first mesquite, the first mesquite away  
23 from the project, that is.

24 MR. RATLIFF: And there are two things that I  
25 think you need to discuss to explain that and one is, how do

1 you know it's attributable to the project in terms of the  
2 monitoring wells? And secondarily, what is the role of the  
3 vegetation monitoring in relation to the well level drops?

4 MR. CONWAY: We have mesquite immediately  
5 bordering the project that are highly stressed so the  
6 working assumption in constructing this was to come up with  
7 something that would create mitigation when a change could  
8 be detected. This is a picture I think that can actually  
9 help us explain it very well.

10 In the picture you can see a red dot kind of in  
11 the center that represents the project's pump and you see a  
12 circle with a radius of 1500 feet. This is meant to  
13 represent the applicant's worst case of water level decline  
14 radiating from about the project's well. And at some  
15 distance beyond that you see a black line meant to represent  
16 the project boundary and also the state line between  
17 California and Nevada. And then at some slight distance  
18 beyond that you have perhaps a fault structure and some of  
19 the first mesquite.

20 So we constructed a condition that requires the  
21 use of three to four monitoring wells to project the water  
22 level declines strictly attributed to the project. Because  
23 we have such steady water levels on-site we expect that  
24 these monitoring wells will also be very steady. We have a  
25 very high degree of confidence that we can detect changes in



1 trend in these wells.

2           So what you can see here, the way this would work,  
3 the first three blue dots would be the first three  
4 monitoring wells radiating from the project's pump in the  
5 northern power block. And if these three wells could show  
6 some direct correlation and measure half a foot of decline  
7 that is radiating out from the wells, if this progresses  
8 again to the half a foot as described earlier or one foot at  
9 that black line, then those are sort of our trigger levels.

10 And at the next blue dot the fourth, the fourth monitoring  
11 well, if half a foot is detected in this, which is to  
12 represent the first mesquite, then mitigation will be taken  
13 or handled at that time.

14           HEARING OFFICER CELLI: What is that mitigation?

15           MR. CONWAY: Mitigation, again, is not perfectly  
16 specified; some options are given. The options would  
17 include perhaps moving pumps of the project, finding new  
18 sources of water other than the Pahrump Valley Basin,  
19 retiring water uses that are nearby or even potentially some  
20 kind of a watering program in the immediate vicinity of the  
21 affected area. So these are just some ideas. Staff is  
22 objective about what the mitigation must do, it must restore  
23 the water levels to the pre-trigger levels.

24           HEARING OFFICER CELLI: Thank you.

25           MR. RATLIFF: And could Ms. Davis --

1 MR. HARRIS: Can I -- I'm sorry, can I ask about  
2 this particular slide.

3 MR. RATLIFF: Okay.

4 MR. HARRIS: Is that something that was in the  
5 record or is it new?

6 MR. CONWAY: It is.

7 MR. RATLIFF: Could Ms. Davis --

8 MR. HARRIS: I'm sorry, it is which?

9 MR. CONWAY: It was submitted along with, I  
10 believe, the heat flux figures on that Monday about two  
11 weeks ago or a week ago.

12 MR. RATLIFF: That's right.

13 MR. HARRIS: It's one of the ones we've expressed  
14 concern about?

15 MR. RATLIFF: That's right. And Ms. Davis perhaps  
16 could explain the role of vegetation monitoring as a backup  
17 element to confirm that there is hazard to the mesquite  
18 habitat on the other side of the fault.

19 MS. CHAINEY-DAVIS: That's correct. This is  
20 Carolyn Chainey-Davis.

21 The groundwater declines will precede any decline  
22 in soil moisture or vegetation health so the trigger must  
23 necessarily be groundwater based, not vegetation based. It  
24 is indeed a trigger, it's not a significance threshold. It  
25 is a -- it is a conservative trigger that is a trigger for

1 adaptive action or groundwater management if the data  
2 demonstrate that there is a defensible, if there is  
3 defensible data that demonstrates that there is a project-  
4 related effect on the mesquite.

5           The reason we can't establish an actual  
6 significance threshold for the mesquite at this time is  
7 because the rooting depths are so variable. They're  
8 documented to range between on average about 10 feet and 70  
9 feet and we have no direct evidence of the depths to which  
10 they are rooting in this area. So we can't -- we don't  
11 know. we don't really know what's going on. So we don't  
12 have enough evidence to set an actual significance  
13 threshold.

14           The reason that the trigger is so conservative is  
15 because -- for three reasons. One is cumulative effects.  
16 We don't know -- we know that there has been a background  
17 decline in groundwater lows throughout the region, more so  
18 in the north but even still so in the south.

19           We don't know the extent to which the groundwater  
20 levels under the mesquite have declined to at or near the  
21 maximum effective rooting depth of the mesquite. So we  
22 don't know, in other words, what the straw is that's going  
23 to break that camel's back, we don't know.

24           We also have to account for or allow for a lag  
25 time in the recovery of the water levels. This is typical.

1 It typically takes about as long to restore the groundwater  
2 levels as it did to draw them down.

3 And then of course the variable rooting depths.  
4 We don't know, we don't know the depths to which they are  
5 currently rooting. We know that mesquite has a potential to  
6 root to great depths.

7 We agree with the applicant, we agree with Nye  
8 County, we agree with anyone else that's commented on that  
9 issue. We just don't have enough evidence now to make any  
10 assumptions about what's going on out there.

11 So what we do have, though, is a provision to  
12 adjust that draw-down trigger if the evidence demonstrates  
13 that there has been no effect, no project-related effect to  
14 the mesquite. So the provision allows for the trigger to be  
15 adjusted in half-foot increments, at which time the data  
16 would be reevaluated.

17 So no restrictions are imposed on the project  
18 until or unless there is defensible evidence that there has  
19 been, number one, a project-related draw-down at the  
20 mesquite, and number two, that the vegetation data  
21 demonstrate a project-related effect. In other words, an  
22 effect that exceeds the normal range of variation -- in  
23 seasonal range in variation and annual range of variation in  
24 plant moisture levels that is adjusted for any background  
25 decline or the effects of climate, for example.

1           So no restrictions would be imposed unless the  
2 values that are collected in the vegetation monitoring plots  
3 surrounding the monitoring wells exceed those background  
4 levels, exceed that natural variation and occur at the same  
5 time and place as a project-related draw-down.

6           So the design uses a -- it's what's called a  
7 before-after control impact design. It's the strongest  
8 study design for environmental impact analysis. And it's  
9 strong because it uses baseline data and these reference  
10 plots or controls to distinguish these background effects,  
11 non--project-related effects from the project's effects.

12           So it utilizes the plan design. What I'm  
13 referring to is Biological Condition of Certification-23,  
14 BIO-23, and it's called the Groundwater Dependant Vegetation  
15 Monitoring Plan. So the measurements -- there was some  
16 debate with the applicant about how to measure a mesquite  
17 effect.

18           PRESIDING MEMBER DOUGLAS: Before you go to  
19 measurements let me just ask a clarifying question to make  
20 sure I understand.

21           MS. CHAINEY-DAVIS: Sure, sure.

22           PRESIDING MEMBER DOUGLAS: Are you talking about  
23 the vegetation monitoring trigger and the groundwater  
24 trigger as separate or independent triggers or would both of  
25 them have to be met, in your view, to require more

1 mitigation; which is it?

2 MS. CHAINEY-DAVIS: The vegetation monitoring  
3 would begin immediately because it's important to get as  
4 much baseline data as possible. The data would not be  
5 evaluated until the groundwater draw-down trigger has been  
6 exceeded. That's where that half-foot trigger comes in.  
7 The half-foot trigger he referred to is a trigger to start  
8 looking and evaluating that vegetation data but no, no  
9 action would be taken. No action would be taken until the  
10 draw-down exceeds the one foot trigger that he referred to.  
11 And at that point no restrictions would be imposed. No  
12 action would be taken unless the vegetation data indicate a  
13 project-related effect, like I said, that also corresponds  
14 in time and space with a project-related groundwater draw-  
15 down.

16 PRESIDING MEMBER DOUGLAS: When you say  
17 "corresponds in time and space" how much time and space are  
18 you talking about?

19 MS. CHAINEY-DAVIS: It would need to -- in other  
20 words, the vegetation effects would have to occur at the  
21 same time as the groundwater -- as the project-related draw-  
22 down. So in other words, if -- let's see, to give an  
23 example. There could be a draw-down, there could be a  
24 decline in the vegetation health from an outside source, so  
25 to the north or the east, another well, for example, a new

1 well. But if the groundwater monitoring wells don't show a  
2 corresponding decline that radiates out from the project  
3 pumping wells then we cannot presume that they are  
4 connected. Does that answer your question?

5 HEARING OFFICER CELLI: One moment.

6 MS. CHAINEY-DAVIS: And on the timing it would  
7 have to occur at roughly the same time. So in other words,  
8 if there was a -- so if there was a -- if there was a  
9 decline in the health of the vegetation but there was no  
10 corresponding decline at or near the same time in the  
11 groundwater they cannot presume, we cannot presume that they  
12 are connected.

13 PRESIDING MEMBER DOUGLAS: That's an excellent  
14 point and that's exactly where I was going. Let me ask you  
15 kind of the converse of that. If there's a decline in the  
16 level of the groundwater but you don't observe a change in  
17 the health of the vegetation can you conclusively decide  
18 that there is no project-related impact or where do you go  
19 if that's what you see?

20 MS. CHAINEY-DAVIS: If the values that we collect  
21 that are collected -- the data that's collected from the  
22 vegetation plots that surround the monitoring wells in the  
23 mesquite, if those values do not exceed the normal range of  
24 variation then we cannot presume that it's project-related.

25 PRESIDING MEMBER DOUGLAS: So what I am asking

1 about is if you do see declines in the water table from the  
2 monitoring wells that trigger a potential concern, a  
3 potential need for more intensive monitoring, but you don't  
4 see changes to the vegetation, I mean, could it just be  
5 because the mesquite in the area have deeper roots and they  
6 haven't been affected yet? That's what I'm asking.

7 MS. CHAINEY-DAVIS: Correct. What it would mean  
8 is that the mesquite have access to, still have access to  
9 moisture.

10 PRESIDING MEMBER DOUGLAS: Okay.

11 MS. CHAINEY-DAVIS: To the groundwater table.

12 PRESIDING MEMBER DOUGLAS: Thank you.

13 MS. CHAINEY-DAVIS: Does that answer your  
14 question?

15 PRESIDING MEMBER DOUGLAS: I think so.

16 ASSOCIATE MEMBER HOCHSCHILD: Can I ask a  
17 question?

18 MS. CHAINEY-DAVIS: And again, remember. If there  
19 is no decline, if there is no decline in the vegetation  
20 health there is a provision for them to adjust, petition to  
21 adjust that draw-down trigger but only in half-foot  
22 increments. So if that one foot then reaches a draw-down of  
23 one and a half feet then we start evaluating -- we evaluate  
24 the evidence again and at that point there might be an  
25 effect.



1           PRESIDING MEMBER DOUGLAS: But are we waiting  
2 until we see an effect on the mesquite or is there --

3           MS. CHAINEY-DAVIS: Correct, we're waiting to see  
4 an effect on the mesquite. And that's because we don't  
5 know. Again, this all goes back to the fact that we can't  
6 really establish a significant threshold for the mesquite at  
7 this time for a variety of reasons.

8           PRESIDING MEMBER DOUGLAS: I understand, I  
9 understand, I understand, okay. But you're talking about a  
10 significant threshold for the mesquite, you're not  
11 necessarily talking about whether the evidence from the  
12 groundwater levels could indicate a project related impact  
13 to groundwater levels.

14          MS. CHAINEY-DAVIS: We have to have both,  
15 basically.

16          PRESIDING MEMBER DOUGLAS: Okay.

17          MR. ZDON: Can I ask a question?

18          HEARING OFFICER CELLI: One moment, if I can.

19          PRESIDING MEMBER DOUGLAS: Actually I interrupted  
20 in the middle of a staff presentation so why don't you guys  
21 wrap it up. Are you done? I started asking questions in  
22 the middle of your presentation. Are you done or is --

23          MR. CONWAY: I'm finished with the presentation,  
24 yes. If you have any questions about it I'm more than happy  
25 to explain.

1           PRESIDING MEMBER DOUGLAS: Thank you.

2           ASSOCIATE MEMBER HOCHSCHILD: Thank you, I did  
3 have a question. You mentioned among your possible  
4 mitigation actions, you said a watering program. And I'm  
5 not clear what you meant by that.

6           MR. CONWAY: Well, for instance, like -- to give a  
7 local example. To the north in Ash Meadows, some of these  
8 habitats are maintained through an effective, kind of  
9 tasteful watering program that might help sustain the health  
10 through another means or through an injection well. Meaning  
11 artificially, artificially watered.

12          ASSOCIATE MEMBER HOCHSCHILD: Are we talking about  
13 bringing in water from outside to recharge the aquifer?

14          MR. CONWAY: Okay, well that would be -- it  
15 depends on what the impact is, but yes. One option would be  
16 for the project to, yes, use -- I'm not saying this is a  
17 viable option but yes, to find water elsewhere. We didn't  
18 preclude it. We didn't want to presume to know that we know  
19 all the possibilities. But anything that replaces the water  
20 in the ground. So if it comes from another source, that's  
21 fine. If it were trucked in that would be fine, for  
22 instance. Or if it were specifically just to address the  
23 mesquite, again not saying that this would work either, but  
24 a watering program potentially could address the water level  
25 decline but may not be the correct solution.

1           ASSOCIATE MEMBER HOCHSCHILD: Okay.

2           PRESIDING MEMBER DOUGLAS: Okay. So that's very  
3 helpful. Let's leave the staff presentation now and move on  
4 to applicant. So, Mr. Harris, go ahead and ask your  
5 witnesses some questions.

6           MR. HARRIS: Great, thank you very much,  
7 appreciate the opportunity. Especially on these  
8 controverted issues I think it's important. If I could get  
9 the mic close enough and get my voice to work that'll be  
10 great. I am going to primarily direct our presentation  
11 through John Jansen, although other members of the panel  
12 have probably been taking notes and may have some responses  
13 to what they've heard, actually for the first time in some  
14 cases.

15           The materials that I've seen on the staff's  
16 PowerPoint, a lot of that material was in the record  
17 previously, a lot of it didn't look familiar to us. And so  
18 as to that document we're going to want a chance to look at  
19 that before we decide whether we think it's new information  
20 or not. So if we can get to that towards the end that's  
21 okay.

22           HEARING OFFICER CELLI: You know, I have to -- I  
23 confess that I remember the PowerPoint coming in but at the  
24 time I was so busy with everything else that I never  
25 actually looked at it so I don't know what it contained.

1           MR. HARRIS: This may not be a big deal, by the  
2 way. I just wanted to flag it.

3           HEARING OFFICER CELLI: I do know that a  
4 PowerPoint came in.

5           MR. HARRIS: Yes, this one is from our side.  
6 Anyway, excuse me, if I can get my voice to work here.

7           We want to go quickly through our view of the  
8 world. It's slightly different than I think was portrayed  
9 here. I think we have in this water supply case what I'd  
10 call dramatic agreement. We are largely in agreement on the  
11 conditions of certification, we are largely in agreement on  
12 what things ought to be like going forward.

13           We have some substantial disagreements on the  
14 characterization of the existing conditions and on the  
15 project's potential impacts. And I would say, frankly, I  
16 think we've capitulated on a few things we can talk more  
17 about.

18           But I want to turn to Mr. Jansen, have him briefly  
19 describe the project from the applicant's perspective, and  
20 we'll take a little bit of time to do that.

21           John, can you briefly just tell the Committee who  
22 you are and what your role has been in the project, if you  
23 would.

24           DR. JANSEN: My name is John Jansen. I'm a PhD  
25 hydro-geologist working for Cardno Entrix and I have been

1 representing BrightSource with the groundwater issues for  
2 the Hidden Hills project.

3 MR. HARRIS: And you actually had some experience  
4 working in the Death Valley region, is that right?

5 DR. JANSEN: Yes, I've been working in the Death  
6 Valley region for about 15 years. I did some work on some  
7 of the Inyo County oversight work related to Yucca Mountain  
8 and I've done several other projects in the area. So I've  
9 been out working in the region for about 15 years.

10 HEARING OFFICER CELLI: Thank you. And I think --  
11 do we have his résumé on file?

12 MR. HARRIS: That was going to be the last one.  
13 It's all about the local, I wanted to get the local in  
14 there, but I'll move on past that.

15 HEARING OFFICER CELLI: Please.

16 MR. HARRIS: Let's talk about now the design of  
17 the project because from the applicant's perspective one of  
18 the things we feel is we don't get enough credit for having  
19 done a lot of stuff up front that makes sense. So can you  
20 talk a little bit about the design of the project, John.

21 DR. JANSEN: Well, the Hidden Hills Solar  
22 Generating facility has been designed to be dry-cooling.  
23 And dry-cooling, it's actually a more expensive technology  
24 but it reduces the water demand for a thermal solar plant  
25 down from about say 1,000 gallons a minute to on the order

1 of, this plant, less than 100 gallons per minute.

2 MR. HARRIS: In terms of acre-feet we're talking  
3 dry-cooled about 140 acre-feet versus approximately --

4 DR. JANSEN: Oh, you know, more like 1,000-1,400  
5 acre-feet.

6 MR. HARRIS: Okay, thanks. I was going to say  
7 more like 3,000, I thought. From the beginning the  
8 applicant has recognized the importance of water in this  
9 region and has agreed to look for water offsets. Can you  
10 talk briefly to that issue. And we'll come back to it at  
11 the end when we talk about Water-1 but just briefly about  
12 the applicant's approach to water.

13 DR. JANSEN: Yeah. Hidden hills has offered to  
14 retire senior water rights in the Pahrump Valley equal to  
15 1.5 times the volume of the water to be pumped. Retiring  
16 senior water rights offsets the project pumping, which means  
17 that the project will not contribute to the groundwater  
18 overdraft in the groundwater basin.

19 MR. HARRIS: Okay. And I also want to talk about  
20 the neighbors. What has the project -- what has the project  
21 proposed from the beginning, again, in the AFC, to address  
22 issues related to protection of the neighboring wells?

23 DR. JANSEN: Well, we've agreed with the CEC staff  
24 on the details of a program to protect private wells near  
25 the site. The Hidden Hills project will provide two forms

1 of protection for adjacent well owners. While we don't  
2 expect any impacts on private wells near the site the  
3 project will pay for well owners for any increased  
4 electrical costs if they have to pump from deeper water  
5 levels. The pumping tests that we have conducted show no  
6 potential for impact to our neighbor wells but we want to  
7 provide reasonable, regulatory assurances that no one will  
8 have increased electric bills for pumping as a result of the  
9 plant. We are committed to the process that's described in  
10 COC Water Supply-4.

11 MR. HARRIS: In the extremely unlikely event that  
12 there is an issue with a well what would be the next step  
13 that the project would take? I know this is enforced in a  
14 condition but go ahead and describe it.

15 DR. JANSEN: Well, in addition to paying for any  
16 increased pumping costs the project would also pay to repair  
17 or replace any wells that are damaged due to project  
18 pumping. All of our tests to date demonstrate that the  
19 project will not have any effect on the neighboring wells.  
20 But we want to provide guarantees to protect our neighbors  
21 to address their concerns.

22 All the neighbors need to do is provide us some  
23 basic information about their wells and allow us to inspect  
24 their wells if there's a problem. This is also described in  
25 COC Water Supply-4.

1           MR. HARRIS: That's a legally enforceable  
2 obligation in the conditions then?

3           DR. JANSEN: That's my understanding.

4           MR. HARRIS: Okay. There's a lot of discussion  
5 about the basin and I don't know, you may want to use your  
6 slides that you have previously put up, if you'd like. So,  
7 Mike, maybe if you can pull up the -- I think it's a five  
8 slide deck that Mr. Jansen has put together. You can use  
9 these or not as you see fit, John. And these are all from  
10 Exhibit 31 so they have all been previously filed. And just  
11 use them to the extent they're helpful to illustrate the  
12 points.

13           But I really want to talk about the unique nature  
14 of the basis that we're dealing with here. And I  
15 particularly want to focus on the geological issues. I may  
16 draw Dr. Spaulding into this a little bit as well. But can  
17 you talk a little about the geology here and how that  
18 affects the water situation.

19           DR. JANSEN: Yeah. The Pahrump groundwater basin  
20 consists of about 8,000 feet of saturated sand, gravel and  
21 clay and it covers about 1,050 square miles. And the sand,  
22 gravel and clay is general described as the basin fill or  
23 the valley fill aquifer.

24           The basin has been over-pumped for decades and  
25 portions of the basin, as we've seen, have experienced some



1 dropping water levels. The majority of that pumping has  
2 occurred several miles to the northeast of the project and  
3 there has been historically little pumping on the California  
4 side.

5           The cross-section that's up on the screen right  
6 now kind of goes from east to west from the east side of the  
7 basin up near the Spring Mountains to west of the project  
8 site. And you can see that there are a series of two faults  
9 in the middle of the feature. They're the kind of -- yeah.  
10 That's one, that's the other. You can see also on the left,  
11 that orange material in the middle, that's the permeable  
12 part of the shallow aquifer that we'll be pumping out of.  
13 That goes between about 150 and 350 feet below the surface.

14           MR. HARRIS: John, just for point of reference.  
15 the faults that are listed there, and Dr. Spaulding can talk  
16 more about the faults if we need to get into it. If I'm  
17 driving down Tecopa Road towards the project site, I  
18 actually experience that?

19           DR. JANSEN: Yeah, you'll see basically a low  
20 ridge of mounds with a lot of mesquite on them. And then  
21 you drop down, you get another flat terrace and you see a  
22 second ridge with mesquite. And you drop down again and  
23 then you get to the project site. Those two topographic  
24 ridges with the mounds on them, those are the traces of the  
25 fault.

1           MR. HARRIS: We called it the Stateline Fault  
2 Zone, what's the right vernacular here?

3           DR. JANSEN: Well, you know, it's a much larger  
4 fault system. They call it the Stateline in a lot of areas.  
5 It's also called the Pahrump Valley, the Stewart Valley  
6 Fault Zone.

7           MR. HARRIS: So from a water perspective why is  
8 that visible fault line an important aspect of your  
9 analysis?

10          DR. JANSEN: Well, the fault actually is a low  
11 permeability zone in the aquifer. The fault offsets the  
12 aquifer and forms a resistance to flow. You can see that  
13 illustrated in that cross-section. The blue line at the top  
14 is the water table that we constructed from existing wells,  
15 regional geologic reports and USGS reports. You can see it  
16 coming off on the east side, the water table gently dips  
17 towards that first fault. And then you hit the fault and  
18 there's an offset and the water level drops. That offset  
19 represents a resistance to flow caused by the fault.

20          MR. HARRIS: Is that what you sometimes call hump  
21 welling?

22          DR. JANSEN: That actually would be more of a  
23 permeability barrier.

24          MR. HARRIS: Okay.

25          DR. JANSEN: If you get just to the left you'll

1 see where the Spring Mound -- just a little further to the  
2 left. Right there. That little mound there, you can see  
3 that there is kind of a mound on the groundwater surface.  
4 That's from the USGS Haraway Report where they show that the  
5 -- the groundwater on the east side of the fault actually  
6 mounds up and that's where the mesquite are. That is --  
7 basically the only way that can form is for water to be  
8 flowing from a greater depth from a higher head zone.

9 MR. HARRIS: I'm sorry, I want to interrupt. So  
10 the mesquite -- okay, we're completely in Nevada on this  
11 side. But the mesquite are located approximately where and  
12 why would they be located there?

13 DR. JANSEN: They're located on the hump on that  
14 -- roughly in the area of the hump on the groundwater  
15 surface. The groundwater is closer to the surface there  
16 because it's mounding up from this up-welling from deeper,  
17 deeper zones.

18 MR. HARRIS: And that's actually the fault  
19 creating a physical barrier to the water flow?

20 DR. JANSEN: The fault is creating a physical  
21 barrier for horizontal flow and also allowing a conduit for  
22 vertical flow from deeper zones. And if you step across the  
23 fault then to the project site you see that the water is  
24 about 100 to 130 feet below the surface on the project site.  
25 So the water is too deep on the project site to support the

1 mesquite. On the other side of the fault it's closer to the  
2 surface because of the fault and that's where the mesquite  
3 is at.

4 MR. HARRIS: Okay, that's very helpful. Should we  
5 move on to recharge now or do you want to continue with this  
6 particular slide?

7 DR. JANSEN: That's fine.

8 HEARING OFFICER CELLI: What we really want to do  
9 is get to the issues.

10 MS. BELENKY: Yes.

11 MR. HARRIS: I think we're getting to the issues.

12 HEARING OFFICER CELLI: Okay.

13 MR. HARRIS: We're explaining why the mesquite are  
14 where they are and it's a geological condition.

15 HEARING OFFICER CELLI: No, this has been helpful  
16 but we want to get to the issues.

17 MR. HARRIS: I will take less time than the staff  
18 took, I promise you.

19 HEARING OFFICER CELLI: Go.

20 MR. HARRIS: Go ahead, John, let's talk about  
21 recharge now, if you would. What are the sources of  
22 recharge? We heard the term "leaky aquifer." Would you go  
23 ahead and give a description of the sources of recharge for  
24 the aquifer.

25 DR. JANSEN: Yeah. The Pahrump Valley groundwater

1 basin is primarily recharged from runoff from the Spring  
2 Mountains. And the water either directly infiltrates into  
3 the aquifer on the fan deposits and then flows to the  
4 southwest through the basin. You also get recharge from  
5 water flowing over the surface during the periodic flood  
6 events and that will slowly recharge primarily in the washes  
7 and draws. And that's evident in the hydrographs of the  
8 wells that Nye County has been monitoring for about the last  
9 ten years.

10           There's also when you're pumping a well -- kind of  
11 contrary to what you just heard, when you pump a well you do  
12 intercept groundwater flow. The fact that water is flowing  
13 through the aquifer means that it's not a stagnant pool of  
14 water. It's not like a tub of water that's just sitting  
15 there. Water is flowing in on the recharge side and out on  
16 the discharge side.

17           It's when you put a well in that system and you  
18 start to pump it you create a cone of depression that  
19 intercepts some of that regional flow. Once it's  
20 intercepted enough regional flow to replace the water that  
21 is being pumped you get a new stable water surface. So  
22 water -- aquifers don't continuously draw down if they get  
23 recharged or if they have regional flow. For a system to  
24 keep drawing down forever it basically has to be a stagnant  
25 pool with no recharge.

1           So in this system the regional flow through the  
2 aquifer provides water that supports the well. You lose  
3 that water on the down-gradient side so you've taken water  
4 that will discharge out of the basin. But you replace the  
5 water that you're pumping so it doesn't continuously draw  
6 down. That's why after we've done our testing on the site  
7 we don't think that the cone of depression is going to be  
8 anywhere near as large as what we initially thought it might  
9 have been.

10           There is also what we call leakance. There are --  
11 above and below that orange permeable zone there is the blue  
12 material. that's finer grained silty sand. That's still  
13 saturated. When you pump that permeable zone you create a  
14 draw-down in the zone but that also creates vertical flow  
15 from the material above and below. That replaces some of  
16 that water that you're pumping. It's just kind of a slow-  
17 release that comes out of that finer grained material. They  
18 call that leakance. That leakance actually is a form of  
19 recharge and it can replace a portion of the water that is  
20 being pumped. So the regional flow and the leakance  
21 basically will create a stable cone of depression much  
22 smaller than what the staff is showing you. We think it's  
23 going to be about 1,500 feet around each well and, you know,  
24 we're very confident of that.

25           MR. HARRIS: Hey, John, the water rights that the

1 applicant is proposing to acquire and retire are essentially  
2 uphill on the right hand side of this; is that correct?

3 DR. JANSEN: And also to the north. But yes, they  
4 are on the other side of the fault. And they will be  
5 generally up gradient from where the site is.

6 MR. HARRIS: Okay. So water rights that would be  
7 moving this way would be left basically in place by --

8 DR. JANSEN: Yeah, the water rights to be retired  
9 would be kind of more on the right side of the diagram and  
10 the groundwater flow is to the left.

11 MR. HARRIS: Okay. I think we're going to move  
12 off leakance and other stuff --

13 DR. JANSEN: Yeah.

14 MR. HARRIS: -- because I see some eyes rolling.

15 DR. JANSEN: Sure.

16 MR. HARRIS: Let's go ahead and talk about natural  
17 variation in the basin because there were questions about,  
18 you know, mesquite and natural flow. Can you talk just very  
19 briefly about what's happening in this basin now in terms of  
20 natural variation. We've heard about the six inch trigger.  
21 What's going on today there?

22 DR. JANSEN: Yeah. There have been a series of  
23 wells monitored by Nye County about the last ten years. And  
24 some of the wells show, you know, well over 20, 30 feet of  
25 variation over the last ten years, some of the wells show

1 much lower. In general, wells on the northeast side of the  
2 fault show more variation and wells on the west side of the  
3 fault show less variation. Once again it kind of shows that  
4 the fault is a barrier, a partial barrier to flow.

5 MR. HARRIS: I'm sorry, more variation on the  
6 Nevada side?

7 DR. JANSEN: More variation on the Nevada side and  
8 much less on the California side, even though the distance  
9 to the pumping center is about the same. So that shows once  
10 again that the fault is acting as a partial barrier.

11 These monitoring wells will show typically several  
12 feet of variation to a recharge event. We have a data  
13 logger in the Stump Springs monitoring well that shows you  
14 can get one or two foot of variation over a period of a  
15 couple of weeks. So, you know, we feel that there is quite  
16 a bit of variability in the aquifer. We feel it's going to  
17 be difficult to detect a six inch trigger but we've agreed  
18 to it nonetheless.

19 MR. HARRIS: Let's talk a little bit about the  
20 distance draw-down methodology. One of the things that the  
21 applicant has been insistent upon is measuring the project-  
22 related effects of pumping. So we called it project --  
23 what's the term of art I should remember right now?

24 DR. JANSEN: Project-related pumping, project-  
25 related draw-down.



1           MR. HARRIS: Project-related draw-down. There are  
2 other users in this basin. There's natural variability. We  
3 talked about seven to eight feet of natural variability.  
4 How are we going to be able to determine the project-related  
5 pumping effects on the aquifer?

6           DR. JANSEN: Yeah, you're right, there is -- there  
7 are several sources of variation, changes in seasonal  
8 recharge, barometric effects, other pumping. Draw-down  
9 around a pumping well follows a very predictable pattern.  
10 Basically, you know, you pump a well, you create draw-down  
11 near the well and it dissipates as you get farther from the  
12 well. That is -- that shape of that drop of draw-down as  
13 you get away from the well follows a predictable pattern.  
14 The cone of depression can be described by what's called a  
15 distance draw-down plot.

16           So the proposed process is to take the raw field  
17 data, use a filtering process that's been developed by the  
18 USGS to try to take out factors such as, you know, regional  
19 changes in water level, barometric effects. To take out the  
20 factors that we can find and that we can isolate.

21           What we'll be left with then, you know, we might  
22 have changes in water level that we can't explain. We're  
23 going to take those changes in water level, plot them on a  
24 distance draw-down plot from each well, which would show the  
25 change in draw-down with distance from the well. And if

1 they are from project pumping they should form a predictable  
2 cone. If they are not from project pumping they will be all  
3 up and down, they'll be all over the place, there will be no  
4 consistent pattern. But if they do show a consistent cone  
5 of depression then they are, you know, related to project  
6 pumping.

7 MR. HARRIS: Okay. So the distance draw-down  
8 methodology is something that the applicant is going to rely  
9 on to be able to say, even though the aquifer went up  
10 because of natural variation or down because of natural  
11 variation, here is our effect in that --

12 DR. JANSEN: Right. Presumably if we had a big  
13 recharge event and the water levels all went up several feet  
14 we could remove that with a filter and still see if we were  
15 having project related draw-down that was superimposed on  
16 the recovery.

17 MR. HARRIS: Okay. And this is a way of taking  
18 out the question of natural variability in the basin?

19 DR. JANSEN: Correct.

20 MR. HARRIS: Let's talk about monitoring real  
21 quick. We had proposed 11 monitoring wells, the staff added  
22 2 to make it 13. Are you in agreement with the staff on the  
23 monitoring program?

24 DR. JANSEN: Yes we are.

25 MR. HARRIS: Okay. And two of those wells would

1 be located on BLM land subject to BLM approval?

2 DR. JANSEN: Actually four would.

3 MR. HARRIS: Four.

4 DR. JANSEN: The two that -- the two additional  
5 wells that they suggested and then two wells that were in  
6 the initial design.

7 MR. HARRIS: Okay, fantastic. Let me see if I can  
8 shorten this even more.

9 HEARING OFFICER CELLI: While you're looking for  
10 that, do you know if you have a diagram showing the 13  
11 wells, the locations?

12 DR. JANSEN: It's on the jump drive I gave you.  
13 It might have been loaded.

14 MR. HARRIS: Was it part of the five or is it  
15 separate?

16 DR. JANSEN: It's separate.

17 HEARING OFFICER CELLI: If it's quick and easy I  
18 just thought it might be helpful. If not, let's --

19 MR. HARRIS: It's the one that's -- it's the one  
20 that's not open, Mike, so you'll have to read the stick,  
21 which is not a metaphor.

22 DR. JANSEN: It should say MW or something. MW  
23 Map, that's it.

24 MR. HARRIS: This, by the way, while he's opening  
25 it, is a diagram that I asked our folks to put together.

1 And I asked that after the filing of rebuttal testimony  
2 because I'm not very bright.

3 HEARING OFFICER CELLI: You need to open that.

4 MR. HARRIS: So it's not in the record. But I  
5 think we've done a good job of accurately portraying the  
6 locations of the additional wells that the staff has  
7 suggested.

8 HEARING OFFICER CELLI: Mike, could you open that?

9 Great. And then make it bigger. I think that this would  
10 be helpful to the Committee to understand where these wells  
11 are. Okay. Thank you very much. Sorry for the  
12 interruption, keep going.

13 MR. HARRIS: Okay. John, go ahead and explain  
14 what's there and what we're seeing.

15 DR. JANSEN: Yeah. The triangles are the  
16 approximate location of the power towers and that's where  
17 the main pumping wells will be, there will be one well at  
18 each tower. The red dots are the monitoring wells that have  
19 been proposed for the monitoring program. So very similar  
20 to Mike's diagram, you can see we have three wells in a line  
21 coming from each power tower and then one farther out up in  
22 the mesquite, which would be further to the northeast.

23 MR. HARRIS: John, can you repeat about the  
24 pumping wells so that --

25 DR. JANSEN: The pumping wells will be right by

1 the triangles.

2 MR. HARRIS: Right by the triangles, okay.

3 DR. JANSEN: Okay. So the initial design just had  
4 one well up to the northeast in the mesquite where the red  
5 dot is. Staff suggested adding a shallow monitoring well to  
6 monitor the water right at the water table, which we agree  
7 with so there are now two wells in the mesquite. So that's  
8 the orange dot next to the red dot. There is also a well up  
9 in the north corner of the site, there's a background well  
10 that will be installed. There's a well in the south corner  
11 of the site as a background well that will be installed.  
12 And then there's a well to the southwest of the site, kind  
13 of southwest of Charleston View, there's another background  
14 well that would be installed.

15 And then there's a series of green dots on the  
16 maps you can see. Those are the wells that Nye County has  
17 been monitoring for about ten years. And we will continue  
18 to use that data and work with Nye County to keep those  
19 wells being monitored.

20 HEARING OFFICER CELLI: Very clear, thank you.

21 MR. HARRIS: John, I just want to make it clear to  
22 -- your professional opinion is that the cone of depression  
23 will remain completely on the project site; is that correct?

24 DR. JANSEN: That's correct.

25 MR. HARRIS: About how far out from those

1 production wells would you expect it to extend?

2 DR. JANSEN: About 1500 feet, which would probably  
3 be about to that first red dot.

4 MR. HARRIS: Okay, 1500 feet on something that's  
5 about 1500 meters, the distance. Is that about right, do  
6 you think, to the project boundary?

7 DR. JANSEN: It's like a mile and a half, yeah.

8 MR. HARRIS: Okay. I won't ask you to convert it  
9 to metric though.

10 And you've agreed to this kind of monitoring  
11 program despite your feeling that the effects are going to  
12 remain all on site; is that right?

13 DR. JANSEN: Yes, correct.

14 MR. HARRIS: Basically to take the issue off the  
15 table?

16 DR. JANSEN: Correct.

17 MR. HARRIS: Okay, thanks. I think that's very  
18 helpful. Approximately how far are the mesquites, then, do  
19 you think, from the production wells?

20 DR. JANSEN: In the range of about a mile and a  
21 half to two miles depending upon which well you're talking  
22 about.

23 MR. HARRIS: So you've put your professional  
24 credibility on the line by agreeing to something at six  
25 inches that -- we've got a letter from Nye County saying

1 they think that's a Draconian measure. Why would you tell  
2 the Committee you think we can live with that low of a  
3 threshold, even though you think that this is going to stay  
4 so close on-site?

5 HEARING OFFICER CELLI: And before you answer that  
6 question I'm just going to point out that that was a long,  
7 leading question.

8 MR. HARRIS: I'm good at that.

9 HEARING OFFICER CELLI: That's right.

10 MR. HARRIS: Go with your strength.

11 HEARING OFFICER CELLI: As interesting as you are,  
12 Mr. Harris, we're really interested in hearing from your  
13 witnesses. We'd like to hear them testify rather than you.

14 MR. RATLIFF: But we don't object.

15 HEARING OFFICER CELLI: But we want to, we need to  
16 hear the record from the experts.

17 MR. HARRIS: Dick is apparently in a fan club of  
18 one, that I have.

19 (Laughter.)

20 HEARING OFFICER CELLI: I'm just calling it to  
21 your attention because we want to hear from the left side,  
22 not the right side. Go ahead.

23 MR. HARRIS: I understand. And I do think we'll  
24 finish before staff did, if somebody is watching the clock.

25 HEARING OFFICER CELLI: Thank you.

1 MR. HARRIS: What the heck was my question?

2 (Laughter.)

3 MR. HARRIS: Mr. Jansen, even though Nye County  
4 has described six inches as a pretty Draconian trigger,  
5 you've nevertheless represented to Gary and other folks that  
6 we can measure that and live with it; why is that?

7 DR. JANSEN: You know, I've been doing this for 30  
8 years, I've put in hundreds of wells, I've done hundreds of  
9 pumping tests. This is obvious to me that we're just not  
10 going to have draw-down at the property line. It's not even  
11 a close question.

12 MR. HARRIS: And what is it that provides you the  
13 confidence that you're going to be able to tell that?

14 DR. JANSEN: It's the site data. We've done three  
15 pumping tests. We know how this aquifer performs. I don't  
16 have any doubt that we're going to get stable water levels,  
17 we're not going to get draw-down off the site.

18 MR. HARRIS: I won't ask you to describe the  
19 pumping test but I think it is important and I'm glad you  
20 said something that there is information in the record on  
21 that. If the Committee wants to hear about those he can  
22 speak to them but -- the nonverbal says no, John, so we'll  
23 move on.

24 I want to go to Dr. Spaulding for just a moment.  
25 I may come back to you, John, to ask you if there is



1 anything in the staff's that you want to respond to.

2 Dr. Spaulding, I just had one brief question for  
3 you. We've been talking a lot about the mesquite located on  
4 the Nevada side and the concern about potential project  
5 impacts on that mesquite. What is the current state of that  
6 mesquite as you know it?

7 MR. SPAULDING: The current state of the mesquite  
8 stands as I know it north of Tecopa Road is that there are  
9 many clones, individual clones atop dunes that seem to be  
10 already in decline, some are dead. They're generally in bad  
11 shape.

12 MR. HARRIS: And you've observed those personally?

13 MR. SPAULDING: Yes.

14 MR. HARRIS: Thank you, I appreciate that.

15 MR. SPAULDING: Thank you.

16 MR. HARRIS: And then lastly back to Mr. Jansen.  
17 Is there anything in the staff's presentation, which I think  
18 you saw for the first time, that made you want to throw up  
19 your hand and say, "wait a minute" or "can I elaborate?" Is  
20 there anything you'd like to expand upon there?

21 DR. JANSEN: You know, we have a difference of  
22 opinion. I think I mentioned before, their analysis would  
23 be accurate if it was a stagnant pool of water but it just  
24 isn't. It's not a confined aquifer, it's leak-confined.  
25 But it really doesn't matter. We have this monitoring

1 program in place, you know. If we're wrong we're going --  
2 you'll see it and, you know, we'll have to mitigate. If  
3 we're right then this will never be an issue.

4 MR. HARRIS: Okay, thank you. One last thing I  
5 want to do. Mr. Battles, could you throw up the language  
6 for Water Supply-1 that we have shared with the staff.

7 HEARING OFFICER CELLI: So Water Supply-1 is in  
8 dispute now?

9 MR. HARRIS: This is the one issue in Mr. Conway's  
10 summary that he says is in dispute. I actually don't think  
11 it's in dispute. We're just looking for a second option is  
12 the way that we did that and we cleverly numbered those  
13 Option 1 and Option 2.

14 The first option is exactly what the staff has put  
15 in to their final testimony. And I guess I want to drop a  
16 footnote here and note that we were okay with the condition  
17 as it was presented in the Final Staff Assessment. It has  
18 changed, it's migrated some. So we are now dealing with the  
19 staff's latest version; we would have accepted the FSA  
20 condition.

21 But without reading the language let me explain to  
22 you basically what -- let me have Mr. Jansen explain to you  
23 what the second option is intended to provide for the  
24 Committee. So we are not looking to take something out,  
25 we're looking to add something. Is that okay?

1 HEARING OFFICER CELLI: Go ahead, Mr. Jansen.

2 MR. HARRIS: Or Mr. Thompson. Whoever is in a  
3 better position to do it. Introduce yourself and your role,  
4 please.

5 MR. THOMPSON: Good afternoon, Tim Thompson,  
6 Cardno Entrix, representing the applicant. I'm a hydro-  
7 geologist.

8 HEARING OFFICER CELLI: We can't hear you very  
9 well, please speak right --

10 MR. THOMPSON: Is that better? I got that it had  
11 to be close.

12 HEARING OFFICER CELLI: Put it right on you.

13 MR. THOMPSON: Okay. Tim Thompson representing  
14 the applicant. I'm a hydro-geologist registered in  
15 California.

16 The second option we've suggested is that the  
17 applicant would acquire and retire water rights at a ratio  
18 of about 1.5 to 1. That is, 50 percent more water rights  
19 being retired than the anticipated use over both the  
20 construction and the operational periods. And that those  
21 water rights would be senior water rights that would be  
22 retired through the process that the Nevada State Engineer's  
23 Office establishes for doing that sort of a transfer.

24 And then the idea is to offset the pumping by  
25 removing either existing or potential pumping that would be

1 occurring in the basin to reduce the impact of the long-term  
2 pumping of the project on potential over-draft impacts to  
3 the basin.

4 HEARING OFFICER CELLI: So let's be clear about  
5 this. First you were talking about retiring rights, now  
6 you're talking about removing wells?

7 MR. THOMPSON: No, no, no. It's in lieu, it would  
8 be in lieu of other pumping that could or is occurring in  
9 the basin.

10 HEARING OFFICER CELLI: Okay.

11 MR. HARRIS: So in essence the second option is to  
12 provide a more objective way of finding the water rights; is  
13 that correct?

14 MR. THOMPSON: Yes.

15 MR. HARRIS: Does Nevada distinguish between paper  
16 rights and real water rights?

17 MR. THOMPSON: Well, they have a -- they have a  
18 process of having -- I mean, water rights are certified by  
19 the state engineer and so they are established in the record  
20 with the State Engineer's Office.

21 HEARING OFFICER CELLI: We understand that some  
22 rights are more likely to be exercised than others.

23 MR. HARRIS: Okay. I was just wanting to make it  
24 clear that there is no legal concept of paper water rights  
25 versus real water rights.

1 HEARING OFFICER CELLI: It sounds like there is a  
2 practical one. Maybe we'll hear more from staff on that.

3 MR. HARRIS: And the second option is intended to  
4 deal with that practical issue.

5 I think I beat the staff on time so I'm going to  
6 stop unless my experts flag me down otherwise.

7 Thank you very much. This is really important on  
8 these controverted issues to have this opportunity so thank  
9 you very much.

10 HEARING OFFICER CELLI: Thank you. Staff, I want  
11 to ask staff's witnesses, we need to hone in on what are the  
12 areas of disagreement? And mostly what we are interested in  
13 is what -- especially when it comes to mitigation and how  
14 real is this mitigation. Can you address that, please? I  
15 guess, Mr. Conway, are you the lead on that or Mr. Marshall?  
16 Go ahead. I don't care, whoever is better suited to speak  
17 to this.

18 MR. CONWAY: We have some examples of times when  
19 there are more real water rights being purchased for offset  
20 through BLM. And they've suggested in a recent comment  
21 letter docketed yesterday that yes, the Nevada State  
22 Engineer does define what water rights are active, which  
23 ones are senior and which ones are in use. So we do believe  
24 it is feasible and possible to distinguish between them.

25 HEARING OFFICER CELLI: That sounds, that's kind

1 of funny in a way. Active, senior and in use.

2 MR. CONWAY: Meaning -- active could mean  
3 technically you are the owner and that you've done the  
4 permit work. They use, you know, some terms for water  
5 rights that aren't being exercised, which I won't attempt to  
6 guess at. But active could mean you have them but haven't  
7 used them yet.

8 For example, the Hidden Hills Ranch property right  
9 next to the project, about two and a half years ago got a  
10 permit to pump cumulatively up to in the neighborhood of 210  
11 acre-feet of water, and that is yet to be exercised.

12 HEARING OFFICER CELLI: Okay.

13 MR. CONWAY: And that property just applied for an  
14 extension, which gives them until November of this year to  
15 prove beneficial use. But if they don't prove beneficial  
16 use by November of this year they may have to resubmit their  
17 application stating when they will put it to use. And these  
18 extensions can be granted with no definite end, as I have  
19 been told from the Nevada State Engineer. So the burden of  
20 proving the use may not come for a long time after the  
21 initial filing.

22 HEARING OFFICER CELLI: Okay, so how do we use  
23 this language, active, senior and in use? They aren't  
24 mutually exclusive, at least in their definitions of their  
25 own terms. In other words, I can imagine that somebody has

1 active rights but isn't using them.

2 MR. CONWAY: Correct.

3 HEARING OFFICER CELLI: Someone has senior rights  
4 but isn't using them.

5 MR. CONWAY: Correct. We'd always ask for a  
6 record of water use to accompany whatever the water offset  
7 is.

8 HEARING OFFICER CELLI: Okay. So is there some  
9 sort of hierarchy of the use?

10 MR. CONWAY: Well really there's one that has a  
11 record of use and ones that, that don't. So as I said,  
12 there's about 40,000 active water rights, 40,000 acre-feet  
13 of active rights, none of those are being used. There's  
14 about 15,000 water rights or -- well, it's some proportion.  
15 Domestic users don't need a water right. But there is some  
16 proportion of what is being pumped in Pahrump that is  
17 associated with a real water right and is being used.

18 HEARING OFFICER CELLI: So what is staff demanding  
19 or seeking to impose on the applicant with regard to water  
20 rights here?

21 MR. CONWAY: And again, it doesn't have to be a  
22 water right but the staff wants a real offset of water in  
23 the basin. For instance, even a crop switching. For  
24 instance, 100 acres of a plot that uses, for instance, five  
25 acre-feet per year, if that were switched to something that

1 used four acre-feet a year perhaps. You know, that would be  
2 100 acre-feet a year of savings, just for example.

3 There are people who have said that there are  
4 water users that spill the amount of water equal to the  
5 project's use. Those spills, if they could be prevented  
6 through a program, through irrigation efficiencies, then  
7 that would constitute a real water savings as well. So the  
8 water rights is just one in a suite of options, okay.

9 MR. HARRIS: If I could, Mr. Celli? Under Option  
10 1 we'd love that. We think that's a great idea, we'd like  
11 to do it. The reason we want Option 2 is that that  
12 particular methodology requires us to prove up, you know,  
13 the savings of water in some way other than a certification  
14 from the Nevada Engineer. So we want both options. If we  
15 can go find somebody who is spilling water and easily prove  
16 up to the staff that we're saving that amount of water,  
17 that's probably going to be cheaper than acquiring water  
18 rights, we'll probably do that. So we're not -- we don't  
19 want to -- again, we're in what I call a dramatic agreement  
20 here. We don't want to take that option off the table, we  
21 just want a second option that doesn't require that sort of  
22 subjective analysis of whether there is a saving or not.

23 HEARING OFFICER CELLI: Okay, what's wrong with  
24 that?

25 MR. MARSHALL: Well, the purchase of water rights



1 at a ratio of 1.5 to 1, just simply doing that doesn't prove  
2 that they're really going to reduce the water use and offset  
3 gallon for gallon the project's water use in the basin. We  
4 need some other demonstration beyond just that purchase of  
5 the water right that that acquisition will actually offset  
6 the water use.

7 HEARING OFFICER CELLI: Okay. But before --

8 MR. MARSHALL: And what we pointed out earlier is  
9 that there are so many water rights available for purchase  
10 in the basin that are never going to be exercised already  
11 that just simply purchasing the project's amount of water  
12 rights in that basin won't necessarily achieve much offset.

13 HEARING OFFICER CELLI: I understand that. Which  
14 is why I thought the applicant was offering Option 2 as  
15 another way to go at the project.

16 MR. MARSHALL: Well that's what we're talking  
17 about. Option 2 really doesn't -- so they purchase water  
18 rights. Well, what more about that do they have to  
19 demonstrate to us that those are -- that they are really  
20 purchasing water rights that are actively used and that  
21 they're reducing water use in the basin?

22 HEARING OFFICER CELLI: Okay. So we talking  
23 about --

24 MR. MARSHALL: We're not getting that, we're not  
25 getting that out of that option.

1 HEARING OFFICER CELLI: Right. But so far what  
2 we've talked about, you're talking about real water rights.  
3 But it seems to me managed under active, senior and in use.  
4 Real isn't even in this vocabulary.

5 MR. MARSHALL: Yes. Well, I'd like to hear their  
6 definition of senior because we don't use that term in our  
7 condition.

8 HEARING OFFICER CELLI: What I want to know is,  
9 what will solve this problem?

10 MR. MARSHALL: An actual water use offset of one  
11 gallon for gallon that the project proposes to use.

12 HEARING OFFICER CELLI: And what is needed in that  
13 condition of certification, that mitigation measure that  
14 isn't there that would make that happen?

15 MR. MARSHALL: We think it's there already. Our  
16 version of the condition provides for that.

17 HEARING OFFICER CELLI: What's wrong -- let's hear  
18 from staff's people.

19 MR. MARSHALL: They want to revise our condition.

20 HEARING OFFICER CELLI: Let me hear from them, let  
21 them speak for themselves.

22 Experts for applicant, what's wrong with the  
23 staff's proposed mitigation measure? Why doesn't it achieve  
24 what the staff is trying to accomplish here? Why isn't it  
25 sufficient mitigation?

1           MR. THOMPSON: I think Option 1 has some valid  
2 approaches and we believe that the allowance for the second  
3 option that we proposed provides for more flexibility and  
4 more opportunities to find a way to offset the project's  
5 pumping.

6           HEARING OFFICER CELLI: Can you roll that down,  
7 Mr. Battles. Just leave it right there, thanks.

8           I'm sorry, I didn't mean to cut you off. I was  
9 reading it and it went away. So you're talking about Option  
10 1. What's wrong with Option 1, from applicant's point of  
11 view?

12          MR. THOMPSON: I don't think there's anything  
13 wrong with Option 1. There are some valuable approaches  
14 there, which may be possible for the applicant to achieve  
15 and implement. We also think that Option 2 is valuable to  
16 provide flexibility because we don't know exactly what  
17 aspects of Option 1 are going to work out.

18          DR. JANSEN: If I may just jump in. I think one  
19 of the concerns in Option 1 is it's pretty difficult to  
20 certify the savings in water. Let's say we switch  
21 somebody's crop; talk them out of growing alfalfa and then  
22 they go across the street and start growing alfalfa. I  
23 mean, how do we certify that we've actually caused them to  
24 reduce their water demand?

25          HEARING OFFICER CELLI: Staff, how do you answer

1 that?

2 MR. CONWAY: We agree that's a possibility and  
3 we've contemplated how we can restrict land use. I know  
4 that may be difficult and beyond this. But without at least  
5 making an attempt to clarify and seek a real water savings  
6 we really don't mitigate the impact. So we're uncomfortable  
7 proposing that when it doesn't address the impact we  
8 identified.

9 MR. MARSHALL: That also requires a lot of  
10 speculation on their part for that to occur. Because we  
11 have used these mitigation condition's approaches in past  
12 projects and have had them adopted successfully.

13 MR. HARRIS: Mr. Celli, I want to point out the  
14 language that some people may not be able to read. Actually  
15 in Option 2 our proposal is a mitigation ratio at 1.5 to 1.  
16 And the reason -- we think 1 to 1 is more than what the law  
17 requires, you're allowed to use some water. One to 1 would  
18 put it at a 1 to 1 ratio and we put 1.5 in there hoping,  
19 frankly, that that higher half ratio might entice the staff  
20 to be more agreeable to the condition.

21 PRESIDING MEMBER DOUGLAS: I've got a quick  
22 question before we go back to the panel. Is anybody from  
23 the Bureau of Land Management in the room or on the phone?  
24 I guess the phone is muted, never mind. In the room? I  
25 don't think so. So I don't know -- does this letter, does

1 this letter have an exhibit number, from the Bureau of Land  
2 Management?

3 HEARING OFFICER CELLI: We received -- somebody --  
4 Mr. Marshall passed out this letter from BLM today.

5 MR. MARSHALL: Yes.

6 HEARING OFFICER CELLI: And so it does not -- is  
7 this going to be something that staff is moving into  
8 evidence?

9 MR. MARSHALL: We don't mind discussing and  
10 paraphrasing their letter because we actually think that it  
11 supports the position that staff is taking. And they're  
12 actually being a bit more conservative in their approach and  
13 requesting that the applicant offset the water -- have a  
14 real water savings of 3 to 1.

15 PRESIDING MEMBER DOUGLAS: Well that was going to  
16 be my question because I see here, and it's just a couple of  
17 sentences. Since water rights in the Pahrump Basin are  
18 over-appropriated by a ratio of approximately 3 to 1 it is  
19 advisable to retire senior consumptive water rights at the  
20 same ratio, in other words, to 1.

21 I guess two things struck me. One was the ratio  
22 that BLM is suggesting and the other is that the approach  
23 that they seem to be suggesting in some way looks to be more  
24 like Option 2 than Option 1. And so I wanted to ask, I  
25 guess, both the applicant and the staff's parties about both

1 parts of that question.

2 MR. MARSHALL: Yeah, I think the intent, our  
3 understanding of BLM's reference there is that they wanted  
4 wet water rights offset. In other words, they wanted real  
5 water use reductions or for us to be able to document that  
6 there was real water use reduction. So that's the way we've  
7 interpreted their letter. Because we've had discussions  
8 with them on this issue in the past.

9 PRESIDING MEMBER DOUGLAS: They say "active  
10 senior" so those are two of our three words from the --

11 MR. MARSHALL: Yes.

12 PRESIDING MEMBER DOUGLAS: -- Nevada water rights.  
13 And what was the other one?

14 HEARING OFFICER CELLI: Active, senior, in use.  
15 And now real, we have real.

16 PRESIDING MEMBER DOUGLAS: And now we have real  
17 and now we have wet. And so we're trying to understand  
18 this.

19 MR. MARSHALL: Yes, excuse me, I was just trying  
20 to -- when I used the term "wet" it was an abbreviation for  
21 all those things that you just mentioned. But I think what  
22 their -- what their -- what their requirement is, and  
23 they've used this in their conditions for mitigation also on  
24 some of their projects on their land is that the applicant  
25 for their projects has to show water use within the past

1 five years. And that there's -- that way they showed,  
2 demonstrated some active use of the water right.

3 PRESIDING MEMBER DOUGLAS: Okay.

4 MR. MARSHALL: And so that would --

5 HEARING OFFICER CELLI: I want to -- go ahead.

6 MR. MARSHALL: The important statement also in  
7 their, in their letter is that they see senior consumptive  
8 water rights. And so, in other words, they're alluding to  
9 the fact that it has to be actual water use, recent water  
10 use. And that's exactly the same wording the staff has used  
11 in our condition of certification.

12 PRESIDING MEMBER DOUGLAS: It looks like  
13 Mr. Harris has a question or a comment.

14 HEARING OFFICER CELLI: And before you do I just  
15 want you to start referring to this BLM letter as Exhibit  
16 327, which is next in order for staff. This is Exhibit 327.

17 (Exhibit 327 was marked for identification.)

18 MR. HARRIS: It's a very good engine size too, by  
19 the way. The 3 to 1 --

20 MS. PETERSON: BLM is on the phone, by the way.

21 PRESIDING MEMBER DOUGLAS: Oh, BLM is on the phone  
22 I hear.

23 MR. HARRIS: If I could, briefly. The 3 to 1  
24 ratio was the ratio of total water rights, so paper, active,  
25 wet, dry, whatever, 60,000 to 20,000. So the 3 to 1 ratio

1 they're talking about is every kind of water right no matter  
2 what flavor we subscribe to it.

3 PRESIDING MEMBER DOUGLAS: Okay.

4 HEARING OFFICER CELLI: Okay. Now I understand  
5 that someone from BLM is on the phone. Would you please  
6 speak up.

7 MS. PETERSON: Yes, this is Sarah Peterson with  
8 the Nevada State Office of the BLM.

9 HEARING OFFICER CELLI: Okay.

10 PRESIDING MEMBER DOUGLAS: Thank you. It's  
11 extremely helpful.

12 HEARING OFFICER CELLI: Let's get, let's get her  
13 in here. Sarah Peterson. Okay, go ahead, Ms. Peterson.

14 MS. PETERSON: What is your initial question, I  
15 guess?

16 HEARING OFFICER CELLI: Well first of all, have  
17 you been able to listen to the entire exchange?

18 MS. PETERSON: So far, yes.

19 HEARING OFFICER CELLI: Okay. And are you someone  
20 that any of these parties were intending to call as an  
21 expert witness today?

22 MS. PETERSON: Not that I know of.

23 HEARING OFFICER CELLI: Okay. So are you -- one  
24 moment.

25 MR. RATLIFF: Commissioner, Mr. Celli, this is



1 obviously agency comment.

2 PRESIDING MEMBER DOUGLAS: That's right, this is  
3 comment.

4 MR. RATLIFF: This is not a witness, a staff  
5 witness or an applicant witness or any party witness but an  
6 agency with resources that is interested in our process and  
7 our issues, which carries, as you know, a certain amount of  
8 weight apart from being pre-filed testimony.

9 HEARING OFFICER CELLI: Thank you.

10 PRESIDING MEMBER DOUGLAS: That's correct. And I  
11 think from the Committee's perspective it would be really  
12 helpful if Ms. Peterson could give us a little more  
13 background on what BLM means with this sentence that talks  
14 about, you know, talking about the over-appropriation of  
15 water rights in the Pahrump Basin by a ratio of  
16 approximately 3 to 1 and the suggestion that active senior  
17 consumptive water rights be retired at the same rate. If  
18 you could just drill down a bit on that sentence that would  
19 be helpful.

20 MS. PETERSON: Okay. So what we used in that  
21 sentence is basically terminology that the State Engineer  
22 uses. So a "senior water right" is based on its priority  
23 date. So that means it has an older priority date so it's  
24 senior in status.

25 Active means it's being actively pumped. Pahrump

1 Basin is one of the basins where they actually do a pump  
2 inventory; the State Engineer goes out and does a pump  
3 inventory. That's how we can tell how many water rights are  
4 being pumped every year and how many are essentially just  
5 sort of sitting there. It's what we will call a paper  
6 right, it's not actually being pumped. So that's what we  
7 mean by active, it's being put to beneficial use. Regularly  
8 and frequently is really what we look for. And is it being  
9 put to beneficial use for a consumptive use such as  
10 irrigation or is it for some -- another reason like  
11 construction where it wouldn't be consumptive.

12 PRESIDING MEMBER DOUGLAS: Okay. So you --

13 MS. PETERSON: And we're also looking at -- what  
14 we'd prefer are water rights that are close to the area of  
15 impact so that way we actually see a real offset. If you  
16 can reduce the pumping close to where your area of impact is  
17 then you are overall reducing the impact to a site.

18 Is there still a lot of feedback? Because I can  
19 kind of hear it.

20 PRESIDING MEMBER DOUGLAS: We're hearing you.  
21 There's a little feedback --

22 HEARING OFFICER CELLI: We hear you fine.

23 PRESIDING MEMBER DOUGLAS: -- but we hear you  
24 fine.

25 MS. PETERSON: Okay.

1 HEARING OFFICER CELLI: We have sound people for  
2 that.

3 MS. PETERSON: Good.

4 PRESIDING MEMBER DOUGLAS: So, Ms. Peterson,  
5 you've talked about active, senior and consumptive and  
6 that's been helpful. Can you talk about this statement here  
7 that water rights in the Pahrump Basin are over-appropriated  
8 by about 3 to 1. Does that, as Mr. Harris suggests, include  
9 active, less active, more or less consumptive, kind of the  
10 whole basket of water rights, or does that include a more  
11 limited set of water rights?

12 MS. PETERSON: I believe that number comes from  
13 all of the water rights. So we have -- the Pahrump Basin  
14 has a perennial yield of about 12,000 acre-feet. There are  
15 water rights on record that total about 63,000. And then we  
16 have domestic use which does not require a water right and  
17 the State Engineer estimates that domestic use at about  
18 22,000 acre-feet. So if you kind of add all that up, your  
19 63 plus your 22 and you minus 12 then you're getting, I  
20 think it's about 3 to 1. But what is being actively pumped,  
21 at least I believe last year in 2011 when they did the pump  
22 test I think active pumping was around 13-15,000 acre-feet.

23 PRESIDING MEMBER DOUGLAS: Okay, that's helpful.  
24 And, you know, this entire sentence that we're talking about  
25 is about BLM's views on how to maximize the benefits of

1 retiring water rights as a mitigation option. That's a  
2 quote, I'm kind of reading it straight from the letter.

3 I did not see BLM in this letter speak directly to  
4 Option 1, which we've talked about. Which is, as I  
5 understand it, tell me if I'm getting this wrong, staff, but  
6 is, you know, efficiency or conservation measures that might  
7 reduce actual consumptive use; is that correct?

8 MR. MARSHALL: That is correct. But we're also in  
9 Option 1 -- well it's not our Option 1, it is our condition.

10 PRESIDING MEMBER DOUGLAS: Right, right.

11 MR. MARSHALL: We would also consider water rights  
12 as long they met those criteria.

13 PRESIDING MEMBER DOUGLAS: I understand, I  
14 understand, okay.

15 MR. MARSHALL: So there is not a dispute on that.

16 PRESIDING MEMBER DOUGLAS: All right. So in the  
17 condition that you have set forward you would consider  
18 reduction of water rights in addition to conservation-type  
19 measures if they met the criteria. And you're saying that  
20 the criteria that you think they need to meet are the same  
21 as the ones that BLM just articulated?

22 MR. MARSHALL: Yes, those would be taken into  
23 consideration. What we want to be clear on is the  
24 consumptive use. We want to make sure that the water rights  
25 we -- if we were to use the water right option for

1 mitigation, that the water rights we acquire are adequate to  
2 offset the consumptive use of the project.

3 PRESIDING MEMBER DOUGLAS: Okay, that's very  
4 helpful. And Ms. Peterson, hang on because we may have more  
5 questions but I just want to turn to applicant's witnesses  
6 now and say, is that how you understood the condition?  
7 Because now I'm wondering what the difference is between  
8 Option 1 and Option 2.

9 MR. THOMPSON: I believe if you scroll up a little  
10 bit here there is an introductory paragraph which lays out  
11 some of the elements as prepared by staff and that brings in  
12 the concept of consumptive use.

13 PRESIDING MEMBER DOUGLAS: Yes.

14 MR. THOMPSON: Do you all --

15 PRESIDING MEMBER DOUGLAS: We understand.

16 MR. THOMPSON: Are you familiar with that concept?

17 PRESIDING MEMBER DOUGLAS: Yes.

18 MR. THOMPSON: So I think Option 1 has an element  
19 of consumptive use inherent in it, whereas Option 2, it's  
20 not as tied to that. But that's why we proposed the 50  
21 percent surcharge, the 1.5 to 1 ratio. It's not as tied to  
22 the consumptive use component but they're still senior water  
23 rights. You'd be reducing pumping but you don't have that  
24 direct tie to the consumptive use element.

25 MR. RATLIFF: Commissioner, it occurs to me that

1 this notion of consumptive use may not have been explained  
2 and maybe we ought to explain it. Someone needs to explain  
3 it.

4 PRESIDING MEMBER DOUGLAS: All right, well, go  
5 ahead.

6 MR. MARSHALL: That is the essence of the  
7 difference of the disagreement on Option 1 and 2 is that the  
8 applicant wants to be able to buy any water right that's  
9 available on the market at a ratio of 1.5 to 1 to offset  
10 their project water use. And what we are trying to be clear  
11 on is that we would accept water rights as a possible  
12 mitigation option if they demonstrate an actual water use  
13 reduction in the basin. So it goes beyond just buying the  
14 water right, there is a demonstration or a proof of that  
15 they're going to reduce the water use by purchasing that  
16 water right.

17 And the way we've constructed our condition,  
18 they're allowed to give us all the information showing and  
19 demonstrating to us how that will be done. And so it's  
20 something we consider as a part of a plan that they would  
21 submit to us for approval.

22 PRESIDING MEMBER DOUGLAS: Okay. And as I  
23 understand consumptive use, you may have a water right to  
24 carry out some form of agricultural activity, for example,  
25 and some portion of that use would be consumptive because

1 plants will take up or transpire the water, the water would  
2 evaporate, but some portion of the water might go back into  
3 the groundwater table. And so do you anticipate making  
4 pretty detailed findings of what portion of a water right is  
5 actually consumptively used versus recharge or are you just  
6 saying, this water right looks consumptive enough to me?  
7 What level of rigor are you proposing in that determination?

8 MR. MARSHALL: Yeah, we would be making a finding  
9 about what is consumptive use depending on what water rights  
10 they propose to offset, use for the offset. We'd be looking  
11 at the land use practices of the activity that was occurring  
12 there and how much consumptive use using known quantifiable  
13 methods for evaluating those kinds of things to evaluate  
14 whether or not it's going to achieve the necessary offset.

15 And so, for example, as you point out, for  
16 agricultural use a very typical return flow on something  
17 like that could range between 30 and 40, 50 percent. So  
18 only half the water would be used by the plant, we'd get  
19 return flow back to the groundwater system.

20 PRESIDING MEMBER DOUGLAS: Okay.

21 MR. MARSHALL: The same thing.

22 MR. HARRIS: So we would just --

23 PRESIDING MEMBER DOUGLAS: A quick clarification  
24 for -- I'm sorry, go ahead

25 MR. HARRIS: No, I'm sorry, I thought you were

1 coming to me next, I'm anticipating your question. Again,  
2 we don't want Option 1 out. And we think we might, we  
3 expect staff to be reasonable with us. And if we can go out  
4 and find where it says that 30 percent return flows, this  
5 makes sense. Which, by the way, might require us to shut  
6 down an ongoing business, which is a bit of a concern. But  
7 having said that, we expect the staff to be rational with us  
8 and we can all reach agreement on whether strawberry crops  
9 return 30 percent or whether alfalfa returns 50 percent.

10 What we want is a backup so we can finance the  
11 project. The ability to say, if we can't reach agreement  
12 with staff we have this second option which is to go to this  
13 universe of 60,000 and retire. We're basically saying the  
14 same thing as BLM, the difference is the ratio.

15 PRESIDING MEMBER DOUGLAS: Right. And that's  
16 where I was going to go back to BLM and just ask another  
17 question about the ratio. Because it sounds to me from what  
18 Ms. Peterson said that 3 to 1 is the basket of water rights,  
19 some of which represent consumptive use and some of which  
20 don't, some of which are active and some of which are not.  
21 And, you know, to -- let's see, let me get this right, to  
22 groundwater recharge. The 3 to 1 proposal is BLM's proposal  
23 that the 3 to 1 ratio reflect, you know, essentially three  
24 units of consumptively used water right being retired for  
25 every one used by the project? Those are different.



1 MR. HARRIS: Yeah, I don't think BLM uses the  
2 word, consumptive.

3 PRESIDING MEMBER DOUGLAS: It's in the letter.

4 MR. MARSHALL: It's stated in the letter.

5 MR. HARRIS: Well, but let's talk about 3 to 1 to  
6 what. Three what to one what?

7 PRESIDING MEMBER DOUGLAS: Well that's what I'm  
8 asking BLM.

9 MR. HARRIS: My understanding of that is that --

10 PRESIDING MEMBER DOUGLAS: Mr. Harris.

11 MR. HARRIS: I'm sorry, I thought you were asking  
12 me.

13 PRESIDING MEMBER DOUGLAS: No, I'm asking BLM.

14 MR. HARRIS: Oh, I'm sorry. I'm clearly not BLM.

15 MS. PETERSON: I'm sorry, can you repeat the  
16 question?

17 PRESIDING MEMBER DOUGLAS: Yes. The question is,  
18 I understand from your letter that water rights in the  
19 Pahrump Basin you're saying are over-appropriated by a ratio  
20 of approximately 3 to 1 and that's three appropriated water  
21 rights to one unit of groundwater recharge. The water  
22 rights, the "3" reflects both rights that are being  
23 consumptively used and actively used and, you know, are wet  
24 and so on and those that may be less wet, less actively  
25 used, less senior, that sort of thing, to "1" of real, wet,

1 recharge. Then you've got a proposed 3 to 1 mitigation  
2 ratio. In your view what standard does the "3" on the  
3 mitigation ratio need to meet?

4 MS. PETERSON: They would need to be senior in  
5 status, actively used, so being put to beneficial use, and  
6 consumptive.

7 PRESIDING MEMBER DOUGLAS: Okay.

8 MS. PETERSON: And preferably located near the  
9 project area.

10 PRESIDING MEMBER DOUGLAS: Okay. So that would be  
11 -- I understand that, okay.

12 MR. HARRIS: So can I ask?

13 PRESIDING MEMBER DOUGLAS: Now, Mr. Harris, go  
14 ahead.

15 MR. HARRIS: That --

16 MR. MARSHALL: That's actually pretty much what  
17 staff is saying except that --

18 HEARING OFFICER CELLI: Mr. Marshall.

19 MR. MARSHALL: -- except that BLM --

20 HEARING OFFICER CELLI: Mr. Marshall, please wait,  
21 we're listening to Mr. Harris. Go ahead.

22 MR. HARRIS: No matter what label you put on  
23 those, there is a certificate from the Nevada Engineer. The  
24 problem is the basin has 60,000 certificates and you can  
25 call them wet, dry or whatever, right? So what we're saying

1 is, what BLM is saying, even if they're saying they're  
2 consumptive or otherwise, it's the right to pump water.  
3 It's 60,000 in the basin. We understand the safe yield to  
4 be more like 19,000 or 20,000, maybe more, John or Tim could  
5 speak to that. So it's the ratio of all the rights that  
6 have an indicia of a right to pump from the Nevada State  
7 Engineer. And so those rights, no matter what label you put  
8 on them, have to have a piece of paper.

9           And my understanding of what happens here is you  
10 take those pieces of paper from the Nevada Engineer, you put  
11 them in a drawer, and then the next time they come up and  
12 say, prove up your water rights or lose them, you don't  
13 prove them up and that's how they're retired.

14           There is not a process in Nevada law to retire a  
15 water right. What you do is you take part of that 60,000,  
16 put it in the drawer, and when the engineer comes back and  
17 says, "Prove it," you say, "I won't," and then they say,  
18 "Okay, gone." And now the 60,000 is now 59,800. Did I do  
19 the math wrong? If I was good with math that would have  
20 been great. But you get the idea. That's the way you get  
21 this basin back into balance is by requiring people to  
22 acquire those rights and put them in a drawer.

23           PRESIDING MEMBER DOUGLAS: Mr. Harris, I do get  
24 the idea. It would be good if that was in the form of  
25 questions to one of your witnesses so that we get evidence

1 in that we can quote to in the transcript and use in a  
2 evidentiary way but I understand what you're saying. Was  
3 there anything more?

4 All right, Mr. Marshall.

5 MR. MARSHALL: I was just going to point out that  
6 what we just heard from Sarah Peterson is essentially the  
7 same approach that we're taking in our condition except that  
8 she's asking for three times more than what we're asking  
9 for. We're just asking for actual project water use offset,  
10 which we think is consistent with CEQA and what we're  
11 limited to.

12 MR. CONWAY: If I may also rebut the last  
13 statement of Mr. Harris'. If people who weren't using these  
14 water rights would lose them we wouldn't have an additional  
15 40,000 acre-feet of water available. Because it's rare that  
16 people are losing them. As in my previous example, the  
17 Hidden Hills Ranch took out a permit in '09, did not use the  
18 water by 2011, filed an extension, see no indication of use  
19 this year, they can file another extension. As I was told  
20 by the Nevada State Engineer, this can continue indefinitely  
21 until some point in time when they begin to ask questions.  
22 So there is no formal system for removing these water  
23 rights, they are able to be shuffled and kept for a long  
24 time without use.

25 MR. MARSHALL: I'd like to add that staff --

1           PRESIDING MEMBER DOUGLAS: We're not ready.

2           HEARING OFFICER CELLI: If we can just have a  
3 moment.

4           (Committee confers.)

5           HEARING OFFICER CELLI: Okay, we are still on the  
6 record. We have been on the record all along, I think.

7           This has been an interesting discussion,  
8 panelists, and we thank you for that. The Committee feels  
9 at this time that we have enough information with regard to  
10 the questions involving Condition of Water Supply-1 and the  
11 over-draft.

12           In terms of the issues as far as we know, that I  
13 wrote down, we had this issue, we've got an Amargosa River  
14 issue, we have the issue with regard to -- we did already  
15 touch upon a little bit the water-dependant vegetation,  
16 which was the mesquite. We saw all that. I don't know if  
17 there is going to be need to get into that anymore as a  
18 water issue versus a Bio issue. I wonder, Ms. Belenky, did  
19 you, we have been talking about, we talked a little bit  
20 about the mesquite, of the effect on the mesquite thicket or  
21 whatever we're calling it. I'm wondering whether it makes  
22 sense to really finish that one off today versus dragging  
23 that into Bio tomorrow?

24           MS. BELENKY: I think we can, if we can still talk  
25 about groundwater dependant vegetation besides the mesquite

1 tomorrow then we can talk about it tomorrow.

2 HEARING OFFICER CELLI: Okay.

3 MS. BELENKY: Then there was the issue that came  
4 up in the part about traffic and visual where they're going  
5 to put in new vegetation, which someone said was an  
6 infinitesimal amount of water, which I was hoping to get  
7 staff to give me some more clarity on what amount of water  
8 they think that -- or whether they have calculated that  
9 water and how much it would be.

10 HEARING OFFICER CELLI: Okay, so we have the, just  
11 to kind of inventory what we have yet to handle. We've got  
12 the Amargosa River issue, we've got the irrigation of the  
13 landscaping, we'll call it. We can put over the  
14 groundwater-dependant vegetation to tomorrow for Bio. Any  
15 other issues with regard to water, staff, that we need to  
16 cover?

17 MR. CONWAY: Just that you mentioned the Amargosa  
18 River. One very key point to Water Supply-1 is that it  
19 maintains potential outflows from the Pahrump Valley to all  
20 downstream resources. And without a real water savings we  
21 cannot guarantee that the outflow will be the same.

22 HEARING OFFICER CELLI: Okay, yes, that's an  
23 important fact. But I didn't want to get into the fact, I  
24 just want to find out what the issues are that we need to  
25 address at this point. So we have Amargosa, we have

1   irrigation of landscape.

2               PRESIDING MEMBER DOUGLAS:   Go ahead, do you have  
3 another issue that you'd like to put on the table?

4               MS. LAMM:   Yes, thank you very much.

5               HEARING OFFICER CELLI:   Ms. Lamm.

6               MS. LAMM:   Can you hear me?

7               PRESIDING MEMBER DOUGLAS:   Yes.

8               HEARING OFFICER CELLI:   Yes.

9               MS. LAMM:   Okay.   Yes.   Again, besides my role at  
10 the Amargosa Conservancy I am also a member of the Nye  
11 County Water District Governing Board.   And Nye County did  
12 submit a letter and their suggestion was also 3 to 1  
13 retirement.   There is a relinquishment process in Nevada.

14              And also, I have not heard anything about the fact  
15 that the state is preparing to designate Pahrump as a  
16 critical management area.   They visited us in the fall and  
17 said we have one year to help get the basin back in balance  
18 or he will come in and designate it a critical management  
19 area.   That's pretty serious.

20              And then also the other thing that I keep hearing  
21 is about 60,000, 63,000 water rights.   In addition to that  
22 there are 12,000 domestic wells which have the right to pump  
23 two acre-feet each with 8,000 more lots that are eligible  
24 for wells; that would be a total of 20,000 wells.   That's  
25 pretty much 40,000 acre-feet in addition to the 63,000.   I

1 just wanted to point that out, thank you very much.

2 HEARING OFFICER CELLI: That was already in the  
3 record, thank you.

4 MS. LAMM: Okay.

5 HEARING OFFICER CELLI: I think that I can get rid  
6 of the irrigation quickly because that's a yes or no kind of  
7 question. So staff, can you, can anyone from staff quantify  
8 the amount of water that would be used to handle the  
9 irrigation of the proposed landscaping? Now that  
10 landscaping, Ms. Belenky, that was part of visual?

11 MS. BELENKY: I believe it was part of visual,  
12 yes.

13 HEARING OFFICER CELLI: Okay.

14 MR. CONWAY: The applicant might be able to  
15 correct me but I believe the proposed project's use in the  
16 range of 115 acre-feet per year and the maximum and what we  
17 analyzed was 140. So in that 25 acre-feet we do have a  
18 small amount of domestic use, approximately one acre-foot  
19 per year for sinks, showers, drinking perhaps, and then some  
20 small amount could go to watering. So within that spare 25  
21 acre-feet there's plenty of water to do desert shrubs or  
22 whatever they choose to do for landscaping. It's built into  
23 the applicant's estimate and they might be able to comment  
24 further on that.

25 HEARING OFFICER CELLI: Let's hear from



1 applicant's expert on that. If you could tell us how much  
2 water use the landscaping is going to take up.

3 MR. ROJANSKY: We don't have precise numbers  
4 because we haven't designed it yet but overall our intent is  
5 to stay with the 140 acre-feet.

6 HEARING OFFICER CELLI: That's as much evidence as  
7 I think as we're going to get on that question.

8 Let's turn to the Amargosa River issues. I wonder  
9 if staff is in the best position to frame the issue. We  
10 understand that there is a concern as to whether the use of  
11 the groundwater would affect the flows of the Amargosa  
12 River. Can you speak to that?

13 MR. FIO: Yes, this is John Fio.

14 HEARING OFFICER CELLI: Thank you, Mr. Fio.

15 MR. FIO: The situation is basically in a nutshell  
16 that nobody really knows if any water goes from the Pahrump  
17 Valley to the Amargosa River. You know, it's far away and  
18 there's a lot of potential complexities that could, you  
19 know, prevent water from getting there. So staff's position  
20 was, to be conservative and just to ensure that there would  
21 be no change in the existing outflow from the basin, and in  
22 that way it would protect whatever receiver of the water  
23 exists downstream.

24 HEARING OFFICER CELLI: So am I correct in the  
25 assumption that when we saw, earlier staff put up a diagram

1 showing the 13 wells. There was a well in the southwestern  
2 corner down there off by itself. Is that a monitoring well?

3 MR. CONWAY: It is a monitoring well to define the  
4 project's impact in the local vicinity. It does have the  
5 indirect benefit of being in the direction of the river and  
6 that data will be available to those that are interested in  
7 it. But it's more specifically to define the project's  
8 specific impact in all directions. We have wells in the  
9 north, south, east and west and this helps kind of shape the  
10 impact in the area.

11 HEARING OFFICER CELLI: Okay. Mr. Brown, do you  
12 have a different view of the issues affecting the Amargosa  
13 River?

14 MR. BROWN: On this issue I'd like to defer to  
15 Andy Zdon, our hydrologist here.

16 HEARING OFFICER CELLI: Okay.

17 MR. ZDON: I would actually agree with staff that  
18 nobody knows what the connection is between the Pahrump  
19 Valley and California Valley, which is within the Amargosa  
20 River drainage. And it is -- you know, there is a serious  
21 lack of data in that area. But I think it's good to stress  
22 what we do know about California Valley. There is a spring  
23 down at the southerly end of California Valley called Tule  
24 Spring, which is about, the water level on that is about 600  
25 feet below the level of the project.

1           There is a major fault that runs through the -- a  
2 northeasterly fault that runs up the valley called the  
3 Crystal Springs Fault. It's effect on groundwater flow is  
4 also unknown.

5           As you go up the axis of the valley towards  
6 Pahrump Valley and the project area, which is to the  
7 northeast, what separates California Valley from Pahrump  
8 Valley is a low divide, low hills of volcanic rocks and five  
9 to ten million year old sediments.

10           Also there is a, in the center of the valley is a,  
11 we do know that the basin fill is essentially 1500 feet  
12 thick. So there is opportunity for water to flow down in  
13 that direction.

14           If we ask ourselves, if we look at groundwater  
15 that is right up at that divide, and that is clearly flowing  
16 down towards Tule Spring on the Amargosa side, you have to  
17 ask yourself, where is that water coming from? It is very  
18 unlikely that any recharge occurs in those low hills. It's  
19 pretty much off-gradient from any recharge that you might  
20 get coming off of the Kingston Range. And it's very likely  
21 that there is some seepage from Pahrump Valley southwesterly  
22 into California Valley, the extent of which is completely  
23 unknown.

24           Looking at the total project pumping, which is 140  
25 acre-feet a year, in comparison to the springs that would be

1 affected by a reduction in flow in California Valley, which  
2 are primarily around Willow Creek. There are some seeps and  
3 springs along the east side of the Amargosa River Canyon and  
4 the area around Tecopa Heights in general. The actual  
5 spring discharges, surface discharges, is around, is  
6 estimated around 1,000 acre-feet.

7 HEARING OFFICER CELLI: I want to direct your  
8 attention to the overhead because there is a map of Pahrump  
9 Valley and it might, might assist everybody if you can kind  
10 of give us some sense of where these things that you're  
11 describing, the Tule Spring, California Valley, Willow  
12 Creek, the Amargosa River.

13 MR. ZDON: Okay. Okay. So you see where  
14 California Valley is labeled. There is a spring just to the  
15 southwest of the word California, that is Tule Spring.

16 HEARING OFFICER CELLI: Okay.

17 MR. ZDON: The low hills, I mean the low -- the  
18 two blebs to the northeast of the words California Valley  
19 are the sediments on the northwest side and the volcanics on  
20 the southeast side. The Crystal Spring fall runs generally  
21 along the northwest side of the Kingston range parallel to  
22 the axis of the valley to the northeast.

23 Further down you'll see some springs right along  
24 the edge of the river there. And those, those springs due  
25 sort of west/southwest of California Valley would include

1 Willow Creek and some of the springs along the Amargosa  
2 River canyon. All those dots.

3 MR. HARRIS: I'm sorry, what were the dots?

4 MR. ZDON: Those are springs.

5 MR. HARRIS: Springs, okay, thanks.

6 HEARING OFFICER CELLI: Okay. So this map labels  
7 the Amargosa River as it's flowing north towards Death  
8 Valley.

9 MR. ZDON: No, it's flowing southward.

10 HEARING OFFICER CELLI: That's south? Okay.

11 MR. ZDON: it flows south from Nevada, down  
12 through the Amargosa River Canyon, then makes a big bend  
13 around the south end of the Amargosa Range into Death Valley  
14 National Park where it terminates at Death Valley Salt  
15 Flats, bad water.

16 HEARING OFFICER CELLI: Okay. Got it, thank you.

17 So you were explaining how the project affects the Amargosa  
18 River.

19 MR. ZDON: Yeah. So there is, you know, as far as  
20 the springs in the immediate area down-gradient from  
21 California Valley, we're looking at the actual spring  
22 discharges of around 1,000 acre-feet a year. So we are not  
23 talking about a large amount of flow, however, there is  
24 agricultural use that depends Willow Creek in particular,  
25 there are wildlife uses, and of course, all of those are

1 sources of flows for the wild and scenic river.

2 Our concern is that although there is a well to  
3 the southwest to monitor those impacts there is no mechanism  
4 like there is for Stump Spring to affect water management of  
5 the project if impacts are seen heading into the California  
6 Valley area.

7 One of the things we would like to see, a very  
8 similar type of monitoring program to address those issues.

9 And I think that's really the crux of the point I'm  
10 disagreeing with.

11 HEARING OFFICER CELLI: Very clear, thank you. So  
12 really the issue here is what mitigation, if any, would be  
13 appropriate with regard to flows southeast of the project  
14 towards the Amargosa River.

15 MR. ZDON: Right, correct. Especially given the  
16 absence of data points down there or monitoring points. By  
17 the time you do see an impact it may be something that's  
18 irreversible.

19 PRESIDING MEMBER DOUGLAS: Let me ask, is the  
20 issue about mitigation or is the issue about what additional  
21 monitoring might be necessary to --

22 MR. ZDON: Both, both. It would essentially be  
23 what monitoring is going to be done, and then based on what  
24 you see from monitoring, if you see an impact, what would  
25 that mitigation look like.

1           PRESIDING MEMBER DOUGLAS:   Okay.

2           HEARING OFFICER CELLI:   And you presented that to  
3 staff at some point, I suppose, in some workshop?

4           MR. ZDON:   Just in my testimony.

5           HEARING OFFICER CELLI:   Okay.   Now let's hear from  
6 staff, what is the staff's reaction.   What is staff's  
7 position on the issue regarding potential impacts from the  
8 project to the Amargosa River?

9           MR. FIO:   This is John Fio again.   As I stated  
10 previously and as the witness testified, we really don't  
11 know.   And our position was that as long as we maintain the  
12 water budget that the outflow would be unaffected.   And also  
13 along those lines, you know, there is going to be a down-  
14 gradient well.   If there would be, if there were an impact  
15 propagating down-gradient you would see it.

16          HEARING OFFICER CELLI:   Now that's an important  
17 point.   You're not talking about the southeast corner well,  
18 there's another well?

19          MR. FIO:   Southwest corner.

20          HEARING OFFICER CELLI:   The triangle only.   So  
21 there is not another well beyond the southwest corner of the  
22 project site.

23          MR. CONWAY:   There is and the applicant showed it  
24 on their figure that showed all the monitoring wells.   I  
25 think it's about one and a half miles southwest of the

1 southwest corner of the project site.

2 PRESIDING MEMBER DOUGLAS: Is it staff's position  
3 that the well that's in the southwest corner of the project  
4 site is sufficient to inform staff of any impacts from the  
5 project that could conceivably affect the Amargosa River?

6 MR. CONWAY: I don't think staff would ever be  
7 comfortable, at least at this time, concluding any kind of  
8 an impact from that well directly because even the distance  
9 between that well and the river is still great. There are  
10 still a couple mountain ranges separating that well and the  
11 river. So regardless of what that well ever showed in the  
12 future, establishing a connection would be very difficult.

13 PRESIDING MEMBER DOUGLAS: I am not actually  
14 asking about a connection, I am just asking in terms of the  
15 point made by Amargosa River Conservancy's witness on  
16 whether there is adequate monitoring to detect whether then  
17 could be an issue. Do you think that there could be an  
18 issue that wouldn't be picked up by the well? That's what  
19 I'm asking. If there were an issue would you see something  
20 in that monitoring well?

21 MR. CONWAY: The purpose of that well is not to  
22 protect the river.

23 PRESIDING MEMBER DOUGLAS: Right.

24 MR. CONWAY: The purpose of that well is to  
25 predict the project's influence on the immediate vicinity of



1 the project.

2 PRESIDING MEMBER DOUGLAS: Can I ask that question  
3 of Amargosa River's witness as well then in terms of whether  
4 you view that well, how helpful do you view that well in  
5 monitoring its potential connection?

6 MR. ZDON: It's a point.

7 PRESIDING MEMBER DOUGLAS: It's a point.

8 MR. ZDON: It's a point to monitor. We have  
9 actually recommended that three monitoring wells be  
10 installed down there to actually look at the gradient across  
11 that divide and actually do some geochemical sampling as  
12 well to see if it's even the same water that we're talking  
13 about, if it's the same chemical characteristics.

14 PRESIDING MEMBER DOUGLAS: Okay. And did you make  
15 that proposal in a workshop?

16 MR. BROWN: It was in testimony.

17 PRESIDING MEMBER DOUGLAS: You made it in  
18 testimony, you made it in testimony, okay.

19 MR. ZDON: The presence of that well, though, as a  
20 monitoring well, yet it does inform what is happening. But  
21 in the absence of any trigger attached to it, it just serves  
22 to do that. Okay, we're seeing an impact but there is  
23 nothing that we are required to do to mitigate that or to  
24 reduce that.

25 HEARING OFFICER CELLI: Okay. But what about the,

1 what is your response to the idea that as long as the  
2 project maintains the water budget there would be no  
3 downstream effects?

4 MR. ZDON: I think that would assume that he  
5 maintenance of that water budget is be retiring water rights  
6 in the immediate vicinity of the project so that --

7 HEARING OFFICER CELLI: Well before we get to that  
8 let's step back into the more theoretical and say --

9 MR. ZDON: Yeah.

10 HEARING OFFICER CELLI: -- assuming that they  
11 really could maintain the budget, would then that negate  
12 any, if possible, effect on the Amargosa River?

13 MR. ZDON: Not necessarily.

14 HEARING OFFICER CELLI: Why not?

15 MR. ZDON: The Pahrump Valley is a very large  
16 groundwater basin. And you could maintain that water budget  
17 by retiring water rights or water use in the north end of  
18 the basin, which will help to keep the basin in general in  
19 balance. But in the immediate area of pumping you may still  
20 have very little impact on the code of depression. So there  
21 are localized impacts and there's basin-wide issues. And  
22 the localized, depending on where those rights are retired  
23 or a consumptive use is retired, may or may not have a  
24 significant effect on the actual impacts we're seeing from  
25 the project.

1           MR. HARRIS: Mr. Celli, could I ask a question on  
2 this point?

3           HEARING OFFICER CELLI: Go ahead, Mr. Harris.

4           MR. HARRIS: Are there even groundwater modeling  
5 tools that can detect 140 acre-feet difference in a basin  
6 the size we're talking about to reach the Amargosa River 26  
7 miles away?

8           HEARING OFFICER CELLI: Who is the question  
9 directed to?

10          MR. HARRIS: Staff or John Jansen or any of the  
11 experts. I actually -- I just want to know if this could be  
12 picked up in a model when you talk about 140 acre-feet in  
13 this scale.

14          DR. JANSEN: It would be in the margin of error of  
15 any model. It's too small to detect to that distance. And  
16 as long as the regional water balance is maintained it's a  
17 moot point.

18          MR. ZDON: I would actually disagree with that.  
19 It would depend on the scale of the modeling that is being  
20 done. It would certainly need more data than we have now to  
21 do. Given an absence of data a model is only as good as the  
22 data that goes into it. And we, at this point, wouldn't  
23 have data to put into a model to do.

24          HEARING OFFICER CELLI: Between that point, see  
25 the point up there on the projection. There's the well at

1 the southwestern corner and then there's that other, what  
2 I'm going to call the monitoring well that's further  
3 southwest from there, you can see that. What uses are there  
4 between that point and the Amargosa River?

5 MR. ZDON: There is a date palm farm, there are  
6 domestic water users and that's primarily it.

7 HEARING OFFICER CELLI: Okay. And I'm assuming  
8 there is nothing between that outermost southwestern point  
9 and the one that's within the site. Oh there is, there is  
10 actually Charleston View. So there is some use between the  
11 southwestern point on the site and the next southwestern  
12 point off-site in the well users from Charleston View,  
13 correct?

14 MR. ZDON: Correct.

15 HEARING OFFICER CELLI: Yes, okay. One moment.

16 MR. BROWN: Can I add a comment?

17 HEARING OFFICER CELLI: Who is speaking?

18 MR. BROWN: Brian Brown with the Amargosa  
19 Conservancy.

20 HEARING OFFICER CELLI: Go ahead.

21 MR. BROWN: I'd also like to point out that in  
22 addition to the uses there are numerous wilderness areas,  
23 areas of critical environmental concern as designated by the  
24 BLM and surface water springs that are vital to wildlife and  
25 so I would consider those to be uses.

1           And on another slightly different issue. I think  
2 everyone here has agreed that there's simply not enough data  
3 to make a call about whether there is this connection or  
4 not. That being the case, because of the longevity of this  
5 project, I think it would be best to err on the side of  
6 caution and require additional monitoring from the applicant  
7 along with some, some type of triggering mechanism. And if  
8 this happens then that has to happen and that has to happen.

9       This is going to have a profound impact on our area,  
10 obviously, and it just -- I think erring on the side of  
11 caution. Ignorance here -- not ignorance but lack of  
12 knowledge almost equals risk, in my opinion.

13           MR. ZDON: And also just to mention, these were  
14 also concerns also raised by BLM as well.

15           MR. BROWN: And Inyo County.

16           MR. ZDON: And Inyo County.

17           HEARING OFFICER CELLI: Now I don't think, Inyo  
18 County, you don't have a witness here on this, do you?

19           MS. CROM: No, we do not.

20           HEARING OFFICER CELLI: Okay. And I am sure that  
21 if you had more evidence on the potential connection between  
22 this potential project and the Amargosa River we would have  
23 received it by now.

24           PRESIDING MEMBER DOUGLAS: I think we are nearly  
25 through his topic in terms of at least what I was hoping to

1 hear, there may be more. I've got a couple of questions  
2 again for Amargosa Conservancy's witness. You brought up  
3 kind of some chemical testing, essentially testing the water  
4 in order to assess whether there is a hydrologic connection.

5 Is that the purpose of the testing? Can you just briefly  
6 describe what kind of testing you meant and what it might  
7 reveal. I am not convinced that I understand what kind of  
8 testing it is. I am also not sure, given the distance  
9 between the project site and the river, how illustrative it  
10 would be, that's why I'm asking.

11 MR. ZDON: We are -- let me, just as some  
12 background on some of the work that we are currently doing  
13 in the Amargosa River that this kind of hinges on. We are  
14 currently doing work on behalf of Amargosa Conservancy and  
15 the Nature Conservancy and working on a collaborative  
16 project with BLM and the USGS on trying to evaluate what the  
17 sources are of the springs and of the river flow of the  
18 Amargosa.

19 As part of that we just concluded last year a  
20 sampling of a number of springs throughout the California  
21 portion of the Amargosa River basin before it enters the  
22 national park. As part of that we were sampling for general  
23 minerals, metals and doing isotopic analysis, uranium  
24 isotopes, strontium isotopes, oxygen, hydrogen and tritium  
25 and the idea of trying to source where these waters come

1 from.

2 One of the results of this is that as staff has  
3 mentioned, it is a very complex system. And almost all of  
4 the spring samples showed signs of mixing from multiple  
5 sources. Unfortunately, Tule Spring is not a location in  
6 which you can get a good sample from so that sample was left  
7 out of the study. But they are very useful for sourcing  
8 waters. There's a lot of data for Pahrump Valley as well  
9 already. And I think just a modicum of work could eliminate  
10 or remove the concern of whether there is flow from the  
11 project area into California Valley.

12 PRESIDING MEMBER DOUGLAS: So you said the words  
13 "modicum of work." Can you unpack that a bit. What is the  
14 work?

15 MR. ZDON: Yeah, we were looking at three  
16 monitoring wells that would be arranged in a geometry that  
17 would allow us to get a hydrologic gradient across that,  
18 that divide. And also looking at doing that same round of  
19 chemical sampling for those three wells and comparing that  
20 to what the project's water chemistry is and seeing if there  
21 is even a match of the same kind of water that we're seeing  
22 in the Amargosa.

23 PRESIDING MEMBER DOUGLAS: Okay. All right, so I  
24 am going to ask you to explain something really basic to me.  
25 When you're in this area and you sort of look at the rocks,

1 the formations and everything. You see a lot of different  
2 colors so obviously a lot of complexity in terms of minerals  
3 or other chemicals that might be present are reflected in  
4 the rocks in the strata that you can see and obviously that  
5 which you cannot see. So how do you make a connection? I'm  
6 intrigued. I'm just trying to understand how this testing  
7 works and how close a connection you can draw between the  
8 source of the water and --

9 MR. ZDON: You're doing forensics on water.

10 PRESIDING MEMBER DOUGLAS: That's what it sounds  
11 like.

12 MR. ZDON: That's essentially it. And you're  
13 looking at, you're looking at what the water chemistry is in  
14 springs that occur up in the source areas, to see what  
15 source area background characteristics are like. By doing  
16 that we've already done some of that work. We have been  
17 sampling springs up in the Kingston range, for instance, so  
18 we have ideas of what the characteristics of those spring  
19 waters are already like. Looking at several different  
20 higher-end springs, higher elevation springs in the various  
21 ranges. We get those end points because it's pretty clear  
22 they're not probably mixing with anything else.

23 And it's actually having that background that  
24 enabled us to look at some of those other springs, for  
25 instance, down closer to the Amargosa River, to say, hey,



1 these are definitely looking like mixtures of one, two,  
2 maybe four different source waters.

3           Going into this project we are expecting much  
4 more, much more waters that were typical of the Pahrump  
5 Valley, calcium bicarbonate waters. Unfortunately, we have  
6 very large data gaps. And as you get down to the river it's  
7 not like that but that doesn't preclude mixing of calcium  
8 bicarbonate waters with the other waters that we're seeing.

9           PRESIDING MEMBER DOUGLAS: Okay.

10           MR. ZDON: So it is, it's a very complex process.

11 But if you have a location that is in close proximity to  
12 California Valley, as the project is and wells which are  
13 sampled, and we can take a look at these other new other  
14 points in the California area and along that divide, if  
15 there's some substantial differences in that water chemistry  
16 and those characteristics it is very likely that there is no  
17 flow cutting across or very limited flow coming across that  
18 divide. And the answer is there.

19           PRESIDING MEMBER DOUGLAS: Right, and that makes  
20 sense. One more question for you. When you were asked your  
21 views on staff's condition in water and whether it was fully  
22 protective of the Amargosa River I think what you said was,  
23 if in fact the project's water use is mitigated at a 1 for  
24 1, I'm putting words in your mouth so you need to correct me  
25 if I'm not doing it right. If it's mitigated by reductions

1 of consumptive use on a 1 to 1 basis, that would probably  
2 address the concern except that you had the remaining  
3 concern of where the reduction in pumping was occurring  
4 because it might or might not affect or help the Amargosa  
5 River. I don't know if I asked that clearly enough but  
6 that's what I think you said.

7 I guess my question is, in your view, how close to  
8 the project site is close enough or what are good areas for  
9 pumping to be reduced that actually would help the Amargosa  
10 River or could help, you know, versus what's too far away?  
11 Can you put any geography on this as you look at that map or  
12 is it just that we're not sure but further is not as good as  
13 closer?

14 MR. ZDON: IF you were to retire rights in Pahrump  
15 Valley that was closer to say Stewart Valley, which in the  
16 northwest corner of Pahrump Valley, I would suspect that it  
17 would have very little effect on being able to mitigate the  
18 actual effects of pumping from the project.

19 Preferably if you are on the same side of the  
20 fault that would be best of all worlds. But certainly in  
21 the south end of the basin in particular. The fault, as a  
22 barrier -- then this actually raises another concern that's  
23 been brought up about the fault acting as a barrier and  
24 being essentially protective, a natural protection from  
25 pumping on the springs, Stump Spring.

1           If that's the case then that water that is being  
2 pumped out has to come from somewhere. So it would be, it  
3 would seem that there would be actually a propagation of  
4 draw-down more in the direction of California Valley in the  
5 opposite direction than there would be across that fault.  
6 And which is also the down-gradient direction. So certainly  
7 being on the same side of the fault would be most protective  
8 of all. But certainly in the immediate vicinity of the  
9 project area and the area of concern would be important.

10           MR. HARRIS: Can I ask for clarification on a  
11 factual issue?

12           PRESIDING MEMBER DOUGLAS: Please.

13           MR. HARRIS: The question was asked about what is  
14 between the project site and the Amargosa River. Is Tecopa  
15 between, is that between the two?

16           MR. ZDON: Yeah, an area called Tecopa Heights  
17 would be, which is a residential area to the south of Tecopa  
18 Hot Springs.

19           MR. HARRIS: About how many residences?

20           MR. ZDON: How many is that?

21           MR. BROWN: I would say 80 to 100.

22           MR. HARRIS: Okay. And all on well water there?

23           MR. BROWN: Yes.

24           MR. HARRIS: And is the date farm between the  
25 project site and the Amargosa River?

1           MR. BROWN: Yes, it is. Not in a direct line but  
2 in the general, general flow it is, yes.

3           MR. HARRIS: And how much water usage do we think  
4 we have on the date farm?

5           MR. BROWN: We have about 25 acres of date palms  
6 on drip irrigation systems as well as two irrigation -- two  
7 domestic wells. I can't really put a number on it but  
8 that's a description of our usage.

9           MR. HARRIS: So a ballpark. I don't know about  
10 dates. How water intensive are they?

11          MR. BROWN: I'm sorry, I can't give you a number,  
12 I don't know.

13          MR. HARRIS: You don't know how much water is used  
14 on the date farm? Don't you own the date farm?

15          MR. BROWN: I do.

16          MR. HARRIS: But you don't know how much water you  
17 use on an annual basis?

18          MR. BROWN: I can't give you an accurate number at  
19 this time.

20          MR. ZELLHOEFER: Mr. Celli?

21          HEARING OFFICER CELLI: One moment. Okay,  
22 Mr. Zellhoefer, please go ahead.

23          MR. ZELLHOEFER: I might be able to help here with  
24 the water question because the Amargosa River flows entirely  
25 through my property and I have done extensive research and I

1 am currently working with the Department of Fish and Game.  
2 So if anybody wants to know they could ask because I know  
3 how much water is going through there.

4 HEARING OFFICER CELLI: Thank you. Okay, with  
5 that then let me ask the parties. I believe that we have  
6 covered all of the issues under the heading of Water Supply.  
7 Is there anyone who disagrees with that?

8 MR. ARNOLD: I would disagree.

9 HEARING OFFICER CELLI: Mr. Arnold, please go  
10 ahead. Oh, that's right, I am so sorry. You are one of the  
11 witnesses; but since you're not sitting with the experts I  
12 forgot. Go ahead.

13 MR. ARNOLD: I'll accept your apology.

14 Actually, you know, I think equally important and  
15 quite visibly absent from the discussion here today is the  
16 cultural considerations and implications to the waters and  
17 soils that we have been talking about. I think that  
18 yesterday when I was trying to share some cultural  
19 information there was -- admittedly, it's a very difficult  
20 topic for us to talk about because it's things that we  
21 typically don't talk about, they're understood. But  
22 recognizing the importance with the Committee and the other  
23 parties not understanding or having the benefit of that  
24 cultural knowledge it's obviously important for us, I think,  
25 to try to share or impart some of those, those perspectives.

1           Now with respect to some of the comments that  
2 you've heard about the uncertainties and whether or not  
3 there's, you know, connections between certain areas and  
4 what have you. Culturally, we know that there are. And so  
5 those are things that we describe in many of our stories,  
6 our songs, it's embedded within our epistemology. Where  
7 you'll, you'll hear about people talking about the  
8 importance of the areas. The interconnectedness that  
9 happens when something happens in one area it can upset or  
10 disrupt or cause an imbalance into, into the resources.

11           So I think with those words said, I think that, as  
12 I shared yesterday, there's obviously going to be some  
13 overlap between what we have in the respective sections so,  
14 i.e, the soils and waters versus cultural resources versus  
15 visual resources and what have you.

16           But I think that we need to really consider all  
17 the things that we see. So for example, in looking and kind  
18 of cutting to the chase, initially where you were looking  
19 for some issues of disagreement, I think there are some of  
20 those areas that we have also with respect to cultural  
21 perspectives and implications.

22           There was no parallel study, obviously, that was  
23 done incorporating or having an American Indian interface  
24 with tribes to try to ascertain those perspectives. I mean,  
25 there were some things that were gathered in the ethnography

1 that was done, that will be presented under the cultural  
2 resources section, but it wasn't all-inclusive nor was it  
3 intended to be a water study like what you're hearing people  
4 talk about, just as all the other respective disciplines.

5           There was no consideration in any of the  
6 discussion that you heard here today of Southern Paiute  
7 epistemology as it relates to waters and soils. There is no  
8 documentation or understanding of traditional ecological  
9 knowledge as it relates to soils and waters. There is no  
10 evaluation or understanding of impacts to the Southern  
11 Paiute life, ways and cultural landscapes as, again, as it  
12 relates to the soils and water.

13           I think having that said, there is some value and  
14 I see some parallels here for some of the information that  
15 is being suggested as far as monitoring wells. That perhaps  
16 some of that may be able to help, for lack of a better term,  
17 is to ground truth some of the things that not only we're  
18 seeing culturally but maybe hydrologically, what people are  
19 seeing or hypothesizing. So I think there would be some  
20 value to that.

21           Further, I think that with respect to trying to  
22 understand the implications to the cultural landscapes.  
23 There is the need to bring in, to expand the number of  
24 individuals that were brought in initially, even in the  
25 ethnographic assessment for the ethnography that was done

1 for this project. Because I think there's lots of other  
2 tribes that are around that don't -- that are -- that rely  
3 just as heavily on the area just as the local, the local  
4 Paiute people do too. Because through our songs and our  
5 stories and our beliefs, I mean, they're all cyclical.

6 I think moreover with this there is -- when you  
7 were asking mitigation. I think this would help  
8 substantiate some of the need for not only looking at -- if  
9 there is a retirement of water rights or if we're looking at  
10 various ways to deal with those certain aspects. I think  
11 there is going to be an equal, legitimate concern for,  
12 again, trying to get something for I guess land set aside  
13 because of the impacts of this.

14 And clearly some of those are going to be  
15 addressed and concerned not only in the cultural resources  
16 section. But I think as well it would happen, as  
17 information is coming out in the future I think you'll see  
18 more and more cultural substantiation of the information  
19 that is being brought forward.

20 HEARING OFFICER CELLI: It's almost like we're  
21 doing this backwards in terms of cultural since cultural is  
22 on Friday.

23 MR. ARNOLD: Well, when we saw the Pinta, Nina and  
24 the Santa Maria, I mean, that's when we said, there goes the  
25 neighborhood.



1 (Laughter.)

2 MR. ARNOLD: And had you only listened to us  
3 perhaps we'd be in a little bit different situation now.

4 Unfortunately, that's why I think oftentimes with  
5 projects -- but I referred to yesterday about the ten  
6 directions. That things, people don't recognize the  
7 importance and the value of that. So whenever we do  
8 anything, and we would implore everybody else to take on or  
9 consider those types of perspectives of whenever you do  
10 anything you always have to not only look at all the  
11 directions in which something is going to be impacted but  
12 you look at the up and the down, the past, the present and  
13 the future, and you look at yourself where that's going to  
14 impact you. And typically whenever you consider all that  
15 you'll have a pretty, you'll be grounded at least in the  
16 discussions, in the decisions, and even the focus as to  
17 where you're going. In life and with respect to projects.

18 So having said that, I think, you know, we have  
19 lots of beliefs about, about water. Water is a living  
20 being. There's living beings within the water. We know  
21 that when we use it ceremonially that you have to approach  
22 it in a certain way. We know that you just don't go walk  
23 up. You can't be loud. You're not supposed to throw things  
24 in it. You're not supposed to disturb it. You have to  
25 address it very appropriately and respectfully, culturally.

1           You have to oftentimes awaken it when you see the  
2 water sitting there. When we use it traditionally we have  
3 to awaken it to make sure that it's going to hear us and  
4 respond to us. And we have to explain to it what we're  
5 doing, what we're intending to do and how we're going to use  
6 it. We know that the water is critical for keeping the  
7 world in balance.

8           As we see our life being mindful of those ten  
9 directions, being mindful of all the resources and  
10 everything that relies upon it, we know that it's first and  
11 foremost something that is so vital to ensure the longevity  
12 and the continuation and perpetuation of life in general.

13           So we know that in our traditional stories, and  
14 this is where I get a little dicey because we have seasonal  
15 stories in which we can -- we call them basically winter  
16 stories. And so when we're outside in the winter season we  
17 can't be talking about those things. And how we know that  
18 is oftentimes when we hear the first sounding of the  
19 mourning doves. And when those start coming around we know  
20 that spring has come, that spring has already come. It came  
21 here actually a couple of weeks ago, a few weeks ago. So  
22 when we heard that we knew and that's our cutoff time.

23           But capsulizing some of that I think can summarize  
24 just a little. And again, just to try to give you a flavor  
25 for kind of where we're coming from and building on a

1 foundation, I think, for what you're going to hear more on  
2 Friday. But I need to set this because I think it's germane  
3 to the water.

4           So when we were looking at -- when the world was  
5 new as we know, as we perceive it, we knew that this whole  
6 area was covered with water. That's what our story says.  
7 There were certain islands, there were certain peaks around  
8 of the mountains that you'll see. Mount Charleston was one  
9 of those. There was an island there. And as that water  
10 subsided -- the water was supposed to go many different  
11 directions and it actually was supposed to be coming right  
12 through where Hidden Hills, where California Valley, all  
13 that. That's where the water was to go.

14           And then we have some deities in our culture that  
15 decided, no, it didn't need to go that way and they shifted  
16 it the other way. And when they shifted it it then ended  
17 up, part of it ended up going down where the Colorado River  
18 is now.

19           But we have a connection between what happens over  
20 there even to what happens over here. And that's where  
21 you'll start to hear more about the salt songs, you're going  
22 to start hearing more about what those songs mean because  
23 that's part of that interconnection that takes you and  
24 spells out all these different things. So our songs, for  
25 example, are vocal snapshots that talk about the areas, the

1 resources, everything that's out there that lays our  
2 foundation for our existence as people.

3           We still rely upon, we use water. We get up, our  
4 day starts very early before the sun comes up, we have to  
5 start things that way. We continue on. And we use water in  
6 all of those opening prayers for part of our spirituality  
7 and physically we have to rely upon that. We can't be  
8 separated from the water.

9           And it's kind of interesting to us. I mean, you  
10 know, how oftentimes people say, well, gee, tell us about  
11 this or tell us about that. When you ask us to tell you  
12 something, that's -- it's like trying to tell somebody -- if  
13 a doctor tells you, well, you know, your arm is fixed. It  
14 was broken so now we fixed it. And we look at that and say,  
15 well gee, that's great that you fixed that part but what  
16 about the rest of you? Because you're all connected. And  
17 that's what the land is, that's what the water is. And so I  
18 use that example just to kind of explain how we, how we view  
19 some of these things in the world.

20           So then beyond that, all those cultural  
21 implications that we have, you know. And I shared with you  
22 about the water. But there's those specific stories about  
23 how the water was placed here, how the springs are where  
24 they're at, where they're located, why there were located  
25 there. There's a lot of that that's really absent, even in

1 the ethnographic information, because again it was so  
2 capsulized in such an aggressive schedule that there wasn't  
3 time to collect a lot of that information or that data.

4           So when we're using, using the water we know first  
5 and foremost that we have to have that in order to keep the  
6 world in balance. When we see things that get out of  
7 balance, out of kilter, that's when everything goes awry.  
8 And so people will oftentimes look at things that they  
9 think, okay, well we can -- we're going to build a solar  
10 project or we're going to build a whatever kind of project.  
11 The people don't know the implications without fully  
12 understanding everything.

13           And so that's where we see oftentimes with this  
14 particular project, while there is a lot of science,  
15 scientific perspectives in what's going on, from the  
16 hydrologists or any of the other respective scientific  
17 disciplines, equally there is scientific disciplines that  
18 study and talk about who we are or what we are as well. In  
19 addition to the information, the stories, the songs, the  
20 traditional ecological knowledge, all the information that  
21 we have that's embedded into our, our knowledge base that's  
22 transmitted down culturally and transmitted orally from  
23 generation to generation, as it has been since the beginning  
24 of time. That's again, as we know it.

25           I think for us what you'll see and what you're

1 hearing here is a lot of the implications that will spill  
2 over into the landscapes as we know it because water is, is  
3 critical within those landscapes.

4 Summing up here, that I think that the creation  
5 stories and how we were created here are such an integral  
6 part of soils and water that has not even been touched here.

7 So clearly we're going to use all this information and  
8 hopefully try to bring this, bring this forward. And we see  
9 that that's something that will be in our responding briefs  
10 as well. I mean, there's going to be a lot of specific  
11 information there as -- which it's good for me to hear maybe  
12 what you guys know, or with all due respect, think you know,  
13 in respect to what we know culturally. Thank you.

14 HEARING OFFICER CELLI: Thank you, Mr. Arnold. Go  
15 ahead, Commissioner Hochschild.

16 ASSOCIATE MEMBER HOCHSCHILD: Thank you,  
17 Mr. Arnold. I just wanted to thank you personally for that  
18 and just to let you know you know, I take that very  
19 seriously and the Committee takes that very seriously and I  
20 really appreciate you going to that level of detail and I  
21 look forward to tomorrow and Friday.

22 I just wanted to make sure I got the ten  
23 directions correct. North, south, east, west, up, down,  
24 self, past, present and future; is that right?

25 MR. ARNOLD: You follow that, you'll not only find

1 your way home but you'll find your way where you're going  
2 for the rest of your life.

3 ASSOCIATE MEMBER HOCHSCHILD: All right, thank  
4 you.

5 HEARING OFFICER CELLI: Mr. Arnold, I wanted to  
6 ask just to clarify because in a moment we're going to move  
7 in everybody's evidence. Did you have any -- were you  
8 proposing any mitigation different than what's been proposed  
9 by the staff and applicant?

10 MR. ARNOLD: I think the only, the mitigation  
11 difference would be what was already identified in the  
12 exhibits that I had previously identified. So those, those  
13 mitigations would be the ones that would be suggested, I  
14 guess, in addition to or to supplement some of those. And  
15 one of those was like when I was mentioning the land because  
16 that was something here that wasn't really discussed.

17 HEARING OFFICER CELLI: The mitigation land?

18 MR. ARNOLD: That's correct.

19 HEARING OFFICER CELLI: Okay. Now, before we  
20 start, I start asking people to move exhibits into the  
21 record, this is also soils and water. And I don't recall  
22 whether there were any issues with regard to drainage or any  
23 of the traditional soils and water matters. Were there any  
24 such issues, parties?

25 MS. BELENKY: Mr. Celli, this is Lisa Belenky with

1 the Center for Biological Diversity. We actually have two  
2 more quick questions on water and then we have one issue  
3 with soil and water that may be able to go into Bio  
4 tomorrow.

5 HEARING OFFICER CELLI: Okay, let me, I just want  
6 to -- first of all, your soil issue. What's the soil? Can  
7 you give me the --

8 MS. BELENKY: Yes, issues with cryptobiotic soils  
9 and the analysis or lack thereof.

10 HEARING OFFICER CELLI: Okay, I remember reading  
11 that in your papers. And your questions in water had to do  
12 with what?

13 MS. BELENKY: Well there's two questions. One is  
14 that no one has discussed the cumulative impacts to water  
15 from the associated other projects that are listed in the  
16 cumulative. I think that does need to be addressed,  
17 particularly when we get to this -- since we're dealing with  
18 this question of whether monitoring is needed. That's one  
19 issue that seems to have been skipped.

20 And then the second is that this morning when we  
21 were talking about growth-inducing I had asked about staff's  
22 conclusion that water limitations are a constraint to  
23 growth; there is a conclusion in the FSA that states that.  
24 And at the time the staff person was not the water staff  
25 person and I was told I should ask the water staff person



1 how they reached this conclusion when they are suggesting  
2 that this project can be approved and yet they're saying  
3 it's a constraint to any growth-inducing from the project.

4 HEARING OFFICER CELLI: Let's take that first. So  
5 who -- is that -- that was directed to staff or applicant,  
6 Ms. Belenky?

7 MS. BELENKY: Staff.

8 HEARING OFFICER CELLI: So staff, I don't know if  
9 you were here when that question arose but there was some  
10 discussion this morning during socioeconomics regarding the  
11 limitation of water as being a, I guess the word I would use  
12 is, a prevention to growth-inducing impacts of the project.

13 Ms. Belenky, if I am not asking this question very well hop  
14 in. Can anyone address that?

15 MR. CONWAY: I can attempt. I think I heard the  
16 issue. Is that something to do with how the fact that there  
17 is not a ton of water here, that that may limit growth; is  
18 that correct?

19 MS. BELENKY: Well.

20 MR. RATLIFF: Could I just ask for clarification?  
21 Is this something in the water testimony or is it in one of  
22 the other pieces of the staff testimony?

23 MS. BELENKY: It was in the growth-inducing  
24 testimony, which we didn't have the staff person who had  
25 written it. But even so, staff said that that was not their

1 conclusion from the socioeconomics staff, it was the water,  
2 a conclusion from the water section, that they had relied on  
3 the water section.

4 MR. RATLIFF: I see.

5 MS. BELENKY: And that section actually makes a  
6 proposed finding of fact so it's not just a generalized  
7 idea, oh, maybe there's not a lot of water.

8 HEARING OFFICER CELLI: Do you have that finding  
9 of fact with you? My thought was that if you could read the  
10 finding of fact --

11 MS. BELENKY: Sure I could do that.

12 HEARING OFFICER CELLI: -- and let staff respond  
13 to, to that finding.

14 MS. BELENKY: That's fine. I can do that.

15 HEARING OFFICER CELLI: This way we'll all be on  
16 the same page.

17 MS. BELENKY: It is a finding, proposed finding of  
18 fact number five in the section on growth-inducing. Just  
19 for the record we know what page we're all talking about,  
20 page 4.8-33. And it says, "The Pahrump Valley groundwater  
21 basin, which includes the Charleston View area, has  
22 experienced significant declines in groundwater levels  
23 during the past 100 years and staff believes this to be a  
24 serious constraint on any significant development." And I  
25 am asking staff the basis for that finding of fact if they

1 are now proposing to approve this project?

2 HEARING OFFICER CELLI: Okay, Mr. Conway.

3 MR. CONWAY: I did work with our alternatives  
4 staff member to help develop this statement. This is more  
5 of a qualitative type of statement. When groundwater levels  
6 are declining it generally hints that the inflows and  
7 outflows are not sustainable and that there is an eventual  
8 end to -- groundwater level declines can't continue  
9 indefinitely. So it's speaking to the lack of potentially  
10 -- to the potential lack of a sustainable resource in the  
11 declining environment, declining water level environment.

12 HEARING OFFICER CELLI: Anything further on that,  
13 Ms. Belenky?

14 MS. BELENKY: Well, I am curious because it is  
15 stated as a finding of fact that constrains will constrain  
16 development. That therefore there will not be growth  
17 induced because this water lack will constrain the  
18 development. That's how it's stated in the FSA. And I  
19 would like staff to explain how they reached that conclusion  
20 when they are assuming that this project will be approved  
21 and then in the context of the cumulative projects that we  
22 know are out there and that were evaluated by staff in the  
23 water section.

24 HEARING OFFICER CELLI: Okay. And I want to be  
25 clear that that's a finding of fact that is proposed by

1 staff, that certainly isn't a finding yet, if at all, by  
2 this Committee.

3 I did hear the word "staff believes" in that  
4 finding, which would never find its way in a PMPD, but I  
5 think that that was sort of a qualifier in itself. So let's  
6 hear from -- so I think the question is, what is the basis  
7 of that belief?

8 MR. RATLIFF: Mr. Celli, one of the -- when the  
9 staff was actually doing the growth-inducing impact section  
10 one of the things they were trying to address was to the  
11 extent to which the project would be growth-inducing in the  
12 immediate project area at the south end of the Pahrump water  
13 basin area. If you build a project there is it going to  
14 induce significant new development?

15 And in those discussions we had discussions with  
16 the county about the prospects for development and I think  
17 it would be useful, actually, to hear the county's point of  
18 view on this matter. Because I think to some degree we -- I  
19 know at least part of our consultations were with the county  
20 on this matter.

21 HEARING OFFICER CELLI: I think that we would like  
22 to hear from the county too but I think Ms. Belenky's  
23 question was she wants to know what the basis of the belief  
24 that the --

25 MR. RATLIFF: And I'm giving it to you.

1 MS. BELENKY: But the county of Inyo, which is the  
2 California county, is one issue but the growth may also be  
3 induced across the state line in Nevada. And this Committee  
4 has already stated that they would look at that growth to  
5 the extent that it will affect and impact resources in  
6 California.

7 HEARING OFFICER CELLI: So let's --

8 MS. BELENKY: Water being one of them.

9 HEARING OFFICER CELLI: So what is your question  
10 then to staff is --

11 MS. BELENKY: Yes, I think --

12 HEARING OFFICER CELLI: -- what is the basis of  
13 that belief?

14 MS. BELENKY: That water will be a limiting factor  
15 on the growth induced by this project.

16 HEARING OFFICER CELLI: From any of staff's  
17 witnesses.

18 MR. CONWAY: I don't believe in the water section  
19 we identified any growth that would occur as a result of  
20 this project and I am not sure what was submitted into the  
21 record by other staff members. But I had some input on how  
22 that statement was phrased in attempting to help our other  
23 staff member. Maybe I don't understand the implication of  
24 it, so.

25 HEARING OFFICER CELLI: I'm trying to help you out

1 here, Ms. Belenky, but (overlap).

2 MS. BELENKY: Well, I think we can move on because  
3 clearly staff isn't -- the both staff who were here on the  
4 two sides of this don't have an answer so that's fine.

5 MR. CONWAY: I can attempt to address what I think  
6 it should say.

7 MS. BELENKY: I do think it would be interesting  
8 to hear what you would say about the cumulative impacts,  
9 which have not been discussed by this panel. Because the  
10 assumption during all of this discussion was that the only  
11 draw-down was of this 240 acres or whatever from this  
12 project.

13 HEARING OFFICER CELLI: One-forty.

14 MS. BELENKY: But the cumulative analysis from the  
15 -- in staff's FSA from other projects that they did consider  
16 cumulatively is far higher than that.

17 HEARING OFFICER CELLI: Go ahead. I wanted to say  
18 that when we asked what the issues were we didn't hear  
19 anyone speak up about cumulative but if you have a point to  
20 make on that go ahead.

21 Mr. Conway, you were going to answer something.

22 MR. CONWAY: Yes.

23 HEARING OFFICER CELLI: You were cut off. You're  
24 free to answer the first question and then if you want you  
25 can go into the cumulative question.

1           MR. CONWAY: I need to be reminded of what the  
2 first question was but I do want to say we did analyze the  
3 cumulative impacts. But this is a separate issue, as I  
4 understand it, from growth-inducing impacts. So I need a  
5 little clarification on the question. I can speak to the  
6 cumulative impacts and lesser to the growth-inducing  
7 impacts.

8           MS. BELENKY: Well thank you. I think that you  
9 already made it clear that you didn't analyze the growth-  
10 inducing impacts. So since we don't have the correct staff  
11 person for that I don't want you to try and answer something  
12 you haven't evaluated. If you do have any comments or  
13 anything you could say about the cumulative impacts, which I  
14 believe that staff found significant and the amount of water  
15 cumulatively that staff analyzed as coming in this area from  
16 projects, that would -- I think that would be useful because  
17 it actually does go to the growth-inducing as well, which I  
18 have been trying to elicit staff testimony about for two  
19 days.

20           HEARING OFFICER CELLI: So let's hear from staff  
21 regarding the findings regarding cumulative impacts on water  
22 supply.

23           MR. CONWAY: We identified a few other projects  
24 that could potentially come into existence in the vicinity  
25 of the project, within maybe a radius of 10 to 15 miles or

1 so. The most significant one we found was at the time a  
2 project called Sandy Valley, not to be mistaken with Sandy  
3 or Mesquite Valley, which is to the southeast of this  
4 valley.

5 But the Sandy Valley Project has a Plan of  
6 Development in with BLM which may have progressed actually,  
7 I think I saw a headline, but at the time it was a Plan of  
8 Development to use land somewhere within a -- it was a large  
9 -- somewhere within a 15,000 acre group of land. And that  
10 would have been, that's proposed for the Nevada side of the  
11 border. And again, this is just a Plan of Development, it  
12 has not begun a formal environmental process but staff  
13 included that. That project is expected to use up to 170  
14 acre-feet per year if it were to come into existence.

15 And there were a couple of other smaller use power  
16 projects, one a PV project, something which amounted to  
17 something under 10. Well actually two PV projects that we  
18 listed that could be somewhere under 10 acre-feet per year.

19 And then next door to the Hidden Hills proposed  
20 project is the St. Therese Mission, which has the potential  
21 to use up to about 18 acre-feet per year, as they described  
22 in one of their hydrogeology reports.

23 HEARING OFFICER CELLI: Actually, you know,  
24 Mr. Conway, I'm sorry to interrupt but we do know that  
25 that's in the record. There is always the inventory of the



1 other projects or potential projects in the area. The  
2 Committee is mostly interested in how it is that, as  
3 Ms. Belenky said, staff came to the conclusion that there  
4 was a significant impact?

5 MR. CONWAY: Staff did not find that there was a  
6 significant impact.

7 HEARING OFFICER CELLI: A cumulative impact?

8 MR. MARSHALL: With mitigation. Water Supply-1  
9 mitigates the cumulative impact. Therefore, there would  
10 have been a significant impact without this mitigation.  
11 That was staff's finding.

12 HEARING OFFICER CELLI: I'm sorry, I didn't mean  
13 to mis-state what you said if that was the case,  
14 Ms. Belenky.

15 MR. MARSHALL: So we did analyze the cumulative  
16 impacts and we found that there would be a significant  
17 impact with this project and all the other projects in the  
18 area and so we also are counting on Water Supply-1 to offset  
19 that cumulative impact. The project is only responsible for  
20 offsetting its contribution to the cumulative impact so  
21 that's we we're using that condition.

22 HEARING OFFICER CELLI: And before you ask you're  
23 question let me just ask, was there any disagreement with  
24 staff, or rather with applicant, on the point of cumulative  
25 impacts, was there any issue there?

1 MR. MARSHALL: Not that we're aware of.

2 HEARING OFFICER CELLI: Okay, go ahead

3 Ms. Belenky.

4 MS. BELENKY: Well it does say that it could be  
5 significant. If staff's testimony is it's not significant  
6 after mitigation that's fine but that's not the same as that  
7 it isn't significant, that the cumulative impacts aren't  
8 significant, it just means that then they propose mitigation  
9 to mitigate them. That's a different question. You do your  
10 analysis first, then you look at your avoidance and  
11 mitigation. That's how CEQA works. Not to be testifying  
12 about the law.

13 HEARING OFFICER CELLI: But.

14 MS. BELENKY: But.

15 MR. MARSHALL: That's what we did.

16 MS. BELENKY: And I would also like to -- yes,  
17 that's what you did but that doesn't mean it wasn't  
18 significant, that the cumulative couldn't be significant in  
19 this area. And I also just wondered if any of the other  
20 panelists had any -- had anything to say about the  
21 cumulative impacts because nobody raised it. And I do -- I  
22 don't mean to keep harping on the growth-inducing impacts  
23 except for the fact that it wasn't analyzed and the only way  
24 I can get at it is through each of the, each of the other  
25 silos that we're discussing.

1 HEARING OFFICER CELLI: But I think that at this  
2 point I understand that you're satisfied, we've taken that  
3 one as far as we can with the witnesses you've had provided.

4 MS. BELENKY: Yes, thank you.

5 HEARING OFFICER CELLI: Okay, thank you. And I  
6 think there really is no issue, apparently, with regard to  
7 cumulative unless any of the other witnesses on the panel  
8 wanted to speak up with regard to cumulative impacts of the  
9 project. And apparently there are none.

10 We were going to hear from the County of Inyo at  
11 the suggestion of staff with regard to water. Go ahead,  
12 Ms. Crom.

13 MS. CROM: With respect to the cumulative impact  
14 analysis and the growth-inducing impacts and the limitation  
15 on development in that area due to the water supply. I  
16 think the county addressed this specifically in response to  
17 the motion in limine that was filed by applicant and it  
18 really dealt with what is the process by which you obtain a  
19 well permit and a certificate of occupancy and having a  
20 potable water source. And so that -- there is not a magic  
21 number.

22 But the county did opine that if, you know, there  
23 were a lot of residential units that were put out there at  
24 some point there may be a tipping point where someone would  
25 not be able to, in a cost-effective manner, drill a well and

1 provide a residential water supply that would allow them to  
2 obtain a certificate of occupancy. So this really went to  
3 permitting issues. And I think this was well addressed in  
4 our response to the motion in limine.

5 HEARING OFFICER CELLI: Thank you. With that then  
6 let's get finally -- we've spoken regarding the water  
7 limitations, we've spoken regarding the cumulative impacts.

8 Were there any issues regarding soils that were an issue,  
9 applicant or staff, that need to be addressed now? Because  
10 we are including -- I know that staff wrote the FSA with the  
11 water supply section separate from soils and water but the  
12 probability is that the PMPD, which is the Presiding  
13 Member's Proposed Decision, would reunite those two areas  
14 and have simply a soil and water section in which water  
15 supply would be a part of that. So do we have any issues  
16 with regard to soil or drainage, surface water?

17 MR. HARRIS: No.

18 HEARING OFFICER CELLI: Staff, do you agree with  
19 the applicant on that?

20 MR. RATLIFF: I believe we have no issues with the  
21 applicant on that. Ms. MacDonald had, I think, a fairly  
22 long dialogue in our workshop with our witness on surface  
23 water concerning the use of certain flood control devices  
24 which might be shaped for recharge. I was never quite  
25 certain whether all of her questions or concerns about that

1 analysis were addressed but I know there was a rather  
2 lengthy colloquy between them at the workshop. And then I  
3 think they discussed it again after the workshop and I'm not  
4 sure what the final resolution or if there was final  
5 resolution.

6 We do have the witness who prepare that testimony  
7 on the line should there be questions. Unfortunately, I  
8 don't think Ms. MacDonald is here to, to ask questions. But  
9 we do have a witness available to answer them if there are  
10 further questions.

11 HEARING OFFICER CELLI: We're pretty concerned  
12 about Ms. MacDonald. She has been such a heavy participant  
13 in these proceedings. We don't have any idea why she is not  
14 here today.

15 MS. CROM: Mr. Celli, we were able to -- this is  
16 Dana Crom from Inyo County, sorry. We were able to make  
17 contact with Ms. MacDonald and she simply informed county  
18 staff that she would not be attending today.

19 HEARING OFFICER CELLI: Well I'm glad -- at least  
20 she's well enough to tell us that so we're glad to know that  
21 she's, it's not bad news. But she did say that she wanted  
22 to test the evidence with regard to soils in the context of  
23 the, of the mirrors and so I'm sorry that she's missing that  
24 opportunity today.

25 So with that then let's go first with applicant

1 for soil and water. Do you have a motion with regard to  
2 exhibits for soil, soil and water and water supply?

3 MR. HARRIS: Yes, we would move our exhibits for  
4 both soil -- I'm glad you're going to put them back in the  
5 same name because I can't deal with the new nomenclature,  
6 apparently. For both subjects. I'm going to ask  
7 Mr. Carrier to read those exhibits.

8 MS. CARRIER: Would you like them together or  
9 separately?

10 HEARING OFFICER CELLI: You can separate them if  
11 you wish, whatever makes most sense to you. Sequential  
12 would be nice.

13 MS. CARRIER: Soils and Surface Water, Exhibit 1,  
14 Exhibit 2, Exhibit 48, 49, 70 and 71. Water Supply, Exhibit  
15 1, 2, 4, 6, 28, 29, 30, 31, 45, 70, 71 and 72.

16 HEARING OFFICER CELLI: Let me read those back.  
17 For Soil and Surface Water, 1, 2, 48, 49, 70 and 71. Water  
18 Supply, 1, 2, 4, 6, 28, 29, 30, 31, 45, 70, 71 and 72. I  
19 got them all?

20 MS. CARRIER: Correct.

21 HEARING OFFICER CELLI: Okay, that's the motion.  
22 Is there any objection by staff?

23 MS. WILLIS: No objection.

24 HEARING OFFICER CELLI: Okay. Objection from the  
25 County of Inyo?

1 MS. CROM: Submit.

2 HEARING OFFICER CELLI: Mr. Arnold?

3 MR. ARNOLD: No objection.

4 HEARING OFFICER CELLI: Mr. Zellhoefer?

5 MR. ZELLHOEFER: No objection.

6 HEARING OFFICER CELLI: Amargosa Conservancy?

7 MR. BROWN: No objection.

8 HEARING OFFICER CELLI: Larry Levy is not here,  
9 okay. The Center for Biological Diversity?

10 MS. BELENKY: No objection.

11 HEARING OFFICER CELLI: Okay. With that then  
12 those exhibits are received into evidence.

13 (The above-referenced documents, previously  
14 marked as Soil and Surface Water 1, 2, 48,  
15 49, 70 and 71 and Water Supply 1, 2, 4, 6,  
16 28, 29, 30, 31, 45, 70, 71 and 72 were  
17 received into evidence.)

18 HEARING OFFICER CELLI: Staff, do you have  
19 exhibits that you wish to move into evidence with regard to  
20 Soil and Water and Water Supply?

21 MS. WILLIS: We do. We'd like to put in for FSA  
22 Exhibit 300 the sections on Soils and Surface Water and  
23 Water Supply and the same for the rebuttal, Exhibit 301.  
24 Exhibits 314, 315, 321, 322, 325 -- and that would be --

25 HEARING OFFICER CELLI: I also have 326 is the

1 PowerPoint.

2 MS. WILLIS: Yeah.

3 HEARING OFFICER CELLI: And 327 is the 3/12/13 BLM  
4 letter.

5 MS. WILLIS: I'm getting to those. Right, 325,  
6 this would be the Supplemental Filings, résumés and  
7 declarations for John Fio, Paul Marshall and Gus Yates. And  
8 then Exhibit 326, which was the PowerPoint; 327, the letter  
9 from BLM; and 328 the Nye County letter, which I don't  
10 believe has been docketed but will be docketed.

11 HEARING OFFICER CELLI: Was the 9th?

12 MS. WILLIS: Oh, I'm sorry, it was docketed on the  
13 11th.

14 HEARING OFFICER CELLI: That was a -- the 11th of?

15 MS. WILLIS: Of March, on Monday.

16 HEARING OFFICER CELLI: Then I have not seen this  
17 one so this is a new one. Because I know that Nye County  
18 put in some comment and so --

19 MS. WILLIS: It's comments by Nye County.

20 HEARING OFFICER CELLI: All right, so this is 328.  
21 Is it a letter?

22 MS. WILLIS: It's a letter to Mr. Mr. Mike  
23 Monasmith and it's dated March 7th, 2013 from Nye County  
24 Water District.

25 HEARING OFFICER CELLI: That's 328.



1 MS. WILLIS: And there are attachments as well.

2 HEARING OFFICER CELLI: Which we are going to  
3 consider all part of 328?

4 MS. WILLIS: Yes.

5 HEARING OFFICER CELLI: How many, two pages?

6 MS. WILLIS: Two attachments.

7 HEARING OFFICER CELLI: How big are they? I just  
8 wonder, are these duplicative of anything we already have in  
9 the record?

10 MS. WILLIS: They're a memorandum and -- first is  
11 a memorandum to Darrell Lacy, General Manager, Nye County  
12 Water District from Levi Kryder, Geoscience Manager. And  
13 the second is a memorandum from Levi Kryder, Darrell Lacy to  
14 Jay Lazarus, President/Senior Geohydrologist and Elke  
15 Naumburg dated February 21st, 2013.

16 HEARING OFFICER CELLI: Okay. And then actually  
17 the record should reflect this was docketed on the 11th.

18 MS. WILLIS: On 3/11.

19 HEARING OFFICER CELLI: Okay. So the motion, so  
20 that's all of it, 300, 301. So the motion is to move into  
21 evidence exhibits marked for identification as 300, 301,  
22 314, 315, 321, 322, 325, 326, 327 and 328. Is there any  
23 objection from the applicant?

24 MR. HARRIS: Yes. We have no objection to 300 and  
25 301, 314, 315, 321. Those, 14, 15 and 21 are résumés so

1 there's no objection to those. Also no objection to 327 and  
2 328, which are the BLM letters and the Nye County letters.  
3 We do have an objection to three items, 322, which is a late  
4 filed Northern Production Well and Conceptual Monitoring  
5 Network Plot Program which was late filed. The same with  
6 321, 322 and 325.

7 MS. WILLIS: 325 are résumés.

8 HEARING OFFICER CELLI: So you have an objection  
9 to the résumés?

10 MS. POTTENGER: No, apologize. 321, 322 and 326.

11 HEARING OFFICER CELLI: And the basis for the  
12 objection is that they are all untimely, untimely filed?

13 MR. HARRIS: Yeah, 326 is the PowerPoint from  
14 today. And either we need time to have our experts to go  
15 look at it to see if there's something new or if it just  
16 wants to be marked but not entered we can do that as well,  
17 but that's completely new to us today. The other ones are  
18 late filed.

19 HEARING OFFICER CELLI: Okay. Any offer of proof  
20 from the staff in terms of good cause?

21 MR. RATLIFF: Actually the exhibits were pre-  
22 filed, they were filed the week before the hearing. They  
23 are reflective of the other pre-filed testimony and were  
24 included because we thought they would facilitate the  
25 Committee's understanding by putting in, I guess, in

1 illustrated form some of the information which is very hard  
2 to convey verbally in a manner that's efficient.

3 We don't -- I mean, I think quibbling over they're  
4 marked or whether they are entered into evidence is probably  
5 not a very productive thing to do. We're fine if they're  
6 marked but I think you ought to be able to use the things  
7 which are useful that have been presented to you.

8 HEARING OFFICER CELLI: Thank you, Mr. Ratliff.

9 At this point let me go around and hear from the  
10 other parties. The motion is to move into evidence Exhibits  
11 300, 301, 314, 315, 321, 322, 325, 326, 327 and 328.  
12 Applicant objects to 321, 322, 326. Any objection from the  
13 county of Inyo?

14 MS. CROM: Submit.

15 HEARING OFFICER CELLI: Mr. Arnold?

16 MR. ARNOLD: No objection.

17 HEARING OFFICER CELLI: Mr. Zellhoefer?

18 MR. ZELLHOEFER: No objection.

19 HEARING OFFICER CELLI: Amargosa Conservancy?

20 MR. BROWN: No objection?

21 HEARING OFFICER CELLI: CBD?

22 MS. BELENKY: No objection.

23 HEARING OFFICER CELLI: Is Larry Levy no longer  
24 here? Okay.

25 Then there being no further objection and the fact

1 that there's reference to it in the record we are going to  
2 receive it. The objection is noted and preserved for the  
3 record but the Committee will receive all exhibits, 300,  
4 301, 314, 315, 321, 322, 325, 326, 327 and 328 on Water and  
5 Soil and Water from the staff. Those are received.

6 (The above-referenced documents, previously  
7 marked as Exhibits 300, 301, 314, 315, 321,  
8 322, 325, 326, 327 and 328 were received into  
9 evidence.)

10 HEARING OFFICER CELLI: Anything from the County  
11 of Inyo?

12 MS. CROM: No.

13 HEARING OFFICER CELLI: Okay. Mr. Arnold, did you  
14 have additional exhibits that you wish to move into  
15 evidence?

16 MR. ARNOLD: Yes, in addition to today's testimony  
17 I would enter in, let's see. And again with no pun intended  
18 with combining the soils, water and spilling over into water  
19 supply, that Exhibit number 800, 801, 802 and 803.

20 HEARING OFFICER CELLI: Didn't we already receive  
21 800?

22 MR. ARNOLD: We did. And the reason that I  
23 suggested them again is as long as we're considering all  
24 exhibits for all sections. My fear is that, I mean, if it  
25 was something that somebody felt was unrelated. I just

1 wanted to make sure for the record that it was noted.

2 HEARING OFFICER CELLI: What I would say is this.

3 The only exhibits that you have offered are Exhibits 800  
4 through 803.

5 MR. ARNOLD: I'm sorry. And that's okay.

6 HEARING OFFICER CELLI: That's the sum total,  
7 right?

8 MR. ARNOLD: You've got it.

9 HEARING OFFICER CELLI: Okay.

10 MR. ARNOLD: Ten directions, remember where  
11 they're at.

12 HEARING OFFICER CELLI: Those are all in their  
13 entirety received into evidence so I don't think we need to  
14 do this anymore. All of your exhibits are received.

15 MR. ARNOLD: And as long as they're applied to the  
16 appropriate sections.

17 HEARING OFFICER CELLI: They are for whatever use  
18 you want to use them for.

19 MR. ARNOLD: Okay, I'm counting on you.

20 HEARING OFFICER CELLI: Okay. (Laughter).

21 Mr. Zellhoefer, any objection?

22 MR. ZELLHOEFER: None, thank you.

23 HEARING OFFICER CELLI: I'm sorry, Mr. Zellhoefer,  
24 do you have any, you didn't have any exhibits at all.

25 Amargosa Conservancy, you have some exhibits.

1 MR. CHRISTIAN: Yeah, we'd like to move 1001  
2 through 1005.

3 HEARING OFFICER CELLI: Now with regard to  
4 Amargosa I have, 1001 is the opening testimony of Brian  
5 Brown, 1001 (sic) is the opening testimony of Andrew Zdon.

6 MR. CHRISTIAN: Correct.

7 HEARING OFFICER CELLI: Okay. Any objection to  
8 the exhibits 1001 and 1002, applicant?

9 MR. HARRIS: No.

10 HEARING OFFICER CELLI: Staff?

11 MR. BROWN: A comment from Amargosa Conservancy?

12 HEARING OFFICER CELLI: Who was just speaking?

13 MR. BROWN: Brian Brown with Amargosa Conservancy.

14 HEARING OFFICER CELLI: Thank you, go ahead.

15 MR. BROWN: We have additional things here through  
16 -- we have 1003 and 1004 and 1005 on this list and I'm  
17 wondering why -- we tried to enter them and you're saying we  
18 can only do 1 and 2?

19 HEARING OFFICER CELLI: No, that was what the  
20 motion was that Mister --

21 MR. CHRISTIAN: No, I moved 1001 through 1005.

22 MR. BROWN: Through 1005.

23 MR. CHRISTIAN: Right, through 1005.

24 HEARING OFFICER CELLI: Okay. So that is the  
25 motion, 1001 through 1005. Any objection, applicant?

1 MR. HARRIS: Still no.

2 HEARING OFFICER CELLI: Staff?

3 MS. WILLIS: No objection.

4 HEARING OFFICER CELLI: County of Inyo?

5 MS. CROM: Submit.

6 HEARING OFFICER CELLI: Mr. Arnold?

7 MR. ARNOLD: No objection.

8 HEARING OFFICER CELLI: Mr. Zellhoefer?

9 MR. ZELLHOEFER: No problem.

10 HEARING OFFICER CELLI: CBD?

11 MS. BELENKY: No objection.

12 HEARING OFFICER CELLI: Okay, 1001 through 1005  
13 are received.

14 (The above-referenced documents, previously  
15 marked as Exhibits 1001, 1002, 1003, 1004,  
16 1005 were received into evidence.)

17 HEARING OFFICER CELLI: CBD, you have a motion?

18 MS. BELENKY: Well we are in a similar position to  
19 Mr. Arnold, we have already entered Exhibit 500, which does  
20 relate to soil and water and has some discussion also of  
21 groundwater-dependant vegetation, which was discussed in  
22 Water and will also be discussed in Bio and also to  
23 cumulative water impacts. So we've already entered it but  
24 we want to make sure that it is also related to this topic.

25 HEARING OFFICER CELLI: Yeah. Folks, parties, we

1 are not really -- except for the staff's FSA we're really  
2 not going to be parsing, cutting up people's exhibits. Once  
3 the exhibit is in it's in for all purposes because if there  
4 is some problem with it it's up to the parties to bring it  
5 our attention. If we don't hear it then we're going to  
6 probably admit the evidence. So with that then you have no  
7 motion at this time with regard to evidence, CBD.

8 Then Water and Soils is closed.

9 Oh, I want to say one more thing.

10 MS. BELENKY: Reserving that issue.

11 HEARING OFFICER CELLI: I don't know why  
12 Ms. MacDonald isn't here today but we've covered  
13 socioeconomics, soil and water and water supply. I know  
14 that she has evidence that she wanted to put in on those  
15 topics. I have no idea why she is not here. I don't see  
16 any reason why we wouldn't admit it as with any other of her  
17 evidence but I just thought I would put it out there and see  
18 if anybody has any strong objection to that. Applicant?

19 MR. HARRIS: Can we put that over until she shows  
20 up and explains?

21 HEARING OFFICER CELLI: Here is what I'm trying to  
22 avoid. I would like to not have to reopen these areas. I  
23 basically want to accept -- I am not going to do it now but  
24 I am basically giving everybody a heads-up that the  
25 likelihood is that we would reopen to enable her to put her



1 exhibits in and then receive them and rule on any objections  
2 and then close the record again.

3 MR. BROWN: I have one question also along those  
4 lines, if I may, Brian Brown. I unfortunately was a little  
5 confused with the scheduling yesterday and the switching of  
6 the traffic. And at some point before this closes on Friday  
7 I had a question, the Conservancy has a question, it's a  
8 traffic issue. And we don't have to do it now but would  
9 there be an opportunity for us to bring that up?

10 HEARING OFFICER CELLI: I don't think so because  
11 they had traffic, unless their traffic people are still  
12 here. I think the traffic witnesses are gone and excused.

13 MR. BROWN: Okay, thank you.

14 HEARING OFFICER CELLI: Correct me if I'm wrong,  
15 are those witnesses here?

16 MS. WILLIS: No, our witnesses have gone.

17 HEARING OFFICER CELLI: Applicant, traffic,  
18 Amargosa wanted to reopen traffic, had a question?

19 MR. HARRIS: Traffic has hit the road, so to  
20 speak.

21 (Laughter.)

22 HEARING OFFICER CELLI: I'm sorry about that.

23 MR. BROWN: The schedule change confused us.

24 HEARING OFFICER CELLI: Okay, well, let's talk  
25 about the schedule. We just received everybody's evidence.

1 We are going to have to reopen to enable Ms. MacDonald to  
2 make motions on water, soil and socio when she returns.

3 So ladies and gentlemen, it's 4:30 on Wednesday,  
4 March 13th. We've covered Socioeconomics, we've handled  
5 Water Supply, we've handled Soils and Water. I just want to  
6 go off the record for a moment just so I can confer with the  
7 Committee on how we would like to use the rest of the time.

8 So one moment.

9 (Off the record at 4:30 p.m.)

10 (On the record at 4:32 p.m.)

11 HEARING OFFICER CELLI: Okay, let's get back on  
12 the record, ladies and gentlemen.

13 Again I want to thank all the parties, I think  
14 this informal format seems to be working quite efficiently.

15 The Notice that we sent out said that public  
16 comment would be heard at six o'clock. We will take public  
17 comment now from the people who are here and anybody on the  
18 phone who would like to make a comment. And then in order  
19 to honor our schedule I would come back at six o'clock and  
20 reopen just to take whatever public comment may have come in  
21 at six o'clock on the phone or here in person and then we  
22 would adjourn until tomorrow on Biology.

23 But before we do we wanted to ask the parties if  
24 you could kind of give us some idea of what is the inventory  
25 of issues on Biology for tomorrow?

1           MR. HARRIS: Thank you. From our perspective, in  
2 terms of live witness testimony we really only have two  
3 issues. We want to talk a little about desert tortoise  
4 mitigation ratios. I expect that will not take more than  
5 five or ten minutes.

6           There are other issues in the biological section  
7 that we will brief, I want to be clear about that, but we  
8 don't feel a need for live witness testimony to further  
9 develop those, the burrowing owl and some other things.

10           And then the flux issue. We do have a panel of  
11 renown experts that are coming in from all over the world, I  
12 believe. So it will be just those two issues from the  
13 applicant's perspective.

14           HEARING OFFICER CELLI: Thank you. And staff, any  
15 other issues that the applicant didn't suggest?

16           MR. RATLIFF: I think we're pretty close in terms  
17 of how we define the issues. We will have testimony on the  
18 species of special concern such as burrowing owl and kit  
19 fox. Desert tortoise, of course, is one of the issues, the  
20 appropriate mitigation ratios to be fully mitigated under  
21 CESA. And, of course, the flux issue.

22           And we have not yet gotten the final word from the  
23 applicant as to whether or not we've agreed to BIO-23, which  
24 is the biological mitigation measure which meshes with the  
25 water supply issues.

1 HEARING OFFICER CELLI: The groundwater-dependant  
2 vegetation?

3 MR. RATLIFF: Yes, it's the vegetation monitoring  
4 which accompanies the groundwater as an additional check on  
5 whether or not the groundwater attributable to the project  
6 is having an effect. If such should occur, I should say,  
7 would have an effect on the vegetation, the BLM vegetation  
8 east of the project site.

9 HEARING OFFICER CELLI: And then just so -- the  
10 burrowing owl and kit fox, are we talking mitigation  
11 language, is that the issue there?

12 MR. RATLIFF: Yes. The staff has proposed  
13 mitigation for that and I think that mitigation is, at least  
14 in terms of how much mitigation is in dispute.

15 HEARING OFFICER CELLI: Okay, thank you. County  
16 of Inyo, did you have witnesses tomorrow for any issues with  
17 regard to Bio?

18 MS. CROM: We do not.

19 HEARING OFFICER CELLI: Mr. Arnold, do you have,  
20 are you calling any witnesses for Bio tomorrow?

21 MR. ARNOLD: Myself.

22 HEARING OFFICER CELLI: Okay. Can you sort of  
23 give us the big picture of what the issues are, if you can,  
24 so we can kind of have a sense of where we need to slot it?

25 MR. ARNOLD: Well, in one sentence, it's like,

1 where are the Indian folks? But I think in reality it's  
2 basically sharing some of our cultural knowledge and  
3 perspectives as it relates specifically to desert tortoise  
4 and some of the other animals that are going to be  
5 identified under the biological resources.

6 HEARING OFFICER CELLI: Okay. Mr. Zellhoefer, you  
7 have none. Amargosa Conservancy?

8 MR. CHRISTIAN: None.

9 HEARING OFFICER CELLI: None as well. CBD, I  
10 imagine you have some issues.

11 MS. BELENKY: Yes, yes we have. Ileene Anderson  
12 will be our expert witness and we have issues related to the  
13 avian impacts and golden eagle, to desert tortoise,  
14 cryptobiotic soils, water-dependant vegetation, kit fox and  
15 other species' mitigation ratios. And then generally  
16 mitigation ratios and how they are being approached in this  
17 project.

18 HEARING OFFICER CELLI: Okay, mitigation ratios.  
19 The Committee would also be interested in hearing how the  
20 workshop went today and if there is anything to report with  
21 regard to noise and traffic and that came out of the  
22 workshop?

23 MS. WILLIS: Mr. Celli, at this point in time we  
24 did meet. Unfortunately, Ms. MacDonald was not present but  
25 we did get Ms. Haskin's input as well. Mr. Brady and I know

1 Mark Bastasch from the applicant's side have been trying to  
2 work out a condition of certification for the traffic noise.

3 HEARING OFFICER CELLI: Thank you.

4 MS. WILLIS: So we don't have something to show  
5 you at this point but there has been discussion all  
6 afternoon.

7 HEARING OFFICER CELLI: But do we expect to  
8 receive additional proposed language, another condition?

9 MS. WILLIS: That's our plan.

10 HEARING OFFICER CELLI: Okay, great.

11 MS. WILLIS: Tomorrow, by tomorrow.

12 HEARING OFFICER CELLI: Thank you. Thank you for  
13 that report, that's great.

14 Now, has anyone heard, is Mr. Levy here?

15 MS. BELENKY: No. I think he'll be back tomorrow.

16 And certainly on Friday which is, his issues are on. Well  
17 actually his issues are on Monday. But I think he plans to  
18 come back possibly tomorrow and on Friday.

19 HEARING OFFICER CELLI: I just think that since  
20 the Committee is here it would really be best if we took the  
21 evidence while we're down here for the local concerns such  
22 as the worker safety and fire protection rather than up in  
23 Sacramento.

24 MS. BELENKY: Well, I don't want to speak for  
25 Mr. Levy except I believe he told me his expert lives in

1 Sacramento.

2 HEARING OFFICER CELLI: Well there you go.

3 (Laughter.)

4 MS. CROM: This is Dana, I agree.

5 MS. BELENKY: So on that point it makes it a  
6 little easier.

7 HEARING OFFICER CELLI: That's true.

8 MS. CROM: I think their lawyer is also in that  
9 area.

10 HEARING OFFICER CELLI: Okay.

11 MR. HARRIS: Horrible, Sacramento. We'll have our  
12 air quality expert here, again it's on Friday,  
13 Mr. Rubenstein. But that will probably depend on whether  
14 Ms. MacDonald shows up again tomorrow. I am not asking you  
15 to do that, I want to let you know you have the option to do  
16 air quality and public health with Mr. Rubenstein --

17 HEARING OFFICER CELLI: Tomorrow?

18 MR. HARRIS: -- tomorrow as well. Just for  
19 flexibility. And he'll be here Friday as well.

20 HEARING OFFICER CELLI: Okay. So we could  
21 potentially get air quality and GHG in on Thursday evening.

22 MR. HARRIS: And public health too because  
23 Mr. Rubenstein is our primary witness for both air quality  
24 and public health.

25 HEARING OFFICER CELLI: How about staff, would you

1 have your air quality and public health people here for  
2 tomorrow?

3 MS. WILLIS: They were planning to be on the phone  
4 on Friday. I notice Ms. Leyva is listening in. I don't  
5 know if we can get that message to her, Mike, just to see if  
6 she'll --

7 HEARING OFFICER CELLI: Let me open up Ms. Leyva.  
8 Ms. Leyva, can you hear us? It appears she is on her  
9 computer. She is using the --

10 MS. WILLIS: Can she chat with you?

11 HEARING OFFICER CELLI: She can chat. Okay, she  
12 says "Sorry, computer." We get that. "I'm listening over  
13 the phone" but she is having computer --

14 MS. WILLIS: Jackie, are you going to be available  
15 for Thursday?

16 HEARING OFFICER CELLI: She says she will be on  
17 the phone tomorrow.

18 MS. WILLIS: Great, thank you.

19 HEARING OFFICER CELLI: Thank you. So she can  
20 hear us and communicate, that's great. But that was only  
21 Ms. MacDonald's issue in terms of the intervenors so we need  
22 her to show up tomorrow.

23 And then that leaves, for Monday, alternatives, we  
24 were going to handle alternatives on Monday. The only thing  
25 I think we could probably try to fit in -- oh, that's right,



1 this witness is in Sacramento.

2 MR. HARRIS: Mr. Celli, while you're looking at  
3 the schedule I have a question. On the road again, I feel  
4 like Willie Nelson here, I want to get my witnesses on the  
5 road on water supply and those issues. So we did close the  
6 record and those witnesses are able to make their planes  
7 now?

8 HEARING OFFICER CELLI: Yes, you are dismissed and  
9 excused. Thank you very much for your participation.

10 MR. HARRIS: And we're closed on those issues?

11 HEARING OFFICER CELLI: That's right, water is  
12 closed, soil and water is closed, socio is closed.

13 We will take public comment at this time. I note  
14 for the record it's a quarter to five but if there is anyone  
15 who is here now who would like to make a comment. I have a  
16 blue card. Rayetta Haskin is a Charleston View resident and  
17 we heard from Ms. Haskin this morning in socio.

18 Hello again, Ms. Haskin.

19 MS. HASKIN: Hi. I just had a question. When I  
20 talked to you earlier before we broke I was speaking of a  
21 man named Kelly Bradley. And I just wanted to know if I  
22 could give you this card, if that's legal or permissible?  
23 Because this is the card he gave me yesterday.

24 HEARING OFFICER CELLI: Actually the way we deal  
25 with the public comment is that we generally don't take

1 additional evidence from the commentators.

2 MS. HASKIN: Well then am I allowed to show it to  
3 you where you can physically hand it back to me?

4 HEARING OFFICER CELLI: Sure. For what purpose?  
5 We believe he exists.

6 MS. HASKIN: Because it also says BrightSource on  
7 the card.

8 HEARING OFFICER CELLI: Ah.

9 MS. HASKIN: And when I was talking BrightSource  
10 said they didn't know him.

11 HEARING OFFICER CELLI: Okay.

12 MS. HASKIN: So am I allowed to show you this?

13 HEARING OFFICER CELLI: Why don't you give that to  
14 Mr. Roberts, Dr. Roberts, and he'll bring it over and we'll  
15 take a look at that.

16 So any comment today? We heard evidence on water,  
17 soil and water and socioeconomics. We heard from you  
18 earlier about socioeconomics, anything on water?

19 PRESIDING MEMBER DOUGLAS: Hang on. I guess  
20 before we get to general comment we'll look at the card and  
21 then we also wanted to check in with you on whether you were  
22 able to participate in the workshop.

23 ADVISOR ALLEN: Whether you were able to get your  
24 questions answered about the location of CR-1, et cetera,  
25 related to noise.

1 MS. HASKIN: Me?

2 ADVISOR ALLEN: Yes.

3 MS. HASKIN: Yeah. It's basically I'm 800 feet  
4 from their front and supposedly they're going to bring me  
5 some kind of list of things they might do to put up a sound  
6 barrier in front of my house, was what they said. And it's  
7 kind of just open for the rest.

8 PRESIDING MEMBER DOUGLAS: Okay. So you were able  
9 to discuss the issues. But the question about the map and  
10 whether the residence that they were looking at was your  
11 residence and all that stuff, are your questions on that  
12 answered?

13 MS. HASKIN: Yes, it is my house.

14 PRESIDING MEMBER DOUGLAS: Okay, it is your house.

15 MS. HASKIN: Yes.

16 PRESIDING MEMBER DOUGLAS: Okay.

17 HEARING OFFICER CELLI: So we looked at the card.  
18 Just so you know, we saw that.

19 MS. HASKIN: Okay. I just wanted you to know that  
20 I wasn't bringing something out of the air that I was just  
21 telling you because it was like innuendo, so.

22 PRESIDING MEMBER DOUGLAS: We appreciate that.  
23 We've asked the Public Adviser to walk over to BrightSource  
24 and show them the card so we'll see if they have any  
25 comment.

1 MS. HASKIN: Yeah. Since we've had a break  
2 Mr. Bradley is also here.

3 PRESIDING MEMBER DOUGLAS: Okay, just a moment.

4 MR. KAZIO: Gary Kazio, BrightSource, just to  
5 clarify that. Kelly Bradley is our community outreach and  
6 has been put on our record that he does do the community  
7 outreach for BrightSource.

8 PRESIDING MEMBER DOUGLAS: Okay.

9 HEARING OFFICER CELLI: Thank you, Ms. Haskin.

10 MS. HASKIN: All right, thank you.

11 HEARING OFFICER CELLI: Thanks for your  
12 participation.

13 PRESIDING MEMBER DOUGLAS: Do you have any  
14 additional public comment, Ms. Haskin?

15 MS. HASKIN: The last part was kind of over my  
16 head, so no.

17 PRESIDING MEMBER DOUGLAS: Thank you, thanks for  
18 being here.

19 HEARING OFFICER CELLI: We've also heard before  
20 from Vivian Wilkinson. Please come forward and speak into  
21 the microphone, Ms. Wilkinson.

22 MS. WILKINSON: Yes. I am really perturbed is the  
23 word, I guess, today, about the fact that there weren't even  
24 any hydrologic charts put up there. They are available.  
25 I've spoken to geologists on the test site there. They are

1 pervasive. And I think we needed to be a little bit more  
2 scientific today in some of the evidence from the  
3 hydrologists.

4 Because I have consulted a senior geologist at the  
5 test site and was told that the maps, the hydrologic maps or  
6 charts, do show a major aquifer that comes out of the  
7 Resting Springs Ranch and migrates into the Amargosa River.

8 And of course the Amargosa River goes to Death Valley. So  
9 we are really talking about quite a large, widespread  
10 effect.

11 And I am very concerned about extra use of water  
12 in this project that would occur when already the source of  
13 it, which is the Pahrump Valley. And it does go under the  
14 mountain ranges. People seem to be propagating some kind of  
15 myth that everything is separated by a mountain range. Of  
16 course that myth tended to fade a little bit today on some  
17 of the maps we saw. That needs to be brought out, there  
18 definitely is a connection.

19 And the Pahrump Valley is in a critical management  
20 area and here we are. I'm sure the first things to go will  
21 be the springs around the Resting Springs Ranch and all  
22 those areas they showed along the Amargosa River. It's  
23 really a terrifying thought to me. And also it could affect  
24 definitely them, the Tecopa Hot Springs, which is an  
25 absolute miracle, a miraculous place. A lot of people go

1 there for healing and they get it.

2 And I think this, this project is too risky. We  
3 don't know enough. And even what we do know we seem to just  
4 perhaps disregard it or gloss it over. And we may wake up  
5 one day when we've lost those springs and the Amargosa River  
6 is very fragile.

7 And I am very disappointed that some of the people  
8 here, they didn't hang around for the public comment. Some  
9 of the public have some knowledge to contribute. It's  
10 really a sad thing. In fact, I passed my thoughts on to the  
11 Nature Conservancy, of which I'm an avid member for many  
12 years and they don't stay around and they didn't ask any  
13 questions. But however, I am here to state my opinion and  
14 hope that some of you, you know, out there that have any  
15 influence can, can help us out. Because I think it's too  
16 much of an unknown. It's too iffy.

17 Those springs are far too precious to lose. They  
18 are, as the cultural leader here said, they are a resource  
19 that is irreplaceable. They will never come back. This  
20 pleistocene water is not ever going to be replenished. You  
21 can't make it, you can't make new water. It's not just the  
22 weather, it's climate and over a long period of time it is  
23 definitely drying. That ended the Ice Age, so.

24 Anyway, I just wanted to express my concerns. And  
25 unfortunately I wasn't reassured today and I don't feel too

1 optimistic about things, about this project, because of the  
2 water use and the visual impact and so forth. All the other  
3 impacts on the Trail and the towers and I'm even -- We've  
4 got Nellis Air Force Base, we've got China -- what's the  
5 name of it, the China Lake. They do maneuvers over here all  
6 the time. I suppose the people have contacted the Air Force  
7 and they listened to see that it won't --

8           Because it was very disturbing to me when they  
9 talked about that light glow and even if you're driving  
10 along you might get retina damage. I mean, that's pretty  
11 alarming. So I really found out things that unfortunately  
12 don't reassure me about the -- what's the word I want to say  
13 -- this project for our environment. It seems there is too  
14 little to be gained and too much to lose. I thank you for  
15 listening.

16           PRESIDING MEMBER DOUGLAS: Thank you.

17           HEARING OFFICER CELLI: Thank you for your  
18 comments. And I did want to, Ms. Wilkinson, I just wanted  
19 to say that what we're hearing in the evidentiary hearings,  
20 we've received an awful lot of evidence from all of the  
21 parties. They have all submitted opening testimony, charts,  
22 figures, testimony and rebuttal testimony. In other words,  
23 they looked at each other's testimony and they answered  
24 back.

25           That volume of information we've already, we have

1 it, we're not going to parade that here in the evidentiary  
2 hearing. We're trying so hard just to focus on those areas  
3 that are in dispute and that's why you're not getting, this  
4 isn't a full exposé of what the whole thing is about. It's  
5 really we're just, we just want to hear what the parties'  
6 points of view are on those things that are at odds.

7 MS. WILKINSON: Right.

8 HEARING OFFICER CELLI: So it's rather  
9 abbreviated.

10 MS. WILKINSON: And based on the information that  
11 will be codified will there be a judgment like, you know, a  
12 philosophical, shall we say, approach to this as well based  
13 on the information?

14 HEARING OFFICER CELLI: Absolutely. What we are  
15 going to produce at some point in the future, I can't  
16 remember exactly when but within a few months after the  
17 close of the evidentiary hearing is called the Presiding  
18 Member's Proposed Decision; Commissioner Douglas is the  
19 Presiding Member. The Committee will deliberate and address  
20 all of the issues, put all of their responses into the PMPD,  
21 the Presiding Member's Proposed Decision. That decision  
22 then goes to the full commission. These two commissioners  
23 are two of the five commissioners. All five of the  
24 commissioners will vote on the PMPD's recommendation and  
25 that will be the final decision on this project.



1 MS. WILKINSON: I see. Thanks for clarifying that  
2 for me. That does make me feel a little better.

3 HEARING OFFICER CELLI: And you have an  
4 opportunity to comment, not only after the PMPD is published  
5 there's a 30 day comment period, and you have an opportunity  
6 to comment to the full commission when it goes before the  
7 full commission. So the public is a part of this whole  
8 process from start to finish.

9 MS. WILKINSON: Okay, thank you very much.

10 HEARING OFFICER CELLI: Thank you for  
11 participating.

12 PRESIDING MEMBER DOUGLAS: There's one more issue  
13 I wanted to raise based on those comments. And that is that  
14 you've asked a couple of times, is Department of Defense  
15 aware of this proposed project. And I just wanted to say,  
16 you know, staff may want to speak in more detail to this,  
17 but the state and federal agencies, when federal agencies  
18 are involved in review as well, have a regular practice of  
19 consulting with Department of Defense and getting input from  
20 Department of Defense. So I don't know, Mr. Monasmith, if  
21 you want to say anything more about this particular project?

22 MR. MONASMITH: Mike Monasmith, project manager.  
23 We do have a letter from Department of Defense, it's  
24 docketed, indicating that there would be no impact. No fly-  
25 over from any of the facilities at the Hidden Hills site.

1 So I don't have the exact date but it is on the record,  
2 docketed, so we do have that letter.

3 PRESIDING MEMBER DOUGLAS: Thank you. I just  
4 wanted to set your mind at ease that the communication has  
5 occurred.

6 MR. KAZIO: Additionally, we have gotten our  
7 clearance from the FAA. And they also do a consultation in  
8 addition to with the DOD.

9 PRESIDING MEMBER DOUGLAS: Great.

10 HEARING OFFICER CELLI: Thank you. Now let's hear  
11 from Deb Shook. Deb Shook, are you still here?

12 MS. SHOOK: I am.

13 HEARING OFFICER CELLI: Please come forward and  
14 speak into the microphone.

15 MS. SHOOK: There was a bit read about how there  
16 was a declining water environment. And as I listened it  
17 seemed to me that the only real consensus was that there was  
18 not enough information to accurately evaluate the effect  
19 that this project would have. Everybody agreed that there  
20 was not really enough information.

21 HEARING OFFICER CELLI: I did want to speak to  
22 that because I remember that the panel all agreed that there  
23 wasn't enough information in order to make an unequivocal  
24 statement that the project might have any effect on the  
25 Amargosa River. But I believe that they all felt that there

1 was enough information to talk about the Pahrump Valley  
2 groundwater basin in terms of those impacts. So I just --

3 MS. SHOOK: Well, they're not really here anymore  
4 unfortunately, are they, to address that. But I got the  
5 distinct impression that they said there was not enough data  
6 to accurately evaluate it. There was an opportunity to make  
7 an assessment but there wasn't enough information to  
8 accurately evaluate it. It seemed like it got fast-tracked  
9 into mitigation rather than to think about whether it  
10 requires more data before proceeding. And that's something  
11 I find a little disturbing, that there isn't, as  
12 Ms. MacDonald said yesterday, a due diligence on the part of  
13 the applicant to provide definitive information about the  
14 effect on the environment.

15 I also noticed that there was a gap in the  
16 information regarding Tecopa Hot Springs. And it mentioned  
17 that Tecopa Heights was there but Tecopa Hot Springs is  
18 right next to Tecopa Heights. And there are thousands of  
19 people who go through there every year as an eco-tourism.  
20 It's really a very active place for eco-tourism and it's  
21 something that hasn't been mentioned. And I thought that I  
22 would mention it because I don't know if you all live here  
23 or not. Do any of you live here?

24 HEARING OFFICER CELLI: No.

25 MS. SHOOK: Then you're probably also not aware of

1 the sand storms and the way the wind is around here, which  
2 was something that came up yesterday, which was about  
3 cleaning the mirrors. And I'll tell you what, that's going  
4 to be a nightmare. Cleaning the mirrors in the sand storms  
5 that last for days and days.

6 I don't know why they haven't put mirrors out  
7 there for the past two years to see how, you know, how their  
8 finish lasts in this kind of weather. Because they're going  
9 to get pelted with sand at high speed, a lot. And you're no  
10 going to be able to clean them when the wind is going for  
11 four days in a row. And then they'll go out and they'll  
12 clean them but then the wind is going to come back and it's  
13 going to blow sand all over them. Maybe if they haven't  
14 spent any time on this property, consecutive time, so that  
15 they see what the weather is like they might not be aware of  
16 what's going to be happening to the mirrors there. It's a  
17 very real thing about the sand and the wind here.

18 And she said yesterday that they would have a  
19 machine with a long arm to clean them, but that was kind of  
20 a really scanty explanation on how they're planning on  
21 cleaning these mirrors.

22 HEARING OFFICER CELLI: Yes.

23 MS. SHOOK: Yeah. And I didn't hear anything  
24 regarding the effect on the soil that the treatment of the  
25 water, if there would be any effect on the soil from the

1 water treatment or from however they plan on cleaning the  
2 mirrors, if it's going to be just with water or some sort of  
3 solution. The effect on the soil with these two things  
4 wasn't anything I heard mentioned.

5 HEARING OFFICER CELLI: As I -- I just want to --

6 MS. SHOOK: Yeah, I heard what you said to her and  
7 I think that that applies.

8 HEARING OFFICER CELLI: Really, I think the take-  
9 away is that if you didn't hear about it today then the  
10 parties don't see that it is an issue and didn't raise it as  
11 an issue. So I don't know if there is or is not enough  
12 information in the record right now. What I can say is it's  
13 appropriate to infer that there wasn't an issue amongst the  
14 parties such that we heard evidence on it here in the  
15 evidentiary hearing. It doesn't mean there is no evidence  
16 on it.

17 And if you're really interested in seeing what  
18 they had to say, I would recommend that you go first to the  
19 Final Staff Assessment, the FSA, it's broken out. The table  
20 of contents is essentially -- you hear us talking about  
21 biology and we're talking about water supply, we're talking  
22 about socioeconomics. These are the titles of the  
23 subsections of the Final Staff Assessment.

24 MS. SHOOK: Um-hmm.

25 HEARING OFFICER CELLI: And that's how they wrote

1 it up. And that's where you would find, really staff's view  
2 anyway, which is a nice place to begin, on the state of the  
3 evidence as they had it at the time they published the FSA.

4 And that's on the Internet. Dr. Blake behind you, who is  
5 our public adviser, can help guide you through the ways to  
6 access all the information that's in the record now so that  
7 you can actually see what the parties put in.

8 MS. SHOOK: Right.

9 PRESIDING MEMBER DOUGLAS: Let me just clarify  
10 that when the Hearing Officer says "issue" he means dispute.

11 MS. SHOOK: Right.

12 PRESIDING MEMBER DOUGLAS: Because we are here as  
13 a panel to hear disputes between parties on areas where they  
14 do not agree. It can be hard for a member of the public to  
15 come to an evidentiary hearing and get a full picture of  
16 what's in the record because you don't get that picture from  
17 observing a hearing, you get a snapshot. You get issues  
18 that are most contentious or most in dispute. But you don't  
19 necessarily get all of the information that would answer all  
20 of your questions about a project.

21 The Hearing Officer referred you to the Final  
22 Staff Assessment. I think that's a good place to refer to  
23 where you do have more questions. You might also ask the  
24 applicant, you know, catch them when we wrap this up tonight  
25 or ask them to explain more about it and they may be able

1 to, they may be able to help you.

2 MS. SHOOK: I would like to see more clarity in  
3 the data and that did seem to be in dispute. I don't think  
4 that's something to marginalize, I really don't. Thank you.

5 PRESIDING MEMBER DOUGLAS: Thank you.

6 HEARING OFFICER CELLI: Thank you very much,  
7 Ms. Shook. Eddie Jim, please.

8 MR. JIM: Hearing Officer Celli, I'm going to  
9 address this to you and then you can forward it on.

10 HEARING OFFICER CELLI: And I'm going to ask you,  
11 if you wouldn't mind, Mr. Jim, if you can point that up  
12 towards you. Very good, thank you.

13 MR. JIM: Okay, thank you. The applicant said  
14 that during construction they're going to use 696 acre-feet  
15 of water during construction. Does that include hydro-  
16 testing of the pipeline? Because I couldn't get this answer  
17 February 28th that Kern River had an open house in Pahrump.  
18 They couldn't answer that question. I wonder if the  
19 applicant could answer that question. Because I do know  
20 what happens to the water, it's let loose once it's hydro-  
21 tested out on the ground. I'm just wondering if that, this  
22 696 acre-feet is included in this hydro-testing of the  
23 pipeline?

24 HEARING OFFICER CELLI: Do you know that,  
25 applicant?

1 MR. KAZIO: Gary Kazio, BrightSource. Right now  
2 we're only projected to use 288 for the project site itself.

3 I do understand that they do do hydro-testing all in the  
4 actual gas line itself but I do not have what that volume  
5 is.

6 HEARING OFFICER CELLI: So the answer is, they  
7 don't have that information.

8 MR. JIM: Okay, thank you.

9 HEARING OFFICER CELLI: Thank you.

10 MR. KAZIO: And that's Kern River so Kern River  
11 could provide that answer for us.

12 HEARING OFFICER CELLI: Kern River?

13 MR. KAZIO: Gas, Kern River Gas Transmission  
14 Company.

15 HEARING OFFICER CELLI: So, Mr. Jim, that  
16 information would be in -- Kern River Gas Transmission  
17 Company?

18 MR. KAZIO: Yes. And that's part of the NEPA  
19 action being analyzed.

20 HEARING OFFICER CELLI: You might be able to get  
21 that from them. I don't know if they have a website.

22 MR. JIM: Okay.

23 MR. KAZIO: I can help aid in getting that answer  
24 for you.

25 MR. JIM: Okay, thank you.



1 HEARING OFFICER CELLI: Thank you.

2 Is there anyone else who would like to make a  
3 public comment who is here today in the Death Valley Academy  
4 Gym? Ms. Haskin, come on up. we need you to speak into the  
5 microphone so that we can get you into the record.

6 MS. HASKIN: When she was talking after I left I  
7 just had a question for you guys. You were talking about  
8 all this data you're collecting. How much of the data that  
9 they're presenting about my house do you guys take into  
10 evaluation as to the effect it's going to have on my family  
11 when you're making your final decision?

12 HEARING OFFICER CELLI: What the decision has to  
13 be based on by law.

14 MS. HASKIN: Yes.

15 HEARING OFFICER CELLI: Are the facts and  
16 information in the record. So whatever the evidence that we  
17 received from all of these parties that they have put in and  
18 whatever effects, whatever descriptions have to do with your  
19 house, that's what is in the record. So for instance, we  
20 talked about noise earlier. If your house was CR-1.

21 MS. HASKIN: SR-1.

22 HEARING OFFICER CELLI: Whatever, they designate  
23 it somehow.

24 MS. HASKIN: Right.

25 HEARING OFFICER CELLI: What would be in the noise

1 section would be, where is the house in relation to the  
2 project, how long they tested it, what the noise levels  
3 were, that sort of information.

4           If your house was a KOP, which is a Key  
5 Observation Point, which is one of the bases they use for  
6 making evaluations under visual, then they would say, well,  
7 from this key observation point these would be the effects  
8 from the point of view of the viewer from here, that kind  
9 information. So any -- I don't really know exactly where  
10 there might be mentions of your house in particular.

11           For instance, with traffic I know that mostly they  
12 are dealing with the rows and there is some description of  
13 the effects on the road and the level of service that would  
14 be near your house but I don't think it would include your  
15 house, per se.

16           MS. HASKIN: No.

17           HEARING OFFICER CELLI: It's just for roads. But  
18 as you go down these -- if you look at the staff's Final  
19 Staff Assessment you see what each of these discrete  
20 sections. There's air quality. Some things are more  
21 amenable to that kind of pinpoint information like noise and  
22 visual than other things like air quality. They're not  
23 going to really analyze anybody's particular house when it  
24 comes to air quality.

25           MS. HASKIN: Well I just wonder because the way

1 they're talking now is they're going to propose that they're  
2 going to put some kind of barrier up at the front of my  
3 house while they're constructing this thing that's going to  
4 block my house further because we're so close. I'm about  
5 approximately 800 feet from the main fence line that they're  
6 going to put their berm on and from that fence line it's a  
7 half a mile to the first tower. So all of this directly  
8 affects me because my house is the closest to everybody.

9           So I'm just wondering how much of that data when  
10 you're making an evaluation of whether this is a good or bad  
11 project and how it affects the people out there. Is that  
12 considered? You know, how it imposes on our -- that's our  
13 self, if that's even in value there.

14           HEARING OFFICER CELLI: It is a lot. And in fact,  
15 everything you're saying right now is going into the record.

16           MS. HASKIN: I see.

17           HEARING OFFICER CELLI: And the law requires that  
18 this Committee consider and address your comments. So you  
19 will be a part of the Presiding Member's Proposed Decision,  
20 your words will be a part of that.

21           PRESIDING MEMBER DOUGLAS: Not only that but we  
22 asked you a number of specific questions in socioeconomic  
23 and so your answers to that will, those questions that you  
24 graciously provided to us about Charleston View will also be  
25 part of the record.

1 MS. HASKIN: I see. The only thing I missed out  
2 on, and I'm not trying to bring it back up just so you know,  
3 is I missed out on understanding that I could speak during  
4 your visual part. Because that really concerned me because  
5 of the way that they talked about how bright that light is  
6 as opposed to my house. And you're saying it's a half-mile.  
7 Because the man pulled it up on the map on the computer  
8 during break. That kind of concerns me for my family just  
9 so I can say it to you. You don't have to bring it back up  
10 or nothing.

11 HEARING OFFICER CELLI: You can, you can.

12 MS. HASKIN: But just the effect on what that  
13 could be to us if my grandkids are out there and they're  
14 playing, that that light is to them of a day. You know, I'd  
15 just like that to be considered too.

16 HEARING OFFICER CELLI: That will be, along with  
17 public health.

18 MS. HASKIN: Because I have 12 of them. All  
19 right, thank you.

20 HEARING OFFICER CELLI: Thank you very much.  
21 Anyone else have further comment here in the room? Seeing  
22 none. Dr. Roberts is indicating no further public comment  
23 in the room.

24 Let's go to the phones. I have Amy Noel, Amy  
25 Noel. Okay, I am going to unmute everybody.

1           Is there anyone on the phone who would like to  
2       make a comment at this time?

3           MR. LACY:   This is Darrell Lacy.

4           HEARING OFFICER CELLI:   Darrell?   Darrell Lacy,  
5       yes, go ahead, we can hear you Darrell, go ahead.

6           MR. LACY:   I'm general manager of the Nye County  
7       Water District.   We feel very strongly that if you're going  
8       to do any mitigation for water issues it should be done in  
9       conjunction with the Nye County Water District.

10          HEARING OFFICER CELLI:   With the which water  
11       district?

12          PRESIDING MEMBER DOUGLAS:   Did you just say --

13          MR. LACY:   The Nye County.

14          PRESIDING MEMBER DOUGLAS:   There's a lot of echo.

15          HEARING OFFICER CELLI:   Mr. Lacy, we're having --

16          PRESIDING MEMBER DOUGLAS:   Mr. Lacy, we are not  
17       hearing you very well.

18          HEARING OFFICER CELLI:   Okay, one moment, let me  
19       do this.   Okay, Mr. Lacy go ahead, we can hear you now.

20          MR. LACY:   Okay, thank you.   We feel very strongly  
21       that as the jurisdiction with responsibility for managing  
22       water issues in the Pahrump Basin in Nye County where the  
23       majority of the water issues are that you've been discussing  
24       today, that any mitigation measures should be done in  
25       conjunction with us.

1           You proved it today when you went through your  
2 discussions about the water rights and that the people at  
3 the table discussing did not understand about water law.  
4 For your practical purposes you can consider the consumptive  
5 use and the water rights as two separate issues.

6           The Nye County Water District recommended a  
7 retirement of three water rights for every acre of pumping  
8 that you were trying to mitigate. That at least helps to  
9 get rid of the over-allocation issue, it does not truly  
10 address the consumptive issue. And if you spend your time  
11 worrying about whether a water right is actively pumped and  
12 consumptively used and senior you're basically wasting your  
13 time because for all practical purposes in the Pahrump Basin  
14 all of the water rights are really bought and sold and can  
15 be moved around.

16           You an spend tens of thousands of dollars trying  
17 to buy senior, actively pumped water rights from someone.  
18 He will be more than happy to sell them to you at the right  
19 price and he'll turn back around and buy cheap ones that are  
20 not being pumped, put them on his well and he can start  
21 pumping them tomorrow. There is no restriction on that  
22 issue. That's one of the reasons we ask for three acre-feet  
23 of mitigation for most of our subdivision agreements here in  
24 the valley.

25           The water district has many projects we are

1 currently working on to reduce the over-allocation as well  
2 as to lower consumption. We think that it would be very  
3 beneficial to both parties if you all could work with us on  
4 this and we'd be more than happy to sit down with our staff  
5 or the applicant whenever they feel a need to do so. We are  
6 the subject matter experts. You should have us at the  
7 table. Thank you.

8 HEARING OFFICER CELLI: Thank you very much for  
9 your comments. Do you mind if I ask, Mr. Lacy, were you  
10 able to hear all of the testimony today regarding water?

11 MR. LACY: I was.

12 HEARING OFFICER CELLI: Okay, good. And you were  
13 able to hear the discussion regarding what they were calling  
14 real water rights?

15 MR. LACY: I had discussions with the federal  
16 agencies in the Amargosa Valley a couple of years ago in  
17 another project. There are some restrictions on moving  
18 water rights in that basin. For practical purposes, that's  
19 totally different than the issues that we'd be dealing with  
20 here in the Pahrump Basin.

21 There are no restrictions to movement here other  
22 than between the basin and the sand. But any water right  
23 that's purchased in the basin here could be moved to any  
24 other well in the basin. so most of the people that were  
25 discussing it truly are not someone who understands the

1 practical nature of buying and selling and pumping water  
2 rights in the basin. As subject matter experts we'd be more  
3 than happy to help you understand this issue.

4 HEARING OFFICER CELLI: I do appreciate those  
5 comments, those are helpful. So thank you for calling in,  
6 thanks for listening and then thanks for participating.

7 MR. LACY: Thank you.

8 I am going to ask Ms. Peterson, Sarah Peterson,  
9 did you wish to make a comment?

10 MS. PETERSON: Yes, I do, thank you, this is Sarah  
11 Peterson with the BLM in the Nevada State Office. First I'd  
12 like to say thank you for accepting our letter. We realize  
13 it was a very late submission.

14 In response to what Mr. Lacy just said. There  
15 were some different circumstances in the -- for the  
16 Millennium Project where we came up with that language but I  
17 think some of it still holds and it is still something that  
18 needs to be looked at as far as when you look at water  
19 rights what you're retiring. So I wouldn't take what Mr.  
20 Lacy said to heart 100 percent.

21 But listening in to the discussion today I  
22 realized that most of the resources that were being  
23 discussed, you know, particularly the Amargosa wild and  
24 scenic river as well as the Stump Spring ACEC, are located  
25 on public land which is managed by the BLM. These are



1 public resources that we are mandated to manage.

2 I can appreciate the applicant's difference of  
3 opinion on the hydrology and the potential impacts to these  
4 resources but, you know, you put 100 hydrologists into a  
5 room and ask them this question, you'll probably get 100  
6 different answers. We just don't know enough of what is  
7 going on out there to really make a good decision either  
8 way. And that's why we asked to be a little bit  
9 conservative and monitor and see if there are any impacts.

10 You know, whether or not this project goes  
11 through, BLM is still mandated to protect these resources  
12 and we need to try and mitigate any potential impacts to  
13 these resources.

14 One item that we do have in the letter that I'd  
15 like to bring up is BLM requests to be notified as to any  
16 results from the groundwater monitoring or notified if a  
17 trigger is hit. We also request to be consulted by the  
18 compliance project manager on the interpretation of any  
19 monitoring results, looking at the performance standards in  
20 Water Supply-4 as well as participate and identifying  
21 mitigation measures to help reduce any potential impacts  
22 that may occur.

23 And then because Mr. Arnold kind of brought it up.  
24 something I don't know that BLM has brought up yet regarding  
25 cultural is just that the Stump Spring ACEC was designated

1 based on the cultural significance of the spring and the  
2 mesquite stands, both historic and prehistoric significance.

3 And we are also looking at potentially increasing the size  
4 of that ACEC and/or developing a new one. We have an  
5 alternative in our resource management plan revision that  
6 will look at possibly increasing that site to include more  
7 of the mesquite bosque in the area. So that's all I have to  
8 say.

9 PRESIDING MEMBER DOUGLAS: Ms. Peterson, this is  
10 Commissioner Douglas, I just have a brief question. You  
11 alluded to Mr. Lacy's assertion that at least in the Pahrump  
12 Valley in Nevada, the Nevada side, that if applicant were  
13 required -- he seemed to assert, and hopefully he is still  
14 on the phone and can correct me if I get this wrong. He  
15 seemed to assert that if applicant carefully bought up water  
16 rights that were being used consumptively and retired those  
17 as mitigation the same water users could go buy a different  
18 right, potentially more cheaply, and resume their pumping.  
19 Do you agree with that statement as it pertains to Pahrump,  
20 the Pahrump Valley?

21 MS. PETERSON: It can, it can happen in Pahrump.  
22 I think based --

23 PRESIDING MEMBER DOUGLAS: It cannot happen, did  
24 you say?

25 MS. PETERSON: What's that?

1           PRESIDING MEMBER DOUGLAS: I just didn't hear if  
2 you said can or can't.

3           MS. PETERSON: I would say can, yes.

4           PRESIDING MEMBER DOUGLAS: It can happen.

5           MS. PETERSON: It can happen. And that can happen  
6 in any basin in Nevada. So yes, that part is correct.

7           But you also have to realize that surrounding this  
8 area is mostly BLM land. There's very little private land  
9 and there's very little other water rights surrounding our  
10 mesquite bosque. And most of the water rights are kind of  
11 in more Pahrump proper, how I designate it.

12          PRESIDING MEMBER DOUGLAS: Thank you.

13          HEARING OFFICER CELLI: Well thank you very much,  
14 Ms. Peterson. I wanted you to know that we will be hearing  
15 cultural issues on Friday and would invite you to call in  
16 again. We are going to be dealing with biology tomorrow.

17          MS. PETERSON: Thank you.

18          HEARING OFFICER CELLI: So we will be starting at  
19 9:00 o'clock on both days. Thank you for calling in.

20          Noel Ludwig, did you wish to make a comment?

21          MR. LUDWIG: Can you hear me?

22          HEARING OFFICER CELLI: Mr. Ludwig? We have some  
23 indication that you are attempting to communicate to us,  
24 Mr. Ludwig, but it doesn't sound like a human voice. If you  
25 wanted to make a comment -- I see that you're on your

1 computer. Let me skip over and I'll see if there is another  
2 person and try to get back to Mr. Ludwig.

3 MR. LUDWIG: Can you hear me now?

4 PRESIDING MEMBER DOUGLAS: Yes.

5 HEARING OFFICER CELLI: Yes we can, Mr. Ludwig, go  
6 ahead.

7 MR. LUDWIG: Thank you. I have two concerns. One  
8 going back to the discussion of the Water Supply-1  
9 mitigation measure. I just want to reiterate other people's  
10 concerns that that Option 2 be, if it is considered, that  
11 the language in there be carefully constructed to ensure  
12 that any water rights acquired are guaranteed to be active  
13 water rights in the area that would reduce pumping from the  
14 basin and not just be paper rights that would do nothing to  
15 actually reduce the consumptive use of water.

16 The second point goes to Andy Zdon's testimony on  
17 the wells and springs in the direction of California Basin  
18 and the map that showed the fault to the northeast and to  
19 the southwest of the project site. And I wanted to state my  
20 concerns that the proposed wells on the southwest of the  
21 project site, about a mile or so from the southwest corner  
22 of the project site, make sure that that well, first of all,  
23 is not placed within the fault zone to give likely erroneous  
24 information but also that at least one well be placed beyond  
25 that fault to get information from outside of the sliver of

1 land that would be most directly impacted by the project.

2 The applicant's initial proposal for water impact  
3 suggested that there would be no water impact outside of the  
4 sliver of land bounded by those two faults. One way to find  
5 out whether or not there would be impacts down-gradient  
6 towards the Amargosa Basin would be to get data outside of  
7 that, that fault blocked in. Southwest of the fault it is  
8 the presumption to be (indiscernible) project site.

9 Those are the two comments that I have.

10 HEARING OFFICER CELLI: Well thank you very much  
11 for your comments. I didn't get, Mr. Ludwig, are you with  
12 any water agency?

13 MR. LUDWIG: I am with the, I am with the Bureau  
14 of Land Management, the California Desert District, and I'm  
15 a hydrologist.

16 HEARING OFFICER CELLI: Thank you very much for  
17 your comments. Okay, we have -- I know that Jeff Ogata is  
18 Assistant Chief Counsel with the Energy Commission. Is Greg  
19 James with applicant or staff?

20 SPEAKER: Inyo County.

21 HEARING OFFICER CELLI: Oh, he's with Inyo County,  
22 okay. Let's see, who else do we have? Amy Noel or Noel,  
23 did you wish to make a comment?

24 MS. NOEL: (Indiscernible), thank you.

25 (Indiscernible) thank you very much, I appreciate the --

1 HEARING OFFICER CELLI: I'm sorry, we heard, could  
2 you just say that one more time because we didn't get all  
3 that, go ahead.

4 MS. NOEL: I'm with (indiscernible) staff. Thank  
5 you very much, thank you very much. I'm glad that I can  
6 hear this on WebEx instead of sitting in the room and I will  
7 make comments in the next day or two, thank you.

8 HEARING OFFICER CELLI: Thank you very much for  
9 your comments. Just so you know, on our side your phone or  
10 your computer or whatever you're speaking in is very  
11 squeaky, We were able to hear what you had to say but  
12 there's a lot of rattling in that phone. Maybe when you  
13 call in tomorrow and the next day if you have a more solid,  
14 stable phone it would be better.

15 MS. NOEL: I'll show up on Friday.

16 HEARING OFFICER CELLI: Great. Thank you, ma'am.

17 MS. NOEL: Thank you, guys, thank you.

18 HEARING OFFICER CELLI: Okay. And then Greg  
19 Jones. I think we have everybody. Oh, Michael Garabedian,  
20 did you wish to make a comment?

21 MR. GARABEDIAN: This is Michael Garabedian.  
22 Thank you for the opportunity. I don't have anything to add  
23 today.

24 HEARING OFFICER CELLI: Thank you very much,  
25 thanks for participating.

1 MR. GARABEDIAN: Have a good day.

2 HEARING OFFICER CELLI: And that is everybody on  
3 the phone.

4 Okay. It's 5:30. Since we said we would take  
5 comment at 6:00 o'clock I will happily stick around and take  
6 further comments at 6:00 o'clock if anybody shows up.

7 Applicant, did you have something that you wanted  
8 to say?

9 MS. POTTENGER: Yes. Thank you everyone for  
10 today's evidentiary hearing. We do have food coming at 6:00  
11 o'clock so if people want to eat the food will be here and  
12 there will be a lot.

13 (Laughter.)

14 MS. POTTENGER: There will be a lot> There will  
15 be enough and we would like some help in eating it so we  
16 don't have to take it home with us.

17 HEARING OFFICER CELLI: Okay. Thank you very  
18 much.

19 MS. POTTENGER: Thank you.

20 HEARING OFFICER CELLI: Thank you, BrightSource  
21 for making that happen.

22 MR. ZELLHOEFER: Mr. Celli, Jon over here.

23 HEARING OFFICER CELLI: Mr. Zellhoefer, yes.  
24 You've got to get right into your mic, please.

25 MR. ZELLHOEFER: I think that this mic is a little

1 bit weak.

2 HEARING OFFICER CELLI: It is, I'm not getting a  
3 good signal. Can you help him out, Tony. Anyway, I'll just  
4 kind of speak a little loud here. I just want to -- hello,  
5 hello, hello? Is this any better?

6 HEARING OFFICER CELLI: Yes.

7 MR. ZELLHOEFER: Okay. I just wanted, you know,  
8 since we're kind of wrapping up early today. If any of you  
9 have an opportunity to head down towards Tecopa or head on  
10 down to the date ranch, Mr. Brown's property, I'm sure he  
11 would be delighted to host you down there. Likewise I'd  
12 love to have you come down and see what this Amargosa River  
13 is all about. You know, the morning is beautiful. And  
14 you're all the way out here so it might be kind of nice. I  
15 know Commissioner Douglas has made a few field trips in the  
16 area. We do have a rather unique place out here and  
17 certainly take advantage of it if you can.

18 HEARING OFFICER CELLI: Thank you very kindly.

19 We are still on the record. We are still in the  
20 public comment period. I don't know where Mr. Harris went  
21 but, Mr. Wheatland, come on up, or Ms. Pottenger, either one  
22 of you.

23 In the comment period, I think it was last night,  
24 somebody was speaking about a housing development.  
25 Ms. Haskin was talking about having heard from Mr. Bradley,



1 who is apparently a BrightSource representative of some  
2 sort, that there was a proposed temporary development of  
3 housing in the area of Charleston View with a proposed new  
4 road, I believe coming from the 160 and coming south of the  
5 Charleston View area to this new development area,  
6 specifically for the purpose of housing people working  
7 during the construction period, hence the temporary nature  
8 of this.

9 But I hope you were here to have heard that  
10 comment last night so that you are not relying on my  
11 representation of it now. I'm giving you my paragraph, my  
12 memory of it. And this was the first we ever heard of  
13 anything like that and it was a source of alarm with the  
14 Committee because we had never heard anything like that.

15 PRESIDING MEMBER DOUGLAS: So we just have a  
16 question, if you could speak to that.

17 HEARING OFFICER CELLI: Please.

18 MR. BRADLEY: I'm here.

19 HEARING OFFICER CELLI: Wait a second. Whoever  
20 you are, if you're going to speak we would --

21 PRESIDING MEMBER DOUGLAS: You need to come to the  
22 mic and tell us your name.

23 MR. WHEATLAND: I would be happy for this  
24 gentleman to speak, let me speak first though, just briefly.

25 HEARING OFFICER CELLI: And then we'll send him to

1 the podium.

2 MR. WHEATLAND: Yeah, then he can go to the podium  
3 and speak. But I'd like to speak first and say that I did  
4 hear the comment. It was as much as a surprise to me as it  
5 was to you because even though I have been involved in this  
6 project for several years this is the first time I had heard  
7 of that. So perhaps if this gentleman has some  
8 clarification he can provide it.

9 HEARING OFFICER CELLI: Thank you, Mr. Wheatland.  
10 And this is Mr. Bradley? Would you state into the  
11 microphone, please.

12 MR. BRADLEY: I am Kelly Bradley.

13 HEARING OFFICER CELLI: Thank you.

14 MR. BRADLEY: I'm a local Charleston View  
15 landowner and I've been here in the state since 2004. I am  
16 also -- previously I was with the St. Therese Mission  
17 Project and I had the wonderful opportunity to work with the  
18 Inyo County Planning Department somewhat on the permits.

19 And prior to the mission in its current state  
20 being permitted we had, we were developing a small, master  
21 plan community on the east, the east side of the Charleston  
22 View subdivision, it was called the Mission at Golden Ridge.

23 And we had the opportunity to sit down with the Inyo County  
24 Planning Department to, you know, help configure that  
25 project.

1           And at that time there was another Las Vegas  
2 developer, Rhodes Homes, who was looking at a property out  
3 there. I think they had put an option on a 1200 acre  
4 property and drilled a test well. So the county planning  
5 department is fully aware of this project. We had several  
6 meetings, the county came down to our office. So that's  
7 what I was referring to. And I was speaking, I was speaking  
8 with Ms. Haskins (sic) off the record as a local business  
9 person and I was just explaining to her about that project.

10           I'd be happy to supply, provide this commission  
11 with the master plan documents for that project. Now this  
12 project is a defunct project; it's no longer in the works.  
13 And what we did -- the Mission was part of that bigger  
14 project and there was a boulevard that ran from where the  
15 mission currently, where the mission currently is up to the  
16 end of Section 3 at the end of Rose Avenue. When we decided  
17 to not proceed with the project we moved the mission down to  
18 a new site, it's current location along the road. We felt  
19 it was no longer practical to put it up there and build a  
20 boulevard inasmuch as, you know, the real estate bubble had  
21 burst and we didn't feel confident about going ahead with  
22 the project. So it's a real project.

23           Now, during a meeting with the Inyo County  
24 Planning Department there was a mention of a road coming  
25 over the hill. I don't know how serious Mr. Rhodes was

1 about that, we weren't interested in pursuing that  
2 opportunity with him.

3 Inyo County had suggested that our -- because they  
4 didn't -- it was my understanding they didn't want to do two  
5 master plans at the same time and they asked us to sit down  
6 together to see if we could come up with a common master  
7 plan. So that's what that was all about, so.

8 HEARING OFFICER CELLI: Are you aware of any  
9 current development plans right now?

10 MR. BRADLEY: We don't have any, we don't have any  
11 more plans for any master plan. We spent a substantial  
12 amount of money getting ready for the permitting process but  
13 we decided to shelve the project. It doesn't -- it didn't  
14 make any economic sense anymore so that project is not in  
15 the works for the future.

16 So what we are just concentration now on is the  
17 mission itself. And if you haven't been by, we're about  
18 maybe 40 percent complete with the construction of the  
19 mission. Ms. Haskins maybe misunderstood me.

20 And she made a reference earlier to property for  
21 sale. When I was discussing, you know, I was trying to  
22 assist her. I used the term "option" and I apologize for  
23 that, you know. Maybe she related that to meaning sale, you  
24 know. That's the terminology I used, it was unfortunate. I  
25 didn't explain what option meant.

1 HEARING OFFICER CELLI: Well thank you for those  
2 comments.

3 MR. BRADLEY: Yeah.

4 HEARING OFFICER CELLI: Mr. Wheatland.

5 MR. WHEATLAND: The other thing I really want to  
6 make clear so that there is no misunderstanding is that  
7 Mr. Bradley wears many different hats and one of the hats he  
8 wears is he is a community outreach consultant to  
9 BrightSource but BrightSource is not involved in any way in  
10 any development plans that he may be considering or involved  
11 with. His role with BrightSource had been merely as  
12 outreach to the community members within Charleston View  
13 area. But he is not employed by BrightSource or serving for  
14 BrightSource in any way in any development capacity.

15 PRESIDING MEMBER DOUGLAS: Thank you,  
16 Mr. Wheatland.

17 HEARING OFFICER CELLI: Thank you.

18 MR. BRADLEY: You're welcome.

19 HEARING OFFICER CELLI: Mr. Celli, the county  
20 counsel, Dana Crom, was willing to address this issue. I  
21 asked her if she would and she said she would. Obviously I  
22 believe they've left but they may be back.

23 MR. KELLER: (off mic): I'm with county counsel  
24 for Inyo County. We --

25 HEARING OFFICER CELLI: Time out. We need to get

1 your mic to work. So, Tony, this is Inyo County's mic, the  
2 last mic at the table.

3 MR. KELLER: I'm Randy Keller --

4 HEARING OFFICER CELLI: We need you to speak  
5 directly into that mic, we're not getting, we're not picking  
6 you up yet.

7 MR. KELLER: Okay. I'm Randy Keller, I'm county  
8 counsel for Inyo County and I had just been discussing this  
9 with Dana Crom. But there are no current development  
10 applications in Charleston View and no entitlement out  
11 there. So if that gives some clarity, there are no projects  
12 in the pipeline at this point.

13 HEARING OFFICER CELLI: Very good. Thank you.  
14 Ms. Haskin, why don't you come on up to the microphone.

15 MS. HASKIN: I just want to say I disagree with  
16 Mr. Bradley. What he's talking about with the housing tract  
17 before was there was a big development with Jim Rhodes out  
18 of Las Vegas. And they came out and drilled a well and we  
19 were told that there was no water in that well and so that's  
20 why the housing development didn't show up then.

21 But when I was talking to him yesterday he said  
22 that they did find water and that in the future they were  
23 going to build homes up there. He said something between  
24 400 and 450 homes and he was -- at the time he was telling  
25 me that the road -- he just said, it's not going to happen

1 that Rhodes was building.

2 He told me that it was something that was coming  
3 our way. That there was a road coming off of the Sandy  
4 Valley Road, it was going to come to the back of the  
5 Charleston View area where I live and it was going to --  
6 that's where the housing tract was going to be. And the way  
7 he spoke to me was, it was something in the future but it's  
8 something that's on the plan.

9 And he also represents the Wiley Estate. So he  
10 has -- his many hats as he spoke of, is also on behalf of  
11 the Wiley Trust.

12 HEARING OFFICER CELLI: Thank you.

13 PRESIDING MEMBER DOUGLAS: Thank you, Ms. Haskin.

14 HEARING OFFICER CELLI: So I think what we have  
15 now is enough evidence, indicia to show that this project  
16 isn't going to happen, at least in the near future and the  
17 county, the county counsel, the chief attorney for the  
18 County of Inyo is here and he concurs with that.

19 MS. HASKIN: Well that they haven't submitted the  
20 paper is all they're saying. That doesn't mean it isn't on  
21 the plate for the Wiley Trust to develop in our way.

22 PRESIDING MEMBER DOUGLAS: That's correct.

23 HEARING OFFICER CELLI: Anything could happen in  
24 the future, we don't know.

25 MS. HASKIN: Right, I understand that. But when

1 Mr. Bradley was talking to me yesterday he was implying that  
2 when this project was approved that that would be coming  
3 because it would be future homes for the people coming that  
4 would be working there and being there. The job site would  
5 stir a reason to build these homes.

6 So that's why when I was talking to you yesterday  
7 I asked how much of this are you, you know, taking into  
8 effect that this is not going to change what's going on out  
9 there when you were talking socioeconomics and my neighbors  
10 being poor, how this -- if you built 400 homes in Charleston  
11 View, that's going to change our tax base, that's just  
12 common sense.

13 And if you, you know. And the road improvement  
14 where we go to Vegas where we don't have to drive out to 160  
15 and turn. If we go out to the back of our yard where our  
16 neighbors are and then we head across to the Sandy Valley  
17 turn, that is also going to be part of our tax base because  
18 that is how the assessor assesses us.

19 So I'm just saying that this, it will have a  
20 direct effect on us, whether they've filed the papers or  
21 not. It doesn't mean what he said was not true.

22 HEARING OFFICER CELLI: Okay, thank you,  
23 Ms. Haskin.

24 MS. HASKIN: Thank you.

25 MR. BRADLEY: Is it okay if I speak again?



1 HEARING OFFICER CELLI: Just briefly, if you need  
2 to.

3 MR. BRADLEY: Okay, yeah. Again, I apologize to  
4 Ms. Haskins, we have a misunderstanding. I was speaking of  
5 past tense, it's a statement of fact that there were  
6 projects. But for the record, there are no projects coming  
7 up in the future, thank you.

8 HEARING OFFICER CELLI: Thank you very much. Now,  
9 Commissioner Douglas.

10 PRESIDING MEMBER DOUGLAS: I just had a brief  
11 question of staff. I think this is my last question for the  
12 day. And I realize that your water panel was dismissed some  
13 time ago but I just wanted to understand the extent to which  
14 the, I'll call it kind of fungibility. The commentor from  
15 the Nye County Water District, the comment that he made  
16 about how somebody might buy up one water right that  
17 somebody had been using and that that person might be able  
18 to go get another water right and continue using it. To  
19 what degree is that factored into your condition or your  
20 analysis? Is that something that you can answer now?

21 MR. RATLIFF: You're asking me?

22 (Laughter.)

23 PRESIDING MEMBER DOUGLAS: I'm asking staff.  
24 Whoever is left on the staff side.

25 MR. HARRIS: It's okay. Dick, you can testify, we

1 don't object.

2 MR. RATLIFF: Yeah. Well this is something we  
3 discussed at great length, actually. It was a concern that  
4 we had that -- I mean, the staff's concern is that retiring  
5 paper is not enough, that you want a real benefit to the  
6 basin. One of the issues discussed was whether, you know,  
7 if you can only retire paper, that's the only effective way  
8 to do it, you retire it at some ratio, you don't do it at 1  
9 to 1, certainly.

10 But I think if the staff were still here I believe  
11 what they would say is that you can retire 1 to 1, that it's  
12 possible to do so. The BLM says you can do so. I think  
13 they've -- they can cite instances where they believe it has  
14 been done. And that was what they intended, that is the  
15 intent of the staff mitigation is that it actually have a  
16 real reduction in water use that compensates for the  
17 cumulative addition, additional draw that this project would  
18 represent.

19 PRESIDING MEMBER DOUGLAS: Okay, that's fine.  
20 We're in the comment period. You know, this isn't evidence.  
21 I just wanted to ask a question about what you -- I just  
22 wanted to clarify that that was not new news and that was  
23 something staff had thought about.

24 HEARING OFFICER CELLI: Thank you. Well at this  
25 time, you know, we still are in the public comment period.

1 We have 15 minutes until 6:00 o'clock, which is when we  
2 noticed it and we need to be here for that. Or I need to be  
3 here for that, I think that I can cut you guys loose and you  
4 can go and I'll just take whatever is going on at 6:00  
5 o'clock.

6 PRESIDING MEMBER DOUGLAS: We'll slowly pack up.

7 HEARING OFFICER CELLI: And then as we heard  
8 there's dinner coming from BrightSource people and there  
9 aren't a lot of us here to eat it. So, I don't know, should  
10 we call in the town of Shoshone and invite them to a big  
11 party?

12 (Laughter.)

13 MR. WHEATLAND: Susan, why don't you mention what  
14 happens.

15 MS. STRACHAN: Just so no one is worrying about  
16 where is all the extra food going, it's going to the school.

17 HEARING OFFICER CELLI: Okay.

18 MS. STRACHAN: Worked with the staff and both  
19 lunches feeding the kids during the day and stuff so it's  
20 not being wasted.

21 HEARING OFFICER CELLI: Excellent.

22 MS. STRACHAN: And then the school is also taking  
23 the recycleables.

24 HEARING OFFICER CELLI: Thank you. Thanks for  
25 being a good citizen.

1 MS. STRACHAN: Actually, if I may, Jim Copeland,  
2 and Jim, I hope I don't embarrass you. The superintendent  
3 for the school district is here. He's the one, and his  
4 staff, that have made all of this helpful -- excuse me,  
5 possible.

6 HEARING OFFICER CELLI: Who is Jim Copeland?  
7 Mr. Copeland, hello. Come on over.

8 (Applause.)

9 PRESIDING MEMBER DOUGLAS: Mr. Copeland, I'm  
10 Commissioner Douglas, I'm the Presiding Member on this  
11 Committee along with my colleagues, Ken Celli is the Hearing  
12 Officer and to his left, Commissioner Hochschild, to my  
13 right Galen Lemei, Jennifer Nelson, Eileen Allen. We just  
14 wanted to thank you for making, helping make this facility  
15 available and accommodate our very kind of specialized  
16 needs, we really appreciate it. It's great to be able to be  
17 here so thank you.

18 SUPERINTENDENT COPELAND: You're welcome. It's  
19 been about 100 years since William Mulholland said, let  
20 there be water and this is Inyo County.

21 (Laughter.)

22 SUPERINTENDENT COPELAND: I'm looking up and I'm  
23 looking at BrightSource and saying, let there be light. And  
24 if BrightSource were to do something in exchange for the  
25 auditorium, for the gym. I said, those poor lights need

1 changing. Happy to host this, sorry about the acoustics.

2 And the lights, my gosh, I'm sorry.

3 (Laughter.)

4 HEARING OFFICER CELLI: You know, actually in that  
5 regard the acoustics, I think this is about the best  
6 acoustics I've ever experienced in one of our hearings. And  
7 we've had, we've been in some pretty modern facilities where  
8 sound is bouncing all over the place. And with the addition  
9 of the carpeting and Tony's great sound mixing we --

10 (Applause.)

11 HEARING OFFICER CELLI: I am so pleased that the  
12 WebEx has worked. I think that the court reporter is  
13 getting an excellent recording. This has been the best -- I  
14 can't, I just really believe this has been the best audio we  
15 have ever had. We can hear every party and we don't have  
16 microphones cutting out and having to trade mics and that  
17 sort of thing so this has been great. Really excellent,  
18 good work. What's the name of your company, Tony?

19 THE SOUND TECHNICIAN: Smart Source.

20 HEARING OFFICER CELLI: Smart Source. We will  
21 remember that. We need to get that card. Thank you.

22 (Laughter.)

23 PRESIDING MEMBER DOUGLAS: Well thank you very  
24 much.

25 MS. NOEL: Am I --

1 HEARING OFFICER CELLI: Is that Ms. Noel? Give us  
2 a moment, we're going to get that speaker going. Okay, go  
3 ahead, Ms. Noel. Amy Noel.

4 MS. NOEL: (Indiscernible).

5 HEARING OFFICER CELLI: I'm sorry. Ms. Noel, this  
6 is hearing Advisor --

7 MS. NOEL: (Indiscernible).

8 HEARING OFFICER CELLI: I had accidentally muted you  
9 so I need you to start over again. I'm sorry, go ahead, we  
10 can hear you now.

11 MS. NOEL: Okay, thanks. I've been listening and  
12 -- things and I just want to jump in because you were  
13 accolading Jim Copeland. He's awesome. He's been a  
14 great (indiscernible) and a good worker for our chamber of  
15 commerce and our school children.

16 HEARING OFFICER CELLI: Okay, thank you, Ms. Noel.  
17 He's here.

18 MS. NOEL: I just want to (indiscernible).

19 HEARING OFFICER CELLI: Say again, Ms. Noel?

20 MS. NOEL: (Indiscernible). Jim Copeland, he's  
21 been a great (indiscernible), chamber of commerce and many  
22 other things. Jim's awesome. So I'm glad to hear you're  
23 honoring him.

24 PRESIDING MEMBER DOUGLAS: Thank you.

25 HEARING OFFICER CELLI: Thank you. There's a

1 phone that needs some work.

2 MR. ARNOLD: Troy, could you repeat that back for  
3 us?

4 (Laughter.)

5 MS. NOEL: (Indiscernible) right now.

6 HEARING OFFICER CELLI: Okay, I think that's  
7 everybody. Well, I've got ten minutes, I'll hang out. I'll  
8 pack up really slowly.

9 THE SOUND TECHNICIAN: Do you want to go off for  
10 ten minutes?

11 HEARING OFFICER CELLI: No, you know what, I'm  
12 going to stay on the record because anybody could call in.  
13 You know, it could happen. And people could walk in and  
14 make a comment.

15 (A break was taken on the record.)

16 HEARING OFFICER CELLI: We are off the record for  
17 the next six minutes.

18 (Off the record at 5:54 p.m.)

19 (On the record at 6:00 p.m.)

20 HEARING OFFICER CELLI: Now we're back on the  
21 record. This is Hearing Advisor Ken Celli. It is 6:01, at  
22 least, p.m. on Wednesday the 13th of March.

23 We have heard socio today, we have heard soil and  
24 water and water supply, we've heard public comment in  
25 several instances. We had public comment after lunch, we

1 had public comment at the close of today's evidence. But at  
2 was heard prior to 6:00 o'clock and so we said that we would  
3 leave the record open because we noticed the public comment  
4 for 6:00 p.m.

5 We have WebEx going. I have Michael Garabedian  
6 who already made a comment, Greg James is with the County of  
7 Inyo and there are no other people on the phone. There are  
8 no more public commentators. Is there anyone who wants to  
9 make a public comment from the people who are here?

10 Nobody indicating that they wish to make a public  
11 comment. So at this time we will adjourn until tomorrow  
12 morning at 9:00 o'clock. Tomorrow morning at 9:00 o'clock  
13 we will begin with biological resources. We'll see you  
14 then, good night. We are adjourned.

15 The Evidentiary Hearing was  
16 adjourned at 6:02 p.m.)

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## CERTIFICATE OF REPORTER

I, TROY RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary 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 20th day of March, 2013.

/s/ Troy A. Ray

TROY A. RAY, CER\*\*369

## 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.

March 20, 2013

RAMONA COTA, CERT\*\*478