

DOCKETED
11-AFC-02

TN # 2931

MAR. 25 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 IV

FRIDAY, MARCH 15, 2013

9:00 a.m.

Reported by:
Troy A. 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

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Advisor for Siting

CEC STAFF PRESENT

Mike Battles, Project Manager

Jonathan Fong (via WebEx)

Mike Monasmith, Senior Project Manager

Richard Ratliff, Staff Counsel IV

Kerry Willis, Staff Counsel

APPLICANT

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

Gary Kazio
BrightSource Energy

John Carrier
Clint Helton
Natalie Lawson
Lynne Sebastian
W. Geoffrey Spaulding
CH2MHill

Susan Strachan
Strachan Consulting, LLC

INTERVENORS

Richard Arnold

Lisa T. Belenky
Ileene Anderson
Center for Biological Diversity

Dana Crom
County of Inyo

Larry Levy
Southern Inyo Fire Protection District

Cindy MacDonald

Jack Prichett
Old Spanish Trail Association

Jon William Zellhoefer

ALSO PRESENT

Nora McDowell Anton
Mary Barger (via WebEx)
Gary Barkley
Sarah Bennett
Richard Bent
Susan Cochran (via WebEx)
Kevin Emerson (via WebEx)
Thomas Gates
Amy Haines
Ann Harrell
Gerald Haskin
Rayetta Haskin
Aimee Howard (via WebEx)
Eddie Jim
Eddie Hawk Jim
Ruby Jim
Thomas King (via WebEx)
Paul Kramer (via WebEx)
Vernon Lee
Mathew Leivas, Sr.
Laura Murphy (via WebEx)
Linda Otero
Mark Silverstein (via WebEx)
Phillip Smith
Scott Smith
Susan Sorrells
Elizabeth von Till Warren
Vivien Wilkinson

I N D E X

	<u>Page</u>
1. Call to Order	1
2. Receipt of Evidence from Applicant, Staff and and Intervenors (in order of intervention commencement date) on the Hidden Hills Solar Electric Generating System AFC	10
 <u>Historical Resources - Old Spanish Trail Panel</u>	 10
Clint Helton	
Lynne Sebastian	
Natalie Lawson	
W. Geoffrey Spaulding	
Richard Bent	
Jack Prichett	
Elizabeth von Till Warren	
Susan Sorrells	
Thomas Gates	
Mathew Leivas, Sr.	
Thomas King (via WebEx)	
 <u>Ethnographic Resources Panel</u>	 155
Richard Arnold	
Thomas Gates	
Clint Helton	
Thomas King (via WebEx)	
Natalie Lawson	
Mathew Leivas, Sr.	
Jack Pritchett	
Lynne Sebastian	
W. Geoffrey Spaulding	

I N D E X

	<u>Page</u>
3. Public Comment	
Eddie Jim	114
Gary Barkley	116, 145
Ruby Jim	120
Vernon Lee	121
Eddie Hawk Jim	124
Vivian Wilkinson	125
Ann Harrell	128
Rayetta Haskin	129
Sarah Bennett	133
Scott Smith	135
Phillip Smith	137
Elizabeth von Till Warren	140
Kevin Emerson (WebEx)	143
Gerald Haskin	144
Linda Ortero	147
Amy Haines	152
4. Closed Session (if necessary)	--
5. Adjourn	297
Certificates of Reporter and Transcriber	298

E X H I B I T SPARTYRECEIVED

Staff	
Exhibits 300, 301, 331, 332, 333	284
Applicant	
Exhibits 23, 25, 26, 27	276
Intervenor - Cindy MacDonald	
Exhibits 714, 753, 755	295
Intervenor - Richard Arnold	
Exhibits 804, 805, 806, 807, 808	292

P R O C E E D I N G S

9:07 a.m.

1 HEARING OFFICER CELLI: So, parties, if you have
2 witnesses, let's have all of your experts take their seat
3 over at the expert witness table. We're going to start off
4 with the Old Spanish Trail issues before we get into the
5 ethnographic issues, so if you have witnesses that are here
6 to testify about the Old Spanish Trail, let's put them where
7 they belong. Ms. MacDonald, one second, your mic isn't on.
8 Tony, Ms. MacDonald's mic please.

9 MS. MacDONALD: Thank you. Good morning. I have
10 a witness that I am bringing, Thomas F. King, but he will be
11 appearing by phone. He tried to get through WebEx on the
12 visual resources and said he couldn't get in, but is he up
13 on the -- he said he would try to be here.

14 HEARING OFFICER CELLI: I'll tell you what, I can
15 -- let me shut this down. If you look up behind you, you'll
16 see the roster of people who are on the phone. And I've got
17 Aimee Howard, I've got Ann. Then I have Laura Murphy who is
18 with staff, Mary Barger, Paul Kramer, Susan Cochran. These
19 are people who we pretty much know who they are. And then
20 you have -- do you see Call-In Users 3, 5, 7 right here?
21 When people call in and they are not using their computer,
22 that's how they are indentified. So, he could be one of
23 those people and depending if we are hooked up yet, Tony, I

1 don't know if we've got WebEx on the mic and all. Okay.

2 So, if you are on the phone - what's the name of your
3 witness?

4 MS. MacDONALD: Tom King.

5 HEARING OFFICER CELLI: Tom King. Tom King, if
6 you can hear me, are out there? Would you speak up please?
7 Tom King, are you on the phone? Tom King. Well, it appears
8 that he hasn't called in yet.

9 MS. MacDONALD: Okay. One last note. If he does
10 end up getting in, I need to submit his résumé. It was an
11 exhibit that has not been submitted yet, so just --

12 HEARING OFFICER CELLI: Yes, it's a little loud in
13 here. I'm having a hard time hearing you again, so let's
14 settle in folks. Let's get ready; we have got a lot to
15 cover today.

16 Now, I just want to make sure that, let's see, I'm
17 going to mute Susan Cochran. Let me just check right now
18 and see if they responded to my chat. Yes, they did. Thank
19 you very much Paul and Susan for listening in and I am
20 really very sorry about the circumstance of not being able
21 to communicate until this morning, but I see that you got my
22 message and I am delighted about that. Any -- Ms.
23 MacDonald, your witness - I just want to make sure that your
24 witness isn't -- Tom King, are you on the phone? Speak up
25 please. Mr. King. Tom King, are you on the telephone? Okay.

1 Who is -- oh, Jonathan Fong is with staff? Mike Monasmith,
2 do you know who Jonathan Fong is? He is staff, okay.

3 Jane. Do we know who Jane is? No last name.
4 Jane, are you with staff or applicant? She is on the
5 headset, so we can't tell. I'm going to pretty much mute --
6 I need to mute people on the phone so that we don't hear
7 their background noise; and yet, by the same token, we also
8 need to hear from people. Tom King, have you called in yet?
9 All right, well, hopefully he will call in.

10 MS. MacDONALD: Thank you.

11 HEARING OFFICER CELLI: Let me just get the names
12 of all of our witnesses, starting with you, sir.

13 MR. HELTON: Clint Helton.

14 HEARING OFFICER CELLI: You're going to have --
15 oh, a new -- a whole new crew of people that hasn't heard my
16 spiel about talking into a mic yet. So, when experts -- I
17 need all of you to make -- do you see how I'm speaking? I'm
18 practically eating this microphone. Okay? That's the way
19 you need to be in terms of your orientation to the
20 microphones. The microphone -- watch what happens. If I'm
21 talking to you now and I start turning my head, the sound
22 goes away when I turn my head. So I need you -- and when
23 you are talking about your exhibits and then you put your
24 exhibit in front of you and you are talking about your
25 exhibit like that, this doesn't work either. So, we need

1 you to hold your exhibits behind the microphone. We want
2 you to do everything that you're doing, but make sure that
3 the microphone is right there at your mouth. You're
4 speaking right into it like a shotgun. Now, your name
5 again, sir?

6 MR. HELTON: I'll try again. Clint Helton.

7 HEARING OFFICER CELLI: Clinton Helton. You're
8 with staff?

9 MR. HELTON: CH2MHill.

10 HEARING OFFICER CELLI: CH2MHill. And next to you
11 is?

12 MS. SEBASTIAN: Good morning, I'm Lynne Sebastian.

13 HEARING OFFICER CELLI: Lynne Sebastian. And who
14 are you with?

15 MS. SEBASTIAN: I work for the SRI Foundation and
16 I'm with the folks from CH2MHill for the applicant.

17 HEARING OFFICER CELLI: You're associated with the
18 applicant?

19 MS. SEBASTIAN: Yes, sir.

20 HEARING OFFICER CELLI: Okay, and next to you is?

21 MS. LAWSON: Natalie Lawson, CH2MHill.

22 HEARING OFFICER CELLI: Thank you, Ms. Lawson.
23 Next to Ms. Lawson?

24 MR. Spaulding: Geoff Spaulding, CH2MHill, for the
25 applicant.

1 HEARING OFFICER CELLI: Thank you, Mr. Spaulding.
2 Good morning. Next to Mr. Spaulding.

3 MR. BENT: I'm Richard Bent with Old Spanish Trail
4 Association.

5 HEARING OFFICER CELLI: Thank you. Good morning,
6 Mr. Bent. Next to Mr. Bent is Jack Prichett.

7 MR. PRICHETT: Jack Prichett, Old Spanish Trail
8 Association.

9 HEARING OFFICER CELLI: Good morning, Mr.
10 Prichett. Next to Mr. Prichett?

11 MS. WARREN: Elizabeth Warren, Old Spanish Trail
12 Association.

13 HEARING OFFICER CELLI: Good morning, Ms. Warren.
14 Good to see you again. Next to Ms. Warren is?

15 MS. SORRELLS: Susan Sorrells, Old Spanish Trail
16 Association.

17 HEARING OFFICER CELLI: Susan Sorrells, OSTA.
18 Next to Ms. Sorrells?

19 DR. GATES: Thomas Gates, ethnographer for staff.

20 HEARING OFFICER CELLI: Thomas Gates. Good
21 morning, Mr. Gates. You are with the Energy Commission.
22 Next to Mr. Gates?

23 MR. ARNOLD: Richard Arnold, all-around good guy
24 and intervenor.

25 (Laughter.)

1 HEARING OFFICER CELLI: Good morning, Mr. Arnold.
2 Glad to see you're up-and-at-'em today. Next to Mr.
3 Arnold?

4 MR. LEIVAS: Mathew Leivas, Sr., co-founder of the
5 Salt Song Project.

6 HEARING OFFICER CELLI: Mathew, I'm sorry, I
7 didn't get your last name.

8 MR. LEIVAS: Leivas. L-e-i-v-a-s.

9 HEARING OFFICER CELLI: Leivas. Okay. And you are
10 -- are you Mr. Arnold's witness, is that --

11 MR. LEIVAS: Yes.

12 HEARING OFFICER CELLI: Okay. And Ms. MacDonald,
13 you're going to call Mr. King. Mr. King, is it Thomas King?

14 MS. MacDONALD: Yes.

15 HEARING OFFICER CELLI: Are you on the phone, Mr.
16 King? Give me a minute, I may have to unmute some people.
17 Thomas King, are you on the telephone? I'm not hearing
18 anything.

19 MS. MacDONALD: Thank you so much for checking
20 again.

21 HEARING OFFICER CELLI: Okay, Thomas King. Thomas
22 King, are you out there on the phone? If you are, please
23 speak up.

24 Department of Aviation. I have Mark Silverstein
25 from the California Department of Aviation. Good morning,

1 Mr. Silverstein. Can you hear me? Mark Silverstein from
2 the California Department of Aviation? I don't know who
3 called -- we've already handled -- I don't know if you can
4 hear me or not, but we took care of traffic a couple of days
5 ago and I think that's the rubric under which we -- or the
6 topic under which we handle aviation. Of course, you're
7 welcome to comment.

8 Okay, Tom King, are you out there? Thomas King?

9 (Off-mic discussion with Tony about reconnecting
10 with WebEx.)

11 HEARING OFFICER CELLI: Yes. Go ahead. So, we're
12 going to -- ladies and gentlemen on WebEx, we're just going
13 to have to call back out and call back in. So, what I'm
14 going to do is I'm going to delete the hearing line. Tell
15 me when we're in, Tony.

16 MR. RYGG: We're in.

17 HEARING OFFICER CELLI: Okay. I'm going to talk
18 for a minute. Call-in user number eleven is actually -- so,
19 "Hearing Line" is us, and if I mute everybody else, then I
20 won't know if Tom King is on the line. Tom King, are you
21 there? Tom King on the phone, can you hear us? Okay, and
22 Melanie.

23 Okay, so I'm just going to write down Tom King's
24 name as a witness who will be coming, and if he does show
25 up, I have to remember to have him sworn in.

1 MS. MacDONALD: Thank you. Okay.

2 HEARING OFFICER CELLI: So, before I do that, let
3 me turn -- start with Commissioner Douglas. Do you want to
4 introduce the parties and get us going?

5 PRESIDING MEMBER DOUGLAS: Good morning,
6 everybody. This is Commissioner Douglas. I'm the presiding
7 member of the Siting Committee for these -- for review of
8 the Hidden Hills Project. To my left is our hearing
9 officer, Ken Celli. To his left is the associate member of
10 this Committee, Commissioner David Hochschild. And to
11 Commissioner Hochschild's left, Eileen Allen is the
12 technical advisor for siting for the Energy Commission. To
13 my right is my advisor, Galen Lemei; and to his right is my
14 advisor, Jennifer Nelson.

15 But I do welcome you all this morning. We're on
16 the fourth day of four days of hearings here, so the parties
17 have all really hung in there with us and done some really
18 good work so far, so thank you. Let's have the applicant
19 introduce themselves.

20 MR. HARRIS: Good morning. Thank you. Jeff
21 Harris, of Ellison, Schneider and Harris, on behalf of the
22 applicant. To my right is Gary Kazio with the company,
23 BrightSource; Susan Strachan of Strachan Consulting; John
24 Carrier; and then Mr. Wheatland from my office, and several
25 people who will be our witnesses. Good morning. Thank you.

1 PRESIDING MEMBER DOUGLAS: Good morning. Thank
2 you. Staff?

3 MS. WILLIS: Good morning. I'm Kerry Willis,
4 senior staff counsel, and with me is Mike Monasmith, project
5 manager.

6 PRESIDING MEMBER DOUGLAS: Thank you, and Inyo
7 County?

8 MS. CROM: Dana Crom on behalf of the County of
9 Inyo.

10 PRESIDING MEMBER DOUGLAS: Welcome. Mr.
11 Zellhoeffer?

12 MR. ZELLHOEFFER: Jon Zellhoefer, and I'm working
13 with the community and residents of Tecopa.

14 PRESIDING MEMBER DOUGLAS: Great, and Mr. Levy?

15 MR. LEVY: Larry Levy, Southern Inyo Fire
16 Protection District. I'm going to have to leave early today
17 for a district board meeting.

18 PRESIDING MEMBER DOUGLAS: Okay, great. Thank
19 you. Ms. Belenky?

20 MS. BELENKY: Lisa Belenky with the Center for
21 Biological Diversity, and Ileene Anderson will also be here
22 today.

23 PRESIDING MEMBER DOUGLAS: Thank you. Ms.
24 MacDonald?

25 MS. MacDONALD: Cindy MacDonald, intervenor.

1 PRESIDING MEMBER DOUGLAS: Welcome. So, with
2 that, I think we are about ready to get started. I'll turn
3 it over to our hearing officer.

4 HEARING OFFICER CELLI: Thank you, Commissioner.

5 PRESIDING MEMBER DOUGLAS: Speak close to the mic,
6 Mr. Celli.

7 HEARING OFFICER CELLI: Yes. Okay, to begin with,
8 let's have all of the experts please stand and raise your
9 right hand to be sworn.
10 Whereupon,

11 CLINT HELTON

12 LYNNE SEBASTIAN

13 W. GEOFFREY SPAULDING

14 RICHARD BENT

15 ILEENE ANDERSON

16 ELIZABETH VON TILL WARREN

17 SUSAN SORRELLS

18 THOMAS GATES

19 MATHEW LEIVAS, SR.

20 were called as witnesses herein, and after being duly sworn,
21 were examined and testified as follows.

22 HISTORICAL RESOURCES - OLD SPANISH TRAIL PANEL

23 HEARING OFFICER CELLI: Thank you. The witnesses
24 are sworn. Please be seated.

25 The way we will proceed today is we are going to

1 begin first with the Old Spanish Trail Association -- well,
2 the Old Spanish Trail issues, then we are going to -- after
3 we finish that, we will get into the Paiute issues, the
4 ethnographic cultural resources issues, and that is all
5 we're going to be able to get done today. When we resume on
6 Monday, we're going to handle alternatives, and where's my
7 -- one second. (Off mic.)

8 Now, Monday's hearing will not be here. Monday we
9 are going to be up in Sacramento. You can still participate
10 by WebEx, which is the call-in telephone conferencing that
11 we've been using and are still using today. On Monday, we
12 will be talking about worker safety, fire protection, and
13 alternatives. So, that's all that left.

14 MS. BELENKY: Uh, sorry. Excuse me, Commissioner
15 -- Mr. Celli. We also were going to discuss project
16 objectives under the alternatives, which could be considered
17 in a -- part of the project description. So, I didn't want
18 that to get lost.

19 HEARING OFFICER CELLI: Right. We made clear when
20 we were dealing with project objectives earlier - I think we
21 handled project objectives on Monday - that project
22 objectives would be included in discussions for
23 alternatives. So that's what we're going to do Monday.
24 Just give me one second here, I have to reorganize --

25 MR. BATTLES: Excuse me, Mr. Celli. It appears

1 now that Ms. MacDonald's witness is on the line.

2 HEARING OFFICER CELLI: Tom King, are you on the
3 phone? Tom King? Tom King, can you -- are you on the phone?

4 MR. KING: Yes, I can hear you fine. Can you hear
5 me?

6 HEARING OFFICER CELLI: I can hear you great.
7 Thank you for calling in. I need you to --

8 MR. KING: I'm sorry it took so long.

9 HEARING OFFICER CELLI: No problem. I need you to
10 stand and raise your right hand, sir.

11 MR. KING: Okay. I'm doing that.

12 (Laughter.)

13 HEARING OFFICER CELLI: Okay.

14 Whereupon,

15 THOMAS KING

16 was called as witness herein, and after being duly sworn,
17 was examined and testified as follows.

18 HEARING OFFICER CELLI: Thank you. The witness is
19 sworn. Please be seated. Thank you for calling in.

20 MR. KING: Thank you.

21 HEARING OFFICER CELLI: Now, because I have Thomas
22 King on the line and I have no other witnesses on the phone,
23 I'm going to mute everybody except Thomas King, unless
24 somebody tells me you have another witness on the phone.
25 Hearing none - so, ladies and gentlemen who are on the

1 telephone, I'm going to mute you, which means we won't be
2 able to hear you talk because we just want to hear one
3 person at a time and that's going to be Thomas King. So,
4 give me a moment to mute all, then I have to unmute us.
5 That's us, we are back on the line. I have to unmute --
6 Thomas King is unmuted, and I think that is everyone.

7 So the way I thought we would proceed today -- I'm
8 informed that the applicant and staff are not in agreement
9 regarding cultural resources, and, as such, the way I think
10 we would need to proceed, then, would be to have staff
11 explain their view of the issues as they relate to the Old
12 Spanish Trail.

13 MS. WILLIS: Mr. Celli?

14 HEARING OFFICER CELLI: Yes?

15 MS. WILLIS: At this point in time, we do not have
16 a staff witness for Old Spanish Trail. Mr. Gates -- Dr.
17 Gates sponsored the ethnographic portion of the testimony
18 and any of the overlapping areas. The staff that prepared
19 the sections on Old Spanish Trail and archeological
20 landscapes or anything other than ethnographic resources
21 agreed with the analysis and the conclusions presented in
22 the Final Staff Assessment; however, they did not agree with
23 the Conditions of Certification numbers 9, 10, and 11, and,
24 therefore, chose not to sponsor the testimony. They were
25 not listed on this testimony in the FSA, nor were

1 declarations included, nor did we include them on the list
2 -- our witness list.

3 HEARING OFFICER CELLI: So who is going to sponsor
4 that testimony?

5 MS. WILLIS: We do not have a sponsor for that
6 testimony.

7 HEARING OFFICER CELLI: So staff has no testimony
8 for cultural?

9 MS. WILLIS: We have Dr. Gates for all of the
10 ethnographic portions of the testimony and any portions that
11 overlap with the Old Spanish Trail and archeological
12 landscape issues.

13 HEARING OFFICER CELLI: That isn't clear to me.
14 I'm sorry. I may be a little slow this morning, but can you
15 explain to me, then, how we -- how this -- whose testimony
16 are we using for the Old Spanish Trail for staff?

17 MS. WILLIS: Staff has what we would term,
18 apparently, staff comment on Old Spanish Trail. It is
19 written up in the FSA. It is an analysis that was
20 presented. As I said, the staff agreed with the conclusions
21 and the analysis, but not the conditions of certification,
22 and, therefore, they did not choose to sponsor.

23 HEARING OFFICER CELLI: Okay. So, we have some
24 disagreement, at least, between staff and applicant with
25 regard to the conditions.

1 MS. WILLIS: Correct.

2 HEARING OFFICER CELLI: Staff is offering comment.

3 MS. WILLIS: And testimony from Dr. Gates.

4 HEARING OFFICER CELLI: And Dr. Gates' testimony.

5 Okay. Mr. Harris, let's hear from you, sir.

6 MR. HARRIS: Thank you for the opportunity.

7 Obviously, this is a big concern to the applicant. We have,
8 basically, a document with no witness. The fundamental
9 tenets of due process would say that we ought to know who
10 the witness is. That is not clear from the documents. More
11 importantly, due process requires us to be able to cross-
12 examine a witness for that evidence to be heard. We are not
13 going to be able to cross-examine the witness.

14 We're -- our major concerns with this section are
15 Conditions CUL-9, 10, and 11, and you just heard Ms. Willis,
16 I think, I don't want to put words in her mouth -- Those
17 conditions all relate to unsponsored testimony. So the crux
18 and the heart of our concerns are all related to witness --
19 or, testimony for which I don't have an identified witness
20 or anybody I can cross-examine.

21 Our inclination was to ask that those portions of
22 the FSA not be admitted into the record, but, if it will
23 help, Ms. Willis then suggested that they be accepted as
24 staff comment. I'd like a little clarity on what "staff
25 comment" means. Does that mean -- well, I'm not going to

1 try to guess what that means, but maybe we have a compromise
2 there, so if I could ask staff to explain what they mean by
3 the term "staff comment," that would be helpful.

4 HEARING OFFICER CELLI: You know, before we do, I
5 will just tell you what our inclination would be and I want
6 to just make sure and -- give me a minute. (Off mic.) Okay.

7 So, we are willing to allow that testimony in as comment.
8 I'm going to continue to call it Exhibit whatever it is,
9 300, and it's the cultural section, and any other evidence
10 that they may want to put in.

11 As I told Mr. Ellison last night, just for our
12 organizational purposes, I am allow -- I am receiving
13 evidence that may have no probative value whatsoever, but we
14 are doing it because we've referred to it in the record. We
15 have been talking about certain exhibits by number and
16 that's the way they are identified, and so, just to keep the
17 record clear, we would receive certain evidence, but in no
18 way is that some sort of an endorsement or a finding of
19 validity or probative value of any of that evidence. I hope
20 that makes that clear. I hope that's helpful to you.

21 MR. HARRIS: We understand, yes, thank you. I
22 would like some clarification, though, in this question. I
23 understand the ruling to be that the staff's testimony will
24 be treated as if it was public comment.

25 HEARING OFFICER CELLI: That's right.

1 MR. HARRIS: And I would like to have the parties
2 recognize that and agree, on the record, that that will be
3 the treatment of that evidence.

4 HEARING OFFICER CELLI: Staff?

5 MS. WILLIS: Well, only the portions that we do
6 not have witnesses for, but Dr. Gates did sponsor a rather
7 large portion of the cultural resources section.

8 HEARING OFFICER CELLI: But that's separated --

9 MS. WILLIS: And there are some portions that do
10 overlap, so that would be up to Dr. Gates to clarify those
11 -- that delineation. Obviously, it is up to the Committee
12 to give the weight of what we're putting in according to the
13 testimony that's provided today.

14 HEARING OFFICER CELLI: This is unprecedented in
15 my experience.

16 MS. WILLIS: And mine as well.

17 HEARING OFFICER CELLI: Okay. So, because then I
18 was hoping someone would say, "Oh, we've done this many
19 times and --" Okay.

20 MS. WILLIS: No, we haven't.

21 MR. HARRIS: So -- I'm sorry -- that didn't help
22 clarify, actually.

23 HEARING OFFICER CELLI: Here's -- I need one point
24 of clarification, because, typically, staff writes a
25 cultural resources section. I have received it; I've read

1 it. And then attached to that was Mr. Gates' appendix,
2 which was the ethnographic study, which was separated by
3 virtue of the fact that it is an appendix, not part of the
4 cultural resources section, right? So it's physically two
5 separate documents if we want to. Am I right about that?

6 MS. WILLIS: His -- Dr. -- actually, on the FSA --
7 I'm not sure if I'm understand -- following you. On the
8 FSA, Dr. Gates is the only author listed with a footnote
9 that he is sponsoring -- "his contribution to this cultural
10 resources section only pertains to the ethnographic portions
11 of this section, and therefore his testimony is limited to
12 the ethnographic resource subject matters." We thought that
13 was a way to make it clear, the portions that he was
14 sponsoring, at least at the onset.

15 HEARING OFFICER CELLI: Okay. So, all right, my
16 idea, then, is not going to fly, because I was going to try
17 to separate the two documents, but I guess I can't.

18 MR. HARRIS: Mr. Celli? That's actually what we
19 were going to request. It doesn't have to be today, but my
20 understanding is that those portions of the testimony that
21 are, and I'm going to use the term "non-ethnographic"
22 landscape related. How's that for coining a new word?

23 HEARING OFFICER CELLI: Right. That's good.

24 MR. HARRIS: Those portions of the testimony that
25 are non-ethnographic landscape related would be treated as

1 public comment. Also, those portions of the conditions that
2 relate to non-ethnographic landscape would be treated
3 similarly as public comment. My request would be that,
4 sometime between now and whenever's reasonable, because we
5 are all tired and we still have hearings, that staff prepare
6 essentially an index that says, you know, that starting on
7 page one, this is Mr. Gates' testimony, that page two,
8 second paragraph, this would be -- to provide us, actually
9 all of us, with a roadmap of how --

10 HEARING OFFICER CELLI: That's a great idea.
11 That's a great idea, Mr. Harris. Ms. Willis, would it be
12 possible to -- let's say you go into the FSA, the cultural
13 section, and perhaps mark in red ink those sections that are
14 comment so we can separate from the black ink Dr. Gates'
15 testimony. That's -- and then we need that docketed and
16 served on all the parties as soon as possible. By when do
17 you think we can get that done?

18 MS. WILLIS: Dr. Gates, I believe that can be
19 done.

20 DR. GATES: That can be done. That can be done by
21 Monday.

22 MS. WILLIS: By Monday.

23 HEARING OFFICER CELLI: We're all in hearing on
24 Monday, but it would be very good at the earliest
25 convenience to get this out so all of the parties have the

1 same document.

2 MS. WILLIS: And Dr. Gates may be participating in
3 portions of the alternative section testimony, so it may be
4 later on Monday, depending on his participation.

5 HEARING OFFICER CELLI: Okay, so does that help,
6 Mr. Harris?

7 MR. HARRIS: Yes, if we could mark that document
8 as the next in order, I think that will be very helpful. It
9 will literally give us a roadmap so we don't have to guess.
10 I would very much appreciate it and I wasn't going to ask
11 for it on Monday. I think if you want to work this weekend,
12 that's fine. Any time in the next week or so would be
13 helpful, I think, to us, but I understand the concerns we
14 all have, including travel.

15 MS. WILLIS: And Mr. Celli, while we are talking
16 about exhibits, we also wanted to enter into the record the
17 ethnographic report that Dr. Gates prepared that was filed
18 and served on all parties and docketed on 8/16/12. I also
19 have the TM number, if you need that.

20 HEARING OFFICER CELLI: Isn't that part of the
21 Exhibit 300 already?

22 MS. WILLIS: I thought it was, but it's not. It
23 was actually separate. It's referenced; it's discussed. It
24 is also discussed in Ms. Sebastian's testimony at length.
25 So I thought it would be probably critical to be part of

1 that record.

2 HEARING OFFICER CELLI: So, you want to -- so,
3 what I'm assigning would be Exhibit 331 would be the red ink
4 and black ink copy that distinguishes the comment of
5 cultural separate from the testimony of cultural. That's
6 going to be Exhibit 331. I'm just going to call that the
7 Red Ink Cul. And then, you want to put in 332, which is
8 Thomas --

9 MS. WILLIS: The title is, "Hidden Hills Solar
10 Electric Generating Systems California Energy Commission
11 Ethnographic Report."

12 HEARING OFFICER CELLI: Authored by?

13 MS. WILLIS: Dr. Gates. Thomas Gates.

14 HEARING OFFICER CELLI: Now, I've read that
15 already. That's the thing we received earlier this year,
16 right?

17 MS. WILLIS: All parties have received -- it was
18 filed and served on all parties.

19 HEARING OFFICER CELLI: Okay. All right, so
20 that's -- we'll mark those for identification and we'll take
21 in evidence later.

22 MR. HARRIS: Point of clarification on that.
23 There are actually two reports. There was a confidential
24 version and a redacted version.

25 HEARING OFFICER CELLI: Right. This would be the

1 redacted version.

2 MS. WILLIS: The redacted version.

3 MR. HARRIS: I was assuming that, but okay.

4 HEARING OFFICER CELLI: Okay. So, yes? (Off mic.)

5 Where is he? Dr. Roberts? It's perfectly okay. Thanks.

6 MR. HARRIS: So, I wanted to ask on that issue if
7 we could have until Monday to look at that document. I
8 don't think we're going to object, but it was published last
9 spring and I want to take a quick look at it. I am ninety-
10 nine percent sure we are not going to have a problem, so can
11 we put that on the housekeeping list for Monday admission or
12 not?

13 PRESIDING MEMBER DOUGLAS: Mr. Harris, I think the
14 staff table can't hear you.

15 MR. WILLIS: Yeah, I'm having a really hard -- I
16 think maybe it's just blocking, but we haven't been able to
17 hear Mr. Harris quite a bit.

18 HEARING OFFICER CELLI: Tony, are the house
19 monitors on? Go ahead, Mr. Harris.

20 MR. HARRIS: That's too bad. I've been brilliant
21 all morning.

22 (Laughter.)

23 As to this last document, we've confirmed that
24 it's the redacted version. I was saying, I don't think we
25 will have any problem at all with that submission, but can

1 we -- let's mark it, and then on Monday, move it into
2 evidence after we've had a chance to look at it. I think
3 we're going to find no objection, but I don't want to be
4 asked about whether we've moved it in this morning without
5 having seen it. Is that reasonable?

6 MS. WILLIS: That's reasonable to us. It was
7 relied on heavily by your witness, though, and was
8 referenced in her testimony.

9 MR. HARRIS: No, I think, like I said, I'm using a
10 memory that's from last spring and, if my memory is correct,
11 I think we actually wanted it in the record, but I want to
12 reserve the right to take a quick look at it before we are
13 asked to object or not is all.

14 HEARING OFFICER CELLI: So, that is the way we're
15 going to treat this. Now, I did want to hear Mr. Harris,
16 you said CUL-9, CUL-10, and CUL-11 are the only conditions
17 that are in issue between staff and applicant?

18 MR. HARRIS: Those are the conditions -- thank you
19 for the clarification. Those are the conditions that we
20 feel require some hearing time. In our pre-file testimony,
21 we've made minor language changes to, I think, 1 -- most of
22 1 through 8, but I would characterize those and I'm going to
23 look at them as generally not substantive from our
24 perspective, but certainly not things that require hearing
25 time. They are not factual disputes; it's "how do we live

1 with this in compliance?" more than anything else.

2 We have proposed revisions to those conditions and
3 also proposed condition to CUL-10 that has, for example, an
4 information kiosk, which we don't object to. So, to get an
5 idea by looking at our pre-file testimony how we feel about
6 10. So, even though 9, 10, and 11 are in dispute, we're not
7 asking you to strike 10 in its entirety. We think the kiosk
8 is a good idea, for example, and there are other things in
9 10 that are good. Again, all reflected in red-line strike-
10 out language.

11 HEARING OFFICER CELLI: Okay.

12 MS. WILLIS: Mr. Celli, to the extent that Dr.
13 Gates can address CUL-9 and 11, he will, and then CUL-10
14 definitely, and I think, that staff just has an objection in
15 general to moving substantive portions of the conditions
16 into the verification. That's just been one of the
17 applicant's comments on many conditions.

18 HEARING OFFICER CELLI: Fair enough. So, is there
19 any possibility that staff and applicant can kind of get
20 together and make -- get the Committee conditions that have
21 at least modified language that brings us current?

22 MS. Willis: We can.

23 HEARING OFFICER CELLI: Okay, because we are sort
24 of in the dark here. I don't understand really what the
25 issues are and it sounds like you have some -- may have made

1 some movement, but --

2 MS. WILLIS: Probably for the conditions that are
3 other than 9, 10, and 11, definitely. And I believe that
4 probably more will come out after the testimony today for
5 those remaining three.

6 HEARING OFFICER CELLI: So, we were going to do
7 the Old Spanish Trail Association first, which we are going
8 to do this morning, but since staff doesn't really seem to
9 have testimony on it other than comment, I guess we turn to
10 applicant to set the context for today's proceedings, and
11 maybe if you can have your experts sort of tell us what the
12 issues are in their view, with regard to the Old Spanish
13 Trail, and then I would turn it over to the Old Spanish
14 Trail Association.

15 MS. BELENKY: Excuse me, Commissioner, Mr. Celli.

16 I --

17 HEARING OFFICER CELLI: Ms. Belenky, we --

18 MS. BELENKY: Yes. I'm a little bit confused as
19 to the procedural --

20 HEARING OFFICER CELLI: We can't hear you.

21 MS. BELENKY: Oh. I'm a little confused as to
22 procedurally what was just decided and, apparently, agreed,
23 without the other parties being asked, as to changing part
24 of the FSA, which is a public document, and now making it
25 comment rather than testimony. And it is unclear how the

1 public and the other intervenors' parties are -- whether we
2 are allowed to rely on and/or comment on any of the sections
3 of staff's FSA that is now being considered comment. And it
4 feels like this is very confusing. I never -- I also have
5 never seen this happen before, and I want to make sure that,
6 to the extent that other parties and the public are
7 interfacing with that FSA, you haven't just pulled the rug
8 out from under that dialogue that was in process with the
9 public and the other parties.

10 MR. PRITCHETT: Mr. Celli?

11 HEARING OFFICER CELLI: One minute. The first
12 thing I am going to ask is, Ms. Belenky, your mic is at that
13 angle. Keep it up like that because it's not coming through
14 clearly.

15 I understand your question. I completely
16 understand because we are not really sure what this means.
17 We understand that the parties relied on this information up
18 until now. Staff, apparently, has some reason for not
19 offering his testimony. Apparently, somebody doesn't want
20 to come forward and sponsor it.

21 So, for now, as an accommodation, just to get --
22 just to keep these processes going, we are going to allow
23 them to put it in as comment. I have a feeling that, since
24 all of the experts are going to be talking about this, that
25 it's sort of going to come in the back door through their

1 testimony. One moment. (Off mic.) Yes. So, I don't think
2 you are confused at all. I think you have a clear
3 understanding of exactly what's going on and it's just a
4 confusing situation.

5 MR. PRICHETT: Mr. Celli?

6 HEARING OFFICER CELLI: Who is speaking?

7 MR. PRICHETT: Jack Prichett. We haven't had a
8 chance to weigh in yet on this. I want to put it on the
9 record that the Old Spanish Trail -- from the moment we saw
10 the FSA with the little footnote, Thomas Gates has
11 attempted, working through the Public Adviser, to determine
12 how this issue is going to be resolved. Blake Roberts can
13 confirm that. I have emails that confirm that. And we got
14 no answer whatsoever.

15 So I object, at this point, to suddenly having a
16 decision made on the spot. We made a good-faith attempt,
17 using every means at our disposal, to try to get this, so I
18 feel like Lisa Belenky -- that we -- we're not happy with
19 this situation that arises at this point. So, you'll decide
20 how to proceed, but we made a good-faith effort and we don't
21 appreciate the staff sort of side-stepping the issue.

22 HEARING OFFICER CELLI: Your objection is noted.
23 There is not a lot I can do about this. We can't force them
24 to put the testimony in. They are a party just like you. I
25 can't tell you what to put into the record.

1 MR. PRICHETT: Yes, I understand. I certainly
2 understand that and I just want to be sure I understand.
3 So, the testimony that we read or the Final Staff Analysis
4 today is going to be treated simply as comment.

5 HEARING OFFICER CELLI: I think so, but, okay --
6 all of your experts are going to be talking about things.
7 Everything that you all are saying is under oath and every
8 word of it is being taken down by a court reporter, which is
9 why it is so very important that you speak into your
10 microphones. All of that is testimony, live testimony.
11 That's evidence. So, I think, as we get into this today,
12 that the record will sort of make itself plain, and,
13 hopefully, it will overcome any deficiencies that arise from
14 this last-minute maneuver.

15 So, with that, let's start applicant -- where are
16 applicant's witnesses here? Folks down here, if you could
17 get us into this by telling us what the applicant's position
18 is with regard to the Old Spanish Trail, please.
19 Mr. Helton.

20 MR. HELTON: Sure. Good morning. First of all,
21 if you don't mind, Mr. Celli, I'd like to introduce myself.

22 HEARING OFFICER CELLI: We don't want to hear your
23 résumé.

24 MR. HELTON: Understood.

25 HEARING OFFICER CELLI: Just go ahead.

1 MR. HELTON: So, my name is Clint Helton. I'm a
2 cultural resources specialist with CH2MHill. I've been
3 conducting cultural resources research for the past
4 seventeen years. I have a master's degree in anthropology
5 from --

6 HEARING OFFICER CELLI: This is your résumé. This
7 is exactly what I want to not hear from everybody, because
8 that's already in the record.

9 MR. HELTON: Understood, sir. Okay.

10 HEARING OFFICER CELLI: So, what is -- if you
11 could say, what is your opinion with regard to the Old
12 Spanish Trail and the impacts thereto, and what is the basis
13 of your opinion?

14 MR. HELTON: Thank you. Sure. Our opinion is
15 that the Old Spanish Trail/Mormon Road will not be impacted
16 by the Hidden Hills Project. We have conducted thorough
17 research of the site, including a pedestrian inventory of
18 the project site, in a 200-foot buffer, to locate traces and
19 tracks of the Old Spanish Trail.

20 We've conducted remote sensing research to examine
21 possible traces and tracks of the Old Spanish Trail. Our
22 findings are that the Old Spanish Trail -- that a segment
23 does exist on the site, but has been heavily impacted and
24 has lost integrity, and will, therefore, not be impacted as
25 a historical resource under CEQA by the project.

1 Mr. Spaulding -- Dr. Spaulding and Ms. Lawson have
2 conducted extensive research, including in the record, Data
3 Response 125, which is an entirely separate roads and trails
4 study intended to verify and document the resources that do
5 exist on the site. And that, again, is Data Response 125,
6 but I would ask Dr. Spaulding and Ms. Lawson to comment
7 further on the nature of the studies that we've performed
8 and the results that we've reached.

9 HEARING OFFICER CELLI: Thank you. If you could
10 give us a summary of that, Dr. Spaulding or Ms. Lawson?

11 MR. HELTON: Thank you, Mr. Celli.

12 DR. SPAULDING: Mr. Celli, I think Ms. Lawson was
13 going to start and then --

14 HEARING OFFICER CELLI: Okay. Ms. Lawson, put
15 that microphone right in front of you and let's hear what
16 you have to say.

17 MS. LAWSON: Certainly. The -- let me talk a
18 little bit first about the segment that we did locate that
19 is, in fact, on the site. We labeled it as twenty-four. It
20 is a wagon road and it is associated with the Old Spanish
21 Trail/Mormon Road, and it does run through the project. The
22 road was identified through a combination of historic map
23 review, a review of historic journals, remote sensing, and
24 actual ground proofing. We went out and -- this road was
25 included in our original pedestrian survey, and then we went

1 back out and revisited this road.

2 The road is very well graded. It is used into the
3 modern era. There is nothing of a historic nature of this
4 road that remains, and it is so impacted that the integrity
5 of this road is such that it is not eligible for the
6 California Register, nor is it eligible for the National
7 Register of Historic Places as a contributing element to
8 overall Old Spanish Trail/Mormon Road.

9 The other tracks and trails that we found on the
10 project I could discuss if the Commission wishes. We
11 determined that these are not associated with the Old
12 Spanish Trail, again, through the long list of studies that
13 I just described. (Off mic.)

14 DR. SPAULDING: Yes. Mr. Celli, in addition to
15 the investigations onsite that Ms. Lawson just --

16 HEARING OFFICER CELLI: Speak right into your mic,
17 please. We didn't hear.

18 DR. SPAULDING: Pardon me.

19 HEARING OFFICER CELLI: Yes, you have to get that
20 close.

21 DR. SPAULDING: In addition to the onsite
22 resources that Ms. Lawson just described, we also, in the
23 Historic Roads and Trails report, DR125, made a concerted
24 effort to identify all road, tracks, and trails within one
25 mile of the project area, and identified two additional

1 resources that are also components of the Old Spanish
2 Trail/Mormon Road complex. And those lie beyond the site
3 boundaries. One, designated Track 5, lies to the north --
4 approximately 0.6 miles to the north of the northernmost
5 project boundary. The second, which we call Track 4 but is
6 also historically known in the literature as the
7 Fremont/Carson, if you will, track of the Old Spanish Trail,
8 lies south of the project area, generally in Charleston
9 View. The closest it gets to it is 0.3 miles. Those are
10 the sum total of the resources identified beyond the project
11 boundary, but within one mile.

12 HEARING OFFICER CELLI: And that is 0.3 miles from
13 the site boundary or from Charleston View?

14 DR. SPAULDING: 0.3 miles from the closest - that
15 would be the southeastern - corner of the site boundary.
16 So, south of the Old Spanish Trail Highway, or Tecopa Road,
17 and is more or less lost in the high vegetation of
18 Charleston View.

19 HEARING OFFICER CELLI: Thank you.

20 DR. SPAULDING: Certainly.

21 HEARING OFFICER CELLI: I'm going to now turn to
22 the Old -- oh, I'm sorry. Commissioner Douglas?

23 PRESIDING MEMBER DOUGLAS: I just have one
24 question for Ms. Lawson. You said that the segment of the
25 Old Spanish Trail that runs through the site is so degraded

1 that it would not be eligible for the Historic Register and
2 something else. Can you explain that?

3 MS. LAWSON: Yes.

4 PRESIDING MEMBER DOUGLAS: And remind me what the
5 second --

6 MS. LAWSON: National Register of Historic Places.

7 PRESIDING MEMBER DOUGLAS: And the National
8 Register of Historic Places. So, on what basis do you form
9 that opinion and what did you look at to form that opinion?

10 MS. LAWSON: We looked at the road on site. The
11 road extends offsite, and -- but we are looking -- the
12 evaluation for the California Register and for the National
13 Register was limited to the segment that is located within
14 the project footprint, the ground that will actually be
15 disturbed. And the segment of S24, the wagon road that is
16 associated with the Old Spanish Trail/Mormon Road that is on
17 the project, has been graded to a modern, twenty-foot-wide
18 dirt road, and it has been graded a couple of inches into
19 the ground and it is so impacted that there is nothing left
20 of the historic nature of the road.

21 Since the integrity is so poor on this segment, we
22 have determined that it is not eligible for listing due to
23 lack of integrity.

24 PRESIDING MEMBER DOUGLAS: Thank you.

25 HEARING OFFICER CELLI: Mr. Prichett, we would

1 like to hear what the Old Spanish Trail Association's
2 position is with regard to the Old Spanish Trail and the
3 applicant's positions.

4 MR. PRICHETT: Certainly. Our position is that
5 the Old Spanish Trail, as defined under law, does cross the
6 project site and, furthermore, will be severely impacted.
7 And when I say Old Spanish Trail, I should distinguish here
8 -- in the discussion here so far, with the applicant and the
9 staff report, we have been using the abbreviation Old
10 Spanish Trail slash or hyphen MR for Mormon Road.

11 So, both the Old Spanish National Historic Trail,
12 which is the 1829 to 1848 mule trace, and portions of the
13 Mormon Road both would be impacted severely by the project.

14 That is our position and I want, in my testimony, to
15 elaborate on how we establish that.

16 HEARING OFFICER CELLI: Please do. This is the
17 time to do that.

18 MR. PRICHETT: All right.

19 HEARING OFFICER CELLI: Let's hear what your facts
20 are.

21 MR. PRICHETT: Well, good morning to everybody,
22 including the local audience. And one thing I realized
23 yesterday: the Old Spanish Trail Association, OSTA, is not a
24 name that is quite as well known as, let's say, Google or
25 Wonder Bread, so let me give you a little bit of information

1 about what the Old Spanish Trail Association is.

2 First of all, it's a national organization that
3 was founded in 1994. It is officially associated with the
4 National Park Service and the Bureau of Land Management.
5 And this map and brochure is issued by the National Park
6 Service and the BLM. We have put copies back on the table
7 there. So, we are an arm, if you will.

8 HEARING OFFICER CELLI: We'd like to mark that for
9 identification and put that into evidence. (Off mic.)
10 Thanks. We're going to get a copy of that, so go ahead.

11 MR. PRICHETT: Okay. Yes, but --

12 MR. HARRIS: I'm sorry. What was the document?
13 Is it a Park Service document?

14 HEARING OFFICER CELLI: It's a Park Service
15 document.

16 MR. PRICHETT: It's a brochure issued by the
17 National Park Service and the Bureau of Land Management,
18 describing the Old Spanish National Historic Trail.

19 The Old Spanish Trail Association is also a
20 501(c)(3), not-for-profit corporation. So, we are more than
21 twenty years old and well-established. Our organization
22 serves as a citizen volunteer agency to support the Bureau
23 of Land Management and the National Parks Service. This
24 trail is more than 2,700 miles long and, obviously, the Park
25 Service and the BLM can't supervise active stewards for

1 anything that long. So, at places along the trail, they have
2 chapters of our organization that act as trail stewards,
3 local representatives, and so forth.

4 I want to point out also that OSTA has a very
5 strong academic and research orientation. We have three
6 PhD's in history on our national board: Dr. Elizabeth
7 Warren, who is here to my left; our president, Reba
8 Grandrud; and Jim Jefferson, who is a student of the Ute
9 Indian. So, we have a very strong professional and academic
10 orientation. Members include historians, archeologists, and
11 local government officials along the route of the trail.

12 I represent -- I'm the president of the Tecopa
13 Chapter, which covers this area. Members spend thousands of
14 hours a year on trail research and survey. In 2012 - we all
15 keep logs - I spent more than one thousand hours on trail
16 research, preparation, report writing, and so forth. So,
17 many of us are experts with academic training.

18 HEARING OFFICER CELLI: That's great. Let's get
19 the benefit of that.

20 MR. PRICHETT: Okay.

21 HEARING OFFICER CELLI: With regard to the local
22 roads, let's hear about what the facts at hand, with regard
23 to the Old Spanish Trail, are.

24 MR. PRICHETT: All right. I'm going to establish
25 two sets -- I want to talk about three issues that remain to

1 be resolved regarding the Old Spanish Trail. First is the
2 evidence itself, both archeological and archival.

3 Secondly, I want to talk about the fact that the
4 Old Spanish National Historic Trail does indeed fall under
5 the protection of the National Trail System Act of 1968, and
6 is defined under the terms of the Federal Trail Standards
7 issued by the federal government in 2011. And I will
8 present that evidence.

9 Third, that should the project proceed, of course,
10 the trail and traces would be entirely destroyed within the
11 project area. So, should the project -- you decide to
12 authorize the project, you should proceed -- the mitigation
13 measures spelled out in Cultural 9 and Cultural 10 need to
14 be much stronger than as currently described in the Final
15 Staff Analysis.

16 Now, if you'd like, I can go through those three
17 points one by one.

18 HEARING OFFICER CELLI: Yes, we would like that.
19 And before you do, I just want to ask you, did you submit -
20 because I don't remember off the top - proposed language for
21 CUL-9 and CUL-10?

22 MR. PRICHETT: Yes, we did, and I'm -- one part of
23 my testimony will deal with the proposed changes to Cultural
24 9. My colleague, Richard Bent, here, is prepared to talk
25 about our proposals for Cultural 10.

1 HEARING OFFICER CELLI: Very good. So, I just
2 wanted to know for my own knowledge. Go ahead.

3 MR. PRICHETT: All right. So, let me take the
4 evidence: first, the archeological, and secondly, archival.

5 Our local chapter has, since 2007, been working to trace --
6 to record and identify portions of the mule trace, the
7 actual 1829 to 1848 Old Spanish Trail as defined under that
8 Act, the National Trail System Act. And it's important to
9 understand how we did this. So, if I could get Exhibit 620
10 on the screen?

11 MR. BATTLES: Mr. Celli, would you pass me
12 presenter rights, please?

13 HEARING OFFICER CELLI: I'm doing that right now.
14 Okay, it's passing.

15 MR. PRICHETT: I'll talk a little bit while we're
16 getting the exhibit up. We have been tracing this Old
17 Spanish Trail eastward from a known point toward Stump
18 Springs, which is just across the Nevada border. And that
19 portion -- that section that runs from Stump Springs to
20 Emigrant Pass, a portion of that is what falls right across
21 the Old Spanish -- uh, across the project site.

22 I realize I missed one point here. Well, no,
23 that's okay. So, the way we were doing it before the
24 project even came to our attention was we started at a known
25 point. This is the summit of Emigrant Pass. Emigrant Pass

1 is about fifteen miles roughly, ten to fifteen miles, east
2 of the project site. All scholars agree that what you're
3 looking at in the foreground, below the person, is the
4 original mule trace where it crossed Emigrant Pass. And I
5 can say all the resources that are listed in my testimony,
6 Hafen and Hafen, Madsen and Crampton, Liz Warren's own book,
7 Hal Steiner, and others. So we said everyone agrees that
8 this is the mule trace, so we began recording it moving
9 eastward toward the Nevada border.

10 Next slide, or, let's see, excuse me, not next
11 one, 620.

12 MR. BATTLES: That was 620, sir.

13 MR. PRICHETT: Oh, excuse me, 618 -- oh, 619.

14 HEARING OFFICER CELLI: We are looking at Exhibit
15 619?

16 MR. PRICHETT: Yeah. You are looking at Exhibit
17 619. On the left, the green patch. Yes, thank you. And
18 the yellow pin. That's Emigrant Pass; that's where we
19 started. We used GPS recorders and we took GPS waypoints at
20 a minimum of every twenty-five meters. Sometimes, when the
21 curve -- when the trace went around a big boulder or through
22 a wash, we would do it as frequently as five meters. So,
23 you can see -- and the trace goes from the pin, the yellow
24 pin on the left of the screen there, to the yellow pin on
25 the far right there. Yeah, at the end of the red. And

1 between those, it's a distance of about eleven kilometers,
2 more than seven miles, which we have faithfully recorded
3 without a break.

4 Remember, we started at a known point that all
5 scholars agree is the trace and we have followed it and
6 recorded it. We have photographic evidence; we've got the
7 GPS tracks. We followed it; we conclude that what we find
8 at the other end, then, is also a part of a mule trace that
9 dates to 1829 to 1849. The white portion you see up there
10 is the dry lakebed in Pahrump Valley, and the project site
11 is about where the little cursor is now. It's in the
12 Pahrump Valley there.

13 So, a couple of points I want you to know. One is
14 that it's clear that the trace was heading from Stump
15 Springs on the right, and it was heading toward Resting
16 Springs, which would be to the west or to the left of
17 Emigrant Pass. We know, historically, that was the route.
18 And you can see, the other thing is that it's very much of a
19 bee-line - very, very straight.

20 DR. SPAULDING: All right --

21 HEARING OFFICER CELLI: Just one point, at this
22 time, the Old Spanish Trail Association has the floor. You
23 will have an opportunity, Dr. Spaulding, to rebut later, but
24 we need to hear from the Old Spanish Trail Association now.
25 So we're just going to let them go. Go ahead, Mr.

1 Prichett.

2 MR. PRICHETT: All right. Exhibit 616. All right,
3 this is based on our work and it's more of a schematic than
4 an actual map. I'm using it for illustrative purposes, but
5 I want everyone in the audience to be able to orient
6 themselves to what we're talking about.

7 So, Mike, if you can follow me. The -- I think
8 everyone will recognize the project site more or less in the
9 center outlined in red. And the purple lines to the left,
10 the deep purple lines. Solid. The lower left corner, Mike.
11 Yeah.

12 That's part of what I showed you in the earlier
13 two slides, our actual recording of the trace. We had got
14 just to Point A there when the project applied for the
15 application in August of 2011. We established, through
16 archival evidence, that not only did the trail -- was the --
17 did the trail users stop at Stump Springs. Can you point to
18 Stump Springs there?

19 But they also used Hidden Spring to the north and
20 another water source farther yet to the north called "*Le*
21 *Rocher qui pleu.*" That's poor French. Choteau, who named
22 it, was a rather semiliterate French-speaking trapper. And
23 perhaps even Mound Spring farther up to the north. You
24 notice that those springs line up in a northwest-southeast
25 alignment. They go along a fault at the foot of the Spring

1 Mountains. That's why they arise there. So, and they are
2 just about two to three miles inside the Nevada Stateline
3 and near the project site. So, let's see where --

4 All right, so that's the situation on the ground
5 now. Let me turn to the archival evidence. And we have
6 cited two archival sources that record use of the springs to
7 the north and the west of Stump Springs.

8 Exhibit 614, please. Yeah. This is based on --
9 the National Park Service provided this base map because I
10 wanted to have the actual, official, congressionally-
11 designated route on my base map. It's a little bit hard to
12 see under these light conditions, but you can see -- over on
13 the right side, Mike. It says Old Spanish -- there's a
14 call-out, yes, Old Spanish National Historic Trail. And
15 it's that maroonish, reddish line that goes across there.
16 And that is the official, congressionally-designated route
17 as on the official map. I've -- then, using data that I
18 obtained from the applicant, we had the National Park
19 Service put in the project site there as you can see.

20 Now, let me point out a couple of things that are
21 really critical in the data here. The first is -- you see
22 Stump Springs that I've been talking about? Notice that the
23 official map, the congressionally-designated official map is
24 in error. It does not show the trail alignment going
25 through Stump Springs. I have pointed this out to the

1 National Park Service, and when they ever finish a
2 comprehensive management plan, they've said they will
3 correct this error. But that's one thing. The placement of
4 the official route that is cited frequently by the applicant
5 is not necessarily accurate. In this case, we know it is
6 not accurate.

7 And then, you can see -- again, the red is what we
8 actually have -- the eleven kilometers that we have
9 recorded, and you can see that up near the top end of that -
10 - Mike, if you'll move it a -- yeah, right there. That's a
11 little segment that appears to be proceeding northward.

12 Now, we know also that, in some cases, the trace
13 went straight across -- would have continued straight to
14 Stump Springs, but what caught our attention was there
15 seemed to be a northward branch of this. And, as I say, the
16 project filed its application just at the point that we were
17 going to complete this and we haven't been able to complete
18 our surveying.

19 We also found -- you see red within the yellow
20 project site there? We also did record some waypoints that
21 we think are probably part of the Track 1 that the applicant
22 has recorded. But, again, we don't know precisely what it
23 was. We haven't made an identification.

24 All right, next one. So the -- you saw that
25 north-trending line of springs and, if I could get Exhibit

1 612? Well, you're not going to be able to read this, I can
2 see. I envisioned a slightly smaller room, but I wanted to
3 be sure that we actually had the exhibit. This is a
4 quotation from Choteau, and it was written in 1848. This is
5 during the actual Mexican period, 1829 to 1848. And Choteau
6 -- it's on the next page, Mike, just to show that there --

7 MR. MONASMITH: It's still downloading.

8 MR. PRICHETT: Yeah, scroll -- or click the down
9 arrow with -- with -- anyway, Choteau told Addison Pratt,
10 who was about to embark on the trail. Choteau had just come
11 over, and he said, "If you don't find water at Stump
12 Springs, then go to the north and you'll find water at *Le*
13 *Parage*," which is his French version of *La Perade* or stop.
14 And which we -- which, yeah, the quote is over there in the
15 right. You're not able to read it, but I've put it in as an
16 exhibit. "And if you don't find water at *Le Parage*, then go
17 farther to the *Le Rocher qui pleu*," and that is the other
18 water source that I have recorded.

19 So it is very clear that, in 1848, it was known
20 that, when you come down from the Spring Mountains and you
21 arrive at Stump Springs, if there's not water, you go north
22 about four miles. And if you don't find water there, you go
23 farther north.

24 Now, if we could go back to the schematic map. I
25 believe that was Exhibit 616. Yeah, now we go back to the

1 schematic map. Now, the springs that I've just spoken about
2 you see at the upper -- more -- right there. The *Le Rocher*
3 *qui pleu*. And we just sent people up there this spring and
4 found water. It is still a running water source. Not a lot
5 of water, but there is still water there. So, if you went
6 that far and got water, and then you were going to continue
7 your voyage, your trip, to the east -- excuse me, to the
8 west, you would go right straight down towards the purple
9 that we have discovered and documented, and that would take
10 you across the northern tip of project site.

11 If you had gone to Hidden Springs - and we have a
12 second archival source for that, Bigler, who went to Hidden
13 Springs - and camped there and fed your animals, and then
14 proceeded toward our deep purple line on the left, again,
15 you would go right across the project site.

16 And I want to point out that the applicant has
17 referred to what they call in their historic roads and
18 trails as the assumption of most efficient route, which
19 states, Mr. Spaulding, that in the desert, traces and trails
20 go between water sources. You have to go between water
21 sources, and so long as there's not an object in the way, a
22 mountain or some sort of obstacle, you will choose the most
23 efficient route, which is essentially a straight line. And
24 that straight line is what I showed you in what we had
25 tracked for eleven kilometers, and you have to assume, since

1 that's a dry lakebed, if you were going from Hidden Spring
2 to connect up with the trail at Point A, you would use the
3 most efficient route, and you would go in roughly a straight
4 line that would take you right across the project site.
5 Same thing if you were going from *Le Rocher qui pleu*. So,
6 this is the reason, I believe, that the staff concluded, and
7 I quote from the staff assessment here, "It is clear that
8 the project site lies squarely among all these tracks and
9 traces." There you see it.

10 Now, remember, the Old Spanish Trail was in use
11 between 1829 and 1848. There were more than a dozen
12 different years that the Mexicans sent caravans, so they
13 didn't always follow the same route. Some years they may
14 stop at Hidden Springs, sometimes -- years, they might go
15 from Stump Springs, but that -- each year, they followed a
16 slightly different route. In addition, the Mormon Road
17 component was used from 1849 up through, roughly, the 1880s,
18 and there would have been scores and scores of wagon trails
19 that would have stopped at these springs and then proceeded
20 to the west. So when the staff says, "It is clear that the
21 project site lies squarely among all these tracks and
22 traces," that's what they are referring to.

23 Now, archeologically, so why don't -- why didn't
24 the applicant find them? A couple of points. One is that,
25 in the Nevada side, there has been a huge amount of

1 disturbance. Roland Wiley built an airport there; he had a
2 ranch, including a peach farm, and so forth, but --

3 HEARING OFFICER CELLI: Where is that airport
4 built?

5 MR. PRICHETT: Just immediately to the east to the
6 project site in the area around Hidden Springs. But then,
7 once you get into the dry lakebed, and, you remember I
8 showed you, the white source was the dry lakebed. Dry
9 lakebeds are powdery and muddy, and in rainy years like 2005
10 it floods, so, naturally, tracks and traces are going to be
11 missing. So you're working in a very difficult area where
12 you would not expect to find tracks and traces. Whereas our
13 research farther to the west was working in desert pavement,
14 and they do remain.

15 HEARING OFFICER CELLI: Okay.

16 MR. PRICHETT: I think that covers, for the most
17 part, my archival and archeological evidence. So I will turn
18 to Point 2 now. The Old Spanish National Historic Trail --

19 HEARING OFFICER CELLI: One minute, Mr. Prichett.

20 MR. PRICHETT: Yeah.

21 HEARING OFFICER CELLI: Commissioner Hochschild
22 has a question.

23 MR. PRICHETT: Sure.

24 ASSOCIATE MEMBER HOCHSCHILD: Thanks. So, um,
25 this is very helpful, by the way. Thank you for this

1 comprehensive review. I just note that it looks like
2 Congress -- the brochure you gave me points out Congress
3 designated this trail in 2002 and it runs through six
4 states. But it also says in your brochure that most of the
5 routes of the trail have been reclaimed by nature, and I'm
6 just curious if that's the case here? Are there currently
7 public transit or some sort of easement through this
8 property for public use? Is the trail at all in use on the
9 site today?

10 MR. PRICHETT: No, it is not, and I -- that's the
11 -- I'm going to address in my next point the provisions of
12 law -- of the law, and precisely the protection that it
13 offers, if you'd like.

14 ASSOCIATE MEMBER HOCHSCHILD: Okay, just -- and
15 this big picture, you know, for the trail in its entirety,
16 what portion is actually in use as a public access --

17 MR. PRICHETT: A tiny, tiny fraction. There are
18 probably, throughout the 2,700 miles of the trail route,
19 there are probably only fifteen or twenty miles that are
20 actually sign -- you know, where there are signs, the public
21 is aware you can stop your car and go to it. It is a very
22 small portion.

23 ASSOCIATE MEMBER HOCHSCHILD: All right. Okay.
24 Thank you.

25 PRESIDING MEMBER DOUGLAS: Again, the Old Spanish

1 Trail Association has the floor. Go ahead.

2 HEARING OFFICER CELLI: Continue.

3 MR. PRICHETT: Okay. So now I'm going to turn to
4 the provision of the Old Spanish National Historic Trail --

5 MR. HARRIS: Mr. Celli, I want to object to this
6 being legal opinion about eligibility. The facts are
7 already in the record. He's going to decide the law. That
8 can be briefed.

9 HEARING OFFICER CELLI: We will hear the
10 testimony. Objection noted.

11 MR. PRICHETT: Okay, I'm just going to make a
12 couple of points here. Let's see. I will sum up a comment
13 that was submitted by the National Park Service's Michael
14 Elliott, in response to our original cultural resources
15 report. And he wrote - and this is a public comment, it's
16 TN66318 on your site - "Many historic sites exhibit no
17 currently visible surface archeological manifestations.
18 These include trails, battle sites, cultural water routes,
19 shipwrecks, and others." So, for instance, on the National
20 Register of Historic Place, there are shipwreck sites.
21 There is no visible marker of that on the surface of the
22 water, but, because we know historically from records where
23 the ship was wrecked, that is eligible to be elevated to the
24 status of the National Register of Historic Places. The
25 National Historic Trails have much the same concept. And if

1 you think this trail -- is my mic still working?

2 PRESIDING MEMBER DOUGLAS: Your mic's off.

3 HEARING OFFICER CELLI: Now it is.

4 MR. PRICHETT: The Old Spanish Trail ended at the
5 plaza, the central plaza in the City of Los Angeles. It
6 went there from Mission San Gabriel. Absolutely no doubt.
7 We have lots of historical records. If you go today and
8 drive from Mission San Gabriel to downtown L.A., you will
9 find no physical trace of the trail, but it is on the
10 congressionally-designated map. Not because there are
11 physical traces, but because Congress said this is part of
12 the route and it deserves historical recognition. So, if
13 the City of El Monte wants to put up a plaque and designate
14 it, or a park, they can do that, and they should do that.
15 So again, no physical trace need be present.

16 Here's another quote from National Trail Systems
17 Act that established this system: "The route need not
18 currently exist as a discernible trail to qualify, but its
19 location must be sufficiently known to permit evaluation of
20 public recreation and historical interest potential." That
21 is precisely the case that we have here. The route may not
22 be discernible for the reasons that I described, but the
23 location is sufficiently known, and we can establish that
24 through the archival evidence. And there is certainly
25 historical interest potential, especially in a valley as

1 scenic as that one. So, again, that's again, language from
2 the Act passed by Congress that established this national
3 trail system.

4 Finally, now I want to go to the federal
5 government's trail -- Federal Trail Standards, which they
6 passed in 2011, November of 2011, and can you get Exhibit
7 623 up, page 47?

8 The Federal Trail Standards -- there are many
9 classes of federal trails. There are recreational trails
10 like the Pacific Crest Trail, there are scenic trails, and
11 there are national historic trails. There are twenty -- I
12 believe twenty-three national historic trails. And they are
13 a fairly big deal, so if the federal government said, well,
14 we've got all these trails. We better explain what they are
15 and how we define them. So they published this set of
16 Federal Trail Standards in 2011. You can't read them, but I
17 will read for you that -- you can see that there are three
18 headings there, indented. Maybe you can make it a little
19 bit bigger. One more notch. Yeah.

20 And the second one you see there says NH
21 superscript two. In other words, NHT stands for National
22 Historic Trails, and they say there are three aspects of
23 National Historic Trails. NH², Heritage Resources, and I
24 read -- if you can't read it there, I'll read it for you.
25 It says, "NH² occurs on all National Historic Trails,

1 although physical evidence and/or remnants may no longer be
2 present."

3 Again, that key argument, you don't have to be
4 able to see it. "Location may be other than the
5 congressionally-designated route." And remember, the
6 applicant has made a big point that the congressionally-
7 designated route goes south of Old Spanish Trail Highway --
8 is south of the project, but the language here in the Trail
9 Standards says, "Location may be other than the
10 congressionally-designated route."

11 And so, the situation we have is the Old Spanish
12 Trail Association has documented and fully reported what we
13 call an unrecorded -- a previously unrecorded branch of the
14 Old Spanish Trail and, by implication, the Mormon Road. A
15 previously unrecorded branch of the 1829 to 1848 trace. We
16 have good evidence that branches of it must have gone across
17 the project site.

18 The National Trail System Act enables, or it
19 allows for the addition of new branches as scientific and
20 archeological research produces new data. We have produced
21 that sort of new data. They didn't know before. When they
22 drew that line on the map in 2001, they didn't have the
23 advantage of our research. We have now documented it
24 archivally and through our own pedestrian survey. One of
25 the arguments we use is that, when you look at that earlier

1 map, you see it goes in here and it comes out there, and if
2 you apply the most efficient route, it had to go through
3 there.

4 All right. I will move on, then, from that to my
5 third point --

6 PRESIDING MEMBER DOUGLAS: Mr. Prichett, before
7 you move to your third point, I have one question. When Ms.
8 Lawson -- Ms. Lawson testified, as I understand it, that, in
9 her view, the section of the Old Spanish Trail running
10 through the proposed project site would not qualify for the
11 National or the California Register of Historic Places
12 because it was altered very significantly. It was a twenty-
13 foot-wide road, it was graded into the ground several
14 inches, and so on. I just wanted to get on the record
15 explicitly, do you agree with that assertion, or do you
16 disagree, and why?

17 MR. PRICHETT: I don't -- well, I agree it quite
18 likely has been altered. I haven't been out there to
19 inspect it, but what I'm saying is that that doesn't -- that
20 doesn't obviate, that doesn't negate the fact that the Old
21 Spanish Trail is protected under the National Trail Systems
22 Act and the Federal Trail Standards. They are separate
23 things, so one is a California designation, but I'm
24 appealing to these federal laws and regulations.

25 PRESIDING MEMBER DOUGLAS: Thank you.

1 MR. PRICHETT: Okay. Well, I know I've been long-
2 winded. I just want to talk a little bit. I -- We believe
3 that we've established the case that we've reported a
4 previously unreported branch of the Old Spanish Trail. We
5 believe that some of those branches, and probably the Mormon
6 Road as well, cross the project site. That being the case,
7 we believe it's important. That these are -- it's a very
8 unspoiled valley out there.

9 The setting is much as it was in the early
10 nineteenth century when people used that. That is going to
11 be lost if the project proceeds, and so we believe there
12 must be some sort of mitigation if nothing can be
13 commensurate with the total loss of that area and the scenic
14 values. But we believe that mitigation measures must be
15 strong and that the people of California deserve some
16 significant compensation for what is being lost here.

17 Now, in the applicant's testimony, they say --
18 they believe that Cultural 9 should be deleted entirely.
19 Cultural 9 proposes -- as it appears in the Final Staff
20 Analysis, consists of two components. One is that -- it
21 says OSTA shall conduct a study to assess, to record the
22 resources -- archeological resources, trail resources that
23 exist on the -- on the project side.

24 And secondly, that a "qualified historian shall
25 prepare a report," then, for submission to the Commission.

1 We believe that that is totally inadequate. We are willing
2 to conduct a survey, but we want -- since the only thing
3 that's going to be left of this site is the data that can be
4 recorded, we propose a really full-up scientific survey.

5 Now, the applicant has referred to remote sensing.
6 They relied on Google Earth, an off-the-shelf tool. One of
7 the tools that we propose is the use of LIDAR. And let me
8 give you a -- an example. I'm looking for my exhibit list
9 here. Well, goodness, the -- my --

10 HEARING OFFICER CELLI: I see the word "LIDAR" in
11 Exhibit 624.

12 MR. PRICHETT: Yes. I want to show you what is
13 possible to recover from places like that dry lakebed, and
14 the applicant did not mention this. And once you get it up,
15 Mike, make it a little bit bigger. Okay. One step bigger
16 if you can.

17 This is a LIDAR survey conducted on a mining site
18 up in Northern California. The project area is about the
19 size of the Hidden Hills site. On the right, you see --
20 well, it's really hard in this light, but on the right, you
21 see the natural, visible light. This is aerial photography,
22 and as you look down, you can see some trees and nondescript
23 brush. This is in the area up around Folsom, those of you
24 from Sacramento, and the low foothills of the Sierra.

25 On the left, you can see a LIDAR image, and you

1 see this was a mining area, and you can see, for instance,
2 about in the middle vertically, a sluice trench, a trench
3 the miners dug to bring water. You can see pits. You can
4 see all sorts of things that are identified that are
5 invisible to the naked eye or in aerial photography.

6 So, if we're going to recover data from this site,
7 we should use the technology that's available, and we
8 propose a full-up survey that would use LIDAR. This could
9 then be the basis for displays and information about the
10 site that would record what had been there. Things that are
11 not evident and not visible even to a ground survey.

12 So, we want a much more elaborate survey, and,
13 instead of handing it over to "a qualified historian,"
14 whoever that would be, we propose that OSTA should partner
15 with a qualified academic institution. And I have
16 approached the Anthropological Sciences Center at Cal State
17 University Sonoma, and I have a packet of materials they
18 sent me. They expressed interest. They are specialists in
19 historical, archeological projects. They have a strong
20 track record of large-scale projects. They would be willing
21 to do this.

22 So, what we propose is that we do the full-up
23 technological and pedestrian survey. And then, we cooperate
24 -- OSTA cooperate, collaborate with this research
25 institution to write a full-up scientific study, including

1 LIDAR, so we really have recorded and preserved the data
2 that may be available for that site because it is going to
3 be lost forever.

4 HEARING OFFICER CELLI: And you have that language
5 in an exhibit now?

6 MR. PRICHETT: Which language is that?

7 HEARING OFFICER CELLI: The language with regard
8 to LIDAR and the proposal with regard to --

9 MR. PRICHETT: It's in my -- it's in my written
10 testimony.

11 HEARING OFFICER CELLI: Okay. Thank you.

12 MR. PRICHETT: So, I think I've come essentially
13 to the end of my testimony. I've sought to establish
14 through factual evidence that, indeed, there is an
15 unrecorded branch of the trace. And we established that the
16 Mormon Road certainly used campsites to the north. We've
17 used the most efficient route method to establish certainly
18 those traces and tracks crossed the project site, and that
19 being the case and since this is an old -- an old Spanish
20 national historic trail, and the standards are very high for
21 Congress to designate such a route, that the loss will be
22 severe and mitigating measures should be compensatory.

23 So that's my testimony. I've testified on
24 Cultural 9. My colleague, Richard Bent, here, is a
25 specialist in information display, exhibits, and so forth,

1 and he is prepared to talk on Cultural 10.

2 PRESIDING MEMBER DOUGLAS: Mr. Pritchett --

3 HEARING OFFICER CELLI: How -- go ahead.

4 PRESIDING MEMBER DOUGLAS: A couple of questions,
5 I think, before you do that. One from me. The LIDAR
6 imagery that you showed us is impressive. Can you just
7 quickly describe how that works?

8 MR. PRICHETT: LIDAR -- you know radar?

9 PRESIDING MEMBER DOUGLAS: Yes.

10 MR. PRICHETT: Which is -- let's see, something --
11 ranging and distance rating. I forget the acronym, but
12 anyway, you ping radio waves off an object like an airplane,
13 and you see how long it takes for them to come back, and
14 that tells you how far away the airplane is. That's what
15 radar is.

16 LIDAR uses a laser, so you send a laser beam down,
17 and it may be a laser beam that's invisible to your eye, but
18 it goes down and as it passes through soils and things of
19 different density, it records different -- it comes back at
20 different time intervals, and so you are able to compile a
21 picture using the lasers.

22 PRESIDING MEMBER DOUGLAS: Okay. You sent it down
23 from what?

24 MR. PRICHETT: Excuse me?

25 PRESIDING MEMBER DOUGLAS: Is it like -- how do

1 you get the aerial view?

2 MR. PRICHETT: Oh, there are commercial companies
3 that do this.

4 PRESIDING MEMBER DOUGLAS: So it would be an
5 airplane, or a --

6 MR. PRICHETT: Oh, yeah. It's an airplane and it
7 flies over and pings the radar down and compiles these
8 pictures on a computer.

9 PRESIDING MEMBER DOUGLAS: How long would it --
10 how long does it take to do this kind of imagery of a site
11 like the size of Hidden Hills or like the one that you used
12 as an example?

13 MR. PRICHETT: Well, I'm aware of the timetable
14 that was spelled out in the FSA. It spells out, you know,
15 thirty days, you have a research design, and so forth. It
16 could be done within that, with the exception, perhaps, of
17 the report writing. But I think collecting the data can be
18 done very efficiently and very quickly. I, uh, our written
19 testimony says we also need aerial photography, both
20 infrared and visible light.

21 If you cover those three things - LIDAR, infrared,
22 and visible - you've pretty much captured what you can
23 capture through remote sensing. And then a pedestrian
24 survey to verify, for instance, the condition of these
25 tracks, and then, I think, you've recovered most of the data

1 and the report, then, would add to the historical stuff that
2 I have summarized.

3 So, we really can put together a fine-grain
4 picture of what took place in this area around the springs.

5 PRESIDING MEMBER DOUGLAS: Right. And the report
6 will come later, right? The initial work would be to gather
7 data, and then your proposal would be that the qualified
8 academic institution would then analyze the data.

9 MR. PRICHETT: Yes. We would work with them and
10 they have the expertise to do a lot of analysis and things
11 that we don't have, so it would be a cooperative thing, and
12 we would publish the report and submit it as specified in
13 CUL-9.

14 HEARING OFFICER CELLI: Anything further from OSTA
15 before we go around the table?

16 MR. PRICHETT: Not from me, but do you want to
17 proceed on to the other witnesses?

18 HEARING OFFICER CELLI: Yes, give us -- so, Mr.,
19 uh, let's see, Mr. Bent. What are you going to speak to?

20 MR. BENT: Yes, uh, excuse me. I intend to speak
21 on Cultural 10 and the mitigation information that is in
22 there now, and what we, OSTA, propose instead of what is in
23 -- currently is in CUL-10.

24 HEARING OFFICER CELLI: Please, go ahead.

25 MR. BENT: Based on what my colleague, Jack

1 Prichett, has established here, we feel that there is a
2 great field of data that needs to be disseminated to the
3 public, and particularly to the citizens of the State of
4 California. This project will -- like Jack had said, is
5 going to, basically, eliminate lots of information that
6 would be able to be presented to the public and so we intend
7 to -- we feel that the current mitigation standards in
8 Cultural 10 are not adequate to tell that story.

9 We feel that, as mentioned in CUL-10, that a
10 single kiosk, a, uh -- essentially a garden with botanical
11 exhibits and a small display in the Shoshone museum is quite
12 inadequate to show what is going to be lost should the
13 project go forward.

14 So, we intend to propose, and we have three points
15 that I want to propose, that would do a much better --
16 thorough job of showing the information and data that will
17 be lost. The first of this is going ahead with the study
18 that Jack had mentioned, using LIDAR and other
19 hyperspectral-type information. Then, we would move on to
20 proposing that a video be produced, and in this video, we
21 would be able to show the breadth and depth of the
22 information that exists within the project area from an
23 archeological standpoint, ethnographical, and biological.

24 This would be a professionally produced video. We
25 have contacted a company and done research onto the

1 capabilities of what would be required to produce such a
2 video. It would be feature length; it would be
3 approximately fifty-four minutes with subtext taken out of
4 that video to be displayed in museums. It would be
5 broadcast quality; it would feature reenactments using
6 actors and costumes to show what that trail -- the
7 significance of what this trail is, because as we know, as
8 we've discovered that this trail is -- has been a major
9 factor in the establishment of the economies of Southern
10 California and the whole state. And so this video would be
11 a significant effort to show the information and data about,
12 as I mentioned, the cultural and biological aspects that
13 would be lost.

14 Secondly, this video would be shown in, and this
15 is what we're proposing. It's not that we don't support the
16 efforts of -- to put displays in the Shoshone area and the
17 Tecopa area, but we feel that it needs to be distributed to
18 a much wider audience; and therefore, the video would be
19 shown in our next proposal, which would be a mobile museum.

20 Now, a mobile museum is basically a museum on
21 wheels that would be able to have professionally-developed
22 displays showing artwork, artifacts, other information that
23 would come out of this study that would then be able to go
24 around the State of California, would be able to go wherever
25 was appropriate. And there are approximately a dozen of

1 these mobile museums in the State of California right now --
2 or I should say nationally, used by art museums, other
3 museums, and the one that I want to cite in particular,
4 which I have an exhibit on. And that is number, yes, that
5 one right there. Go ahead. It's called the Van of
6 Enchantment.

7 The Van of Enchantment is basically an RV that has
8 been used by the State of New Mexico, and it is a --
9 developed by the Department of Cultural Affairs and the
10 Department of Transportation to show the history of trails
11 in New Mexico.

12 And one of the significant factors of this is that
13 the way they use it is to go to remote areas and also
14 schools and to other folks that might be geographically
15 challenged from being able to appreciate and understand the
16 history of transportation and trails in New Mexico. And
17 this is a similar -- we feel it lends itself very well to
18 what we, OSTA, are trying to do.

19 I have -- can we go to the next slide, please?
20 Inside, you can see the level of professionalism that has
21 been used to show the significance of the trails in New
22 Mexico. We are proposing the same type of displays to show
23 the Old Spanish Trail's data and information as -- not as it
24 exists now, but as it will exist soon in the future.

25 There is one more slide I would like to show. Uh,

1 if we can make that a little bit larger. Yes. As you'll
2 notice, there is, again, professionally-produced displays
3 and maps. If you will notice the one map there, the
4 circular -- yes, that circular piece right there. And this
5 is in New Mexico. That shows from Old Spanish Trail from
6 its origin new Abiquiu to Los Angeles and shows the various
7 northern and southern routes as they are known today.

8 So, I just think they feel it's very significant
9 as well. I would just like to say that, uh, everyone knows
10 or has heard of, or most people have, the Santa Fe Trail,
11 the Oregon Trail, and we, the OSTA, are just on the verge of
12 discovering lots of -- more information and data that can
13 and should be shown and made known to the public.

14 And with -- if this project were to go, a lot of
15 that data and information will be destroyed forever;
16 therefore, we feel that one of the mitigations factors, and,
17 in fact, in the FSA, it says there really is no adequate
18 mitigation factor that could be used to compensate.
19 However, we believe that producing such a type of museum
20 would go a long way to satisfy the public need for this type
21 of information.

22 PRESIDING MEMBER DOUGLAS: Mr. Bent?

23 MR. Bent: Yes. And through the video and through
24 the museum here, we would be able to capture both the visual
25 and the aesthetic value that is there now that will be

1 eliminated if the project goes forward. That's all I have
2 to say at the moment.

3 HEARING OFFICER CELLI: Commissioner Douglas?

4 PRESIDING MEMBER DOUGLAS: One question for you,
5 Mr. Bent. Is OSTA's proposal for the global mobile museum
6 that the applicant would help fund the establishment of a
7 museum, or help contribute to artifacts in the museum, or is
8 it operation? I mean, there -- keeping a museum going and
9 sending it around the state to schools seems like it would
10 take an ongoing funding commitment. What are your thoughts
11 there?

12 MR. BENT: Yes. We believe that this should be a
13 -- yes, this is roughly a \$2.2 billion project that is being
14 proposed. In the United States, other projects like this,
15 we know, that usually has one percent of that project cost
16 is used as mitigation, and we are proposing something
17 similar here. So, therefore, yes, we are -- we would like
18 the applicant to support this project as we have just
19 stated.

20 HEARING OFFICER CELLI: Thank you, Mr. Bent. Now,
21 Mr. Prichett, did you have another witness you needed to
22 testify at this time?

23 MR. PRICHETT: Yes, we do, and I'm going to have
24 Liz Warren, who is a professional historian, testify now
25 about the historical significance of the Old Spanish Trail.

1 MS. WARREN: Good morning. I'm really going to
2 focus on Fremont. His name is used quite frequently and
3 thrown around a lot. And, in fact, in CH2MHill's own direct
4 testimony, they cite him as the reason why there's no value
5 to this particular portion of what we consider to be and the
6 National Park Service and the BLM consider to be the Old
7 Spanish National Historic Trail.

8 Citing their own direct testimony on pages 11
9 going onto 12, they follow Myhrer. Myhrer, et al., 1990, to
10 evaluate the Old Spanish Trail/Mormon Road. The following
11 criteria should be met, according to them - that is, to,
12 supposedly, Myhrer and so forth, that one of the most
13 important things is that it has to be on -- mapped by
14 Fremont and other early cartographers.

15 What does that mean exactly? Mapped by Fremont
16 and whatever. It might be on a Fremont map, in fact, what's
17 loosely referred to as a Fremont map is actually by Charles
18 Preuss, a very, very well-known, highly-respected
19 cartographer of the period who did the map. He accompanied
20 Fremont on his trail -- on his trip in 1844, and he also
21 provided the map for that report that was published in 1845.

22 I don't recall which document is it, but it's uh, the
23 Fremont Report, just a moment. Oh, I don't have it here.
24 Uh, is it 652 that's the docket for Fremont Report? Or is --
25 no. Yeah, I think it might be, 66-something. Do you have

1 that number by any chance? Anyway, it's in your document
2 list. That's Bryant. That's a different source. Uh, the
3 Fremont Report itself, which is -- oh, I don't know, I'm so
4 messed up here.

5 But I uh, anyhow, the point is everybody overlooks
6 that this document, the Fremont Report, submitted to the
7 United States Topographical Core and then through them to
8 the U.S. government.

9 HEARING OFFICER CELLI: That would be 653.

10 MS. WARREN: 653? I haven't looked at it in quite
11 a while. In there, Fremont -- if you read that report and
12 you read it carefully, you will see a number of interesting
13 clues to whose route he was taking.

14 And this is very, very important in our discussion
15 here. Fremont was ordered to survey and map portions of
16 California, which the United States government, at the time,
17 was very interested in and the Mexican government was
18 testified of the American interests, understandably enough.

19 And so, as he went down the road, he went to
20 California looking at the Oregon Trail. He came out of
21 California looking for what he called the Great Spanish
22 Trail. And there are a number of designations of that sort.

23 Old Spanish Trail really is a kind of statement that, you
24 know -- it's like that old U.S. 91. It's the Old Spanish
25 Trail is what they're talking about. Originally, it didn't

1 have a capital zero -- or, "O."

2 When Fremont was on this trail, which he follows
3 out of Calif -- out of Southern California, he has with him
4 five guides: Godey, Kit Carson, and Broken Hand Fitzpatrick
5 and so forth. Hadn't any of them been on this trail before.
6 Carson had been on a portion of it.

7 They are going down the trail, but what Fremont is
8 very -- also supposed to be doing, is looking for this
9 fabled San Buenaventura River, which was supposed to be
10 something that would drain this huge interior portion
11 western United States, and drain it to the ocean. And had
12 they found such a river, the whole history of the region
13 would have been very different, because there would have
14 been river ports and barges and all sorts of things
15 traveling all the way into central Nevada or someplace like
16 that.

17 They don't find such a thing - they find the
18 Mojave River. They are delighted when they find it. Other
19 people have found it before them, Native Americans first,
20 and then the Mexican Spanish people, and so forth. It was
21 very important on the trail in the southern part of the
22 route.

23 And he was so interested in this river, to see
24 whether or not it actually grows and drains the continent in
25 some fashion, that he blows past the original route of the

1 -- one of the original break-off routes of the trail, and
2 continues on down the river.

3 So he's camping there and they slaughtered three
4 cattle and, you know, they are just having an interesting
5 respite, when into the camp comes two people: a young boy,
6 Pablo Hernandez, and a man, Andres Fuentes.

7 They tell a terrible, terrible story about a
8 massacre farther out on the trail, that they ask for help
9 because they can come out in advance of the big party -- the
10 main party for the year hoping to get their animals better
11 fed farther out on the trail than they would have been had
12 there been a huge number of people from the original big
13 caravans.

14 So they went out as far as they thought it was
15 safe. It turned out not to be safe. Their horses were very
16 attractive to the local Paiutes out there, and so they were
17 attacked. They fought a big battle. All four of these -
18 two women and two men - couldn't fight much of a battle and
19 Pablo Hernandez is twelve years old.

20 Hernandez and Andres Fuentes, a grown man, were
21 out herding their horses and so they were able to survive.
22 They go back to look for help from the great caravan that's
23 following them. They don't find the great caravan; they get
24 to where they would intersect with the Mojave River and they
25 see that a caravan has gone below.

1 So they go down below, and who do they find but
2 Captain John C. Fremont and his big party. And they tell
3 this story and so Carson and Goedde go ahead and they go to
4 Bitter Springs. They wait for the main Fremont party to
5 catch up. Fremont says go on ahead, I'll bring the main
6 party, you go on ahead and see what you can do. At Bitter
7 Springs, the horses had been left by Fuentes and Hernandez.

8 And so they went on ahead. They found that
9 everybody was dead. The only thing alive at the site was
10 this little dog, probably a Chihuahua, who had been brought
11 from Santa Fe by the -- by this family.

12 So Fremont, now, is very far along on a route that
13 he did not know about. This is a route that was used by the
14 caravans and had been broken through, who knows how earlier
15 -- how much earlier, was in heavy use by that time, and had,
16 indeed, seen a tremendous amount of -- numbers of animals
17 and people on it.

18 As a matter of fact, that's the part of the route
19 that was used earlier, in 1840, by the horse raiders who
20 would come in off the Great Basin, accompanied by Wakara,
21 the Ute chieftain, and other Native Americans, as well as
22 mountain men and fur trappers and all kinds of people to
23 raid the California ranches.

24 They took so many horses that it changed the
25 economy of California at the time, in 1840 - thousands of

1 horses. Now, I can't imagine herding five horses back
2 across the Mojave Desert, never mind several thousand, but
3 that's what they did.

4 One of the most important persons in that was "Old
5 Bill" Williams, and he went back to California by way of
6 this route that we're talking about today. Skeletons of the
7 horses that were killed because the trip was too onerous and
8 too strenuous for them - there were not enough water
9 sources, and so forth - those skeletons were still there.

10 So when Fremont talks in his report about meeting
11 up with the remains of many animals on the trail, it's those
12 animals we're talking about. Those horse-raid victims,
13 basically, the horses.

14 So we have a very important distinction to make
15 here that I would like to make sure is on the record. This
16 is Andres Fuentes's trail. It is labeled Fremont because he
17 published it and Preuss made the map, but it is the Fuentes
18 Trail. The Fuentes Trail is the old Spanish caravan route
19 of the period. There are other routes earlier in time. So
20 we need to, uh, do we have a (off mic).

21 When we talk, then, about how this land from the
22 Hidden Hills site is affected by the caravan routes, what
23 are we talking about? We are talking thousands of horses.
24 They're not going head-to-tail in a line - there is a huge
25 herd. They stretch for a very, very great distance. They

1 stretch through this project site. There is no question
2 about it whatsoever in the minds of most of the people who
3 have researched this whole story and the story of the trail
4 itself. It has to have happened that the -- these animals
5 went through that site to get to various water sources at
6 different times of their experience along that trail.

7 And so, looking at the proposal that, in order to
8 evaluate the trail, you have to follow only Fremont is not
9 so. And if you follow Fremont, remember, it's the Fuentes
10 route; it's not a straight line. It's going to be a line
11 that is going to have all kinds of turns and twists because
12 the horses will be looking for water. And the horses and
13 mules, when they look for water, they are very hard to
14 manage.

15 So we're talking about putting in your mind's eye,
16 not a straight line that you might see on a map, but put the
17 kind of crowd of animals and men that really were, in fact,
18 using that trail, and you will get a different picture.

19 The notion, by the way, that CH2MHill uses, this
20 BLM -- it basically started out as an internal report --
21 that project to map the BLM managed lands there in Nevada,
22 and to collect artifacts so they could tell what this route
23 was all about and so forth. And there is nobody that I know
24 of, as a historian, who uses this project report for
25 anything, unless you want to look at historic artifacts of

1 the period, which are all over the place out in the desert,
2 and --

3 HEARING OFFICER CELLI: Why not?

4 MS. WARREN: I'm sorry?

5 HEARING OFFICER CELLI: You said nobody uses it,
6 and my question was why not?

7 MS. WARREN: Well, first of all, it's not that
8 it's a bad -- it is -- it's respected as far as it goes, but
9 it predates the feasibility study for the trail. It
10 predates any of the official work done to designate -- to
11 determine whether to designate the trail, and then, there
12 are -- there's really no particular value to it other than
13 that it was done by the BLM as a management tool for them.
14 And it's not an archival study really, it's just a -- well,
15 a management tool basically.

16 It's useful for looking at the artifacts that were
17 found. Most of -- all of them are historic artifacts. They
18 date from the Mormon period. There are some interesting
19 little maps that were done, but it really doesn't add to and
20 do in-depth -- provide in-depth -- any kind of research that
21 would be useful to trying to interpret the trail.

22 There has been a lot of research -- history -- the
23 study of history is an ongoing project. You can't just say,
24 oh, this is it in 1890 and it never changes, because we
25 uncover new sources, we uncover -- we have new

1 interpretations of things. So history is a work-in-progress
2 always.

3 HEARING OFFICER CELLI: Thank you. I didn't mean
4 to pull you off course; I just wanted to know what you meant
5 by that, so you answered the question.

6 MS. WARREN: There really isn't any value to it
7 from the standpoint of understanding what was going on. If
8 you're looking at the geography of Las Vegas valley or the
9 Spring Mountains or something, it would be useful if you
10 didn't have an idea where these things were. And it's used
11 today. I mean, we're talking about land that is now part of
12 a national conservation area and part of a national
13 recreation area.

14 The trail goes right through all of that, so to
15 know where that is also affects how -- how is that managed,
16 even within those different kinds of resource
17 interpretations. And when the BLM changed -- had to change
18 its management from national recreation area to national
19 conservation area, there was a major change in management
20 that had to occur. And this, I would say, is still ongoing.

21 Okay. So, at any rate, I don't understand why
22 anybody, looking into -- the value of this trail is so
23 significant in terms of management of this project site, why
24 they would not at something far more important to evaluate
25 these trail routes through the area and so forth. It's just

1 not adequate for the purpose.

2 HEARING OFFICER CELLI: Thank you, Ms. Warren.
3 Mr. Prichett?

4 MR. HARRIS: Mr. Celli, can we ask for one
5 clarification?

6 HEARING OFFICER CELLI: Sure.

7 MR. HARRIS: The references to national -- federal
8 -- federally-designated lands, those were not references at
9 the project site.

10 MS. WARREN: Right.

11 HEARING OFFICER CELLI: Clear. Thank you.

12 PRESIDING MEMBER DOUGLAS: Very clear.

13 HEARING OFFICER CELLI: Mr. Prichett, did you have
14 any other witnesses on this?

15 MR. PRICHETT: Yes. We have one more witness,
16 Susan Sorrells. She is a resident of Shoshone and I'll let
17 her speak for herself.

18 HEARING OFFICER CELLI: Thank you. Ms. Sorrells,
19 please.

20 MS. SORRELLS: Yes, uh, is this --

21 HEARING OFFICER CELLI: Actually, if you don't
22 mind my asking, Ms. Sorrells, can you give us sort of a big
23 picture title overview of what it is you are going to be
24 speaking to?

25 MS. SORRELLS: Yes, in fact, that was my opening

1 comment. And the two things I want to speak to, although
2 they are not as objective as the evidence presented by Jack
3 and Liz, are the long-term effects of this project on the
4 local economy, which I can speak to as a local business
5 person. And the second one is the relationship between this
6 project and the National Landscape Conservation System,
7 which is extremely important to our financial sustainability
8 in the future.

9 HEARING OFFICER CELLI: Okay, if I can, one
10 moment. (Off mic.)

11 Okay, Ms. Sorrells, the reason we had our
12 conference is that we have already heard evidence with
13 regard to socioeconomic impacts and we -- we are interested
14 in what you have to say, but we would like you to limit what
15 you have to say only to the Spanish Trail, because the
16 impact of the economy on Shoshone or even Tecopa, at this
17 time, is not relevant. Okay?

18 MS. SORRELLS: Yes.

19 HEARING OFFICER CELLI: Can you do that?

20 MS. SORRELLS: I can.

21 HEARING OFFICER CELLI: Great. Thank you. Go
22 ahead.

23 MS. SORRELLS: Okay. I wanted to say -- I wanted
24 to have as introductory remarks, because I wanted to show
25 you the overview before I started, a little bit about my

1 history. It's not really a resumé, but it's my history in
2 the valley.

3 My great-grandfather came into the valley in the
4 late 1800s and my family has been here since that time
5 continuously. We are here because we love the land and we
6 have a history of stewarding and protecting the land. My
7 husband and I, who took over the business in the late 1980s,
8 have continued that tradition.

9 I have been -- I was a founding member of the
10 Amargosa Conservancy, and I just do want to say that in
11 Shoshone, we have made a shift to equal tourism where we
12 will be taking and do take people out into the Mesquite
13 Valley and the Kingston Range and also show them the Old
14 Spanish Trail.

15 We are on the edge of Death Valley, which has
16 1,400,000 visitors, which is very important to our economy.

17 We've also been -- another goal of ours is stewarding the
18 environment, and the Old Spanish Trail is a tremendous
19 national treasure.

20 I wanted to say a little bit about the National
21 Landscape Conservation System. It was -- I don't know if --
22 I'll cut to the chase here, but it was established in 2000
23 under the Clinton era. In 2009, it was brought into the
24 Federal Register and the laws guiding the administration of
25 it were codified. And part of that system is old trails.

1 And I just wanted to read here quickly that the
2 mission of the National Landscape Conservation System is "to
3 conserve, protect, and restore these national significant
4 landscapes that are recognized for their outstanding
5 cultural, ecological, and scientific values." One of the
6 units of this system are historic trails.

7 And so, in our area, we not only have the Amargosa
8 River as a wild and scenic river, we have eight wilderness
9 areas, which are part of this system, and we also have the
10 Old Spanish Trail.

11 And as a local resident and a local business
12 person, and as a member of a family who has very deep roots
13 in the area, and also as a community member in the
14 Shoshone/Tecopa community, I feel that this project would
15 directly contradict the mandates of the National Landscape
16 Conservation System.

17 You cannot only look at a small section of trail.
18 This act considers landscapes - not only natural
19 landscapes, but also cultural landscapes - and I think the
20 evidence is clear that those landscapes would be destroyed.

21 HEARING OFFICER CELLI: Thank you, Ms. Sorrels.
22 Thank you for your comments. Thank you for your testimony.
23 At this time, Mr. Prichett, did you have anything further
24 before I turn it to the other parties?

25 MR. PRICHETT: Just two points. I'll -- very,

1 very short. One, regarding the video that Richard talked
2 about. Remember that once you put two 750-foot towers and
3 all those mirrors out there, that valley will never, ever
4 look the same, and a video can capture it as it looks today.

5 Record it for -- as it is just as the LIDAR will help
6 record what's under the ground.

7 And the second thing, as Susan says, the National
8 Landscape Conservation System protects trails, and again,
9 the visual aspects of that, the land around here will be
10 lost.

11 HEARING OFFICER CELLI: Thank you. One moment.

12 MR. PRICHETT: And thank you for allowing us all
13 this time. We really appreciate it.

14 HEARING OFFICER CELLI: (Off mic.) Mr. Harris,
15 the way we intend to proceed would be to hear from the rest
16 of the panels' witnesses, and then come around and let
17 advocates' witnesses take everybody else's testimony upon
18 rebuttal.

19 MR. HARRIS: That's fine, and you'll be pleased to
20 know it will probably be Ms. Pottenger instead of me.

21 (Laughter.)

22 HEARING OFFICER CELLI: Okay. So, we've heard
23 from applicant, we've heard from Old Spanish Trail
24 Association. Now, let's hear from Mr. --

25 MS. MacDONALD: Um, excuse me. This is Cindy

1 MacDonald.

2 HEARING OFFICER CELLI: Yes.

3 MS. MacDONALD: I don't mean to interrupt, but my
4 witness, Dr. King, I think, might be able to speak to some
5 of the -- there are some questions I wanted to ask about the
6 Old Spanish Trail, or at least have him expand on things.

7 HEARING OFFICER CELLI: Okay, before we do,
8 Ms. MacDonald, I want to hear from staff's witness,
9 Mr. Thomas Gates.

10 MS. MacDONALD: Okay. Thank you.

11 HEARING OFFICER CELLI: So, let's --

12 MR. GATES: Are we moving off Old Spanish Trail
13 now?

14 HEARING OFFICER CELLI: No, we are not. We're
15 staying on the Old Spanish Trail and we're not going to move
16 off it until we finish, which we have not done yet. So,
17 Mr. Gates, please.

18 DR. GATES: Thank you very much.

19 HEARING OFFICER CELLI: We're interested in what
20 is your opinion with regard to what you've heard this
21 morning already, and any facts that form the basis of your
22 opinion.

23 DR. GATES: Thank you very much. As Ms. Willis
24 stated, I'm here, uh, prepared to provide oral testimony on
25 the sections of the staff's assessment which pertain to the

1 ethnographic resources. What Ms. Willis also stated was
2 that there was some slight overlaps between the ethnographic
3 resources and the Old Spanish Trail and the archeology. So,
4 I would like to just briefly touch on the overlap between
5 the ethnographic resources that I documented and the Old
6 Spanish Trail.

7 HEARING OFFICER CELLI: Go ahead.

8 MR. HARRIS: Can we have an offer -- at least a
9 reference to the part of the testimony that is at issue
10 here, because it's not clear to me. I thought I heard
11 something different about his involvement with those other
12 issues, but --

13 MS. WILLIS: I'm sorry, we --

14 MR. HARRIS: If we can we just have page numbers
15 going forward, it would be very helpful.

16 MS. WILLIS: We're not hearing Mr. Harris.

17 MR. HARRIS: What's that?

18 MS. WILLIS: We can't hear you.

19 MR. HARRIS: It's been a lucky day for you.

20 (Laughter.)

21 HEARING OFFICER CELLI: I understand what you're
22 saying, Mr. Harris, and I think that that's fair. Just to
23 summarize, Mr. Gates is going to speak to the overlap
24 between ethnographic cultural resources and the Old Spanish
25 Trail Association, and again, Mr. Gates, we are just

1 focusing now on the Old Spanish Trail.

2 DR. GATES: What I would like to state is that in
3 the ethnographic studies that I conducted with Pahrump
4 Paiute and other tribes, prior to this trail system being
5 Spanish, Mexican, or Mormon, originally some segments of
6 these trails were Native American.

7 In addition to that, the spring areas that they
8 refer to that these trails link between were also Native
9 American occupation sites long before newcomers came into
10 this area. In addition to that, as Ms. Warren alluded to,
11 there were some skirmishes between native people and some of
12 these travelers, and that is partly a Native American story,
13 and there are Native American versions to that story that,
14 in some ways, differ from what is in the published record.

15 I want to finally say that in history, there was a
16 slave trade that happened along this trail, and Pahrump
17 Paiutes and other Paiutes were the slaves and traveled as,
18 frankly, commodities on this trail under captivity. And the
19 documents are out there; the archival record is pretty solid
20 on that.

21 So, what I'm trying to say is that there is a
22 Native American point to this story, and to the extent that
23 CUL-9 provides research into this, staff stands and supports
24 CUL-9 still as it regards to doing research for this
25 ethnographic component of the Old Spanish Trail and the

1 Native American ethnographic component.

2 In addition to that, staff had proposed that this
3 interpretation be made available to the public in an
4 interpretive facility of a venue, which we suggested
5 Shoshone Museum might be one, uh, recipient of that
6 interpretive material for their abilities to put that out to
7 the public, and we stand by the more traditional methods by
8 which that interpretation is provided in a building, a
9 facility.

10 Staff is not in disagreement about what the
11 Spanish Trail Association is proposing with their ideas for
12 interpretation and how that is put out. In fact, the
13 interpretive material could be used in both venues. The
14 staff is just simply saying that we stand by our ideas to
15 provide this interpretation to the public in a more
16 traditional museum facility. Thank you very much.

17 HEARING OFFICER CELLI: Thank you, Mr. Gates.
18 Thomas King, can you hear me? Are you on the phone, sir?
19 Thomas King? I'm trying to unmute him and I can't for some
20 reason. Let me -- stay there, Mr. King. I see that you're
21 speaking. We need to get you on the phone here. Mr. King,
22 go ahead.

23 MR. KING: Okay, you can hear me?

24 HEARING OFFICER CELLI: We can hear you fine. Go
25 ahead.

1 MR. KING: Okay. Well, I've submitted testimony
2 and I am prepared to answer any questions that you have. I
3 don't know exactly what you need from me that I haven't
4 provided in terms of written testimony.

5 HEARING OFFICER CELLI: Let me give it to you.
6 Let me tell you how best to proceed. The best way for you
7 to proceed, Mr. King, would be for you to say this is what
8 my opinion and this is what the basis of my opinion is. So
9 go ahead.

10 MR. KING: Oh, okay. I can do that. My opinion,
11 in essence, is that the staff report, particularly the
12 ethnographic report, is a very solid piece of work and I
13 think its conclusions make a good deal of sense. The
14 applicant has attempted to pick that report apart, I think,
15 on the basis of a very narrow scholastic kind of
16 interpretation that --

17 MR. HARRIS: Mr. Celli?

18 HEARING OFFICER CELLI: One moment, Mr. King, I
19 have an objection here.

20 MR. HARRIS: Just a clarification. I know he does
21 have some testimony of Old Spanish Trail, so I don't object
22 to him testifying on this portion, I just -- I thought we
23 were getting off-topic.

24 HEARING OFFICER CELLI: I see. Mr. King, just to
25 be clear, we are limiting the testimony at this time to the

1 Old Spanish Trail.

2 MR. KING: Okay. I'm not entirely clear on that.

3 HEARING OFFICER CELLI: Okay. So --

4 MR. KING: With regard to the Old Spanish Trail,
5 that has not been a focus on my particular attention to the
6 documents, but just listening to what I've heard, it seems
7 that the applicant's personnel -- contractors are focusing
8 narrowly on the archeological evidence they can see of the
9 trail, and that's not necessarily the point.

10 When it comes to interpreting and valuing and
11 doing something with something like a historic trail, the
12 issues mostly have to do with how that trail may figure in
13 the viewpoints and beliefs and values of living people
14 today. And the fact that it has been -- it evolved over the
15 years and is now a graded road, or parts of it are a graded
16 road, is that's really not the point.

17 Many trails are not, today, visible the way they
18 were when there were -- when there were wagons or mules or
19 horses or whatever going along them, but what's important is
20 that they exist in a visual landscape that can be seen, that
21 can be interpreted, that can evoke the sense of place
22 represented by that historic trail.

23 And so, it's sort of apples and oranges. That
24 it's the fact that there may be not much in the way of
25 archeological evidence, so I agree that LIDAR might very

1 well reveal a great deal that can't be seen with the naked
2 eye or with regular aerial photography. The fact that there
3 may not be a lot of artifacts out there is sort of beside
4 the point.

5 I was also struck by the fact that the applicant's
6 contractor could say that they had determined that something
7 was not, in fact, eligible for the California Register or
8 the National Register. Now, I'm not deeply familiar with
9 how the California Register of Historic Resources works, but
10 I'm extremely familiar with how things are determined
11 eligible for the National Register of Historic Places, and
12 we contractors do not make such determinations.

13 Determinations for the National Register,
14 formally, are made only by the keeper of the National
15 Register in the National Park Service and state historic
16 preservation officers, and others advise and render opinions
17 on that. Contractors can do that, too, but we certainly
18 don't determine anything. So if there is a need for some
19 kind of determination of the trail's eligibility for the
20 National Register of Historic Places, that's got to come
21 from the National Park Service. I think that's all I really
22 have to say about the Old Spanish Trail. I'd be happy to
23 answer any questions if I can.

24 HEARING OFFICER CELLI: Thank you, Mr. King. Stay
25 on the phone because you can continue to participate in this

1 discussion as we go.

2 Mr. Arnold, we'd love to hear what you have to say
3 about the Old Spanish Trail only.

4 MR. ARNOLD: I'm getting this feeling that you're
5 always trying to limit me to make sure that I'm on track. I
6 greatly appreciate it.

7 HEARING OFFICER CELLI: I'm doing that with
8 everybody. It's not personal.

9 MR. ARNOLD: It's not taken personally, especially
10 when we have ten directions and you only have four.

11 (Laughter.)

12 Okay. I think there's a lot of -- this is Richard
13 Arnold speaking -- a lot of interesting parallels, I think,
14 that are being drawn here with the Old Spanish Trail and
15 especially with respect to the applicant and what -- and how
16 they're viewing it.

17 You know, the parallels that I see is that the
18 early explorers and the applicants both talk about what they
19 see or what they don't see. They base their information --
20 and they would write it down in the literature of their
21 perceptions. You know, they would talk about discovering
22 things like water springs, places, and resources on the Old
23 Spanish Trail. And it's interesting to me because, as
24 Southern Paiutes -- you know, when people talk about
25 discovering these things, we don't know how you discover

1 something that was never lost. I think it is very
2 interesting.

3 It held on -- it carried over, actually, with --
4 you know, when people talk about the crops and the resources
5 and the trails that were there or not there, we knew and
6 know that they were there. The -- Dr. Gates had referred to
7 the slave trade that was going on, and it was a known slave
8 trade that was going on, on that trail.

9 That particular trail has a lot of deep-rooted
10 meaning, feelings, and sensitivities to it because of what
11 it was used for. You know, they used to have -- when a lot
12 of the early Spanish people started coming into the area,
13 they would gather up Southern Paiute people and many other
14 Indian people along the trail, oftentimes using other Indian
15 people as guides to get into the area.

16 They would then come in and they would reveal
17 where we were, and, as such, then people would come in, we
18 were gathered up, taken to slave markets that were New
19 Mexico, sometimes out in California, and we were sold, we
20 were bartered, we were commodities.

21 It started setting a foundation for how we felt
22 and how we were perceived and how we were treated. Now, I
23 think that, for us, when the settlers came out here, and one
24 of the reasons and the things you are going to hear, not
25 only with the Spanish Trail, but respective to our -- the

1 cultural resources that's out there, is the absence in the
2 literature.

3 And then that's -- actually, you have to
4 understand why there's an absence in the literature. When
5 we have people coming out here, and as I've been alluding
6 to, people can come out to this area and they'll say, gee,
7 it's a barren wasteland. There's nothing out here. There's
8 just bushes or there's nothing of significant value.

9 Early on, when settlers came through, one of the
10 first things you wanted was water. So, when the Indian
11 people were around and we were -- those were our waters.
12 Those were the waters that were provided to us by the
13 Creator. When we had those waters, people would say, well,
14 you know, the only way that you can really get title to
15 those waters, is that you have to be able to farm the land.

16 You have to be able to work the land.

17 They didn't recognize, nor were they familiar
18 with, traditional ecological knowledge. They didn't know
19 how we practice our horticulture. They were expecting these
20 nice, even rows or crops, and when you go out into the
21 desert, you're seeing what our farmland looks like.

22 You're seeing how the crops are there, how we
23 manage them. We don't have to put them in nice, neat rows.

24 We don't have to go out and try to preserve them in that
25 fashion. We don't need to go out and try to remove them

1 from one location to another. It's critical that they're in
2 the locations in which they originate, and that's why we
3 were so involved in the horticultural there.

4 So, not knowing that is what became the basis for
5 why information was not in the literature. It wasn't to
6 their advantage unless you could prove that it was something
7 good for you or for the people that were sponsoring your
8 trips or whatever, why you needed to show that it was a
9 barren wasteland.

10 Consequently, when I spoke to the slave trade,
11 things like that continued to perpetuate the -- folks
12 leaving the area, seeking places of refuge, still using --
13 they still have the same spiritual connection and cultural
14 connection to it.

15 Oftentimes, we were there, but when people -- we
16 started see people coming around, and as I jokingly said on,
17 I think, the first day, when I said something about there
18 goes the neighborhood, that's what was happening. People
19 were coming in with the purpose of trying to capture Indian
20 people, trying to remove us, and then also taking over our
21 land and our resources. Thank you.

22 HEARING OFFICER CELLI: Thank you, Mr. Arnold, and
23 I know we're going to hear some more about that. Now, we've
24 heard from Old Spanish Trail, Richard Arnold. We've heard
25 from Cindy MacDonald's witness. Ms. Belenky, did you have

1 any testimony on the area of Old Spanish Trail?

2 MS. BELENKY: No, thank you.

3 HEARING OFFICER CELLI: Inyo County?

4 MS. CROM: No. Thank you.

5 HEARING OFFICER CELLI: And Mr. Zellhoefer, are
6 you here? Did you have anything to say about the Old
7 Spanish Trail? And you need to get to a microphone, please.

8 MR. ZELLHOEFER: Thank you, Mr. Celli. I have no
9 input on the Old Spanish Trail.

10 HEARING OFFICER CELLI: Thank you. Then, at this
11 time, we're going to come back around to the applicant and
12 let the applicant have their last say on whatever it is they
13 heard and whatever they disagree with, and let's hear why.

14 DR. SPAULDING: Thank you, Mr. Celli. I trust
15 that, uh, we'll be given sufficient time to cover the
16 matters of fact. First of all, I'd like to say, for the
17 entire panel and the applicant, that we have a great deal of
18 respect for Mr. Arnold's perceptions and, certainly, for
19 Dr. Warren's research.

20 We consider, certainly, Dr. Warren's research on
21 the Old Spanish Trail/Mormon Road to be integral in our
22 study, as well as the journals of Fremont and some of the
23 other people who passed along with Old Spanish Trail/Mormon
24 Road in the early nineteenth century.

25 If you indulge me, I'd like to talk a little bit,

1 first, about methodology, and also about how we proceeded,
2 and what's known as designing a research design for our
3 roads and trails technical study.

4 A research design essentially identifies what is
5 likely to be found during the research. You develop some
6 test hypotheses, and those test hypotheses then reflect on
7 the type of data that are gathered and, actually, also
8 identify the methodology of the data that are going to be
9 gathered.

10 When we set out to inventory the historic roads
11 and trails, and also prehistoric roads and trails, if any
12 existed, in the project area, we understood, as a first
13 order assumption, that all likely roots of travel were
14 likely to have been originally blazed by prehistoric Native
15 Americans. And, certainly, ethnohistoric groups, moving
16 into the modern area, they were well-known, and certainly
17 the guides that took the early Eurasian, uh, Euro-American
18 travelers back and forth across this incredibly hostile land
19 would have been aware of these trails as well.

20 So, in every case, we considered these historic
21 roads and trails to be potential palimpsests -- that is, a
22 palimpsest is a piece of parchment that's erased and used
23 over again, and erased and used over again. And, certainly,
24 when we get to the evaluations of the historical
25 significance of those linear features across the landscape,

1 one of the evaluations, as Ms. Lawson referred to, was
2 whether or not it's been erased so many times, if you will,
3 by, in this case, historic grading, that no element of the
4 actual historic route remains.

5 Now, that consideration in and of itself is
6 important in light of what Dr. Warren put out as the BLM
7 report, which is essentially -- to a certain extent, indeed,
8 it is a little out of date now, but it also conceptualizes
9 the methodology by which the Old Spanish Trail/Mormon Road
10 has been dealt with as a management challenge and as a
11 resource in southern Nevada.

12 The Old Spanish Trail/Mormon Road is generally
13 considered to be an undefined corridor. It's a route of
14 travel; it would include anything from I-15 to an actual
15 preserved trace of the original trail that hasn't been used
16 since the middle nineteenth century. All those routes in
17 different parts of a different -- of the same valley, and
18 sometimes in different valleys, all have the same objective:
19 how to get from the Colorado River to the West Coast.

20 So, we understand that there is a corridor,
21 conceptually, that describes the Old Spanish Trail/Mormon
22 Road, and within that corridor, there are individual
23 segments that are either eligible or not eligible, and
24 that's an important distinction for obvious reasons.
25 Obviously, there is very little educational or historic

1 value in a twenty-foot-wide graded road, but in other cases,
2 there are pristine sections of prehistoric trails, even, out
3 there in the landscape.

4 So, once we have, more or less, adequately and
5 accurately conceptualized the challenge in front of us,
6 which we did in our Data Response 125, The Old Spanish
7 Trail/Mormon Road, we then look at the methodologies that
8 are appropriate to identify all potential segments of that
9 resource in the project area.

10 The most straightforward and efficacious way of
11 doing that is using remote imagery, because, essentially,
12 Mother Nature abhors a straight line. And so, you can
13 actually see routes of travel across the landscape that were
14 repeatedly used - in some cases used only once by a dirt
15 bike, but, certainly, the routes of travel across the
16 landscape that were repeatedly used are quite visible
17 through remote imagery.

18 And, parenthetically, I'll add that, since my
19 graduate student days, I'm familiar with a broad range of
20 remote imaging techniques from LIDAR, single -- side-scan
21 radar, to other techniques that actually allow you to look
22 under the ground for a limited extent. One of my major
23 professors at the University of Arizona became rather famous
24 for identifying relic Pleistocene drainages that lay only
25 within, you know, a meter underneath the sand sheet. But we

1 considered those to be unnecessarily, uh, elaborate, if you
2 will, when you could use commercially-available remote
3 imagery to identify those roots and trails across the
4 landscape. And those include relatively narrow routes of
5 only eighteen to thirty inches, but that extend for miles
6 across the landscape.

7 We were also able to assign relative ages to those
8 routes based on what type of geomorphic surface they cover.

9 The older ones are rather obliterated in a number of areas
10 because of, oh, who knows -- perhaps seventeenth or
11 eighteenth century flood events. The ones that were used
12 into the historic period are, obviously, crossed both
13 younger and older geomorphic surfaces. So we were able to
14 categorize these routes in terms of probably prehistoric,
15 probably historic, and obviously used and abused into the
16 twentieth century.

17 And that was the methodology that we took it to.
18 So, what I'd like to do, if I could, is turn to an exhibit
19 that Mr. Prichett put on the screen, and that would be
20 Exhibit 619. And I'd like your indulgence and guidance. I
21 also have a laser pointer, but if you'd like me to move
22 forward the cursor like we did yesterday, we could do that
23 as well.

24 Someone said to just point at the screen.

25 HEARING OFFICER CELLI: You know what? Actually,

1 for people on WebEx, they don't see the pointer, so my
2 thought is, if you wanted to, you're welcome to go sit where
3 Mike Battles is sitting and then you'd have your hand on the
4 cursor.

5 DR. SPAULDING: I'd have the cursor.

6 HEARING OFFICER CELLI: Go ahead. Let's do that.

7 DR. SPAULDING: Sure. Thanks. This is a nice
8 aerial image looking north of the southern portion of the
9 Nopah Range. This is Emigrant Pass through here. And then
10 we see the eastern boundary of what's known as the
11 California Valley.

12 My main point to mention here is that the
13 direction of the trail across this valley has, essentially,
14 no predictive value with respect to where the trail will lie
15 in the Pahrump Valley. What will happen is that there'll be
16 folks traveling either east or west in this general area,
17 they'll cross a pass, and then a decision will be made - in
18 this case, as they travel east into the Pahrump Valley -
19 with respect to which spring they want to hit to rewater and
20 look for -- forage for their animals, if appropriate.

21 And then the -- and I believe we agree with the
22 OSTA on this, that there will be, essentially, bee-line
23 traces from the passes to the various springs. And so, the
24 position -- the relative -- the position of the springs
25 relative to the passes is very important -- this particular

1 trace has no predictive value with the respect to the
2 fashion of the trails in the Pahrump Valley. This
3 illustration hardly shows the Pahrump Valley, which begins
4 here and extends to the east and north in that direction.

5 Okay, if I could have Exhibit 616, please. Click
6 the back arrow. Now, as conscientious cultural resource
7 professionals, it is our obligation and responsibility to
8 carefully consider and analyze anybody's informed opinion
9 that there may be a historic resource within or near our
10 client's project area, and we did so.

11 What happens is that we have been able - like, for
12 example, this route here - it looks fairly close to one of
13 the tracks we identified. This also looks fairly close to
14 one of the tracks we identified, perhaps the same track.

15 This is the OSTA unproved central mule trace that
16 is alleged to cross through the project area. There is no
17 linear feature, either historic or prehistoric, that crosses
18 the project area. In that particular location, we used
19 remote imagery; we used on-the-ground intensive pedestrian
20 survey, specifically looking for this feature. It, for all
21 intents and purposes, does not exist on the ground.

22 We looked for this feature, and it correlates with
23 a feature that we call Track 1, which is a historic bladed
24 road likely used. It does not, apparently, connect to the
25 north - at least, we could find no connection. This

1 particular trace we also found does not exist, but it is
2 very close to a track that passes to the north that we call
3 Track 5.

4 So my main point of illustrating, using this
5 exhibit provided by the OSTA, was to emphasize that we have
6 checked every one of these alleged features. Some exist,
7 some may exist depending on whether or not you want to
8 wiggle a half-a-mile or so, and others, such as the unproved
9 central mule trace, emphatically do not exist on the ground.

10 MS. POTTENGER: Dr. Spaulding, excuse me, Mr.
11 Celli, may I direct a question to Dr. Spaulding since he's
12 up there?

13 HEARING OFFICER CELLI: Go ahead.

14 MS. POTTENGER: Dr. Spaulding, will you look at
15 Exhibit 614, please.

16 DR. SPAULDING: (Off mic.) Good. Pretty close.

17 MS. POTTENGER: Now, there's some red dots
18 identified along the eastern edge of the project boundary
19 and I believe -- pardon me, I believe it was Mr. Prichett
20 who said they haven't made an identification yet of those
21 waypoints. Did you identify any of those points in the
22 project site, and can you explain, if any identification was
23 made, what those were?

24 DR. SPAULDING: The red dots, as they're currently
25 shown on this exhibit, uh, I'm not necessarily familiar

1 with, and they're not portrayed at a sufficient scale to
2 allow me to analyze them geographically. During the OSTA's
3 rebuttal testimony, or in the OSTA's rebuttal testimony that
4 was filed, I believe, in February, there is the testimony of
5 a Mr. Sutak that identifies two GPS waypoints in locations
6 where historic trails do cross into the project site.

7 We actually concur with Mr. Sutak's testimony to
8 the extent that we have identified both of those points.
9 One is a recorded resource that is in the report. It is
10 considered not eligible. That would be S26. The other is
11 to the north of the project site, in actual fact, and is
12 Track 5.

13 No new resources have been identified whenever
14 locations are provided to us. They are checked, and they
15 are either found to be resources that we have previously
16 identified or found to have not existed at all.

17 So, if I could conclude my part of the
18 presentation.

19 HEARING OFFICER CELLI: Stay with your microphone,
20 please.

21 DR. SPAULDING: Yes, I certainly will and --
22 pardon me for one second. Uh, I remain quite confident in
23 our Data Response 125, that it represents all resources --
24 the linear resources within and near the project area. And
25 nothing that has been presented contradicts those findings.

1 And, with that, I'd like to turn it over to my colleague,
2 Mr. Helton, if I could, please, if you have no questions.

3 HEARING OFFICER CELLI: Thank you, Dr. Spaulding.
4 Commissioner Douglas does have a question to you.

5 DR. SPAULDING: Yes, ma'am.

6 PRESIDING MEMBER DOUGLAS: Dr. Spaulding, you
7 referenced aerial photography, I believe, and maybe it was
8 OSTA that referenced use of Google Earth. Can you help me
9 understand what methodology you used to see if there were
10 linear features that were observable from the air?

11 DR. SPAULDING: Certainly. And I'll preface this
12 by saying that aerial archeology, or the use of remote in
13 archeology, is -- has a long and well-established tradition
14 going back to Charles Lindbergh using uh, aerial imagery to
15 understand the Anasazi Ruins at Pueblo Bonito, nearby.

16 And many British studies, in the early twentieth
17 century, when they realized that there were features on the
18 ground that could be seen from the air that can't actually
19 be seen on the ground. That's the amazing thing about
20 aerial imagery is that it becomes much easier to see
21 features that may be obscured or otherwise not visible when
22 you're standing on the ground. It's really a lot of fun in
23 that regard.

24 My experience with remote imagery analysis extends
25 back to my teenage --

1 PRESIDING MEMBER DOUGLAS: Dr. Spaulding?

2 DR. SPAULDING: Yes.

3 PRESIDING MEMBER DOUGLAS: I asked about the
4 methodology --

5 DR. SPAULDING: I understand.

6 PRESIDING MEMBER DOUGLAS: -- that you used to
7 look for linear features on the site.

8 DR. SPAULDING: Yes, we use commercially-available
9 aerial imagery from Google Earth. And, as you know, if
10 you've used that imagery yourself, frequently you have a
11 choice of a number of years, and so we chose the years 2005
12 and 2012 as being the highest resolution.

13 PRESIDING MEMBER DOUGLAS: Okay, and what -- did
14 you focus just on the project site, or did you look at --
15 did you take broader view than that? Like, what was the
16 scope of what you looked at?

17 DR. SPAULDING: Correct. We took a fairly broad
18 view to initially start with, because our research design
19 said, initially, that the trails running across the
20 landscape would extend to point water sources from the
21 passes. We know where the passes are; we know where the
22 point water sources are. So, we initially began our look --
23 if you will, inspection, by looking for linear features that
24 would extend from the passes to the water sources, and we
25 did find them.

1 PRESIDING MEMBER DOUGLAS: Okay. And in terms of
2 the pedestrian surveys, was that done just on the site
3 itself, or around the site?

4 DR. SPAULDING: Yes. The intensive pedestrian
5 surveys were done just on the site itself and the buffer
6 around the site, and then ground truthing was also used at
7 the end of the remote imagery analysis that -- where we went
8 out and identified the features on the ground that we could
9 see in the aerial. That ground-truthing component is
10 considered to be rather important and was performed for all
11 the identified features except for Track 5 to the north of
12 the project area.

13 PRESIDING MEMBER DOUGLAS: Okay, and was this the
14 same buffer that was used for the biological analysis? The
15 same --

16 DR. SPAULDING: No, ma'am. The culture resource
17 buffer is -- was a different size.

18 PRESIDING MEMBER DOUGLAS: What size was it?

19 DR. SPAULDING: Uh, Mr. Helton? Can you help me
20 out, there?

21 HEARING OFFICER CELLI: Go ahead, Mr. Helton.

22 MR. HELTON: Two hundred feet surrounding the
23 site.

24 HEARING OFFICER CELLI: Say that again. That
25 didn't come out.

1 MR. HELTON: Two hundred feet surrounding the
2 project site.

3 HEARING OFFICER CELLI: Two hundred feet
4 surrounding the project site. That's Mr. Helton's
5 microphone there, Tony.

6 PRESIDING MEMBER DOUGLAS: All right. Last
7 question.

8 DR. SPAULDING: Certainly.

9 PRESIDING MEMBER DOUGLAS: I'm just trying to
10 understand intensive surveys. So that is, kind of -- how
11 does that work? You've got people out there and --

12 DR. SPAULDING: Oh, the surveys themselves. Yeah,
13 the surveys themselves --

14 PRESIDING MEMBER DOUGLAS: -- really high level.

15 DR. SPAULDING: Excuse me, I'm sorry.

16 PRESIDING MEMBER DOUGLAS: Just really high level.
17 So people are out there and they're crisscrossing the tract
18 at what distances?

19 DR. SPAULDING: Generally speaking, when the
20 pedestrian surveys were, basically, what -- how many meters?

21 MR. HELTON: Ten-meter intervals -- ten- to
22 fifteen-meter intervals.

23 PRESIDING MEMBER DOUGLAS: Okay. Thank you.

24 MS. POTTENGER: Commissioner Douglas, may I ask
25 Dr. Spaulding a question to expand a little bit more on your

1 question about what was surveyed?

2 HEARING OFFICER CELLI: Not at this time. We need
3 to move quickly. We're going to give you about three more
4 minutes to sum up with your witnesses here because we need
5 to get to public comment in a minute.

6 MS. POTTENGER: This is --

7 DR. SPAULDING: With your indulgence, then, I
8 would like to turn it over to Mr. Helton.

9 HEARING OFFICER CELLI: Go ahead. Now, Mr.
10 Helton's microphone is the first one here. Go ahead.

11 MR. HELTON: I'd like to, as a gentleman, ask Ms.
12 Lawson to go first, and then I'll wrap up.

13 MS. LAWSON: I will attempt to hurry then. First
14 off, I wanted to answer Commissioner Hochschild's question
15 regarding what trails are still in use out there.

16 HEARING OFFICER CELLI: One moment. Why isn't
17 this sounding so good right now, Tony? (Off mic.)

18 PRESIDING MEMBER DOUGLAS: Why don't you start
19 over?

20 HEARING OFFICER CELLI: We're not getting it on
21 our monitor. (Off mic.) Ms. Lawson, why don't you give
22 this a try and we'll see how you do.

23 MS. LAWSON: Can you hear me now?

24 HEARING OFFICER CELLI: Yes. Thank you. Much
25 better. Go ahead.

1 MS. LAWSON: Excellent. I wanted to answer
2 Commissioner Hochschild's question regarding whether or not
3 -- or what trails are still in use out there.

4 S24 is still in use on the project site.

5 Track 4, which is the probably the main track for
6 Fremont, is largely still in use. It is on BLM land, and
7 there is a BLM road that connects to that trail and you can
8 drive a lot of it. So there is still some vehicular traffic
9 on that as well. Also, in DR 125, it's mentioned that that
10 was used for local traffic until the early 1900s.

11 I wanted to briefly, very briefly, expand on some
12 of the methodology that we used in the roads and trails
13 study. I wanted to mostly point out that, once we had done
14 remote sensing, there was additional archival map research,
15 where we looked at maps to go up -- before we went out to
16 the roads.

17 And then, when we went out to the roads and
18 trails, we were looking at -- particularly offsite, we did
19 locate additional artifacts. We didn't locate very much
20 additional artifacts on the site itself. That had already
21 been completely surveyed by the pedestrian survey, but it
22 was a combination of remote sensing, archival maps, and
23 location of artifacts. And, in one case, or S24, finding a
24 small segment of wagon road offsite that enabled us to
25 determine age of these roads and trails.

1 One other quick correction I wanted to make. The
2 National Register of Historic Places is not a California
3 listing. That is actually a national listing and, in fact,
4 there are three segments of the Old Spanish Trail/Mormon
5 Road in Nevada that are currently included in the National
6 Register. They are discontinuous segments. Even though the
7 whole segment from Mountain Springs to Stump Springs is
8 currently reported in Nevada, only three of these segments
9 are listed on the National Register. The other segments are
10 considered noncontributing elements. I will now turn it
11 over to Mr. Helton.

12 HEARING OFFICE CELLI: Please, Mr. Helton.

13 MR. HELTON: Thank you. Just a couple things.
14 Mr. Prichett noted that -- he said, I haven't been out there
15 to inspect certain things. I just wanted to note that we
16 have. We've spent a lot of time on the site analyzing
17 what's on the ground and recording, as Dr. Spaulding said,
18 conscientiously, everything that was there.

19 I would like to say that we are in agreement with
20 Mr. Prichett that, as defined by law, as he said earlier,
21 that the National Historic Trail -- no part of that
22 designated National Historic Trail occurs within the project
23 site. As Ms. Lawson just pointed out, there's also
24 something that is listed on the National Register called the
25 Spanish Trail Historic District. I haven't heard it

1 discussed here today, actually, but that district property
2 that is currently listed on the National Register.

3 And, as Ms. Lawson points out, it is discontinuous
4 and in its own nomination form, that district notes that --
5 it says that the nominated segments of the discontinuous
6 history district were chosen for their historic integrity in
7 terms of location, setting, feeling, and association. Other
8 areas were looked at but they lacked integrity.

9 So, the only nationally-listed property that
10 exists currently is this district, and even its criteria for
11 listing acknowledge that there are some portions that do not
12 retain integrity. That's part of our testimony.

13 MS. MacDONALD: Mr. Celli? I would like a few
14 minutes to cross-examine before we go to public comment.

15 HEARING OFFICER CELLI: You would want to cross-
16 examine who?

17 MS. MacDONALD: I have five questions for the
18 applicant and one for staff, please.

19 HEARING OFFICER CELLI: What are your five
20 questions for the applicant?

21 Ms. MacDONALD: The questions for the applicant is
22 I would like to know the extent of your direct consultation
23 with the OSTA regarding the Old Spanish Trail over this
24 process.

25 HEARING OFFICER CELLI: What are your other

1 questions so I can hear --

2 MS. MacDONALD: The same thing with the Southern
3 Paiute people and the locals, such as Ms. Sorrells. Direct
4 consultation.

5 HEARING OFFICER CELLI: So, answer the question,
6 please, of what your contacts were with OSTA, the local
7 people, and the local Paiutes.

8 MR. HELTON: I will be glad to, Mr. Celli. I
9 wasn't done with a few points I wanted to make. Can I
10 continue?

11 HEARING OFFICER CELLI: Go ahead. Finish that up.

12 MR. HELTON: Thank you. Mr. Prichett also
13 mentioned that, in certain terms, the Old Spanish Trail
14 doesn't have to be physically present. He read from the
15 National Trail Act criteria, noting that it says that a
16 resource's location must be sufficiently known. We agree
17 with that and we've performed exhaustive research to
18 document the location, as we've said, of tracks and traces
19 that could be associated with the Old Spanish Trail on the
20 project site and within that two hundred foot buffer, as we
21 mentioned.

22 HEARING OFFICER CELLI: Just at this point, we're
23 only interested in factual information and factual dispute.

24 Mr. HELTON: Understood. I think the question
25 before us, also, that the FSA points out, is the CEQA

1 threshold with which we're talking about that needs to occur
2 in order for there to be a material impact to a historical
3 resource. If you will indulge me, I'd just like to read the
4 FSA. It says --

5 HEARING OFFICER CELLI: Actually we won't indulge
6 you on this one

7 MR. HELTON: Okay.

8 HEARING OFFICER CELLI: And I'll tell you why. I
9 don't mean to be rude, but this is a legal call and not a
10 factual one.

11 MR. HELTON: Okay. Understood. I think that the
12 only thing that I would point out is that, again, our
13 analysis is that there is a trace of the Old Spanish Trail
14 within the project site, but it is important to point out
15 that we are -- as Dr. King said, we're not making a
16 determination, but our job is to make a recommendation as to
17 whether that resource meets the eligibility criteria as
18 spelled out in the California Register for Historical
19 Resources in CEQA, and that's what we've done. And that --
20 I just want to reiterate that. We have done that analysis,
21 and that resource does not meet those criteria for
22 eligibility; therefore, we do not have a historical resource
23 present that could be materially impaired or demolished,
24 according CEQA criteria.

25 HEARING OFFICER CELLI: Two questions for you, Mr.

1 Helton. First is if you've had discussions with the Energy
2 Commission staff's cultural people regarding the
3 recommendations for eligibility.

4 MR. HELTON: That is in our testimony and was
5 submitted as part of the application.

6 HEARING OFFICER CELLI: I was just asking whether
7 you were -- did you rely on staff's FSA?

8 MR. HELTON: No.

9 MR. SPAULDING: If I could --

10 HEARING OFFICER CELLI: Did you discuss it in a
11 workshop? Eligibility requirements.

12 DR. SPAULDING: Yes, sir, we did.

13 HEARING OFFICER CELLI: Okay. That was that first
14 question. The second question is tell us about your
15 consultations with the local natives, the local nonnative
16 population, and --

17 MS. MacDONALD: And OSTA. The direct
18 consultation. Thank you.

19 HEARING OFFICER CELLI: And OSTA.

20 MR. HELTON: Sure. Early on in the process of
21 this analysis, we did draft and send letters to a list of
22 tribes that was provided to us by the Native American
23 Heritage Commission. Those letters were sent requesting
24 opinion and feedback on the project and effects to resources
25 significant to them. We sent a letter to the Old Spanish

1 Trail Association as part of those mailings. And so, that
2 constitutes our consultation.

3 MS. MacDONALD: So, you have no direct
4 consultation with any of these individuals over this
5 process. Did I understand that correctly?

6 HEARING OFFICER CELLI: Actually, Ms. McDonald, it
7 was direct in that they sent letters --

8 MS. MacDONALD: Okay. Thank you.

9 HEARING OFFICER CELLI: We don't know if there was
10 an actual dialogue, per se.

11 MR. PRICHETT: Correction, though. It is very
12 important to note it - and I put this in my cultural
13 resources book - they addressed the letter to OSTA, the
14 organization, Las Vegas --

15 HEARING OFFICER CELLI: Let me ask you this. Did
16 you get the letter?

17 MR. PRICHETT: No. Because they put it to Las
18 Vegas, Nevada, not Las Vegas, New Mexico, where our
19 organization is headquartered, so we never got the letter.
20 And it is very easy to find me; they could have asked Susan
21 Sorrells or anyone else.

22 HEARING OFFICER CELLI: That's -- great. Thank
23 you. So, we now know the extent of their outreach.

24 MS. MacDONALD: Thank you. The next question to
25 applicant is, in your testimony, where do you reference the

1 two BLM kiosks located on the Nevada side of Tecopa Road
2 that identifies the importance of the Old Spanish Trail
3 Highway and the Stump Springs cultural and historic
4 resources of the area? Where in your testimony is that
5 located?

6 HEARING OFFICER CELLI: If at all.

7 MS. MacDONALD: If at all, correct.

8 DR. SPAULDING: The kiosks in Nevada?

9 MS. MacDONALD: Yes.

10 DR. SPAULDING: (Off mic.) Go ahead.

11 MS. LAWSON: We do not reference the two kiosks in
12 Nevada.

13 MS. MacDONALD: Thank you. The last question I
14 have for applicant is will you please state what the legal
15 definition of cultural is and what LORS it is located in?

16 HEARING OFFICER CELLI: We're not going to let
17 that one -- that's brief stuff.

18 MS. MacDONALD: Okay. Then I only have one more
19 question, for staff. Staff, you said that, notwithstanding
20 the variability in the applicant's description of the
21 resource, and outstanding concerns about the accuracy of
22 artifact material-type identifications, can you please
23 explain what you meant?

24 DR. GATES: I'm not sure if that if that is part
25 of staff's testimony that I can support.

1 MS. MacDONALD: Thank you very much. Thank you
2 for that opportunity.

3 HEARING OFFICER CELLI: Thank you, Ms. MacDonald.
4 Ladies and gentlemen, it's a little after 12:00. We told
5 everybody that we were going to have a public comment
6 period, and we are. So we are going to break for public
7 comment -- well, before we break for comment, I'm going to
8 ask the parties to put in their evidence.

9 I understand and I can see that there is a lunch
10 provided again by BrightSource. Thank you, again, to
11 BrightSource for providing lunch to whoever is here today.

12 The way I'm going to ask people to proceed is that
13 Blake Roberts, who -- Blake, would you hold your hand up in
14 the air? Mr. Roberts, right there. Dr. Blake Roberts is
15 receiving their blue cards. If you fill out a blue card,
16 then that's how we know that you want to make a public
17 comment, and then we will call your name. You come to the
18 podium and speak to the Committee about your impressions
19 about this project, and any information you'd like to
20 impart.

21 We are going to do that as soon as we take in the
22 evidence. Oh, we're not going to take in -- I think this is
23 not the time to take in evidence, because we're still within
24 the topic area of cultural, even though we've only done half
25 of it. So, I'm not going to call for evidence at this time.

1 With that, this panel is excused to lunch, and I'd
2 like to hear from Eddie Jim.

3 MR. LEVI: Mr. Celli?

4 HEARING OFFICER CELLI: Who's speaking?

5 MR. LEVI: Larry Levi

6 HEARING OFFICER CELLI: Mr. Levi.

7 MR. LEVI: I need to leave, and I'd just like to
8 thank you for the opportunity to be here, and, while I am
9 confident that the fire district and BrightSource will come
10 to an agreement, I will be seeing in you in Sacramento on
11 Monday.

12 HEARING OFFICER CELLI: I look forward to it.
13 Thank you for your participation, and you know something?
14 You're right. Thanks for being here. Mr. Jim.

15 MR. JIM: Can you hear me?

16 HEARING OFFICER CELLI: Yes.

17 MR. JIM: Okay. Mr. Celli, I'm going to address
18 this to you. I'm appalled to see a camera in this -- this
19 morning over cultural issues. What I've got to say is
20 private. I'm not in the business into writing books about
21 my tribe or anything. I know certain people in our tribe
22 like to write books, but not the Jim family. If this
23 continues, the Jim family will be reluctant to have public
24 comment.

25 HEARING OFFICER CELLI: Let me just say something

1 about that, because we're in sort of a tough situation
2 there. This is a public hearing. We're a public agency.
3 This is a governmental public hearing, and the public does
4 have the right to come in a film the Committee, anyway. And
5 I would ask, in deference and with respect to the Jim family
6 and any other people who don't want to be photographed, that
7 you not photograph or videotape them.

8 I'm talking to you. This gentleman here is a
9 videographer. I did see someone else walking around - a
10 fellow with a yellow hat had a camera and was taking
11 pictures. And so, I'm going to ask that people voluntarily
12 not do that, even though they have the right to do that.
13 That is something that public opening meetings -- they are
14 allowed to do.

15 MR. JIM: Okay. Thank you.

16 HEARING OFFICER CELLI: So, did you have any other
17 comment, Mr. Jim?

18 MR. JIM: Not at this time.

19 HEARING OFFICER CELLI: Okay. Thank you. So, we
20 would ask people to refrain from taking pictures, videos, et
21 cetera of any of the parties or the people that are coming
22 in from the public.

23 Is Gary Barkley still here? Mr. Barkley? Come on
24 down and speak into the microphone. Yeah, I -- just for the
25 record, I know that we have -- Commissioner Hochschild is on

1 my left, and Commissioner Douglas is here. Everything you
2 are saying is part of the record, so you will be in the
3 transcript. So, go ahead, Mr. Barkley.

4 MR. BARKLEY: I'd like to speak on behalf of the
5 project. I'm a resident of Charleston View. I've been
6 there for maybe ten or twelve years. I own a couple of
7 pieces of property there. I'm in favor of this for the
8 issues that many of the environmentalists speak of, but I
9 think the bigger issue is the world climate.

10 The problem we have addresses cultural issues, and
11 coal-burning power plants would seem to be a big issue that
12 we have throughout the world. San Diego's building a coal-
13 burning power station, and the price of coal, because of the
14 price of natural gas, is going down, so it's not becoming
15 not an issue.

16 I think this says a lot for the ability for
17 bringing in a new source of renewable energy, and that -- it
18 has that potential. The same issues we have with atomic and
19 the Nevada test site, and Yucca Mountain and the spillages
20 that we have out there in the ground waters are, to me, a
21 bigger issue than the issues of the solar. The lakes that
22 are on the test site that are already polluted are our
23 groundwater for the Amargosa. They come right through here.
24 They go down to Bad Water and back up through about a one
25 hundred mile radius. They pick up that radiation or

1 whatever the ratings that come out of that ground -- they
2 found places like Amargosa, in the ground water -- and they
3 definitely have some pollution. And concerns, to me, are
4 that this ability to bring a renewable energy source is a
5 great potential that we have, not only here, but for the
6 entire world.

7 Zechariah wrote, in 2005, that throughout the
8 world, between China and India, they put eight hundred new
9 coal-burning power plants, and it is 2013 now. These are
10 issues that the world needs to address with the acid in the
11 oceans, from the footprint of the coal-burning power plant
12 industry, and the issues that we're going to -- I think are
13 big issues here. Just the -- uh, issue of the atomic, uh --
14 the atomic pollution. We know there's some problems with
15 that.

16 The coal-burning power plants on a cultural issue,
17 the Paiutes and the Western Shoshone suffer greatly from the
18 effects of the coal-burning power plants. The mercury
19 that's in the water that these plants bring to us.

20 And this is the reason that I am for this ability
21 to bring in a renewable source -- that we have the ability
22 if there are issues and we're not sure what the issues are.

23 All issues are much less of an issue than the other
24 alternatives that we have.

25 One more thing I'd like to bring up, that I wasn't

1 able to during the process, is somehow we need to be able to
2 have some kind of source that someone that can help with the
3 avians. As far as driving to Las Vegas and working on a
4 routine basis, I hit three jackrabbits a day in the morning
5 -- at three in the morning driving on my way to Las Vegas
6 and the power lines are there, the birds sit, wait, and I
7 picked up at least one red tail hawk of the two red tail
8 hawks that we have up there. And something needs to be done
9 about someone going in.

10 With the amount of new vehicles that will be
11 coming through the project to actually just stop and after
12 each session or twice a day or something -- pick the rabbits
13 up and throw them off the highway. And that would do a lot
14 to keep the birds from -- because that's why the birds are
15 there, you know, is because the rabbits are there. So
16 that's something that needs to be addressed.

17 I don't know if you guys are that familiar with
18 Charleston View, but we have basically no infrastructure.
19 We have fire tanks, a little bit of a fire response, limited
20 on all that by distance from Tecopa to Charleston View. Our
21 response is slow on fire and I appreciate that the process
22 will have the BrightSource assisting in bringing a response
23 from fire analysts, and I think it is much-needed
24 communications.

25 As it is right now, we have mailboxes, fire tanks,

1 and trashcans, and that's where we have our meetings - at
2 the dumpsters, when we have meetings in Charleston View.
3 And we need a little bit more than that, so I think I want
4 to say that BrightSource has made itself exceptionally
5 available through the process of outreach to the community
6 for the people who are -- have no communications, they have
7 no computers and I want to thank BrightSource for that.

8 It's given us some insight, some overlays, and
9 some issues that we can confront with an acceptable
10 understanding of what's going on instead of approaching this
11 blindly. And I don't think it proper, like the last
12 speaker, when people, on behalf of the project, who live
13 there that aren't here to testify themselves, but I know
14 there are.

15 There are friends of mine that are in
16 construction, they have homes and stuff out there that they
17 would like to be a part of what's going on. I think that
18 would bring a good thing to the community. And I guess
19 that's all I have to say.

20 HEARING OFFICER CELLI: Well, Mr. Barkley, thank
21 you for your comments. We appreciate your thoughtful
22 response. Is Ruby Jim -- are you still here? Ms. Jim?
23 Please come forward.

24 By the way, if there is anyone else who would like
25 to make a public comment, we need you to fill out the blue

1 cards and hand them to Blake Roberts who just handed me that
2 blue card, so we know you want to speak. Go ahead, Ms. Jim.

3 MS. JIM: Ruby Jim, Pahrump Paiute. I did want to
4 seek a point of clarification briefly, if I may, and just
5 make sure what I heard this morning was correct. It was my
6 interpretation that the applicant requested that the
7 redacted ethnographic study done by Dr. Gates will not be
8 accepted into evidence until Monday?

9 HEARING OFFICER CELLI: No, we're going to accept
10 it into evidence today. Just to be clear on what happened,
11 the FSA has a complete cultural resources section. It is
12 split between the Old Spanish Trail itself and there's an
13 ethnographic section as well. They were talking about
14 taking that part of the FSA that addresses the Old Spanish
15 Trail -- they would deem as comment. The ethnographic study
16 would come in as regular evidence, as testimony.

17 MS. JIM: Okay. Thank you. So, that answers,
18 kind of, my first inquiry and area of concern of that point.

19 And then, I just really quickly wanted to address
20 a comment that was made by one of the gentlemen this
21 morning, who noted that there is no historical value to what
22 is essentially now a twenty-foot-wide road. And I would
23 posit that that is basically incorrect. There is a man
24 right now who is traveling the Spanish Trail. He just
25 recently went through Mesquite, Nevada. He has his dog; he

1 has his two llamas with him. He is about forty or fifty,
2 and he, you know, he wanted to do this before he got a
3 little too old. He wanted to walk the trail.

4 You know, and I just -- I just want to pose that
5 there is historical value that still exists in a modern
6 context. You know, this is Matthew Fine's historical value
7 in the fact that this is our history. He finds that
8 important. You know, I don't care which trail he takes,
9 it's just that there is intrinsic value in the trail itself.

10 Our history is important to people. There's
11 historical value to the Old Spanish Trail. Most folks
12 consider it the main trail and its offshoots in the modern
13 world. There are still people who care, you know, and to
14 say that it's not a historical resource, well, I'm certain
15 that the gentleman does not necessarily think that the
16 historical resources diminish simply because it's not
17 something that would be considered under CEQA.

18 HEARING OFFICER CELLI: Thank you for your
19 comments, Ms. Jim. Thanks for being here. Vernon Lee.

20 MR. LEE: Yes. I would like to thank Ms.
21 MacDonald for the question about direct consultation. In
22 Indian country, consultation is a very significant thing
23 that is now enforceable in federal policies. I'm not sure
24 if it's the law. I think it may be a part of law. The fact
25 is -- is that the Pahrump tribe should have been directly

1 contacted, and not only that, but they have to satisfy their
2 needs. Now, from what I understand, that wasn't done.

3 I'll get into more detail about that in the next
4 consultation, but I think that it's very important that that
5 consultation was not done and it needs to be done. And
6 that's really not good.

7 Anyway, about the Spanish Trail. I grew up in
8 this area. I've lived in the Kingston Mountains, Tecopa,
9 Shoshone, and at Chapel Springs, which is over on the
10 Resting Springs Range. Now, my mother, who was raised by
11 her grandparents at Chapel Springs - and she was born in the
12 20's, so her grandparents were probably somewhere in the
13 1800s. But she often talked about the Old Spanish Trail.

14 Now, it is rooted in history; everybody agrees to
15 that. The values of it, you will have to determine. But
16 there are episodes that my mom told me that her grandparents
17 told her about things that happened on the trail. There
18 were a number of battles here and there and I don't want to
19 say where.

20 And, I guess, you know, the trail itself, on one
21 part of the map -- it kind of varied with the other springs.

22 And it's kind of a no-brainer that you had to have the
23 water, so I would see where the springs were used and they
24 would travel probably in a direct route, which would go
25 across the footprint of the proposed solar plan.

1 The other thing is -- about the Spanish Trail is
2 I'm also in the operating engineers and I run heavy
3 equipment. Now, we put in the Kern River pipeline, uh,
4 between Moapa and Las Vegas, and there was a section of the
5 Old Spanish Trail which we had to cross. And they went to
6 great extent to not disturb anything.

7 One of the big taboos then was, if you get out of
8 the right-of-way, you're fired. And the right-of-way was
9 approximately fifty feet wide, and, where it crossed the
10 trail, it narrowed to about ten feet and then they have to
11 single file -- all of the heavy equipment had to cross it
12 and they had to lay down all these railroad ties in a
13 particular manner not to destroy the trail or to distort it
14 in any way or to have as little impact as possible.

15 So, you know, the Kern River people had to go
16 through great lengths to not disturb the trail, and that
17 was, I think, mandated by whatever preservation policies or
18 laws that were in place.

19 So, it is very important to a lot of people. I
20 believe it is rooted in history. Like Mr. Arnold said, it
21 was more of a transportation route for slaves, which
22 happened to be the natives. So, we do know about it and
23 it's there, and would just hope that you make the right
24 decision on this. Thank you.

25 HEARING OFFICER CELLI: Thank you, Mr. Lee. Eddie

1 Hawk Jim, are you still here? Mr. Eddie Hawk Jim. Please,
2 come forward.

3 MR. JIM: My name is Eddie Hawk Jim. A little
4 background on myself. I am an Eagle Scout. I am a two-time
5 national service member from Air Corps. I've traveled all
6 over this nation. I've worked for smaller communities.
7 I've talked to people saying that, in the beginning, they
8 thought it was good, until at the last moment they realized
9 that the historic value they lost can't be replaced anymore.

10 You guys may not think that there may be huge
11 damage to, like, the Spanish Trail or something. I lived in
12 Pahrump Valley for twenty-two years. People think there are
13 no boundaries out there. I've seen people tear up roads,
14 historic or not, making new ones. They don't -- if
15 someone's messed with the land, they think it's okay to go
16 across what is disturbed. I've been to funerals and
17 everything. To people, mounds are just mounds. To my
18 people, they're like burial grounds.

19 What I'm trying to say is there is a huge -- a
20 significance for the Spanish Trail because I volunteer for
21 Boy Scouts, I do everything. I've seen trails going through
22 there, everything. It's sad. If we mess with the historic
23 land that has already gone through thousands of years ago or
24 hundreds of years ago, there will be more damage than
25 natural; it will be human damage.

1 For people who haven't been out there like I have,
2 it's a (unintelligible). I used to take Boy Scouts out to
3 the Spanish Trail to look at. I've even walked it with them
4 a couple of times, because we have a merit badge that allows
5 us to walk -- to earn it, we have to walk on or, sort of,
6 travel on landmarks or trails -- historic trails and learn
7 the history of it.

8 These smaller trails that some people think are
9 insignificant are actually a huge thing. We can only speak
10 about it, but these smaller trails are -- haven't been --
11 were there once, and now growth is going over it. Some of
12 these kids are a lot better to have walked down these trails
13 than to just talk about it. I've done disability kids.
14 I've done mule quests, which are juveniles.

15 Once you get out there, they understand what's the
16 significance of it. We've even changed a couple kids
17 wanting to get more involved. See, the trail has a huge
18 significance and what I've learned over the years is that
19 it's a lot better to maintain it than change it.

20 HEARING OFFICER CELLI: Thank you, Mr. Jim.
21 Vivien Wilkinson?

22 MS. WILKINSON: Good morning, and it's a wonderful
23 day outside as usual here. And we will be succinct because
24 I have had, as pointed out, a chance to speak before.
25 Listening to the testimonies each day has revealed more and

1 more, shall I say, a sense about the effects on the
2 environment, from all points of view - biological, the
3 cultural we've discussed today.

4 And this -- what I -- my feeling is now that this
5 ecosystem is very rare, very rare and precious. There
6 aren't very many like this here anymore. It's disappearing.

7 And it's based upon the beautiful waters left over from the
8 Pleistocene Age and not being replenished. It's just a drop
9 in the bucket, we get replenishment every year, hardly
10 anything.

11 And this project is too enormous; the effects of
12 it are too enormous, all those aspects that we've been
13 discussing to consider going ahead with it. That's my
14 feeling. It really could destroy this ecosystem. And it's
15 an ecosystem, which people come, as some people have
16 mentioned, from all over the world to see.

17 Death Valley National Park is part of it. And
18 it's really -- everywhere that I go, I see people from all
19 over the world. They come to see it because it is so
20 unique. And we're not -- I think, that -- perhaps, that
21 applicants -- some of them perhaps think, why are they
22 complaining, why is anyone opposing us coming, we're only
23 going to be on three thousand acres, but it's three thousand
24 acres that's surrounded by wilderness.

25 And here we have a chance to maintain this

1 openness, this BLM, the wilderness surrounding it, and then
2 we put this in there, which is going to pump the ground
3 water and change the ecology. The rare birds here -- it
4 really is a paradise for Eco2 or something, as Ms. Sorrells
5 pointed out, and I thoroughly agree. It is going on. And
6 even the dune buggy people that come out, you have to
7 realize how close this is to the project. You know, the
8 south end of Death Valley is right near the sand dunes and
9 all these dune buggers come out here and play around and
10 it's, you know.

11 Well, I shouldn't carry on, but obviously I just
12 think it's just too little of a gain for a huge loss that we
13 can never replace. There will be an effect. And the
14 thought after today of listening about the Spanish Trail, I
15 never realized how important it was. I'm glad. It was very
16 nice to learn all these things.

17 And to think of two 750-foot towers destroying
18 that visual impact of the area through which it passes.
19 It's an enormity to me beyond the small gain for a huge loss
20 in the ecosystem of this wholly untouched area other than
21 that. And that's all I have to say. Thank you so much for
22 listening, and this whole procedure has been so educational.

23 HEARING OFFICER CELLI: Thank you, Ms. Wilkinson.
24 I just want to say it has been great to know you and
25 Ms. Haskin. I saw her - she was here earlier. And Mr. Jim,

1 Eddie Jim, wherever he went in the back. This is our last
2 day here.

3 MS. WILKINSON: I know.

4 HEARING OFFICER CELLI: And it's a wonderful thing
5 to get to know the locals and to hear what you have to say
6 and how much you love this area.

7 MS. WILKINSON: Well, I must say that I had rather
8 frightening feelings of coming before a board such as you,
9 you know, and I think a lot of people do, because I did
10 speak to a lot of the other town persons where I am and they
11 seem frightened and I said there's nothing to be frightened
12 about.

13 And you have taken away that fear from me. I must
14 admit that I felt a little frightened, but I like the way
15 everything's out in the open, and that you really are trying
16 to do a fair job. I think you're trying to be fair, and I'm
17 hoping the scales will tip in the favor of the environment.

18 HEARING OFFICER CELLI: Thank you so much for your
19 participation, Ms. Wilkinson. Is Ann Harrell here? Please
20 come forward to the podium to make a comment. Again, if you
21 want to make a comment, you want to fill out one of these
22 blue cards and give it to Dr. Roberts.

23 MS. HARRELL: It's Harrell, Ann Harrell.

24 HEARING OFFICER CELLI: Go ahead, Ms. Harrell.

25 MS. HARRELL: I'm a local landowner, and I've been

1 keeping in touch through email. I appreciate that the
2 Commission is very prompt sending out emails with all the
3 information and stuff. I also appreciate Ms. MacDonald.
4 She has done a lot of work on behalf of the landowners.

5 I hope that the Commission makes the right
6 decision and I understand that, if this doesn't go through,
7 that there may be other options that the owners of the
8 property are planning to do and I'm hoping that this -- with
9 the less water use would be a better use of the land. I
10 hate to see, you know, the historical things disappear, but
11 the land is owned by a private owner, and they're going to
12 do what they want to do, unfortunately. But I appreciate
13 everything that everybody's done, and I thank you.

14 HEARING OFFICER CELLI: Thank you for being here.
15 Thank you for participating. Rayetta Haskin. Oh, there you
16 are. Ms. Haskin, come on up.

17 MS. HASKIN: Hi, I'm going to backpedal a little
18 bit in my talk. One, you're talking about the historical
19 significance of this, and you guys coming from the city --
20 because when I came here, I was, like I said, from L.A. I
21 had no idea how important this land was. My husband is a
22 Native American. He's a Pahrump Paiute. He was born in
23 Pahrump, he was raised in Shoshone and Tecopa, he grew up
24 with Ms. Sorrells's brother, and the people here.

25 The history they have taught me in just being part of

1 this group of communicates here is just so valuable. You
2 people coming from the city will not understand unless you
3 spend time here with the people to understand how historical
4 stuff here really does hit them to the heart in their core,
5 and you really need to pay attention to what they're saying.

6 But beside that, what I actually originally
7 decided to talk about was -- last night when we were at the
8 meeting, it was so late that everybody kind of just brushed
9 the end. And one thing I wanted to bring to your attention
10 was when you were talking what -- the effects of what goes
11 on to health out there, you really didn't even touch the tip
12 of what happens to us as far as residents of Charleston
13 View, our pets, our homes, our vegetation, from this project
14 being 3,600 feet from our home.

15 The main tower is a half-mile off the road. I'm
16 eight hundred feet from their gate. So, I'm virtually 3,640
17 feet from that main tower. And I have a real concern for
18 what this thing is going to do to me just sitting in my
19 home, or my family, or my pets.

20 I planted over a hundred-and-some trees in my yard
21 because I have five acres, so my grandkids have this park to
22 play in, and now this big thing with this heat and radiation
23 and all this stuff is going to definitely affect where we
24 live.

25 And I really think there's some issues with

1 Charleston View that need to be addressed, and I don't know
2 how you're going to fit that in with this because it's
3 different, but when you guys get together and you're
4 deciding the final vote, if you guys can just put us back on
5 the map as being significant because my community is senior
6 people. They're people who are on fixed incomes. They are
7 very, very poor, and I keep stressing that point because all
8 of this is going to have a direct impact on the fact that
9 they even went -- like I say, have a home, have things to
10 do, how they can take care of their families. And when you
11 add this big health hazard across the street from our homes,
12 you're talking about putting this barrier in my front yard
13 so I don't hear sound?

14 And any of you, when you go home this weekend, I
15 ask you to think about what's impacting us, how you would
16 feel if this was going across the street from your house
17 3,600 feet. And you're having to live next to this big,
18 huge tower and our vista of nothing. I mean, we have a
19 community that is so unique in the United States today
20 because we don't have business, we don't have pollution, we
21 can grow our own food, we drink well water that year round
22 is ice cold out of the ground that we can drink and we do
23 not have to worry about contamination or fluorides or
24 anything else being in our water.

25 And now you have a plant that's going in directly

1 in front of my house and it's got chemicals they're doing,
2 there are things going on the ground, there's all kinds of
3 things that are going to happen, and when this is all said
4 and done, it's going to happen to my family. It's going to
5 happen to my husband who is seventy-two years old. It's
6 going to happen to my grandchildren and my friends and my
7 neighbors.

8 And you really need to understand where this
9 project is going in and where -- the significance of it to
10 the residents of Charleston View, because, ultimately, we
11 are the prime people who are going to be dealing with all of
12 this, and you need to really put some weight in what we do
13 and what's about to happen to us. I realize we're a small
14 bird, but we're still people that, you know, who should be
15 of some value to the Commission. And so, that's really what
16 I wanted to say last night and I thank you.

17 HEARING OFFICER CELLI: Thank you, Ms. Haskin.
18 Again, thank you for being here throughout.

19 (Applause.)

20 HEARING OFFICER CELLI: Ms. Haskin, I really
21 appreciate all of your participation. You've been here
22 since the very beginning, and you've sat through some long
23 hours with us, and we really appreciate your being here, and
24 you've said quite a bit that's been a big help to this
25 Committee and we will never forget you.

1 MS. HASKIN: Thank you.

2 HEARING OFFICER CELLI: Thank you. Sarah Bennett?
3 From the OSTA, please.

4 MS. BENNETT: Well, I want to just say that I
5 realize that people can look at the same thing and see
6 things that are different. We are interpreting, let's say,
7 what we see. And so, I'm thinking about the applicant's
8 archeologists there. They went ahead and did the job that
9 they were paid to do.

10 I'm going to talk about myself as an Old Spanish
11 Trail member -- active member of a very small chapter here
12 in Tecopa. We have six or seven members who are actually
13 putting feet on the ground and wanting to know about this
14 small segment that runs through this community.

15 And as we did that, as we worked, meter by meter,
16 through California Valley, and we came up over the ridge
17 there, and we looked down into Pahrump Valley, we had just
18 come out of this pristine valley. We didn't find any trash,
19 any modern trash, except things that might have fallen from
20 the sky - Mylar balloons or other such things, and it was
21 such a wonderful experience of discovery, walking this
22 trail, discovering it, noting it down on a map.

23 And then when we got to the ridge and looked down
24 into Pahrump Valley, we were just wondering, now where is
25 this trail going next? And almost at that same time is when

1 the project came to our attention, the solar project, and
2 all of our energy, now, has been on that.

3 So, we haven't been on the trail very much. And
4 the thing that strikes me is these archeologists that are
5 paid have done a lot of work on this land, but there hasn't
6 been any exchange with people like our association who
7 really have a vested interest to know what it is that they
8 are finding. And we could have given them suggestions or we
9 could have given them perspectives that may have helped them
10 reinterpret what it was that they were seeing on the ground.

11 And so, I feel kind of like -- at a loss. Like,
12 here we are, an organization that is very interested in
13 knowing some part of history. We don't have the financial
14 resources; we are a small group of volunteers that are doing
15 this. And then to have this come up, and these people have
16 the resources, but look at the interpretation in a -- very
17 narrow and disinterested, in a way. Disinterested in the
18 history part of it, anyway. And it's a little disconcerting
19 that we aren't looking for the truth, so to speak.

20 I am a resident of Bakersfield, California. The
21 power that is supposed to be generated in this area is going
22 to be coming out to us. I think that there are better ways
23 to use renewable energy than to place it out in a desert
24 community like this, impacting the people, impacting the
25 organisms, impacting the ecology, and impacting a historic

1 trail. I just think there's a better way and I don't think
2 it's been well thought out. I thank you very much for your
3 attention.

4 HEARING OFFICER CELLI: Thank you very much, Ms.
5 Bennett:

6 (Applause.)

7 HEARING OFFICER CELLI: Is Scott Smith here?
8 Mr. Smith. I believe we've heard from you before in the
9 status conferences on the phone, right?

10 MR. SMITH: Yes, I was there.

11 HEARING OFFICER CELLI: Go ahead. Speak right
12 into that microphone.

13 MR. SMITH: I got to turn it up a little bit
14 there. That was my wife that just spoke. My name is Scott
15 Smith. I want to mention something that was talked about by
16 CH2MHill again. They talked about how Jack Prichett had not
17 been out on the trail for the last year and made a big point
18 out of that.

19 Jack has done more work on this project over the
20 past year. I probably talked to him on the phone three,
21 four, sometimes five times a week. I, myself, have spent --
22 I was just trying to figure it out. I have it written down
23 at home. I didn't bring it with me, but I spent -- over the
24 past year, I'm sure I spent over thirty days out on that
25 trail.

1 Now, Dr. Spaulding had said that he assumed or
2 thought that probably Track 1 was the same as what we had
3 shown going up through the project site. First of all, my
4 background: I spent forty-six years in the grading industry.

5 I was a construction cost estimator, a field man,
6 everything like that. I know what grading looks like.

7 Now, they have made, very clearly, a statement
8 that the Old Spanish Trail goes through there and it's been
9 graded, and so, therefore, it's been lost. Well, the trace
10 that we have been following going up through there is not
11 graded, has not ever been graded, and it is a wagon trail,
12 and it does have traces of the Old Spanish Trail running
13 with it.

14 And I just want to stand up here in public and
15 thank Jack for all the work he has done. He's just been
16 phenomenal on it.

17 And I am also wondering why the electricity is
18 being produced over here and then shipped all the way back
19 over the Central Valley. When I drove out here, I went
20 across Tehachapi. Now, Tehachapi -- I don't know how many
21 thousands and thousands of windmills they have. Never have
22 I seen more than fifty percent of them running because they
23 don't have the grid to take all the electricity.

24 Now, I'm not a NIMBY. I've put solar panels in my
25 backyard and I do save quite a bit of money off of it and I

1 believe in solar power, but why not put it in the Central
2 Valley if we're going to use it in the Central Valley?
3 There's plenty of land out there. Thank you.

4 HEARING OFFICER CELLI: Thank you very much,
5 Mr. Smith. If there's anyone else in the room who would
6 like to make a public comment, we have these blue cards. If
7 you would fill one out and give it to Blake Roberts, then we
8 will call you by name. Phillip Smith is next. Mr. Phillip
9 Smith. Hello.

10 MR. SMITH: My name is Phillip Smith. I'm a
11 Chemehuevi Indian from the Colorado River Ute Tribe in
12 Parker, Arizona. And I've been involved with a lot of these
13 meetings -- these public meetings. I always look at that as
14 a waste of my time. Any Indian that attends these is a
15 waste of time. We've been ignored.

16 I hear people talk about the -- down here, about
17 the Old Spanish Trail. They want it preserved for the
18 history record. And I hear over here that those old trails
19 were Indian trails a long time ago, but you don't talk about
20 it. I'm way down there, what -- I just heard about this
21 meeting the other day. And I just found out where the
22 location was last night. Poor communication to me, getting
23 around to all of us.

24 Like one of the ladies says or the guy says here,
25 you don't need government to govern with the people, the

1 tribes. You don't. The only one I know is down there in
2 Blythe in the Rio Mesa project. They met government-to-
3 government, and they found out a lot. They're shut down
4 right now because they heard from us, I guess. Shut another
5 down over there is we protest out there.

6 But we're so far down, and up there is long ways,
7 not because it's a long ways up here, it don't mean that our
8 people were not from up in this area. Yes, we were. We
9 were all over. Different places. And I don't know what you
10 consider to be on the Register or anything like that, and
11 it's not historical, or not worth it. I know we're -- I
12 guess we're not. I didn't think the native people to become
13 citizens until 1924 because we were nobody. We weren't put
14 in the Register.

15 And out here, people live by every spring like the
16 springs they're talking about. Everywhere there was a
17 spring, there was tribes and families there. There was
18 always a family on these springs out here. And because
19 they're not there today, it wasn't our choice. The miners,
20 the ranchers lobbied to Washington, D.C., get all these
21 Indians out of the desert. Put them somewhere. And they
22 did.

23 My father lived out in the desert. He was located
24 down in Parker, Arizona. That's where he was. But that
25 doesn't mean that -- and then they sent him to the boarding

1 school. They just took all the kids away and sent them to
2 the boarding school. No more history. Don't talk their
3 history. Don't talk their language.

4 It is hard for us to grab these things today, but
5 it's still there. We still know it, but you took it away.
6 Just like Cortes, when he came to Mexico, invaded Mexico to
7 destroy our history. When I see these projects out here,
8 you're erasing our history. That's what the project's
9 about.

10 Indian tribes don't have nothing against these
11 projects. It's a matter of where you put them and where you
12 set them. You know a lot of laws that violate it. You
13 don't need us to (unintelligible) the government on EPA law
14 106. I don't know why you don't do that.

15 Just like the Ivanpah. That was a ranch. Ivan
16 was one of the first persons there from the Indian tribes.
17 Man, I thought that was going to be a little project, and
18 they took us on a little fieldtrip, a little project, going
19 to hook up to the power line right above them, but ol' Bob
20 ought to make this fast money in the FastTrak thing, and all
21 of a sudden, it expanded and it expanded all over California
22 -- or expanding to California.

23 It can't expand, like over here -- like this area
24 here in a FastTrak thing. About two hundred locations in
25 California -- Southern California, like they proposed. We

1 can't be going here and there. Look how far I traveled from
2 -- I came from Needles this morning. Look at how far that
3 is to get out here. I just found out where the location was
4 last night, and I made my trip here.

5 And I do know that, to me, right now, I'm wasting
6 my time. I'm going to let you guys know that, too. That
7 we're not really heard. They ignore us. Just like they say
8 they honor the Old Spanish Trail. How about us? We've been
9 here before that. Think about us. Think of locating our
10 people. Think of the projects don't meet government-to-
11 government.

12 A steam plant was proposed out in Ivanpah one
13 time, years and years ago, and that was a steam plant, a
14 coal-burning plant. And they met government-to-government,
15 but these new projects don't meet government-to-government.

16 These are the only projects I know that don't meet
17 government-to-government. Thank you.

18 HEARING OFFICER CELLI: Thank you, Mr. Smith.

19 (Applause.)

20 HEARING OFFICER CELLI: Thank you for coming out
21 here and thank you for your comments. Thank you,
22 Dr. Roberts. Elizabeth von Till Warren, did you wish to
23 make a comment?

24 DR. WARREN: I'm speaking as a concerned Nevada
25 citizen. This whole project is based upon the assumption

1 that all of the infrastructure will be provided through the
2 State of Nevada's territory BLM land. The transmission
3 lines, the natural gas pipeline will come from very close to
4 my town, within a half mile, come through all of this part
5 of northern Clark County and western Clark County in order
6 to serve this Hidden Hills project.

7 And I can't think of a worse name for anything.
8 It's anything but hidden. I know why it's named that. As a
9 historian, I know that. But it certainly gives a false
10 impression, just the name of it itself.

11 But the point is Nevada is going to transmit all
12 this energy, it's going to provide the way to light it with
13 natural gas through the Kern River pipeline, and the water
14 that you'll take for the project comes out the Spring
15 Mountains, basically, which is a Nevada landscape feature -
16 huge.

17 What do we get out of all of this? Well, we
18 transmit the power down to El Dorado Dry Lake where it goes
19 into the grid, and guess where it goes? All of it to
20 California. We don't get one megawatt, we don't get one
21 watt for that matter.

22 So what are we doing? Why are we not putting all
23 those watts on people's roofs wherever they are, and forget
24 all these long, huge transmission lines and this enormous
25 distribution of what is relatively pristine desert?

1 Granted, it is not totally pristine, but it's certainly
2 better than Las Vegas Valley. It's certainly better than
3 Los Angeles. It gives us a sense of being someplace that's
4 important.

5 I think we should step back from these huge
6 projects and take a look at what are we doing to ourselves.

7 What are we doing to the place we live? And what is the
8 cost? And the true cost is not given. The true cost of
9 building these projects means that, forever after, at least
10 in our lifetimes and many lifetimes to come, probably as far
11 forward as the Paiutes go back, and the Shoshones, we will
12 destroy the land.

13 So my slogan to leave you with today is: green
14 energy creates brown fields.

15 HEARING OFFICER CELLI: Thank you, Ms. Warren.

16 (Applause.)

17 HEARING OFFICER CELLI: Now, we have a number of
18 people on the phone that are muted. Before we unmute the
19 phone, I wanted to hear first from any agencies that wish to
20 make a comment. I'm going to unmute the phones now, and ask
21 if there are any -- is there anyone on the phone now who is
22 -- speaking on behalf of a governmental agency? Anyone on
23 the phone? I thought I had the gentleman from the BLM
24 earlier. Okay, is there anyone on the telephone who would
25 like to make a comment -- who is a member of the public who

1 would like to make a comment at this time? Please speak up.

2 MR. EMERSON: Hello? Can you hear me?

3 HEARING OFFICER CELLI: Yes. Kevin Emerson, go
4 ahead.

5 MR. EMERSON: My name is Kevin Emerson.

6 (Unintelligible.)

7 HEARING OFFICER CELLI: One minute, Mr. Emerson.
8 Hold on just a second because we need to fix the volume on
9 your line. Try again.

10 MR. EMERSON: How's this?

11 HEARING OFFICER CELLI: Not much better.

12 MR. EMERSON: Would you like me to call on another
13 line?

14 HEARING OFFICER CELLI: You know what? I'm going
15 to ask that you and -- I'm going to ask all the public
16 commenters to call in on Monday. We're going to be resuming
17 at nine o'clock, again on the WebEx, on Monday. And in the
18 interest of time, I think, unless someone has something that
19 they really need to say today, I'm going to ask that the
20 commenters comment on Monday at noon, so that we can finish
21 up the evidentiary hearing on the cultural matters today.

22 So, thank you, Mr. Emerson. I appreciate that.
23 In general, it's better when you call in to use -- if you
24 are using a landline, to use the handset than a
25 speakerphone. I've noticed we've had some difficulty

1 hearing people with cell phones. Is there anyone else at
2 this time? Otherwise, we have Gerald Haskin who is here.
3 Mr. Haskin, please step forward.

4 MR. HASKIN: Yeah, my name is Gerald Haskin and
5 all I wanted to say was I've been around quite a bit of
6 different places. I was born in Pahrump, Nevada, and I've
7 seen -- a relation of mine has got some Indian artifacts
8 that was picked up in Vegas. The guys didn't know what they
9 were. They just, you know, pushed them aside and stuff, so
10 he brought them home.

11 And yesterday I was sitting out there watching the
12 doves run around the yard four or five foot in front of me,
13 you know. I've got all kinds of animals around. Every once
14 in a while, we see an eagle out there and it's just kind of
15 a shame if, from what I understand, from all these mirrors,
16 and all the heat from them, those birds won't stand a
17 chance.

18 It's just kind of a shame that all this is going
19 to affect the animals and stuff. It's kind of nice living
20 out there in the quiet and, you know, your grandkids can
21 scream and holler all they want to and do what they want to.

22 Then last night, I was out there sitting on the
23 back porch looking up in the air, watching, you know - I had
24 to shut off the porch light because it was too bright and
25 was looking at stars. And out there those stars are

1 beautiful. They really shine. We get a little glare out of
2 Pahrump and out of Vegas, and you really -- so you have to
3 kind of look southwest to see the stars. They are pretty.
4 That's about all I can say. Thank you.

5 HEARING OFFICER CELLI: Thank you Mr. Haskin.

6 (Applause.)

7 HEARING OFFICER CELLI: (Off mic.) Mr. Barkley,
8 in the back. Could I ask you to please come back to the
9 podium for a second? And while he's walking, I just really
10 want to thank everybody who's taken the time to come out and
11 speak. We are listening. I'm listening. This Committee's
12 listening. And I really appreciate everyone being here.

13 I had a question for you. We were here until
14 almost ten o'clock last night discussing the impact on
15 birds. We had some of the top biologists, the top experts,
16 really, in the country on this question, and nobody
17 mentioned the idea that you did today.

18 I just want to make sure I'm understanding. That,
19 basically, one of the problems you're seeing that's
20 impacting birds here is carcasses of rabbits on the road.
21 That then the birds are eating the carcasses and get hit by
22 a truck. I just want to make sure I'm understanding that.

23 MR. BARKLEY: This is a problem, and, going to the
24 outreach for BrightSource, I was assured that the power
25 lines would run along Tecopa Road, at least from the

1 Stateline to the extent of the project and a little farther.

2 This is where the birds hang out. It's where the golden
3 eagle and the two red tail hawks -- there were two. I
4 picked one up off the highway. There are barn owls out
5 there. There's a variety of falcons and hawks that frequent
6 the area.

7 Driving down the highway early in the morning, and
8 usually myself, I kill two or three rabbits, and the hawks
9 are something -- I did pick up a red tail hawk. I probably
10 shouldn't have pulled the tail feathers out of it, but he
11 was pretty much splattered. But I've seen barn owls in the
12 same situation and I'm definitely afraid of all the
13 transportation that's going through between 160 and that
14 area.

15 And I think the issue is -- as big of an issue as
16 all the other issues with the flux and the things and I'm
17 not sure how that's going to go or, you know, how the birds
18 will treat that. But it's a separate issue and maybe it
19 should have been addressed in a different venue. I think
20 maybe putting some poles out in the desert and raising some
21 bunny rabbits and throwing them out there for the -- I don't
22 know. I'm not an environmentalist.

23 I think this is an issue to clean the road, and
24 with the traffic in there, there's going to be a lot of dead
25 rabbits. The kit foxes -- there's a kit fox that's between

1 160 and the Stateline. They come out and eat the same
2 thing. The little coyotes. It's an issue with all the
3 animals that are carnivores.

4 PRESIDING MEMBER DOUGLAS: So, just a brief
5 comment on process. We're going to take a five-minute break
6 and give everyone a chance to stretch and get ready for the
7 next panel. I wanted to -- after we take the last public
8 comment -- let's just go to the public comment. Linda
9 Otero? Fort Mojave Indian Tribe.

10 MR. KAZIO: Commissioner Douglas?

11 PRESIDING MEMBER DOUGLAS: Yes.

12 MR. KAZIO: Just real quickly to address the
13 removal of the carcasses - it is in BIO-8, um, condition --
14 uh, BIO-8, 16.

15 PRESIDING MEMBER DOUGLAS: Thank you. So it
16 didn't come up because it was not in dispute. There was
17 agreement that carcass removal would occur.

18 MR. KAZIO: That is correct.

19 MR. BARKLEY: Thank you.

20 PRESIDING MEMBER DOUGLAS: Thank you. Ms. Otero.

21 MS. OTERO: Good afternoon, Commissioners. My
22 name is Linda Otero. I'm a member of the Fort Mojave Indian
23 Tribe. I'm here also with Nora McDowell Anton from the Fort
24 Mojave Indian Tribe. You called earlier about government?
25 I do also represent our tribal government. I'm on the

1 tribal council. I also serve as the director of the
2 Ahamakav Culture Society; so does Nora McDowell serve in the
3 capacity as assistant director.

4 We made the trip out here today from Needles,
5 California, as well this morning to at least hear and listen
6 and learn about the process of what the CEC does -- goes
7 through to make a decision ultimately of the Hidden Hills
8 Project. We've been keeping an eye on that -- this
9 particular project because the CEC does make other decisions
10 on other projects related to renewable energy in the
11 Riverside County, and you are aware that there have been
12 several already in the decision-making end. And, as
13 mentioned earlier, about the Rio Mesa Project as well.

14 I had the opportunity to meet Commissioner Karen
15 Douglas in December and state some important things that, I
16 think, was left out of this process. It's taken us almost --
17 several years to understand what this process is about. And
18 as I heard comments from tribe about consultation, that's
19 what lacks, and for us to understand that this is a legal
20 process doesn't have that way in which a tribe can be
21 sitting at the table to have the right government-to-
22 government consultation. So, that there lacks our full
23 participation of any tribe, as well as the tribes
24 represented here as well.

25 We learned that the hard way. We learned that by

1 way of a decision being made on the Genesis Project that
2 destroyed a lot of cultural sites because they didn't
3 understand to involve the tribes to the depth in which we
4 would have participated and shared. That part was never
5 ever fully addressed, and then, when that process with the
6 CEC is complete, it moves over to the federal side and the
7 BLM does -- takes that with that same information base and
8 makes that continued decision-making on the -- from the
9 federal side, through the interior.

10 So, long story short: this is a long process and
11 this is probably not going to be the end of this either, but
12 just to make the comment known that the CEC has heard, at
13 least from Fort Mojave and other tribes about the level of
14 acknowledging tribal participation, tribal governments are
15 well, and we need that doorway into having that opportunity
16 aside from having, you know, the legal process that, as
17 tribes are not always willing to participate in that manner,
18 but raising it to acknowledge that we are sovereign
19 governments as well.

20 All throughout the renewable energy plan to move
21 forward was through the Energy Act of 2005, when Congress
22 passed that and agreements were made with the federal
23 government and the state government. MOU's were developed
24 and created and, from that, various plans were initiated.
25 Not at any time were tribes asked to participate, and here

1 we are in a process that just very limits the tribal
2 participation.

3 That's a key, important part, to understand the
4 landscape as has been talked about earlier. We, as native
5 people, understand this natural world and how we fit into
6 it. It's a part of our life ways. It's been mentioned
7 earlier and it still is a part of what needs to be
8 understood. It's a living culture. We are part of that
9 living culture. It's never died out. We won't go away.

10 That's why we speak in these forums. We speak in
11 any capacity that we can to make that voice heard, and, for
12 those who don't understand that, we are a still a living
13 culture. We tie into those places that are still alive
14 through the spirits, and that is important for us to still
15 maintain and have that continuity of our past that we also
16 recognize that it's important for our future.

17 Unfortunately, that is never embedded in the
18 document to understand that, and when you have contractors
19 do certain work, even for an applicant, they miss that
20 component of it. That's the depth of why tribes get
21 involved. To make that point understood. But sometimes the
22 language isn't carved out right to fit from those ways in
23 which we speak where the laws are, as we spoke -- heard --
24 was spoken of earlier about the National Register or the
25 California Register.

1 Some of that language does not exactly fit the way
2 in which we express ourselves and how it should be
3 identified in the level in which it -- the significance is
4 far more -- greater than what the language represents.

5 And one thing that should be understood is when
6 people think of everything of only physical. It's not just
7 physical. Absence of sites, absence of those things has
8 significance as well, and that's very much missed at times.

9 When they say, well, there was no sites here or no
10 identification of any markers here or there, that doesn't
11 play well with the tribes because, in our way, absence of
12 sites as well does not mean it's not significant. It's tied
13 into the spiritual life, the spiritual level in which some
14 folks don't always understand from the western way of the
15 scientific method.

16 So, to -- we want you to know that, you know, we
17 made this trip to support people here, the tribal people and
18 people of the lands that are part of this community. We are
19 being mindful of what's going on and the decision that
20 possibly be made on the Hidden Hills Project, and, um, weigh
21 in on acknowledging that you raise the level in which
22 cultural input is significant and honor that.

23 PRESIDING MEMBER DOUGLAS: Thank you, Ms. Otero.
24 Thank you for being here today.

25 (Applause.)

1 PRESIDING MEMBER DOUGLAS: I want to thank you --
2 I'll wait for the applause to die down. I want to thank you
3 also for taking the time, along with your colleagues from
4 Fort Mojave to come and visit me and talk about our process
5 and talk about how we can better engage with tribes in our
6 siting process.

7 As Mr. Arnold has pointed out, probably a couple
8 times in the last few days, and he has been extremely
9 patient and extremely constructive sitting through many days
10 of this - I'll be very curious at the end to hear what he
11 thinks of it all.

12 This is the first time that we have had a Native
13 American Tribe formally intervene and become a party in our
14 proceedings. This is new, certainly new to Mr. Arnold and
15 the Pahrump Paiute Tribe, it's new to us. It's important
16 that we get it right and it's important that we learn from
17 this and move forward. So thank you. Thanks for being
18 here.

19 Let's see here. I have Amy Haines of Charleston
20 View.

21 MS. HAINES: My name is Amy Haines and I am a
22 Charleston View resident. Today I just wanted to say that
23 the Hidden Hills Project going in will not only affect my
24 life, but my family, because I am a native. I am a Pahrump
25 Paiute. And the damage that is going to be done to this

1 land will never be restored. And the people sitting behind
2 me hold this place very sacred. And it is very distressing
3 to me that people can, in a way, step on other people's toes
4 because they don't understand the power that this holds to
5 the people.

6 And I am sixteen years old. I have lived with my
7 grandma and my grandfather, Rayetta and Gerald Haskin, for
8 over half of my life, because my mother has not made very
9 wise decisions and she has kicked us out several times.

10 And if it weren't for the safety of Charleston
11 View and its secluded area, then I probably would not be
12 standing here today. Because whenever we went to Grandma's
13 house, we never had to worry about anything. We never had
14 to worry about what was going to happen to us, who was going
15 to be in the house, you know.

16 And it is just very distressing to me because
17 nobody here really lives here and nobody understands what
18 Charleston View is to these people. And being -- living
19 here over half my life, it's -- I don't know, it's very,
20 very upsetting because everybody is going to leave and we're
21 going to have this thing in front of my house.

22 It's going to destroy part of my heritage that I
23 am finally getting to learn about because my mother was
24 never into her Indian heritage. And now that I have moved
25 in with my grandmother and my grandfather, I am now hearing

1 stories about this amazing culture that the natives have.
2 And this is going to get rid of a huge part of that and it's
3 going to affect the kids in my neighborhood who really don't
4 have anything. And it's going to affect the adults who
5 cannot afford what all of this is going to bring.

6 And I just -- I really don't believe that this is
7 fair to the people of Charleston View and the natives
8 because it not only affects the Pahrump Paiutes, but
9 different tribes near us. And I just -- I don't believe
10 that that is a very fair thing to do. That's really all I
11 have to say. Thank you.

12 PRESIDING MEMBER DOUGLAS: Thank you.

13 (Applause.)

14 HEARING OFFICER CELLI: Thank you.

15 PRESIDING MEMBER DOUGLAS: All right. Thank you.

16 Is there any more comment from in the room? Okay, it
17 doesn't look like it right now. Thank you all for being
18 here. Thank you very much and I hope you stay to listen to
19 the next portion of the hearings.

20 I wanted to make one comment before we take a very
21 brief break and that has to do with the video camera in the
22 room. I know that there was a concern expressed about
23 filming the proceeding as it's going to go forward.

24 Another area that I've now been reflecting on
25 where our law is not necessarily as conducive to Native

1 American participation in the hearings as we might like, as
2 we actually cannot say to someone that they cannot film.
3 So, however, that said, we've spoken with the gentleman with
4 the camera. My understanding is his only desire is to film
5 a couple people who have permission. He has no interest in
6 filming anyone else. So I wanted people to understand that.
7 Is that correct, sir?

8 VIDEOGRAPHER: That is correct. Thank you.

9 PRESIDING MEMBER DOUGLAS: Very good. All right.
10 So, with that, let's take a five minute break. Let's come
11 back at --

12 HEARING OFFICER CELLI: Well, in five minutes it
13 will be about seventeen after. I want the parties to put
14 your experts on the expert panel now so we're all ready to
15 go in five minutes.

16 We're off the record.

17 ETHNOGRAPHIC RESOURCES PANEL

18 HEARING OFFICER CELLI: Okay. I just want to make
19 sure that we have all of our experts seated. Ms. Warren,
20 are you also a cultural expert on this?

21 Jack Prichett, I wonder if your entourage has
22 shrunk. I'm thinking that what we would do is bring
23 people down closer to the Committee so we can see them.
24 It's better when we can see their faces when they talk.

25 Mr. Arnold, I'm thinking, if there's room, I don't

1 want to disrupt you too much, but we'd sure like to see
2 everyone closer up. If we can move everybody down this way,
3 we can see your face when you're talking. It's a lot
4 better.

5 The other thing is, ladies and gentlemen, I know
6 that certain parties are not going to make it to Sacramento.

7 You're going to be on the phone. It is going to be very
8 important, though, that you continue to participate on the
9 phone on Monday, because we're going to talk about things
10 like what needs to be in the briefs. So that's important.

11 So, let's have all of the experts take their
12 seats. Come on down, experts. So, Clinton Helton. I have
13 Lynne Sebastian. I have Natalie Lawson. I have Geoff
14 Spaulding. Okay. Now, I still have Richard Bent, are you
15 continuing to be an expert on this panel for the cultural?

16 MR. BENT: Yeah, I can do that.

17 HEARING OFFICER CELLI: I mean, I don't know. I'm
18 not saying you have to. We're no longer on Old Spanish
19 Trail, we're now on the cultural -- ethnographic-cultural
20 side of things. Are you all going to continue? Just
21 Mr. Prichett? Okay, thank you.

22 So, Mr. Prichett, I'm going to put you next to
23 Dr. Spaulding. Next to Jack Prichett, I would like to put
24 -- Thomas Gates, if you could sit next to Jack Prichett.
25 And then, next to Thomas Gates, I'm going to put you,

1 Mr. Arnold, if you wouldn't mind sliding down next to
2 Mr. Gates. And, again, that's Mathew Leivas. You're going
3 to scoot down next to Mr. Arnold.

4 And Ms. MacDonald, is Mr. Thomas King still --
5 Ms. MacDonald?

6 MS. MacDONALD: Yes?

7 HEARING OFFICER CELLI: Is Thomas King testifying
8 on the ethnographic, or was he just Old Spanish Trail?

9 MS. MacDONALD: No. He was cultural and historic
10 resources, so both portions.

11 HEARING OFFICER CELLI: So he's a part of this
12 panel as well?

13 MS. MacDONALD: Yes, sir. Thank you. Assuming
14 he's on the line.

15 HEARING OFFICER CELLI: He is. Well, I see that
16 he's still here. Mr. King, you want to say something. Let
17 us know you're still alive and kicking. (Off mic.) I do.
18 Thank you. And then, CBD did not have a cultural expert.
19 Not Zellhoefer. Not County of Inyo. Arnold, yes. Okay.
20 Go ahead and get yourselves set up.

21 The way I'd like to proceed now, ladies and
22 gentlemen, is that we have the testimony of Thomas Gates
23 that is going to come into the record as testimony. And I
24 thought the best way to proceed today would be to allow
25 Mr. Gates to sort of kick things off for staff, tell us what

1 the issues are, allow applicant's party, then, to respond to
2 the comments -- or, really, the evidence as presented by
3 Dr. Gates. Then, we would turn it over to Mr. Arnold. Then
4 we have Thomas King, who we will insert wherever we can when
5 we think it's appropriate.

6 So, with that, let me just make sure. Everybody
7 on this panel has been sworn already, including Thomas King.

8 So, let's start then with Thomas Gates, please.

9 DR. GATES: Thank you very much for the
10 opportunity to provide oral testimony on my written
11 testimony. Uh, hello?

12 HEARING OFFICER CELLI: Yeah, you've got -- see
13 how I am? I'm speaking right into this thing. My nose is
14 bumping into this microphone. That's what we kind of want
15 you to do.

16 DR. GATES: Okay. Let me try it again.

17 HEARING OFFICER CELLI: Perfect.

18 DR. GATES: So, thank you very much for the
19 opportunity to provide oral testimony. I've got a
20 PowerPoint.

21 HEARING OFFICER CELLI: We're having a Jimi
22 Hendrix experience, Tony.

23 MR. RYGG: All right.

24 DR. GATES: Are we out of power? Hello? Hello?

25 HEARING OFFICER CELLI: That's good. Stay close

1 to it, Dr. Gates.

2 DR. GATES: So, I've got a PowerPoint, and I want
3 to make sure that, as each of these images come up, that, to
4 the extent that you're concerned that these are part of the
5 evidence, I would like to try to identify what the sources
6 of these are.

7 HEARING OFFICER CELLI: I'm just passing over the
8 permissions right now to Mike Battles, who will get your --
9 he has your PowerPoint, I take it? Okay, very good. You're
10 now on WebEx. You're broadcasting live from Shoshone,
11 California.

12 DR. GATES: So, this image here comes from the
13 cover of the ethnographic report - the one that was
14 submitted into the docket as a redacted version. This is on
15 the cover of that report. I'd like to start.

16 I have identified four areas of dispute. I'd like
17 to start with a quick paragraph that introduces the tribes
18 that the Energy Commission staff consulted with for this
19 project.

20 Staff consulted with nine tribes concerning this
21 project. All of those tribes were clear and unequivocal
22 that the project is in the center of Pahrump Paiute Tribe's
23 territory and that they would have first say on cultural
24 resource issues pertaining to the project and potential
25 impacts. The -- and so the Pahrump Paiute Tribe

1 participated fully in a collaborative study that I
2 conducted.

3 There are 565 tribes in the United States that are
4 federally recognized. There are hundreds more that are
5 petitioning to be recognized, and that's a long process to
6 get that recognition. The Pahrump Paiute Tribe is one tribe
7 that is petitioning to be recognized. Their petition has
8 been pending with the Department of Interior since about
9 1987. So, they are in that process, but they are not yet
10 federally recognized. Nonetheless, they are listed with the
11 state's Native American Heritage Commission. They show up
12 routinely on the documents that the Heritage Commission puts
13 out that then requires us to consult with them as a starting
14 spot.

15 The Pahrump Paiute Tribe's headquarters are in
16 Pahrump, Nevada. Their ancestral territory is about fifty
17 percent in California and about fifty percent in Nevada.
18 Their membership is roughly a hundred or so, and those
19 people live both in Nevada and California.

20 I want to move on to what I perceive to be the
21 four areas of dispute. There may be others that the
22 applicant's witnesses might bring up, but the four that I
23 identify are the following: "If ethnographic resources
24 documented by staff exist, then what types of historical
25 resources or historical properties are they?" That's number

1 one. Two, "What methods are such resources known by?"
2 Three, "What levels of effort should be expended in
3 employing whatever methods are used?" And four, "What are
4 sufficient mitigations for project impacts to ethnographic
5 resources in, near, and around the project area?"

6 So, I'll then proceed to go through these four
7 areas of dispute. Could I have the first slide -- the
8 second slide, I should say. I just want to quickly identify
9 -- and I'll return to these three different images
10 throughout the rest of this presentation.

11 The first ethnographic landscape is a Salt Song
12 Landscape. This is a map -- go back, Michael. This is a
13 map that you can find readily available on the Internet, and
14 for which I obtained copyrights on behalf of the Energy
15 Commission to include in our reports or assessments.

16 Next slide. The second ethnographic landscape that I
17 identified is labeled the Pahrump Paiute Home Landscape.
18 I'll return to this image later.

19 And the next slide. The third ethnographic landscape
20 that staff documented in collaboration with the Pahrump
21 Paiute Tribe is the Ma-hav Landscape, of which this provides
22 an image of the location of that landscape. Each of these
23 three images that I just ran through were attached to the
24 ethnographic report and were brought forward into the
25 staff's Final Staff Assessment.

1 Now, there's been some question in workshops as to
2 what is the relationship with these three landscapes. So,
3 if you'll indulge me, I'll use this simple metaphor. I'll
4 simply say that if we were to picture a necklace, the Salt
5 Song Trail would be the strand or the string that ties the
6 necklace together; the fourteen, fifteen, or sixteen,
7 depending on how you count them, cultures would be gems on
8 this necklace, of which the Pahrump Paiute Home Landscape is
9 one gem; and the Ma-hav Landscape would be facet of the
10 Pahrump Paiute Home Landscape. So they are part and parcel,
11 going from a very large landscape to a very specific aspect
12 of one tribe's homeland.

13 Now, the first area of dispute -- or the second
14 area of dispute beyond what are lands -- what are the
15 resources, is what type they are. Staff is pretty clear in
16 our study and in our Final Staff Assessment that what I'm
17 talking about is what is normally called, under CEQA, an
18 area, and what, under federal guidelines, is called a
19 cultural landscape, and specifically a type of cultural
20 landscape which is an ethnographic landscape.

21 I think that's -- there's a major divergence there
22 between what staff has asserted they are documenting and
23 what the applicant's expert suggests I was documenting.
24 They are saying that, actually, I was documenting a
25 traditional, cultural property, or the equivalent in state

1 guidelines would be a place.

2 So, I want to run through three -- the next three
3 slides to get at this nomenclature. And now, these next
4 three slides, or schemas, do not exist in the record.
5 However, text that does describe these differences of
6 nomenclature do exist, and this summarizes it, so I hope I
7 can go forward with these three slides.

8 So, here is a typology of historical resources per
9 state guidelines for CEQA. There are these different types.

10 I really don't want to focus to the left, I want to focus
11 more to the two on the far right - places and areas. What
12 you'll notice under state guidelines is there's nothing in
13 state guidelines called a district, just places and areas.
14 And I am clearly talking about the far right areas.

15 Under the federal nomenclature, it's no longer
16 called historical resources. They choose to call them
17 historic properties. And there are these types again. Now,
18 there's some quibbling over whether a TCP is a property unto
19 itself or is some sort of combination of the other types.
20 And that's something that goes back and forth. And, indeed,
21 we have Dr. Tom King as part of the panel, and these are
22 terms that he and a coauthor came up with twenty years ago,
23 and he clearly is the expert on a lot of this nomenclature
24 about, particularly, traditional cultural properties.

25 But again, what I want to point out is, under

1 federal law or federal statute guidelines, districts, of
2 which one type of district is cultural landscapes and one of
3 the four types of cultural landscapes is an ethnographic
4 landscape.

5 And I want to make the parallel that, when we talk
6 about TCPs, or traditional cultural properties, we are
7 talking about places. And when we talk about areas, the
8 federal equivalent is a cultural landscape, of which I'm
9 talking an ethnographic landscape.

10 HEARING OFFICER CELLI: Dr. Gates, one second.
11 Ms. Willis, do we need to mark this PowerPoint as 333?

12 MS. WILLIS: I don't intend to offer it into the
13 record, unless you feel that these -- the three additional
14 depictions are something that you would find useful.

15 HEARING OFFICER CELLI: So, I'm going to mark for
16 identification Dr. Gates' PowerPoint as Exhibit 333. Go
17 ahead.

18 DR. GATES: Thank you. So, having made those
19 distinctions, I want to go to one last distinction that is
20 partially in dispute. And that's the next slide, please.
21 The applicant's expert witness seems to think that staff
22 either did or should have or would have been most prudent to
23 document what I was out there documenting as discontiguous
24 properties. This is that there might be some theme --
25 cultural theme, and that you identify on the ground these

1 specific spots, locations, a trail track, an artifact
2 adjacent to the trail.

3 These are discontinuous and that's what you, then,
4 specifically delineate and then assess your effects to
5 determine if it's eligible, and then assess your effects
6 tool. That's certainly one method. It's a method that's
7 most useful particularly for archeology.

8 That's not what staff was looking at. Staff was
9 more on the left, with something that was contiguous. Later
10 on, I will talk about exactly why the landscapes I'm talking
11 about and documenting are contiguous not discontinuous.
12 There is some disagreement there over what either staff did
13 or should have done.

14 In, sort of, summarizing this nomenclature -- this
15 nomenclature part of my oral testimony here, I want to make
16 another point. And that is that, under state guidelines for
17 actually determining eligibility to the state register,
18 particularly in a brief promulgated by the California Office
19 of Historic Preservation Technical Brief 6, it states that
20 the state program for historic preservation "is extremely
21 similar to the federal program."

22 So, where you start for finding guidelines for
23 nomenclature that is lacking under state law -- or
24 guidelines, you can assume that the federal guidelines will
25 cover that omission. And I'll return to that point in a

1 bit, but I want to underscore that point now.

2 So, I want to move on to the next area, now that I
3 feel like I've articulated what staff was intending to do.
4 And now I want to talk about the methods which we use to
5 then identify, evaluate, document, and assess eligibility.

6 I'll start by saying that, if the applicant's
7 witness is incorrect in what types of historical resources
8 staff was aiming to document, likewise, then the guidelines
9 they would suggest we follow gets them further divergent
10 from what staff's position was.

11 The applicant's witness suggests that staff should
12 have followed federal bulletin -- or National Park Service
13 Bulletin 15 for determining eligibility. While staff did
14 not follow so much 15, I'm very familiar with Bulletin 15,
15 but, given that I'm working as a state employee in
16 California, working on a project pursuant to CEQA, I
17 followed the guidelines of CEQA first.

18 To the extent that I may find those guidelines
19 lacking, I'm going go to the California Office of Historic
20 Preservation and look at their guidelines next. Those
21 guidelines are found in Technical Brief 6. To the extent
22 that I find those two guidelines lacking, I might then
23 resort to taking a look at Bulletin 15 - not to say that
24 Bulletin 15 has got nothing to say about what is happening,
25 but it is the third area that I would actually rely on if I

1 find the first two lacking, and I did not find them lacking.

2 Likewise -- so then, that's at the level of
3 determining eligibility, applying criteria to properties.
4 The one situation in California is, while cultural
5 landscapes have been identified by the Office of Historic
6 Preservation as one of the top priorities that need -- that
7 the state needs to get clear on, and that's in their
8 statewide plan.

9 Despite that, and that being in their plan for now
10 probably ten years, there are no guidelines at the state
11 level for documenting areas or places, so it therefore could
12 be logical in actually documenting -- not determining
13 eligibility for any property, but documenting specifically
14 areas or places that you would then resort under this
15 language in Technical Brief 6, that the programs are
16 "extremely similar," you would therefore go to the federal
17 guidelines for understanding how to document areas or places
18 as those are defined under CEQA guidelines.

19 So, the two guidelines that exist at the federal
20 level, and there are other types of literature - you'd get
21 out into the grey literature beyond the guidelines. And
22 there's plenty of literature out there. The two particular
23 guidelines in dispute are something called Brief 36 --
24 National Park Service Brief 36 and National Park Service
25 Bulletin 38.

1 So, Bulletin 38, coauthored by Dr. Thomas King,
2 talks about how you document traditional cultural
3 properties. Since I was not documenting a traditional
4 cultural property and I was, instead, going after an area,
5 which to be an ethnographic landscape, I was following Brief
6 36.

7 Now, 36 is, I believe, a little bit older than
8 Bulletin 38. Bulletin has got a lot of wisdom in it. I've
9 lived with Bulletin for twenty-some years. It's got a lot
10 of good advice and I've -- basically, over those twenty
11 years, I basically have internalized that advice. However,
12 let's just be clear, I was following the guidelines of Brief
13 36, not Bulletin 38.

14 Now, if the question is what is the difference
15 between those briefs and bulletins, I would simply say that
16 the definitions of what a traditional cultural property is
17 are different for what the definitions for ethnographic
18 landscape are.

19 Another difference is that Bulletin 38 puts more
20 emphasis on collaborating, consulting, reaching out to
21 communities that have values that are attributed to the
22 historic property that you're trying to document, and that's
23 a really critical area. Brief 36 is a bit silent on that.
24 And there are some other differences, which, the more I go
25 into that, the more I think it takes me away from the oral

1 testimony I'm going to provide, although that may come back
2 up in the discussion.

3 I do want to underscore -- before I move on to the
4 third area of dispute, I do want to underscore that, while
5 the applicant's witness erroneously attributes that I should
6 be following certain guidelines, which I did not, on the
7 side, I want to point out that the applicant's witness did
8 not follow the guidelines they said I should follow,
9 particularly in the area of consultation. I would say that
10 the applicant's cultural resource management professionals
11 did a minimal job. I would not say that it was zero, but
12 they did a minimal job in outreach to the tribes.

13 Now, if they don't have the same requirements as a
14 state agency for government-to-government consultation, so
15 that certainly is acceptable. I wouldn't say they did a
16 poor job of their minimal efforts, but it was minimal.

17 Bulletin 38 is pretty clear. If you were going to
18 articulate the merits of a type of historical resource or
19 property that is very closely affiliated with a community
20 that has values about that property, you should reach out to
21 those people and you should talk with them and understand
22 what that is about their culture, particularly if it is
23 something like a traditional cultural property where the
24 values can be sometimes intangible, hard to understand to
25 the non-practitioner, and are not readily apparent by the

1 ground, unlike something like, for archeology, where the
2 science -- you can get a lot out of the science of the
3 artifact without talking to people who are maybe affiliated
4 with that artifact.

5 So I want to move on to the third area of dispute.
6 This area of dispute, which concerns the level of effort --
7 sorry, I'm going to do something similar to what Richard did
8 yesterday. I want to go back to dispute two.

9 (Laughter.)

10 I'm not quite finished with that. I want to also
11 say something about a different -- another method that staff
12 followed in doing this documentation besides the guidance
13 provided in Brief 36. The issue here is that we are trying
14 to take a look at ethnographic resources. And ethnography
15 is a discipline that best practices would say that, in order
16 to understand another culture of which I am a foreigner too,
17 it probably takes at a minimum a year, if not a couple
18 years, to really get into that. There are ethnographers
19 that have spent their whole life with a culture and still
20 feel like they don't understand it. I've spent eighteen
21 years as a tribal employee. I still don't understand that
22 culture ultimately. It's a second culture to me.

23 So, the issue here is if the Commission, in our
24 schedule to regulate the siting of these facilities, if we
25 are to truncate that process, it starts to go against the

1 grains, against the discipline of ethnography. Fortunately,
2 there are methods out there that quicken the process and
3 there are tradeoffs to that.

4 So, in employing a method that allows me to do
5 ethnography within a, for example, a four- to six-month
6 period, I use a method called REAP, Rapid Ethnographic
7 Assessment Program. It's a program and method that was
8 promulgated by the Parks Service, and there are other types
9 of similar processes out there. I start to forget the
10 acronyms, but there's a Rapid Assessment -- and some of this
11 came out of the 1930s, the Dust Bowl and trying to
12 understand social impacts of people during that time and to
13 do that quickly.

14 And so, REAP is a ethnographic method that you
15 would employ when you are not trying to understand the full
16 breadth and depth of a culture, but specifically what is the
17 bearing of the breadth and depth of that culture as regards
18 a particular project area.

19 So it's truncated, it's quick, it can be called
20 shotgun in some ways, and there are tradeoffs. And what you
21 do when you have these tradeoffs is you identify the
22 constraints, you try to rectify those constraints, or you
23 acknowledge -- if you cannot overcome those constrains, you
24 acknowledge that and move on.

25 In my reports and assessment, I identified some

1 weaknesses. One -- there were five. One was an issue of
2 confidentiality. How can you move into a group that you do
3 not understand and know and gain their confidence and gain
4 their precious information without a long period of time
5 where you can gain trust? So confidentiality becomes an
6 issue.

7 Second issue is, if you are in a culture in which
8 English is a second language, it's best to understand their
9 culture if you know the language and can speak, for example,
10 Southern Paiute or Pahrump Paiute. And that is a
11 constraint.

12 I don't speak that language and there's very few
13 professionals out there that actually do, and for us to go
14 out and find that person and bring them under contract would
15 be a difficulty that I dispensed with. And we worked within
16 English and some of my -- the people that talked with me --
17 English was a second language. There was some constraints
18 but we worked through that.

19 A third area where we would identify constraints
20 is I couldn't find some of the materials. Some of the
21 seminal ethnographic literature was tough to ferret out.
22 Some of it was not in the public purview and it would have
23 required me to develop professional relations with other
24 professionals that held these documents of which I simply
25 didn't have the time.

1 So, I didn't have the full benefit of all the
2 information out there to do my ethnographic assessment. Had
3 I had two years, I probably would have gotten to it.

4 A third area is you cannot understand the full
5 breadth of a resource. So, for example, later I'll talk
6 about the Salt Song Landscape where -- it's a circuit that
7 goes through four states. I didn't focus on four states and
8 I didn't consult with sixteen tribes. I focused only on the
9 segment in the Pahrump Valley and I only consulted with the
10 tribe that was most directly affiliated with that segment.
11 So you start to lack the full breadth of the resource.

12 So, being up front about these constraints as part
13 of the method of REAP allows you to move forward and try to
14 figure ways in which you can work around that.

15 Now, going on to dispute area three - the dispute
16 is over the given -- what the resources -- given the
17 guidance and the methodologies that were followed, what is
18 the level of effort that needs to be employed to actually do
19 a good job of identifying these resources? And there is
20 some debate here over whether staff did enough work. It
21 tends to come out in four areas - this level of effort.

22 The first is how precisely and well-delineated the
23 boundaries of these different resources have been delineated
24 and documented. A second area of this level-of-effort
25 dispute is the applicability of various eligibility

1 criteria. The third is a specificity of locales for the
2 contributing attributes. We'll talk about contributing
3 attributes in order to define an ethnographic landscape --
4 you identify the contributing attributes.

5 And so, this dispute is in how well did I define
6 those contributing attributes. And the fourth area is the
7 amount of specific local and other information required to
8 substantiate that something exists in the world,
9 particularly for some of us who are foreigners to this
10 culture, that might be a little bit esoteric or less
11 tangible. So, how much information is enough to convince
12 the rest of the world that, yes, there is indeed something
13 out there that is worth considering. These are these areas.

14 Now, all four of these are applicable to the three
15 different resources, which would mean you would have a
16 permutation of, what, twelve different problem areas. They
17 are hit and miss across these three different landscapes.
18 So, I'm going to now walk through that by use of some of the
19 maps and images.

20 So, I want to start -- uh, let's go to the next
21 slide, Michael. Back to the Salt Song Trail. I've already
22 said yes, indeed, it is a trail or circuit that runs through
23 four different states. The expert witness for the applicant
24 thinks of this landscape as, perhaps, something more
25 archeological - a mark on the ground, or perhaps some

1 locales adjacent to this mark on the ground.

2 And, while the Salt Song Trail, in places,
3 probably is a mark on the ground and perhaps - I'm not sure,
4 I did not ground truth, but perhaps some of the trails that
5 were discussed earlier today to the north of the project
6 perhaps are some of the Salt Song Trail, but to really
7 understand the Salt Song Trail, it's not about a mark on the
8 ground.

9 The Salt Song Trail is a corridor and, if I
10 really, really try to understand Pahrump Paiute cultural
11 knowledge about the Salt Song Trail, it's a corridor that's
12 below the ground, it's above the ground, and its
13 dimensionality, you know, is it -- how high does it go up?
14 If I'm really true to the ethnography, it goes up to the
15 cosmos. It is linked to the Milky Way and so it's hard to
16 put parameters on this. But, on the other hand, I do not
17 want to say it is everything. It certainly is a corridor,
18 and there's a corridor that runs directly through the
19 project area.

20 Let's go to the next slide. So, this is something
21 that was submitted under staff's rebuttal testimony as an
22 additional image. I was trying to point -- with this image,
23 I was trying to point out, one, that we were only focusing
24 on that part of the Salt Song Trail that ran through the
25 Pahrump Valley, and I was trying to show that, indeed, the

1 project - as you can see in the small dot in the middle of
2 the purple - indeed, the project is clearly in the viewshed.

3 This is a viewshed from one of the higher places of the
4 Spring Mountains. But I just wanted to show that -- and so,
5 this Salt Song Trail, it comes from the north, north of the
6 Spring Mountains, it runs along the Spring Mountains, and
7 from there goes out towards Barstow. If you look down to
8 the far left just to the right of that little green inset,
9 the word Barstow is there.

10 So if you drew a direct line from there back to
11 Mount Charleston. But I -- sorry, I didn't put the line on
12 the map. I should have done that. It runs just to the
13 north of the project area. So, while I do not want to say
14 that, yes, there is indeed a line that you would find on the
15 land right there, I do want to say that that is probably the
16 middle axis of this corridor, and the project is right -- if
17 it's not smack in the middle of that axis, it's just off to
18 the south.

19 And I think that gets you some idea. So I think
20 that that is enough information to make some decisions about
21 impacts to this resource without trying to talk about how
22 far to delineate the corridor.

23 Next slide, please. So, back to this before I
24 leave the Salt Song Trail Landscape. I also wanted to bring
25 up this issue that, you know, in order to find something

1 eligible to a register - in this case, the state register is
2 what I was looking at, not so much the National Register -
3 you have to apply these eligibility criteria. And only one
4 eligibility criteria needs to be applied and found to have
5 merit in order for something to be considered eligible to a
6 register and, therefore, to be considered under, you know,
7 as an impact to the environment. I, however, found two.

8 Under one, broad patterns of history, and the
9 second eligibility criteria that I applied was under the
10 state eligibility criteria -- would be criteria number
11 three, that speaks about the -- does the property have
12 values that are -- that speak to art, traditions, designs?
13 Now, usually, this is applied to like, for example, great
14 artists, architects, this type of thing, build some very
15 nice building, and it's got merits, and it shows the work of
16 that master.

17 However, when you start to get into traditional
18 cultural properties and ethnographic landscapes with these
19 cultural values, these intangibles, I felt that it was
20 applicable here because we're talking about the Salt Song
21 Trail. And the -- one of the critical words in that title
22 is song, and while song is not place-based, as the argument
23 would go, therefore it's not a property, I want us to
24 understand what a song means for this landscape.

25 I think one of the things that happens in these

1 songs is it is commemorating both the living and the
2 deceased, the recently deceased, on a traditional route.
3 And these songs speak to that route, and they guide people
4 along that trail.

5 So, what the applicant's witness would want us to
6 do is do some sort of ethnomusicological analysis of the
7 songs, pull out specifically the places for areas or locales
8 that are mentioned in the songs, and put circles around
9 those on a map and protect those.

10 And I think, while that is interesting -- I didn't
11 do that ethnomusicological analysis, but what you do need to
12 understand about these songs is, while the applicant's
13 witness is only focusing on the text of the songs, I would
14 like to talk about the texture of the songs and the context
15 of the songs.

16 The songs do not make sense outside of the
17 landscape for which they were created and came from. You
18 cannot find these songs on the Internet, you can't buy and
19 sell these, the public isn't supposed to be privileged to
20 these songs. These are for a ceremony that is to be
21 performed in the land.

22 That's the context of these songs. The landscape.
23 Impact the landscape, you impact the songs. Now, in
24 between context and text is texture, the quality by which
25 these songs are produced. And, from what I understand from

1 the limited interviews I've conducted with traditional
2 cultural practitioners of Salt Songs, of which, before
3 Richard Arnold became an intervenor, I had the opportunity
4 to discuss with him these -- some of these aspects.

5 There is a reverberation and an echo that happens
6 in the land. There is an acoustic quality to these songs
7 that you could only capture in the land, and that's what you
8 fail to understand if you just look at the text. And so,
9 that's why, I think, we want to talk about these songs in
10 relationship to the land, because that's where these songs
11 came out of, and it goes off into some esoteric legends,
12 methodology, cosmology, and epistemology as to exactly how
13 that happened and what the Creator did and how the people
14 inherited and how they recreate, in an obligatory way, with
15 the Creator.

16 That goes off into something -- I really don't
17 want to go there, and, frankly, there's others here that are
18 much more experts than I. I have two Ph.D.'s over here to
19 the left of me that know about this much better than I. So,
20 I'll leave it to them.

21 But that's -- I just wanted to underscore that.
22 Let's go to the next slide. Now, what you see here -- this
23 is, again, the Pahrump Paiute Home Landscape. What you see
24 in the green is a journey. It's the journey of Chief
25 Tecopa. The green is generally his travels, and the red

1 dots are where he stopped along his travel.

2 And I'm using Chief Tecopa's journey as a way to
3 document the ancestral territory of the Pahrump Paiute
4 people. Now, I'm being critiqued here by the expert witness
5 for the applicant that this homeland is not well delineated.

6 And all I can say is I would agree with that. There are
7 areas beyond the journey, outside of that ring that perhaps
8 are not well-known, exactly, where those boundaries are.
9 There are. There are, perhaps, some longstanding
10 intertribal disputes over where that is, and I don't --
11 frankly, I don't find it to be staff's position to weigh in
12 in a document, and put a line on a map that is not going to
13 matter one way or the other for making a decision.

14 I do know that generally -- the Pahrump Paiute
15 homeland is generally within that green journey. And let me
16 tell you the story of that green journey. Let's go to the
17 next slide.

18 This is an image that came out of the ethnographic
19 report, the study that I did. This is Chief Tecopa. Chief
20 Tecopa had a heavy decision weighing on his shoulders in
21 1873 when another famous person, Wesley Powell, at that
22 point an agent to the United States government, was given
23 the mission to come figure out how many different Paiutes
24 were out there and to what extent you could put them onto
25 limited reservations. This is in relationship to opening up

1 the West, broadening the United States' boundaries at the
2 demise of tribes by getting them onto reservations.

3 And Wesley Powell had relation with Tecopa and asked
4 Tecopa if he would go around and talk to his people, his
5 various villages, so those red dots are where he stopped and
6 asked them, would they move over about a hundred miles to
7 the east into their neighbors' territories, and to what
8 extent would the Pahrump Paiute move over to the, at that
9 time, proposed Moapa Reservation.

10 And Chief Tecopa had a heavy duty on his -- because he
11 was -- on the one hand, he was trying to decide about the
12 future of his people, and whether they would have a better
13 go of it in a reservation where they were told they would be
14 protected from some of the depredations that were occurring,
15 as we talked about the slaves and so on and so forth. On
16 the other hand, he knew that by making that decision, he
17 would lose his homeland.

18 So, he had a heavy burden on him as he made this
19 trip, and, in fact, the result of that is some Pahrump
20 Paiute moved to Moapa and some, particularly the village
21 right here in Shoshone - in fact, that village is located a
22 stone's throw away from this building over by a spring about
23 a hundred or two hundred yards from here.

24 The people particularly in this valley said no, we're
25 not going. So some went, some stayed, and of those that

1 went, some of them, within a couple years - because, at that
2 time, Moapa Reservation was one of the most poorly-managed
3 reservations in the United States. Plenty of documentation
4 that showed the corruption of the people that ran that
5 reservation.

6 So, a bunch of Pahrump Paiute came back. They didn't
7 get the fair shake they thought they were going to get.
8 That's partly why you continue to have a Pahrump Paiute
9 Tribe today that's not recognized by the federal government.

10 So, I find Chief Tecopa's journey to be defining
11 for the boundaries of the homeland -- the Pahrump Paiute
12 homeland, and I find that it should be eligible under the
13 criteria that identifies famous people and what they've done
14 for the history of the United States. Now, the applicant's
15 witness would suggest that this is an absurd practice. This
16 is comparable to, perhaps, documenting the United States.

17 MR. HARRIS: Can I interrupt for just a second.
18 When you refer to the applicant's testimony -- there's
19 actually more than one applicant witness. There's four -
20 it's a panel - and I would actually like us not to
21 personalize this. Can we refer to her testimony?

22 DR. GATES: The applicant witness's testimony, I
23 guess.

24 HEARING OFFICER CELLI: Let me ask this: I think
25 you're generalizing that, in other words, Mr. Gates has read

1 applicant's testimony and --

2 MR. HARRIS: I was fine until he got to the word
3 absurd. It is very personal and if we can take it back. We
4 tend to refer to the staff's assessment; if he could refer
5 to the applicant's testimony, that would be preferable for
6 my --

7 HEARING OFFICER CELLI: Okay. I think if you can
8 use more neutral terms --

9 DR. GATES: Okay. So, it's far-fetched.

10 HEARING OFFICER CELLI: Okay.

11 DR. GATES: It was a far-fetched stretch for me to
12 suggest that a Pahrump Paiute homeland -- that would be
13 comparable to somehow nominating the boundaries of the
14 United States as a national homeland, or the Mormons,
15 although I don't quite see them as a nation, although maybe
16 Utah -- the State of Utah is their nation, but I don't think
17 that that quite fits.

18 But there was a suggestion that what I was trying
19 to do was comparable to nominating the Mormons' homeland or
20 the United States. And I would simply say that the National
21 Register already does that. All the properties on the
22 National Register, by definition, are in the United States
23 and they define the United States. Likewise, in California,
24 we have a California Register. All the properties in
25 California define the history in the material culture of

1 California. There is no such register for the Pahrump
2 Paiute Tribe that is exclusive to them. So, it's perfectly,
3 I think, fair to assess them as a nation and consider that
4 as a property. So that's all I have to say about that Ma-
5 hav -- or, the Pahrump Paiute homeland.

6 Let's go to the next slide, Michael. So, let's
7 move on to the Ma-hav Landscape. Here, the issue of
8 contiguous versus noncontiguous comes to play. I'm clearly
9 not documenting a discontinuous district - it's contiguous.
10 I'm trying to demonstrate, and this was an image that I
11 submitted under staff's rebuttal testimony. I'm trying to
12 show that, for example, the red line, which is the
13 boundaries of the Ma-hav Landscape.

14 Then there is the green line, and, Michael, what
15 does the green line say? The second box down? (Off mic.)
16 It's -- I can't quite read it, but -- oh, it's plants and
17 animals. So what I'm trying to show here is that the plans
18 and animals that are attributes to this landscape are
19 ubiquitous throughout the entire landscape. I'm not out
20 there documenting this plant, that plant, that jackrabbit,
21 this type of animal. I'm saying, there is a habitat, and
22 that entire habitat is a contributing attribute and that is
23 a contiguous attribute. I'm saying that for ceremony as
24 well. There's not one specific locale.

25 I'm also pointing out with this map that the

1 trails -- partly, the trails that are documented by the Old
2 Spanish Trail are Native American trails, and those are
3 contributing attributes to their landscape.

4 The springs likewise. And it's not just the
5 springs, but, under Pahrump Paiute understanding of their
6 homelands and their landscapes, it is the washes - even
7 though there may not be water in them at a given time - it
8 is the washes that are part of the water system, and that
9 those washes are also ubiquitous throughout the Ma-hav
10 Landscape.

11 Next slide. This is a picture of Dora Brown and
12 her granddaughter. Mr. Vernon Lee, who spoke earlier during
13 public comment - this is one of his relatives. The Lees, of
14 which Dora Brown was a Lee, are from the Hidden Hills area,
15 the Ma-hav Landscape. They were the ones who resided there.

16 Dora Brown was one of the last ones to live in
17 that area and Dora Brown actually, in 1941 after Ms. Wiley
18 acquired the property, removed her from where she was
19 living. And she then moved to the north to a place called
20 Dora's Place off of Wiley's property, and it became known as
21 Brown Spring. And I believe this picture, although there's
22 some dispute over where exactly this is -- this is an image
23 that came out of University of Las Vegas, their archive
24 collection, and they identified it as Brown's Spring.

25 And there she is with the granddaughter. Now, the

1 issue here, and the reason I bring this up, is the Ma-hav
2 Landscape, both in deep legend, instructions from the
3 Creator, as I understand it from the people who talk to me,
4 this particular area has to do with puberty ceremonies,
5 particularly of how young ladies become women, and the
6 instruction happens at these spring areas.

7 Now, the expert's testimony for the applicant says
8 that I should have delineated specifically where these
9 menses ceremonies should have occurred. And she quotes from
10 another esteemed ethnographer, Richard Stoffle. I think she
11 misquotes, and she's suggesting that somehow that was up on
12 the mountain somewhere where that happened. That's not the
13 case in the quote. Actually, I think she misread the quote.

14 It actually happened here, but I don't feel like
15 it's appropriate, nor do I think that the Commission needs
16 to have the specific delineated place where these puberty
17 ceremonies occur delineated on a map, perhaps for the public
18 to view, to make a decision that, yes, this did occur, does
19 continue to occur in this place, and there will be an impact
20 to that from the project. I don't think I need to provide
21 that.

22 And there's other things. There's burials in the
23 areas. There are, not just necessarily in the project site
24 but just adjacent to it, and those are known places. I've
25 been to -- personally, I've been taken there by Pahrump

1 Paiute people and have been shown these burials. There is a
2 place where clay, water -- and carrying water is very
3 important to the culture. There's a place where clay is
4 sought in the banks of the Hidden Hills, and there's some
5 places where the clay is the best to make the pots that
6 carry the water. I didn't feel like I had to delineate and
7 put a circle right around that clay area in order for you
8 all to make a decision concerning is there an impact or not.

9 Next slide. The last slide here is -- this
10 hearing concerns -- this is a home site, an Indian home site
11 at the Ma-hav Landscape. The Hidden Hills, I believe, is
12 that large tree in the background near where the spring is.

13 From some sketchy archival research, perhaps this
14 was occupied 1830s, 1840s, but then the trail starts to come
15 through and you start to have depredation along that and I
16 am suspecting that people moved away from here.

17 And I simply want to point this out because I'm
18 moving to my fourth area of dispute, and it has to do with
19 the levels of mitigation. And I'm simply showing here that
20 there is a public interest in Native American culture. Any
21 even Wiley, Roland Wiley, respected that and perhaps made a
22 small business off of that. And you notice the fence around
23 the Indian home site.

24 I think, in concluding the dispute area number
25 three, this how much information is needed in order to make

1 a decision. What really puzzles me is, in the applicant
2 testimony, Dr. Sebastian cites her own work as making her
3 qualified to weigh in on issues of traditional cultural
4 value. And she cites and alludes to a document she wrote in
5 1993, where she says that she doesn't need to know all this
6 specific information.

7 That this stuff is sensitive, perhaps it's
8 esoteric for some of us, and you do not need to know that in
9 order to make a decision. And to some extent -- and
10 particularly, Dr. Thomas King, in one of his seminal books
11 on traditional cultural properties, labels this perspective
12 in historic preservation as the Sebastian's dictum. She is
13 actually renowned and known for making this assertion that
14 only enough information is needed to make something up.

15 MR. HARRIS: Are we going to go down this route
16 now?

17 HEARING OFFICER CELLI: Okay. Ladies and
18 gentlemen, listen. There is just no way we can get a clear
19 record if two people talk at the same time. So, we didn't
20 get whatever you were saying. There was something about
21 Sebastian's --

22 DR. GATES: Dictum.

23 MR. HARRIS: This is what we object to.

24 HEARING OFFICER CELLI: Let me ask you this, Dr.
25 Gates. Is this necessary testimony in order to make your

1 point?

2 DR. GATES: I'm simply saying that there is a best
3 practice in ethnography; that you do not need to expose as
4 much as the infinite degree of knowledge of a culture. Our
5 only need is to know enough to make a decision, and the
6 expert witness has said that herself in her own past career.
7 That's my statement.

8 HEARING OFFICER CELLI: Okay.

9 DR. GATES: I want to move on to the fourth area
10 of dispute.

11 HEARING OFFICER CELLI: Thank you.

12 DR. GATES: It concerns mitigation. The applicant
13 is suggesting simply one kiosk near the site where this
14 interpretation would be provided for those that drive by -
15 they can pull over, they can read this kiosk. They even
16 suggest that perhaps the Salt Song Trail itself would be
17 interpreted on this one kiosk.

18 Staff couldn't be further from -- that's a big
19 disagreement right there. What staff is proposing is a
20 kiosk that serves as an anchor. So, yes, there is a kiosk
21 that provides some very limited introductory, precursory
22 interpretation of the traditional culture, the Pahrump
23 Paiute culture - perhaps not the Salt Song Trail, but points
24 to other venues where the willing tourists or public can get
25 more information about this culture.

1 We have done some preliminary discussions with the
2 Shoshone Museum here in town and they might be one possible
3 venue to be a recipient of this type of enhanced
4 interpretation. What we envision beyond that kiosk would be
5 an augmentation of the current facilities to include, for
6 example, a Pahrump Paiute room, studies, particularly the
7 studies identified as Cultural Conditions 9 and 11, would
8 provide some seminal information to help do that
9 interpretive -- provide that interpretive material.

10 We have identified some standards by which this
11 interpretation would be produced and, in addition to that,
12 we would like to see a spring, perhaps, restored as a
13 demonstration of horticulture. This is the western extent
14 of New World agriculture: beans, squash, maize, that type of
15 thing, happened here with Pahrump Paiute, and we'd like to
16 see a spring developed that had that sort of demonstration
17 to the public. And perhaps a small demonstration village
18 where the public could understand something of the
19 lifestyles of the Pahrump Paiute during the periods of
20 significance that I documented in my reports.

21 Now, I feel that that type of mitigation serves
22 the loss that the public will have of no longer being able
23 to directly experience and see these landscapes for
24 themselves. So, a simulation of an interpretation-type
25 thing in a museum might appease and handle that public

1 impact.

2 I can't help but notice that - and staff says this
3 in a number of places in their reports - that staff
4 struggles over how do you then mitigate for the loss of the
5 direct culture that the Pahrump Paiute are going to feel
6 themselves? They are probably -- while they might
7 participate in developing the interpretation and be
8 consulted during that process, I don't think they're going
9 to a museum to learn about their own culture. Or to the
10 extent that they do, it's probably going to be very
11 precursory.

12 So, I don't find interpretive mitigation -- any
13 type of mitigation that makes the Pahrump Paiute whole, and
14 that's where I struggle. You know, what is enough to do
15 that? And I couldn't -- as a person not being a Pahrump
16 Paiute, I couldn't say that. And we talked about this to
17 some extent with the Pahrump Paiute Tribe.

18 At this point, all I can say is that I've noticed
19 that Mr. Arnold, as an intervenor, has produced some
20 suggestions for mitigations that go to that, and staff
21 simply acknowledges that and supports that, although that is
22 something that is being introduced by the intervenor and not
23 the staff, so I can't -- and that mitigation is a request
24 for comparable lands to be purchased and held in a
25 stewardship conservation easement, and I believe that Mr.

1 Arnold, who can speak to this himself, has identified the
2 Native American Land Conservancy as a group that would hold
3 those easements, manage those lands, on behalf of the
4 Pahrump Paiute Tribe, and I'm aware of that group. They are
5 competent; I think they could do that job. But that is the
6 intervenor's suggested mitigation.

7 HEARING OFFICER CELLI: I just want some
8 clarification for the record. Does staff join in that
9 recommended condition?

10 DR. GATES: I am supportive of it. I'm not sure
11 if I can actually own that mitigation, because it wasn't
12 submitted under our testimony -- staff's testimony. But,
13 going forward, if there is a need to rethink and rewrite the
14 conditions, I certainly think that staff would be
15 wholeheartedly participatory in that process. And there's
16 already going to be some sort of parsing because of some of
17 the other things we first talked about earlier this morning.

18 HEARING OFFICER CELLI: Thank you.

19 DR. GATES: The last couple of slides and I'll be
20 finished here, Michael. This shows the overlap between the
21 Old Spanish Trail corridor areas and the archeological
22 landscape. Now, I'm not here to provide testimony that was
23 otherwise sponsored or put out by the colleagues. But there
24 is a small overlap. You've already heard to the extent that
25 the overlap between the Spanish Trail corridor and the Ma-

1 hav Landscape -- I've already articulated that.

2 There's also some archeological values that I
3 identified as contributing attributes, the Ma-hav Landscape,
4 and I would like to still be able to speak to that and,
5 specifically, what that means is, while I didn't prepare the
6 testimony for archeology because archeology is a
7 contributing factor to the Ma-hav Landscape, staff would
8 like to continue to support the mitigation suggested in
9 Cultural Condition 11.

10 HEARING OFFICER CELLI: Which is exactly --

11 DR. GATES: Which is asking for an archeological
12 study for the archeological landscape, and I am simply
13 saying there is an overlap between that landscape and the
14 Ma-hav Landscape. And that archeology and that overlap is
15 contributing to the Ma-hav Landscape.

16 I think that -- is there one more, Michael?
17 That's it. So that concludes my oral testimony. Thank you
18 for the indulgence of time, and I'm available for any
19 questions.

20 HEARING OFFICER CELLI: Thank you, Mr. Gates.
21 Applicant. Let's start with Mr. Helton --

22 MR. HARRIS: Well, actually, if we could -- it is
23 a panel; they are all available, but we're directing most of
24 them through Dr. Sebastian, so that's all the lawyering I'm
25 going to do. I'm just going to ask her to go forward

1 because I --

2 HEARING OFFICER CELLI: Good job, counselor.

3 (Laughter.)

4 MR. HARRIS: I'm a slow learner, but I'm getting
5 there, so thank you.

6 HEARING OFFICER CELLI: Dr. Sebastian, then,
7 please.

8 DR. SEBASTIAN: Thank you very much. If I could
9 -- oh, good, you left the slides up. I would actually,
10 because we have these good slides and there are two images
11 in there that I had hoped to use, I would like to be able to
12 refer to those.

13 I feel like the biggest dispute between Dr. Gates
14 and myself are not the ones he's outlined, but that a bit of
15 confusion of what is his job and what is my job. Many of
16 the things that he has referred to in his oral testimony
17 have to do with what's the appropriate way to identify and
18 record places that are of religious and cultural
19 significance to native people. And that's absolutely,
20 appropriately his job. That's where his skills lie and the
21 guidance that he used in order to be able to do that was
22 appropriate.

23 My job was to talk about how you go about
24 evaluating these kinds of properties in a very specific way.
25 And the thing that I most want to say is that I am not here

1 to opine about the significance or the value of these places
2 to the native people who value them. I don't know that
3 stuff; it's not something that I am an expert in and, in
4 fact, as Dr. Gates has pointed out, they're the only experts
5 in that.

6 I am not questioning whether they value these
7 landscapes, whether they have important historical
8 associations and cultural associations. I am really here to
9 answer a very narrow and very specific question, because
10 it's the question that the Commission is going -- eventually
11 going to have to wrestle with. And that question is: are
12 these three ethnographic landscapes properties that meet the
13 requirements for eligibility to the California Register,
14 because that's what determines what is a significant impact
15 under CEQA.

16 And so, I want to stay really focused on those,
17 but I -- because the whole issue about what kind of property
18 is it came up, I want to -- I don't want to go down a rabbit
19 hole because I know you all really want to be done, but let
20 me just say one word about Dr. Gates' slide number five, if
21 I could. That's the second one of those. There we go, that
22 one. There's a little bit of a misunderstanding here on the
23 subject of traditional cultural properties and, again, given
24 that Dr. King is on the phone, I'm not going to opine very
25 much about that.

1 But traditional cultural properties are not a
2 specific kind of thing like a building or an archeological
3 site or a bridge. Traditional cultural properties can be
4 all the different things that are categories of things that
5 can actually be listed on the National Register, which is
6 objects, sites, structures, buildings, and districts.

7 And I have seen traditional cultural places that
8 are all of those. Well, I'm not sure if I've seen any that
9 were buildings, but I've seen structures, districts, and so
10 forth. So, it's not that I was suggesting that he
11 pigeonhole any of these properties into a specific kind of
12 property.

13 The reason that the whole issue of traditional
14 cultural properties even came into my testimony, my written
15 testimony, has to do with the fact that, as Dr. Gates has
16 pointed out, there isn't a lot of guidance prepared and
17 disseminated by the California Register. And the California
18 Register, as he says, sort of devolves to the Federal
19 Register if there is no appropriate guidance specific to
20 California.

21 So, as I was looking at the various guidance
22 documents about evaluating properties for the National
23 Register and I thought about these things as ethnographic
24 landscapes, as he has correctly defined them, I was -- there
25 is no National Register guidance on ethnographic landscapes.

1 There's two -- they have bulletins on everything in the
2 world, and they're actually looking at doing a bulletin on
3 ethnographic landscapes, but they don't have one yet. They
4 do have one on rural landscapes and they have one on
5 designed landscapes. So, the rural landscapes is as close
6 as you can get, in National Registry terms, to a landscape
7 that is ethnographic.

8 I looked at that guidance document, and it
9 basically is talking about what you would expect if we call
10 the rural landscapes farms, ranches, you know, these old
11 Spanish villages, things like that. And there is a little
12 paragraph in there that says, this isn't really applicable
13 because of the requirements for sort of built things as
14 markers of this landscape.

15 This isn't really very appropriate for the kinds
16 of places that Native Americans value that may be largely
17 natural landscapes. For that, you should go and see
18 National Registry Bulletin 38, which is the one on
19 traditional cultural properties. So, that's why I even
20 brought the traditional cultural properties in, is because
21 that's where the National Register recommended that I go.
22 You know, there isn't a lot in that on landscapes, although
23 there is a lot of good things about not only about what
24 Dr. Gates was talking about, how you go about identifying
25 and reporting these things, but also how you go about

1 evaluating them, and I'll come back to that.

2 But that's really all I want to say about that,
3 because, you know, this gets sort of wonky for historic
4 preservation if we start, you know, how many angels can
5 dance on the head of a National Register pin here, so I'm
6 just going to let that go unless there are questions about
7 it, which I will be happy to take.

8 I want to go back to my major job here, and that
9 is to help you all understand how to think about evaluating
10 properties for the register. And, as Dr. Gates says, the
11 main -- sort of the Bible for evaluating all kinds of
12 properties, every one of those lists up there - except
13 records, because you can't actually, I found out just last
14 week, put documents on the National Register. But for
15 evaluating all those kinds of properties, Bulletin 15 is the
16 Bible, the main thing that talks about the various criteria
17 of eligibility and the kinds of the integrity the property
18 has.

19 So I depended, indeed, very heavily on Bulletin
20 15, and it has very specific requirements. And so, I want
21 to kind of help you, you know, get a picture of what those
22 requirements are, so that, when it comes down to the point
23 of having to make a decision about whether there is a
24 significant impact on an eligible property, you've at least
25 heard about the terminology and can have a way to think

1 about it.

2 So, there are four basic things that a property
3 has to have to be eligible to either one of these registers,
4 but mostly I'm focusing on the National Register guidance
5 because that's what there is for evaluation. It has to be a
6 property, it has to be a place, a physical place. The
7 register is very clear that, you know, there are many
8 cultural things: performances, songs, artwork, lots of --
9 I'm not getting close enough to the microphone here.
10 Artwork, many things that are culturally significant, but
11 the National Register is Historic Places and, by extension,
12 the California Register of Historic Resources is about place
13 -- physical places. Clearly, all three of the landscapes
14 that Dr. Gates and his native consultants have identified
15 are places. We have maps. We don't have boundaries on some
16 of them and I'll get back to my boundaries matter, but
17 clearly there are places.

18 The second thing is they have to have been
19 significant for at least fifty years generally, although
20 there are exceptions. Clearly, all three of these places
21 have been used for far, far longer than that. So they meet
22 those first two things.

23 The second two things are sort of meat of the
24 matter of how do we know that we have a register-eligible
25 property? The first step is does it meet one or more of

1 four criteria of significance? And the second step, if it
2 does meet one of more of those, is does it have sufficient
3 integrity to convey its significance? If it doesn't meet
4 one of the criteria, then you're done, because you have to
5 have both of those things for eligibility. So, eligibility
6 basically equals significance, meeting one or more of the
7 criteria, and integrity, and I'll talk a little bit more
8 about integrity in a bit, because I want to start with those
9 four criteria.

10 So there's four criteria. One is association with
11 important events or patterns of events in the past. That's
12 "1" in California terms, and "A" in National Register terms.
13 The second one, "2" or "B," is about association with
14 individuals who are -- have made important contributions to
15 history in the past. The third one, "3" or "C," is really
16 about intrinsic qualities of the property itself. Often
17 that's things like does it exemplify a style or time period
18 or a method of construction, those kinds of aspects of the
19 property, although I'll come back to Dr. Gates' really
20 interesting suggestion about a possible application of 3.
21 And then the fourth one is about information potential. The
22 property has the potential to contribute important
23 information about the past.

24 So those are the four possibilities. We have to
25 -- the question before you is do these three ethnographic

1 landscapes meet one or more of those criteria? I'm going to
2 start with the Ma-hav Landscape, which the staff assessment
3 says is eligible under Criterion 1. That is for its
4 association with events or patterns of events that made a
5 significant contribution to our history. The staff
6 assessment says that the Ma-hav is eligible under this
7 criterion because of its broad contributions to unique
8 historic events in the Pahrump Paiute landscape.

9 So, the ethnographic report describes the Ma-hav,
10 "as a place where Pahrump Paiute lived, hunted, gathered,
11 worshiped, were born, gardened, died, and were buried." And
12 that's in the ethnographic report. You know, this is
13 absolutely true. I mean, you know, many things happened
14 here, they were things that were important to the people
15 happened here. There is no question about that. But the
16 same can be said of all areas of human settlement. I mean,
17 people lived, were born, died, and did things everywhere, so
18 how do we distinguish a place that is eligible -- that's
19 eligible under "A?"

20 And the National Register's answer is that it has
21 to be a specific and important association between a
22 specific physical location and an important event to pattern
23 of events. And so, in that sense, there is in fact a
24 requirement for specificity. You know, what was it that
25 happened here, what is the specific event or important

1 event, not just that history happened here. Everybody keeps
2 pushing the microphone at me. I'm clearly sliding back on
3 my chair, sorry.

4 It's not just that history happened here, it is
5 that there is a specific and important historic event.
6 History that happened here is important. There is no
7 question about it. Especially to the people whose history
8 it is. We can all agree about that. The question before
9 you is -- is there a property that's been defined as it's --
10 as it's defined in the record that has a specific and
11 important association with an event or pattern of events in
12 the past and has that been brought forward?

13 The staff assessment also says that the Ma-hav
14 Landscape is eligible to the California Register under
15 Criterion 4 - that's the one about information potential -
16 because it could yield ethnographic information about the
17 history of the area and yield archeological information from
18 known or potential -- currently unknown archeological sites.

19 The mere fact that things could be learned about
20 an area through any kind of research - historical,
21 documentary research, ethnographic interviews, archeological
22 studies - doesn't make that area eligible under Criterion 4
23 for its information potential. Again, we could say this
24 about everywhere, you know? There's archeological sites in
25 the whole desert. All of those places are not eligible for

1 their information potential.

2 The assessment of archeological information
3 potential requires that you have a known site and that you
4 know enough about the condition and the content of the site
5 to be able to make an argument for why that site could yield
6 information with a significant bearing on specific and
7 important research questions. So, the fact that there are
8 archeological sites out there on this landscape does not
9 make it eligible under Criterion 4, from my perspective.

10 To move on to the Pahrump Paiute Home Landscape,
11 like the Ma-hav, the home landscape is described in the
12 staff assessment as being eligible to the register under
13 Criterion 1 because of the broad contributions to the unique
14 historic events that have Pahrump understanding of their
15 homeland and their ongoing traditions and history.

16 I think that's a wonderful description of why this
17 place matters to people. It's their history. The same
18 reason that, you know, we all love the place that we come
19 from. It's because our families -- in my case, my family's
20 lived there for seven generations. They're buried there.
21 The important events in my life and in my community's life
22 all happened there. It doesn't make is eligible under "A"
23 because it's not a significant and important association
24 between a specific place and a specific event or pattern of
25 events in the past.

1 National Register Bulletin 15 says mere
2 association with historic events or trends is not enough in
3 and of itself to qualify under Criterion "A." The
4 property's specific association must be considered important
5 as well.

6 And so, that was my reason for saying that there's
7 a very important general association here. There is a
8 really good description to a lot of things. It's not a
9 specific association and that's what the register requires.

10 The state assessment also says, as we just heard,
11 that the Pahrump Paiute Home Landscape is eligible under
12 Criterion "2" or "B" for its association with Chief Tecopa.

13 Did I say that right? I've been saying it in by head
14 "Técopa," and I promised myself I was going to not say it
15 wrong. Tecopa.

16 Clearly Chief Tecopa was an important person and I
17 think we have a really interesting description of that in
18 the ethnographic report and Dr. Gates has touched on some
19 really important parts of it. He meets that requirement
20 that the register has of it being an individual whose
21 significant contributions can be documented. And what's
22 interesting, in this case, is they're not only documented in
23 written histories but in the oral traditions of his people
24 as well.

25 So he clearly meets the requirement to be an

1 important person. The question is, does the whole homeland
2 have an important and specific association with him, because
3 Criterion "2" has that same requirement for important and
4 specific. When I teach classes on this stuff, I always say,
5 you know, "George Washington slept here" is not enough. It
6 has to be something that happened in this individual's
7 productive years. It has to be a specific association with
8 that event.

9 I think it's interesting -- we see in the
10 illustration that we had up here earlier that there are
11 known stopping places, there's a known route of travel.
12 There could be a property associated or a set of properties
13 associated with Chief Tecopa's travels that might well
14 qualify, but the entire homeland landscape, even though he
15 carried out his activities within it, the whole homeland
16 landscape does not have that specific and important
17 association that we're looking for registry eligibility.

18 The Salt Song Landscape. When I -- I would like
19 to go to -- I'm sorry, I lost the slides here. Dr. Gates'
20 slide number seven, which was the map of the Salt Song --
21 there you go, you're way ahead of me. If you'd do that in
22 slideshow mode. That's okay, because I don't need you to do
23 the cursor; if you'd just put it up in slideshow mode, it
24 might be a little bigger and easier to see. Well, not a
25 lot, but you can see those light-colored arrows, so it at

1 least gives you -- and many of you've seen this in the
2 printed version, which is a little easier to see. It's a
3 very large thing. It covers parts of four states. And when
4 I read the staff assessment of this and I read the
5 ethnographic thing, it -- the description that's on -- in
6 the fine print on that map says that this map shows the
7 Southern Paiute holy lands spanning ocean and desert,
8 mountains and rivers, across four states.

9 These landmarks are described in the Salt Songs
10 and represent ancient villages, gathering sites for salt and
11 medicinal herbs, trade routes, historic sites, sacred areas,
12 ancestral lands, and pilgrimages in a physical and spiritual
13 landscape, which is a lovely description - but, I mean, that
14 really makes it sound like that whole giant area encompassed
15 by the named places and the arrows is one enormous property.

16 The ethnographic report doesn't actually talk
17 about it as a corridor, but the staff assessment does --
18 describes this more as a corridor and, actually, Dr. Gates'
19 rebuttal testimony and the additional illustration, which
20 I'll go to in a minute, really spoke to that corridor nature
21 of it as well. Although there are quotes in the
22 ethnographic report that says it's not just the named place,
23 it's everything within the landscape encompassed by the
24 named places. So, it's hard to think about, you know, what
25 we're thinking about, and it's really hard to think about it

1 without it at that scale.

2 And this gets us back to the, sort of,
3 nomenclature and the districts and the contiguous and
4 discontiguous thing. What I actually suggested in my
5 testimony was, because of the scale of -- the scale of this
6 property as it was being described, although it clearly
7 reflects how the Paiute people of all types view the
8 landscape and why it's important and a lot of things, what
9 you all are looking for is a tool, a planning tool, to help
10 you site places on a landscape on a -- at a much smaller
11 scale.

12 And that's one of the things that the register --
13 the National Register and the California Register are good
14 for. They basically have two roles. One is the sort of
15 honor roll to recognize the importance of places, and the
16 other is as a planning tool that's, you know, is it eligible
17 to the California Register, is there going to be a
18 substantial impact on it and, if so, does that constitute a
19 significant impact?

20 So, there are two very different roles here. And
21 for that planning tool version, my comment was, you know, at
22 a property of this scale, how could anything that anybody
23 did have a significant impact on it? If everything within
24 this whole huge area is -- you know, how would we assess
25 whether we're having a significant impact or not?

1 And so, in thinking about, you know, well, how
2 might we think about this in a way that would be more useful
3 as a planning tool, I pointed out that the National Register
4 allows you to do a thematic approach to things that says,
5 yes, there is this vast universe of stuff out here that's
6 associated with whatever, and we can develop a sort of big
7 context that says this is the kind of stuff we got and this
8 is why it's important. And then you can look at the sort of
9 individual places on the landscape that are part of that
10 huge context, and use that to make more reasoned planning
11 and affect assessments.

12 So, I wasn't arguing that he should have reported
13 it as a district, contiguous or otherwise, I was just
14 suggesting that, as a way of thinking about how to use this
15 as a planning tool, that might help. And I may come back to
16 that, because in his rebuttal testimony, he really does
17 focus in on a specific part of this much larger landscape,
18 and I think we could use this notion of thematic to say,
19 okay, if we were looking at that, how would that work?

20 So, in my original testimony, still thinking of
21 this as the enormous thing, I said that I didn't think that
22 we'd be able to bring this -- all of this land into saying
23 it's a National Register property, four states big, that's
24 eligible for its specific association with the Salt Songs.
25 Even though it does have a specific association with Salt

1 Songs, the scale of the property might make it really
2 difficult to do that. And I sort of left it at that.

3 But let me now turn to what Dr. -- and I still
4 think that's true. I don't think it would be useful to --
5 as a planning tool, to think about it that way, and I'm
6 pretty sure the National Register is really hipped on empty
7 space. You know, they've never -- they wouldn't want to go
8 there with this.

9 MS. MacDONALD: Excuse me. I don't mean to
10 interrupt. I really don't, but we have little time.
11 They've been very clear. We have a cut-off --

12 DR. SEBASTIAN: Yes. I'm almost done.

13 MS. MacDONALD: We have three other intervenors.

14 DR. SEBASTIAN: I'm almost done.

15 MS. MacDONALD: Okay. Thank you.

16 DR. SEBASTIAN: I just want to go back. So
17 basically, I'm still standing behind the "A" eligibility
18 might be problematic.

19 I want to just touch on the "C" eligibility about
20 the songs, which I thought was really interesting. It's not
21 an argument I ever heard before, but -- and I'd like to -- I
22 really tried to go there, but the problem is that the
23 register is really specific to the notion that high artist
24 value is an attribute of the place, not of the behavior
25 associated with the place.

1 And, so the high artistic value of the songs,
2 which is unarguable, is really true, but because it's
3 specific to an attribute of the place and it's not -- the
4 artistic value is not an attribute of the place, you know, I
5 don't know. I've never encountered this argument before. I
6 think it's interesting. But, both Bulletin 38 on
7 traditional cultural places and Bulletin 15 make the point
8 that it's an attribute of the place, so I'm just going to
9 let that go.

10 So, the last thing I want to say, if we could go
11 to the next slide. I think it's the next one. Yeah, this
12 one. So, in his rebuttal testimony, Dr. Gates kind of
13 narrows down into this space that he says is a way for us to
14 understand the corridor. And, I have to admit, I kept
15 looking for the little white lines over the corridor, but
16 I've gotten over that. But, as he describes it, it's
17 basically places on the landscape with sort of, I don't
18 know, I'm putting words into his mouth maybe. With sort of
19 the viewsheds between them included, and that what is the
20 corridor.

21 So, I think that's really interesting, and what we
22 have here is the possibility of looking at a thematic place
23 that we could say is specifically and importantly associated
24 with the Salt Songs. Mount Charleston is an important
25 place; we know that from many sources: from the tribes

1 themselves, but even from historic and ethnographic records,
2 and it is on the edge of the viewshed for the project area.

3 So, at this point, we need to think about -- so,
4 let's say we were going to hypothetically say, okay, so what
5 we have here is a place that is eligible under "A" for its
6 association that's specific and important to the Salt Songs.

7 The next question you have to ask is does it have
8 integrity? Does it have enough integrity to convey its
9 meaning? And I'm not going to go into the wonky stuff about
10 what integrity consists of.

11 What I'm going to say is that the staff assessment
12 provides a really clear indication of the integrity of this
13 portion of the Salt Song Landscape, which I couldn't do
14 better than to quote, "The Spring Mountains are surrounded
15 on several sides with incompatible intrusions," and they
16 talk about Las Vegas and Ellis Air Force Base and the Nevada
17 Test Site, the town of Pahrump.

18 MS. MacDONALD: Is this already in the testimony?

19 DR. SEBASTIAN: Yes, this is a quote from the FSA.

20 And then the staff goes on to report that, despite that,
21 the Southern Paiute Salt Song Landscape, in the view of the
22 practitioners, maintains its integrity of association,
23 feeling, its setting, and the location. And also states --
24 says that no amount of landscape alteration could prevent
25 the practitioners from continuing their tradition. That the

1 link between this pattern of events, the Salt Song
2 ceremonialism and this place, is still intact and is still
3 very strong.

4 So, if we take that assessment - and that's a good
5 assessment, I think, of the integrity of this place - and we
6 ask the question, is there a significant impact from the
7 project -- from development of the project?

8 What you do is look at what the project is going
9 to do to the integrity of - largely setting, in this case.
10 What is it going to do to the integrity of setting? And is
11 that a -- and clearly, if we're going to build this thing,
12 it's going to alter the setting. We all are agreed on that.

13 Does that alteration of the setting rise to the
14 level that it is a significant impact? That it is -- in the
15 words of the FSA, the proposed project would have a
16 significant impact with -- effect, I'm sorry, with respect
17 to cultural resources if it would materially majorly impair
18 -- I'm sorry, if it would materially impair the significance
19 of one or more properties. And the material impairment
20 standard is that it would demolish or materially alter in an
21 adverse manner the physical characteristics of that historic
22 property.

23 When you assess that question, and this is my
24 final point and it's an important one. When you assess that
25 question about what is a material or a significant impact,

1 you have to examine the current integrity of the property.
2 And if we think about Mount Charleston and, you know, and
3 the viewshed of corridors coming into it, you have to think
4 about what existing intrusions there are in the property --
5 in the setting of this property, and what the extent and
6 severity of the new intrusion will be and decide, will this
7 actually diminish the integrity of this property or does it
8 alter, but not rise to that level of material diminishment?

9 That's the question that we have. That's the question that
10 we have to address.

11 HEARING OFFICER CELLI: Thank you, Dr. Sebastian.
12 Commissioner Douglas?

13 PRESIDING MEMBER DOUGLAS: Thank you, Dr.
14 Sebastian. I just wanted to say that I know that, as
15 Ms. MacDonald pointed out, we have planes to catch out of
16 Las Vegas. I think a lot of people do; however, we have not
17 gotten as far through today's testimony on this topic as we
18 would like to have in order to catch those planes.

19 So, I just wanted to let people know that, if we
20 need to stay longer, we will. And we will probably send one
21 of our advisors to Pahrump to make alternate travel
22 arrangements if, in fact, it turns out that we're not
23 finished by 4:00, which, in fact, seems pretty likely at
24 this point.

25 So, I just want everybody to know that, so that

1 those of you who also might be in the position of making
2 alternate travel arrangements can do so. Would anyone like
3 to speak on that point, or should we just -- (off mic).
4 Okay. So, we'll keep rolling. That's a heads up.

5 HEARING OFFICER CELLI: And thank you, applicant.
6 We've now heard from staff, applicant. I'm going to go to
7 Tom King. Oh, I'm sorry, Mr. King was muted. Tom King, can
8 you hear me?

9 MR. KING: Yes, can you hear me?

10 HEARING OFFICER CELLI: I can. I'd like you to
11 keep talking just so we can kind of fine-tune your audio.

12 MR. KING: Okay. I am talking. Please fine-tune
13 the audio. I am continuing to talk. Okay?

14 HEARING OFFICER CELLI: Perfect. Excellent.
15 Thank you very much. Tom King, were you able to hear all
16 the testimony heretofore, meaning up until now?

17 MR. KING: Pretty much. Some of the -- when
18 questions came from people other than those actually
19 testifying, then they were kind of garbled, but I could hear
20 the testimony quite well.

21 HEARING OFFICER CELLI: Which was largely a rehash
22 of what was already in the record anyway, I believe. You've
23 read all of that, haven't you?

24 MR. KING: Yes, I have.

25 HEARING OFFICER CELLI: Okay. We'd like to hear

1 what your opinion is with regard to this issue and the
2 reasons why you feel the way to do. So go ahead, you have
3 the floor.

4 MR. KING: Thank you. I have found this to be a
5 very depressing afternoon for me. I have been working
6 around historic preservation for close to fifty years, and
7 it -- one thing that I have come to believe is that Congress
8 did not create the National Register of Historic Places, and
9 I don't think that the California Legislature created the
10 California Register of Historic Resources.

11 In order to give academics and professions, like
12 me and Dr. Gates and Dr. Sebastian, the opportunity to
13 debate hair-splitting fine points of interpretation. I
14 believe - and looking at the list of founders' literature
15 convinces me of this - that these registers were created and
16 the programs around them were created in order to try to
17 make sure that places that are important to people - to
18 American citizens, to California citizens, to voters, to
19 taxpayers - are run roughshod over --

20 (Laughter.)

21 MR. KING: -- or paid attention to when federal
22 agencies and state agencies are planning things. But we
23 keep drifting in these programs; we keep drifting away from
24 the notion of recognizing things that are important to
25 people and trying to make sure that those are attended to.

1 Drifting into these nitpicking arguments about how abstract
2 criterion can be applied and abstract standards and which
3 bulletin applies and which bulletin doesn't apply.

4 Back in the 1980s, we found that we were drifting
5 in that direction, and we were getting into a situation
6 where, really, nothing could be found eligible for the
7 National Register of Historic Places unless a professional
8 of some kind laid hands on it and said, yes, this meets the
9 criteria the way I believe the criteria ought to be
10 interpreted.

11 And my coauthor at the time, Patricia Parker of
12 the National Park Service, and I thought this is wrong.
13 This is anti-democratic. This is not the way that the
14 government ought to operate. And we found that the
15 administration at the time, the Ronald Reagan
16 Administration, supported that notion. The Advisory Council
17 on Historic Preservation supported our concern. And,
18 eventually, the National Park Service did.

19 And the result was National Register Bulletin 38,
20 which basically says, you've got to pay attention to the
21 people. And what the people of the community, the people of
22 the tribe, say is important is what you ought to look at.
23 You ought not to find some way to nitpick your way out of
24 considering what the people think is important.

25 Bulletin 38 has been in place for a number of

1 years now, and what I can certainly see happening today, as
2 I have seen happening in a number of other cases, is we're
3 drifting away again. The point of Bulletin 38 was to try to
4 push the government toward paying attention to the places
5 that are important to people.

6 And yet, here we are sitting here again, having
7 these silly, abstract, technical arguments about whether
8 something is an area or a place, whether something falls
9 under Brief 36 or Bulletin 38, whether it's too big, whether
10 it -- whether events have to be specific.

11 And let me just read you a little bit of -- the
12 applicant's consultant made a good deal about the notion
13 that all these places were not eligible for the National
14 Register under National Register Criterion "A" and its
15 equivalent criterion in the California Register. Because
16 she said the associations weren't specific enough.

17 Well, we should have said more about that in
18 Bulletin 38, but here is what we said in Bulletin 38,
19 "Events can include specific moments in history or a series
20 of events reflecting a broad pattern of theme. For example,
21 the ongoing participation of an ethnic or social group in an
22 area's history reflected in neighborhoods, buildings,
23 streetscapes, or patterns of social activity constitutes
24 such a series of events."

25 We were trying to make the point that if a

1 neighborhood, if a community, if a tribe ascribes
2 significance to a place because of the things that they
3 traditionally do there, the things that they traditionally
4 believe are associated with the place still ought to be
5 eligible for the National Register.

6 And so, whether exactly each of these properties
7 is eligible for the National Register or the state register
8 is something that certainly we can debate and we can pick
9 nits about, but I think the bottom line is you have people
10 living there, living in the area who ascribe significance to
11 these places, and they're American citizens, and some of
12 them are citizens of Indian tribes, and their concerns ought
13 to be respected in the planning and decision-making process.

14 I think that's what the laws are really all about, if we
15 strip away all the silly extractions of criteria and
16 standards. And that's -- I'll get off my soapbox.

17 (Laughter.)

18 HEARING OFFICER CELLI: Is there anything else you
19 had to add, Dr. King?

20 DR. KING: I'll be happy to answer any questions.

21 HEARING OFFICER CELLI: Okay. Stay tuned. We're
22 going to go to Richard Arnold next. Mr. Arnold, you've been
23 very patiently listening to everybody else talk about your
24 people.

25 MR. ARNOLD: I'm having flashbacks from solar

1 flux, so I don't know.

2 (Laughter.)

3 MR. ARNOLD: Thank you very much. Richard Arnold
4 here. I'm somewhat distressed and perplexed, I guess, over
5 all the discussion that's going on. As a tribal person and
6 a traditional practitioner, here it is that we're trying to
7 share information for the first time -- coming before the
8 California Energy Commission for me, as an intervenor, and
9 trying to impart some information that, typically, we never
10 talk about. And I'm trying to at least provide an
11 understanding and a grounding as to why we believe what we
12 do and trying to set that stage as we have been going on
13 from day to day in each one of the topical areas.

14 First and foremost, I want to convey the support
15 and interest for the FSA and within -- and specific to the
16 FSA, the ethnographic report that was done, because I think
17 it was important that we had received that information -
18 although you may not have seen a complete version because of
19 the redactions that were in there, we know what was in there
20 and there was reasons for those redactions.

21 Nonetheless, redactions still gave you a glimpse
22 into the significance of the area. And we relied upon that
23 information. We relied upon Dr. Gates, when he came in as a
24 total unknown to us, trying to gather some information, and
25 we were -- we trusted him, as representative of the CEC, and

1 for a representative under - as part of CEQA, trying to
2 gather some information that would be useful.

3 It's very distressing when we have to, now, try to
4 justify and qualify everything, and I understand and I've
5 been around the block a couple times even though I am an old
6 country boy. But I think that there's things here that we
7 need to remember, as Dr. King was alluding to - the spirit
8 of the laws, the spirit of the regulations, why they are
9 there, what we have to do. It doesn't mean that everything
10 has to be fit into this real defined, uh, regulation or
11 interpretation, but it gives you an understanding of what
12 people in our community, tribal people, not only in Pahrump,
13 but as you'll hear with the Salt Songs, that branches out
14 into many different areas.

15 When we look at this area and we look at this
16 project and, if you can imagine, most people that are --
17 that came into this project for purposes of scientists, for
18 purposes of project components, for people who are reviewing
19 some of the work, people who maybe have never been to the
20 area, but are still critiquing the work - we find it very
21 interesting, because for them, they can come and go. We
22 can't. This is our home.

23 You heard some discussions about how, at one time,
24 when Chief Tecopa was to go around talking to all the
25 Southern Paiute people, trying to get them to go to Moapa.

1 Some people did go and some of us did not and some people
2 came back, but we always retained our importance to the land
3 and to the home where we continued to call home.

4 And I think oftentimes when a project comes into a
5 community and, if it has perceived adverse affects or real
6 adverse affects, if it happened in your communities, if this
7 thing was going right next door to your house, and you
8 didn't like that, even though you tried to fight it and it
9 still went there, you have the option to move. We don't,
10 because our grocery store, our church, our school, our
11 pharmacy, everything that we know and the places that we
12 need those specific contents or resources within are from
13 that area.

14 So, we have no place to consider, you know, even
15 trying to relocate. Now, you could imagine how you would
16 feel, and I think it's always important to not only
17 personify this but personalize it for people to understand.

18 Just imagine, right next to your home, right next to the --
19 within your traditional homeland, your holy land, now you're
20 going to have a 700 -- two 780-foot, not just one, but two
21 780-foot towers. And not that that's going to be sufficient
22 enough, we're also, by the way, I'm going to tell you, I'm
23 going to put 340,000 heliostat mirrors right next to your
24 house, right next to your church, right next to your
25 pharmacy, right next to your school, right next to

1 everything else that you need and you rely upon, and that
2 you've relied upon for thousands of years. It causes
3 tremendous alarm.

4 Now, one of the things, I think, that we've seen
5 through this whole process, is you've been hearing lots of
6 critiques from the applicant, and again, with all due
7 respect because we all have our jobs to do here, but I think
8 that there has been a lot of critiques on the information
9 that has been presented, and it's a little bit distressing
10 because how easy it is to sit back and to make those
11 critiques.

12 And understanding that we have our jobs to do, but
13 you would think that because it was entered in early on in
14 this process, that maybe there was a need for a parallel
15 study to be conducted in which the Commission would have
16 information in which you could weigh against each other.
17 Then you could see the validity of any of the debates that
18 may arise. But you didn't have that.

19 So you only have the one ethnographic report.
20 That became very troubling for us as Southern Paiute people
21 because, moreover, not only did we not see the counter
22 product, but we didn't see any discussions coming to the
23 tribes.

24 Oh, letters are great, you know, and that's
25 typically what happens with the federal government and that

1 what happens with state governments to tribes. There's
2 never the good-faith effort. You can check the box by
3 saying, you know, oh, yes, I have a distribution list here,
4 and this is where it was sent, but there's never anything
5 beyond that. And I think that what considers our being --
6 raises several concerns for us as not only Southern Paiute
7 people, but Indian people in general.

8 I've been listening here and, granted, I think I
9 have been patient. I've gone through a couple pillows --
10 (Laughter.)

11 MR. ARNOLD: -- and I don't know what else in
12 these chairs, but when I hear the applicant, throughout the
13 discussions, from the previous Old Spanish Trail discussion,
14 I mean, it's still under the cultural resources heading, we
15 were still hearing things. There were, you know,
16 descriptions of how people came across. They couldn't say
17 they came across the lands, no, they came across the
18 "hostile" lands. Or the "alleged" features. And some of
19 these are pretty interesting terms. Because I think -- it is
20 what I have seen through the responses from the applicant,
21 is oftentimes there's quibbling over words - words that we
22 don't have in Paiute but you guys have in English. I mean,
23 it could be an "if" or an "and" or a "but" or a "they" or a
24 "that" or a comma or a period or this or that, and we're
25 saying, "what?" And so that's where we see the wasting of

1 breath like I talked about last night. People have to talk
2 with conviction, they need to understand the resources, they
3 need to understand what's happening here, and that's where
4 we're coming from here.

5 Now, when I come here today, I'm speaking about
6 the Southern Paiute epistemological views, and really
7 relating to the cultural resources described in the FSA and
8 the ethnographic report, and more specifically, the three
9 ethnographic landscapes that are going to be impacted.
10 I'm going to say that -- and I can be challenged and
11 whatever else, but as a traditional practitioner and as an
12 intervenor and as a cultural expert, I am saying that,
13 definitely, it will be impacted. It will be adversely
14 impacted, because we do not have anything in which to do --
15 to try to cure or remedy this situation.

16 When you have songs, and you're going to hear
17 about it in a bit here, the songs that we have been going on
18 from generations to generations that have helped people go -
19 - keep this world in balance, help keep them in balance,
20 help keep us in balance, help keep the resources in balance,
21 everything that we need. If we weren't doing that, that
22 land wouldn't even be there. Then it may be the barren
23 wasteland that everybody describes it as. But it's not;
24 it's a very lush resource.

25 We -- for us, everything that we're saying here,

1 and all the tribal people who have come up here, the things
2 that they're saying is said with real conviction. It's real
3 to us. It's not perceived. It's not anything that, you
4 know, we're making up. It's there. It's the real deal.

5 And I'm not trying to pull upon people's
6 heartstrings, I'm not trying to pull upon your personal
7 beliefs, but the thing is, when you get so attacked, your
8 epistemology, your religion, everything that you have starts
9 getting attacked by one project, you have to then speak up,
10 and that's what we're doing.

11 Now, you read about these -- you've heard about
12 the three landscapes, you know, and I see that as troubling
13 because it's oftentimes one relied upon -- people rely upon
14 the archeological evidence that's there, very defined, spot
15 by spot on a map. They'll be very finite kinds of things,
16 and culturally, we don't have a lot of those things that we
17 can necessarily point to.

18 And I have to qualify that, because I know as the
19 project proponent, I mean, every word that I'm saying, I
20 know is going to be analyzed: "and he said," "well, but he
21 said this," "but he did say this." And that's how you guys
22 use the English against us. But what I'm telling you is
23 it's a very holistic view that we have of the land and the
24 resources. That we cannot be separated from the land and
25 the resources, and they cannot be separated from us.

1 This project, you know, I think the ethnographic study
2 collected a lot of good information. There's a lot of
3 useful information in there. And I'll be the first one to
4 say, and I'm sure Dr. Gates would concur, that it's not
5 perfect. That we know that it was things that he had to, in
6 a very abbreviated format, try to get in -- tried to
7 introduce himself to us, and if you could put yourself in
8 our shoes of being inundated with people always coming in,
9 "hey, tell us your secrets." You then become suspicious
10 oftentimes.

11 You don't know what the intention of that
12 information is -- or, I mean, how it's going to be used or
13 interpreted. And, again, we have to be so careful, because
14 if it's not complete, then you'll have somebody coming and
15 saying, "well, yeah, but you didn't say this and you didn't
16 say that." And that was not the intent of our discussions,
17 nor was that the intent of this ethnographic study. The
18 intent was to start collecting some baseline information,
19 trying to collect information that would be useful,
20 identifying the resources that are out there, and for that
21 to then go into the record and trying to help evaluate this.

22 Again, if you wanted to challenge it, it would
23 have been very appropriate for the applicant to say, "okay,
24 we need to conduct a parallel study so that we can then
25 share our points of view with you as well."

1 I'm hoping to provide some clarity to basically a
2 lot of the things that have been going on, but there's
3 things that really spilled over and resonated with me today,
4 and I really have to comment on it.

5 One in particular was Chief Tecopa. And Chief
6 Tecopa, you know how you saw the landscape, you saw his
7 journey. Mr. Leivas here, who is from the Chemehuevi Tribe
8 down by Lake Havasu, on his tribal building there is a
9 painting of Chief Tecopa down there. Way down there. Still
10 very much tied to where we're from in Pahrump. Most
11 importantly and notably, Chief Tecopa is buried in Pahrump.

12 Most importantly, along with that -- not most importantly
13 because you can't keep on saying "most importantly, most
14 importantly" --

15 (Laughter.)

16 MR. ARNOLD: -- so I think that's something wrong
17 with you guys' language there. I'm not sure.

18 (Laughter.)

19 MR. ARNOLD: So, let me just kind of edit that one
20 last "importantly," but equally - there's a good word -
21 equally, when Chief Tecopa died, there was the same Salt
22 Songs that we sing today that were sung for him. When
23 people before him -- when his parents died, the same songs
24 were sung. And it goes back, back, back.

25 When the -- In the beginning of time, as we

1 perceive it, and people can say, "Well, gee we weren't here
2 since the beginning of time, tell us differently" - we were
3 here, we know. How in the heck do we have these stories
4 about the knowledge of the underground water systems, how in
5 the heck do we have all this knowledge about things in the
6 world, all kinds of different resources?

7 We have so because it's grounded in our belief
8 system and our stories and we know it's true. And one of
9 the things we do -- as a traditional practitioner, it is not
10 our responsibility to question you and your beliefs, and we,
11 conversely, ask the same thing. But here I am,
12 unfortunately, having to share some intimate information,
13 and I have to do so to help qualify what we're saying.

14 I think to understand this, you need to know that
15 what we're sharing today is tremendously difficult. It's
16 being done in honor of the land, for the resources, for the
17 past, present, and future. Remember those ten directions.
18 I can never impart -- emphasize that enough to everybody.
19 You have to think about everything from every direction that
20 you see. You need to consider up and down, you need to
21 consider past, present, and future, and you need to consider
22 yourself in that dynamic. And, if you do, you'll understand
23 what we're trying to say and share as tribal people.

24 Culturally, you know, we have to apologize for
25 sharing some of these things. I mean, it goes against the

1 grain of our culture. It goes against who we are. And
2 we've always respected everything that's out there because
3 we know that everything out there is alive. It has a spirit
4 and it has a being. It's just like you and I. And it has
5 thoughts and it has feelings. If you ignore it, you're
6 going to find out the repercussions. We have seen it. When
7 you see things happen and -- if there is a large accident,
8 let's say, in the mountain, the people will tell you, "oh,
9 the mountain spoke, the mountain talked to you, the mountain
10 reacted, the area reacted, the land reacted." Resources
11 will react and that's what will happen.

12 It is important to note that the CEC ethnographic
13 landscape study was conducted as part of the analysis for
14 CEC, and it established the baseline of ethnographic data in
15 response to the proposed project. It used the ethnographic
16 program -- the Rapid Ethnographic Program that Dr. Gates had
17 alluded to, and it was very interesting to us, similar to
18 all these different types of hearings we've been having and
19 the importance, as I shared with you yesterday, about our
20 beliefs about the number of breaths and not wasting your
21 breath. We have to make sure that what we're saying is with
22 conviction.

23 And so, when I see all these strategies and
24 tactics, it's very entertaining, very interesting to watch
25 the dynamics behind the scenes, and at sometime maybe I'll

1 share how this whole experience has been and what I perceive
2 it to be and maybe perceive you people to be, good, bad, or
3 indifferent --

4 (Laughter.)

5 MR. ARNOLD: That -- there was some interesting
6 things that were happening. First of all, imagining you
7 have such a huge project. I heard that over the last week.

8 "This is a very large project," and "we've never really
9 dealt with things at this scale," on, and on, and on. But
10 you know what? We're going to try to tell everything about
11 the Southern Paiute people, the epistemology, the cultural
12 resources, all the other resources that are out there.
13 We're going to do that in a very condensed, capsulized
14 fashion, and more importantly, unless I'm mistaken, I
15 believe Dr. Gates is the only ethnographer that goes out --
16 that works for the CEC to go out and work with the tribes,
17 and, as such, there were multiple projects that were going
18 on.

19 And I just thought this is kind of a -- and I
20 commend the applicant for the strategy, and I'm not making
21 any innuendoes, it's just -- because I know you'll fire back
22 at me and that's fine, but life is good. But it seems to me
23 that when I see all these different projects, and here
24 Dr. Gates was here, trying to collect the information. And
25 I remember we were in the middle of discussions and he said,

1 "Well, you know what? I've got to, though, because I've got
2 this other project I've got to get down to, and I've got to
3 do this similar thing."

4 So he goes down there, and out of our respect for
5 those people down there, we needed to make sure that he got
6 their information. Then I'd get the calls back from those
7 people, "Yeah, we were right in the middle of something, but
8 Dr. Gates said, well, he had to go over here." And then he
9 had to come back up and see us. And it kept on happening.

10 And then, conveniently, the other projects, they
11 were suspended temporarily, so then Dr. Gates could come
12 back, but, gosh, that clock still kept on ticking. And then
13 Dr. Gates says, "Well, I'm here to wrap up, but, you know
14 what? I only have a short amount of time now because I had
15 to go do all those other things." Brilliant strategy,
16 brilliant strategy.

17 Now the information in what we're doing here was
18 never intended, and, as Dr. King said, we spend so much time
19 quibbling on the appropriate National Parks Services
20 Bulletins and things, and regulations, what applies, what
21 doesn't apply. And that was never our intent. There was an
22 informed consent process in here where Dr. Gates came and
23 told the intent of what he was doing. And the intent was to
24 collect some information for this project. Not for a
25 traditional cultural property, nor for anything else that we

1 were doing. We didn't do that, nor was it our intention to
2 share that information, because we were just going by what
3 was being told to us. We would have said the same stuff
4 when the -- if the applicant would have done another
5 project, but again, we never got to see that.

6 When we were out there, I remember Dr. Gates, when
7 we were trying to impart our knowledge, he was able to talk
8 to a lot of Southern Paiute people, but not to everybody.
9 And when we were out there, I remember it was a very windy
10 day. And one of the things that we do is, when that wind
11 blows, it's very important. I mean, they all have names:
12 the directions that they come from, what they mean, what
13 they do, they bring you messages.

14 But they tell you to listen to the wind; the wind
15 will guide you. People don't do that; they go out there and
16 they're concerned because their hair is getting messed up.
17 The forgetting and not hearing the message that's coming for
18 them. It could be telling you about an impending storm, it
19 could be telling you about lots of things that are changing
20 in the environment, it could tell you all kinds of things,
21 but people just do not question or consider that.

22 So, when we were out there, I remember you could
23 hear the wind echoing and shooting off of various areas.
24 And I remember very clearly talking to him about the
25 acoustics of the earth. People walk out there all the time.

1 They never hear anything. People will tell you about the
2 serenity of the place because they don't hear anything, but
3 that silence is a sound, and people need to understand that
4 sound is also very important. You need to have that
5 serenity and you need to be in a right frame of mind, you
6 need to be grounded, so you can hear, understand, and
7 appreciate, and know what that information is for.

8 Some -- when I -- I went through all this stuff
9 and I was trying to think, gosh, you know, there was so much
10 that we talked about, so much we had to redact, so -- and
11 again, I don't want that to be used against me, either,
12 saying, "well, gee, there's been too much information
13 redacted because he said that it's been redacted." And I
14 did. And it has been redacted for a reason, because we have
15 been told -- we have been brought up with the notion of we
16 have lost so much and we have faced so many challenges.
17 Nobody can ever appreciate all those challenges unless it
18 happened to you personally.

19 So, as such, it is so important for us to protect
20 what we have left. And what we have left is the information
21 we're trying to share, and yet, when we share it, we see the
22 person that's standing there with -- you know, smiling --
23 with a smile on their face and one hand behind their back
24 with the knife or whatever they're going to do to you, and -
25 - but they're telling you that they're your friend or

1 they're here to help you or they understand what you're
2 going through. And we just don't see that connection.

3 In the Final Staff Assessment, you'll notice - and
4 we brought this up very early, and it's very germane for the
5 Salt Songs - is that, while talking about the certain area
6 or region within Pahrump about the Salt Songs, there are
7 many other tribes that aren't a part. They are not
8 identified as groups that were contacted. You'll see the
9 Chemehuevi Tribe, the Colorado River Indian Tribe, Paiute
10 Indian Tribe, Kaibab Paiute Tribe, not to mention the
11 Twentynine Palms Paiute Chemehuevi people, the Paiute people
12 up in Tehachapi, Las Vegas Paiute Tribe - there's lots of
13 people that came out at various points, and a lot of people
14 chose not to.

15 People did that out of respect, knowing they were
16 coming into our homelands - so, out of respect, they
17 thought, "We need to leave it up to them." But when we talk
18 about the Salt Songs, we don't own the Salt Songs. The Salt
19 Songs are not -- any one of the Southern Paiute Chemehuevi
20 Tribes, it doesn't belong to any one of us, but we're all
21 responsible for the songs from our areas. We then -- and we
22 know our areas, then we have to converge on -- when there's
23 a funeral, we all converge together and we all sing the
24 songs as a part of a journey that you're going to hear about
25 here.

1 So it's important to note that you can't just, you
2 know, try and compartmentalize, try to dissect, try to chew
3 up our culture like this just for this project. It's like
4 the analogy I used the other day about, you know, it's like
5 trying to talk to your -- or, talk about your finger without
6 talking about your hand. It's going to affect everything
7 else, just as this has very far-reaching effects.

8 There was -- there's lots of things that I think
9 that, when looking at this, you know, there was things
10 looked at so suspiciously, and I find that interesting.
11 Because it's not in the literature, maybe, or it's not an
12 archeological site. I can tell you right now, we --
13 traditionally, we do things and we talk about things that
14 are all around us that you can't see, you can't touch, but
15 they're real and they're out there.

16 And I have no idea how an archeologist would ever
17 know those things without talking to Indian people. And
18 just to go out there and say, "well, you know, some other
19 people had gone out there and they didn't find anything, or
20 they found the lithics or the debitage," the French for
21 "garbage" I guess it is or whatever. Oh, they found those
22 things, but they don't understand the context of that. They
23 don't understand and I wish oftentimes that people would go
24 into the Chief Tecopa Cemetery in Pahrump, look at his
25 grave, see what you'll find on his grave. You're going to

1 find lithics on there as offerings that were left there out
2 of respect for that person. I'm not saying every lithics --
3 I'm not saying all lithics are burials, but I'm saying you
4 need to take off your blinders and look beyond what is out
5 there.

6 You know, there's -- the studies that were going
7 on here, the interconnectedness, I think, was often missed
8 when people were talking about landscapes because of -- you
9 heard the buffer zones, you know, people would talk about,
10 "well, gee, we walked out however -- one hundred feet, two
11 hundred feet, or fifty feet," whatever it was, their
12 transects that they walked however many meters apart and
13 things they did.

14 They're trying to get a feel for the archeological
15 things that are out there, but doggone it, those dunes that
16 are out there, you never heard a lot about those. You heard
17 some people go out and they kind of analyze that. I don't
18 remember hearing a lot about any of the archeology that was
19 ever done around the dunes.

20 That's one of the places that are key within this
21 landscape that is related to -- and even though it's down
22 the road a bit, just like the rabbits, just like the desert
23 tortoises, we don't just stay in one area. We have to go to
24 various areas, we don't continually go back to the same
25 area. Because of all the things we've seen, and many other

1 reasons, we're very discrete at what we do. We don't go out
2 and advertise what we're trying to share with people. We
3 don't try to say, "Hey, you know what? There's going to be
4 this big doin's, everybody come watch." That's not our
5 intention. We have to have the privacy and the
6 connectedness with the land and the resources, or else
7 things won't work and things will be continually out of
8 balance.

9 It's so -- gosh, it's beyond my comprehension. I
10 can never imagine talking, understanding, and trying to
11 comprehend the importance of an area without knowing it.
12 But, I also couldn't understand how I could talk about an
13 area if I never visited it.

14 I literally take my hat off to the Committee and
15 the Commissioners because you have gone out there. You have
16 visited the site. You know what it's like. You know what's
17 out there and some of us have even been in some
18 uncomfortable surroundings and buildings and chairs and the
19 like.

20 But other people, including people who have been
21 reviewing and critiquing the information, have not. Gee, I
22 mean, I think that would be almost -- that's a pretty
23 important and fundamental criteria for people to understand.

24 I couldn't talk about things without doing something
25 similar. It's almost like, in my estimation, I guess, that

1 I've seen over my career, you see a lot of desktop reviews.
2 I mean, very easy desktop exercises. You know, you have an
3 emergency response. "We're going to do it on a computer.
4 We're going to let -- see how everybody's going to react,"
5 but you don't know until you really feel it and really do
6 it.

7 And when I see archeologists, it would be
8 analogous, and I'm not by any means alluding to -- but it's
9 analogous to what a windshield survey would be. And trying
10 to now get a feel for what's out there without ever getting
11 out of your car. Without going to the area. Without
12 analyzing it.

13 Now, it is important to note that a lot of the
14 people for the applicant that are challenging things here,
15 are and focus on, even have credentials of RPA, registered
16 professional archeologist, you don't see that as an
17 anthropologist ethnographer, nor do you see those
18 affiliations. And I know that, as an anthro -- as an
19 archeologist, a person who come to you and say -- oh, and by
20 the way, I'm not an archeologist. But if an archeologist
21 would challenge and say, "well, you know, it's all under the
22 guise of anthropology." Well, maybe it is, you know, but
23 gosh, I'm just kind of an old country boy and when I see
24 professional trades, I wouldn't hire a plumber to do an
25 electrician's work. And conversely, even those you can say,

1 "Oh, yeah, I've read lots of those reports, I've known
2 those," well, look at your training, really where it's at
3 and what you've done and the things that you're talking
4 about.

5 And I think archeologists, first and foremost -
6 and again, this is my understanding, so I may be wrong again
7 just being that old country boy - but it seems to me
8 archeologists deal with things from the past. The material
9 culture, whatever, you deal with things from people living
10 long ago, and they're the ones that, then, try to interpret
11 what those things mean. Just like the people who write the
12 laws - they're not the Indian people that write the laws,
13 it's the other people that are out there writing the laws
14 about Indian people, defining what our culture is and
15 defining whatever.

16 A lot of people are well-intentioned, other times
17 they miss the mark, but it seems to me that we need to try
18 to find some parity in what the heck is going on out there.
19 Now, this project has raised so many issues about the
20 interconnectedness of the landscapes, the ethnographic terms
21 used, things that may be skewed or erroneous, the -- all
22 these things about things that we're seeing. Well, gosh
23 darn, nobody ever came and talked to us. Nobody understands
24 us and the people who are reviewing us, they don't have
25 expertise in that area. I would suggest and, you know, I

1 could ask people here about their experience. Oh, I'm going
2 to hear people, "Oh, I've worked in this area here." And a
3 lot of people are going to say, "Oh, I've never worked in
4 this area here."

5 People may have looked at it archeologically.
6 What do you know about the culture? What do you know about
7 the Paiute people here? What do you know about their Salt
8 Songs? What do you know about their ceremonies? What do
9 you know about their epistemology? What do you know about
10 their traditional lands? What do you know about their
11 resources that they use? What do you know about their
12 doctoring that goes on? I mean, I can go on and on and on,
13 just as we did yesterday.

14 Now, I think it's very inappropriate for people
15 to, um -- for lack of a better term, and better words -- but
16 almost to take -- to make critiques. That's one of your
17 words. To make critiques about something that you don't
18 understand and then trying to present that to the Committee
19 and to the Commission as fact. Because for us, then, now
20 we're relying upon somebody that took our words, and the
21 things that they think that we said, we didn't say, the
22 things that are eligible or not eligible based upon their
23 standards, um, you know, and they'll make a decision.

24 We're sharing this information so, one, you can
25 make an informed decision; two, that I think is important,

1 that you understand the dynamics of what's going on; three,
2 there needs to be some management considerations, regardless
3 of whatever happens, that people, when they come out for
4 these areas, including the applicant, when -- for future
5 studies, you need to really look at the big picture. You
6 just don't go and, although I understand a lot of the
7 dynamics behind this project, it's very incumbent upon the
8 project to go -- to take that extra step, to make that good-
9 faith effort, to have that level of transparency, of making
10 sure that we're all one, singing the same song, at least we
11 have an understanding of the song that we're singing, and
12 that we understand what the intent is of a project, the
13 implications, and how we're going to make sure that things
14 are perceived.

15 Now, admittedly, we had great lunches over the
16 last few days, and so that I appreciate, and that's been
17 fun. You know, if you guys would have had chairs as good as
18 the food, I would have even --

19 (Laughter.)

20 I would have even been on your side maybe a little
21 bit more. Um, but, again, I think it's important to, um, to
22 really consider all that has been said so far.

23 The ethnography that has been presented, I think
24 it needs to stand the way that it is with the addition of
25 all the other information that you're hearing here, and

1 particularly the cultural perspectives that you've heard not
2 only up at this table but from the back as well, from the
3 general public, people -- we're all not coming in here
4 because we enjoy doing this; we're coming out here because
5 we need to be out here, to share what -- what's going on. I
6 think, you know, when we're looking at all these different
7 things, um, and the information that is limited as such you
8 have some really current information, actually current --
9 more current than a lot of information that has been
10 presented before, with respect to the ethnographic
11 information that has been collected.

12 You don't find that stuff around, because we're
13 not supposed to share it. We did so in hopes that trying to
14 drive home a point of what all these things mean. Um,
15 again, the studies were never intended to be all-inclusive,
16 they were not intended to be comprehensive, they were not
17 intended to be a dissertation, they were not intended to be,
18 um, definitely used against us by any means. And I know
19 that the applicant is not intentionally trying to use it
20 against us; the applicant is trying to consider what's there
21 and trying to understand it, and when there's those voids of
22 information, questions need to be asked as opposed to
23 jumping to a conclusion and saying, okay, no, I'm sorry,
24 there is nothing else to consider, it says it right here in
25 this story. It doesn't go that way, I mean, and that's not

1 how we act or we respond.

2 The Hidden Hills area and particularly -- in
3 particular, is very important because of, at the time of
4 creation, and I am really -- I'm just at the edge of where I
5 should be on some of this cultural information, and so,
6 being mindful of that and being respectful of that, and I
7 ask people's indulgence on that, and I shared with you how
8 we have winter stories, and our winter is already gone, we
9 cannot -- we can't talk about other things like that, but I
10 can tell you the gist of when information -- when the world
11 was created, everything was centered around Mount
12 Charleston. That's the center; that's the hub of our world.

13 From there, it spanned out, and it went out down
14 by Hidden Hills specifically, and down by Emigrant Pass, and
15 into that area there, into California Valley over there.
16 All throughout there, down into where the Providence
17 Mountains are, where Kingston is, all that, where the water
18 was redirected, it was supposed to -- it was redirected to
19 go back down by the Colorado River. Had that occurred --
20 had that not occurred, we may have a different view of
21 Hidden Hills. But because that did and is embedded in our
22 stories, we have to talk about it, we sing about it, we know
23 the stories that are about it, and that's what helps keep
24 the area alive.

25 Now, before I go on, because I'm now at the point

1 of almost entering into the Salt Song, and -- but before I
2 get to that, I know that Dr. Gates had information, too.
3 And I don't know when protocol -- this is my first rodeo
4 around the CEC rodeo, but there was information that he
5 wanted to -- he held back in sharing that as a foundation.
6 And then perhaps it may be good to have that information
7 provided, and then we could take it from there to -- so then
8 you understand what we're talking about, and it makes --
9 maybe makes more sense.

10 HEARING OFFICER CELLI: Well, so, in other words,
11 you want, uh, you want to hand the floor back to Dr. Gates
12 is what you're saying, Mr. Arnold?

13 MR. ARNOLD: I thought I did.

14 HEARING OFFICER CELLI: Okay.

15 MR. ARNOLD: Yes.

16 HEARING OFFICER CELLI: But you're not, as they
17 say in Congress, you're not yielding your time? We want you
18 to finish up your statement, so go ahead --

19 MR. ARNOLD: Yeah, this would --

20 HEARING OFFICER CELLI: Please, and then we'll go
21 back to Richard Arnold.

22 MR. ARNOLD: Yeah, this would be a comma.

23 HEARING OFFICER CELLI: Yes.

24 (Laughter.)

25 HEARING OFFICER CELLI: Go ahead.

1 DR. GATES: I was simply talking -- hello? I was
2 simply talking about how the Salt Song Trail works in the
3 particular corridor between Mount Charleston areas and then
4 to the southeast as -- I was going to call him Dr. Arnold,
5 but --

6 (Laughter.)

7 MR. HARRIS: Mr. Celli, I don't know if it will
8 help, but I want to object to not being anywhere in this
9 part of testimony. There's no description of a corridor
10 between those two locations that I'm aware of.

11 DR. GATES: Yes, there is, and it's in the
12 rebuttal testimony, the particular slide that was up, that
13 had the purple --

14 HEARING OFFICER CELLI: The objection is
15 preserved. Overruled, but preserved.

16 DR. GATES: So, I was specifically wanting to talk
17 about exactly how that Salt Song Trail works, and, we were
18 talking -- what are the dimensions of that corridor? And I
19 started to talk about the Milky Way and the Solar System,
20 and I started to realize I'm going too far with what I was
21 told to keep in confidence. So it's hard for me to describe
22 that.

23 I was also talking about how the songs as text,
24 um, call out certain places, areas, sites, but I didn't
25 intend for only that to be what is documented as the Salt

1 Song Trail, that it's this corridor and that it connects up
2 to the cosmos in their belief system. I certainly did not
3 want to talk about how that relates to their death
4 ceremonies and how their spirits go on to another world, and
5 how the project may impact their belief systems about that.

6 So that's where I started to pull back.

7 And there was the -- I think the last thought
8 Richard had talked about when we were talking about the wind
9 and the sound and the role of the landscape in the quality
10 that's produced in the song, so you cannot divorce the
11 landscape from the song itself. Yes, the song is not a
12 tangible property, although it is an airwave - you can
13 measure it, you can record it, so it exists - but it's not
14 place -- sometimes people say a song is not place-based, and
15 I'm saying, on the contrary, this song exists in this
16 landscape. But then exactly what does that mean? How does
17 the echo and the reverberation of the land between the
18 singers and the spirits -- that's where I started to stop.

19 MR. ARNOLD: Thank you. Semicolon. Okay, I'm
20 going to go over just a little bit now, I'm going to start
21 talking about the Salt Song, what that really means, and
22 then I'm going to have another comma, and then I will turn
23 over to Mr. Leivas, and then just wrap it up, if that's
24 acceptable.

25 The Salt Song -- there's several elements, I

1 think, that, as a foundation, that people need to
2 understand. First and foremost, there's hundreds of songs;
3 they don't just consist of a few. Um, and they're all very
4 unique and they're specific to the areas which they talk
5 about. Beyond the Salt Songs, and similar to, we have what
6 -- oh, I guess, for lack of a better word, I mean, or
7 translation, I guess, it's almost like a silver or a shiny
8 song, like Silver Songs, I guess, maybe, is one way to talk
9 about it. Um, and I'm not going to go into detail about
10 that, because that's something that's culturally
11 inappropriate.

12 But I want to tell you what we have to do as
13 singers. What singers have to do, we have to imagine and we
14 have to visualize the areas that we're singing about, and it
15 actually spills over, and this is what I said, when we were
16 talking about the visual resources on day whatever it was -
17 it's kind of a blur but it was sometime during this week, I
18 think - and we were talking about that and I was telling you
19 there was going to be a lot of overlap in some of these
20 areas.

21 And so when we're up -- when we're talking about
22 areas, we're visualizing the areas, sometimes we have to go
23 there physically, sometimes we have to be there spiritually,
24 sometimes -- and don't take the word sometimes, that means,
25 like, oh, he didn't -- that doesn't mean you have to do it

1 all the time. I'm going to qualify it by saying that what
2 we do is we have to visit areas, um, spiritually,
3 physically, we have to imagine and visualize the area that
4 we're singing about, we have to think about it, we have to
5 think about the family that is grieving, we have to think
6 about the person that we're going to go on the journey with,
7 on this spiritual journey, we're going to take them into the
8 afterlife through a whole series of songs, we're going to
9 also talk about the things that are happening in those ten
10 directions, of what's going on, how we use the songscape and
11 the storyscape, that -- those are all part of what we're
12 charged to do, and then what the songs do for us. I mean,
13 you'll see songs where it lasts typically a couple days. A
14 long time ago, it used to be four days and four nights - you
15 sing nonstop, and you're there and you're going on that
16 journey.

17 One of the key places is obviously in the Spring
18 Mountains, the center of the earth, but then there's other
19 places all around. You're going to see a map that was
20 referenced before that was intentionally vague. We had to
21 make sure it was vague because we didn't want people going
22 around and seeing things that are out there, or violating
23 our beliefs, using that information so, oh, now I'm going to
24 go out and I'm going to check this out, and so, for us,
25 culturally, it contaminates the area, so that's why what

1 you'll see is intentionally vague.

2 And then there's, you know, people will challenge
3 us saying, well, gosh, you know, gee, it didn't go -- it
4 didn't, you know -- people may raise the question about Las
5 Vegas, well, it didn't talk about Las Vegas, you know,
6 doggone it, and look at all those casinos and everything
7 that's there.

8 Take another look at the map, see -- does the map
9 -- did it go in Las Vegas? You'll see it going around, um,
10 kind of, Las Vegas. I mean, and -- but once again, we still
11 have to visualize, we have -- in good conscience, you know,
12 we're not there trying to sing these songs, trying to bring
13 somebody on to a spiritual journey knowing that we're being
14 deceitful and saying, oh, we -- you know what, we know all
15 this stuff is here. We know there's 340,000 mirrors out
16 there, oh, and by the way, there's 278 -- I mean, there's
17 two 780-foot towers, and we're not going to tell you that.
18 We can't do that. We cannot do that. We don't have a
19 remedy for that. And so, for us to be of the right mind,
20 the right voice, the right conviction, the right belief that
21 we have to make sure that those things are happening, it's
22 so integral and important to us that we have to make sure
23 that we're complete and we're whole.

24 This trail, it still has been, it still will be --
25 be sung, and it really is distressing to think that, if I

1 have to try to describe something, I'll tell you straight
2 up, in Paiute we do not have a word for parabolic mirrors.
3 We do not have words for solar flux. We don't have words
4 for that, and it's very reminiscent of me when we were --
5 all these tribes were all brought together and we had to
6 talk about radiation. We'd never heard about radiation and
7 the heat that comes off and the solar flux and all that.
8 I'm, you know, I'm sorry to say that, yeah, we don't have a
9 word for radiation either.

10 You know, but we can define radiation; we can tell
11 you about its attributes. We can tell you, when we were
12 trying to describe what radiation means, that it was going
13 over everybody's head, just as what the physicists were
14 doing yesterday to me, I mean, it was -- you know, I'm not
15 the sharpest knife in the drawer when you're talking about
16 all that stuff, and I was trying to grasp it, and so all
17 this stuff is going over my head, and I'm trying to -- I
18 remember we were talking to the elders and we were trying to
19 talk to people about radiation and everybody just looking
20 glazed. Didn't have a clue what we were talking about,
21 until an eighty-five-year-old Southern Paiute man stood up
22 and said, "I know what you're talking about. You're talking
23 about an angry rock. You're talking about something, you
24 know, that, one, is sentient and is personified because it
25 has a belief. You know, when you get real mad, your blood

1 pressure goes up, you get real hot, you get real angry -
2 that's what radiation is. It comes from Uranium. That's
3 how it -- how it happens. That's what happens to you. Then
4 you bring that anger into an area, and it ends up impacting
5 an area and impacting lots of things."

6 And, because of that, our cultural perception then
7 knows that that stuff causes sickness. That's our only word
8 that we have that can even translate to the outcome for this
9 stuff. We know it's there; we know it's not natural, and we
10 know it's been in a place where it shouldn't be, and we're
11 going to have to try to then figure out a way that, if this
12 were ever permitted, what in the heck do we do?

13 And again, I say that because I just -- I cannot
14 emphasize enough that I really -- I told you the other day,
15 we get up very early. We get up before the sun comes up.
16 It doesn't matter how late we have to stay, and even if it's
17 at a CEC hearing. We will still get up early. We get up
18 well before that sun, and we have to get up before that sun,
19 and we watch the sun go down, too. We know all the
20 characteristics, and we know we have to do that because we
21 have to pray to get the day started, to make sure things are
22 going right, and, as strange as it may seem, that here's
23 this weird, for lack of a better word, I'll just use the
24 Paiute word of ugly, project -- and ugly is not our word --
25 that's not our Paiute word for ugly. But, nonetheless, we

1 had to include this project that included 278 -- two 780-
2 foot towers, 340,000 mirrors including all the people that
3 are coming here to testify for the project - you guys were
4 all included in our prayers this morning. You guys were
5 included because we know that what we're trying to do is
6 give you guys the wisdom that is -- comes from our
7 traditional life and our traditional beliefs, and trying to
8 help you understand the implications of what can happen with
9 this particular project. So, again, it's something I think
10 that we're going to continue to struggle with.

11 I know that we are charged with keeping this world
12 in balance, and we're not talking about, I don't know what
13 the world is. I mean, when I was growing up, I thought
14 everybody talked Paiute. I thought you guys all understood
15 us, and you guys don't. I thought you guys all thought like
16 us, and you don't. You know, I thought that everybody
17 understood the importance of the resources out here in
18 Pahrump, and by reading a lot of the things and hearing the
19 -- the, um, critiques, I'm not so sure the understanding is
20 there. So, when we sing these songs, when we pray, we rely
21 upon the resources we rely upon, we prayed and we were -- we
22 visited spiritually -- we were down in the project area this
23 morning. We were down there talking to those -- everything
24 that's down there, just to make sure that it knows that
25 we're here fighting for it, we're talking for it, because

1 when their voices were taken away, those animals -- when
2 they used to talk -- and they still talk with us, but you
3 folks can't understand that. But we know that their voices
4 are there, and we have to be the ones to stand up and talk
5 for those particular animals, resources, and, again,
6 bringing their wisdom that they know of the area to us,
7 through us to you. So, with that, and with this comma, I
8 would then turn it over to Mr. Leivas.

9 HEARING OFFICER CELLI: Thank you very much, Mr.
10 Arnold. Mr. Leivas, please.

11 MR. LEIVAS: My name is --

12 HEARING OFFICER CELLI: Yes, we can hear you.

13 MR. LEIVAS: Okay. My name is Mathew Leivas, Sr.
14 I'm a Chemehuevi. I live on the Chemehuevi Indian
15 Reservation. I was born and raised in Parker, Arizona, as a
16 member of the Colorado River Indian tribes, but Chemehuevi.
17 (Speaking in native language) in our language, all of our
18 people. (Speaking in native language) means the people,
19 okay, you understand that? (Speaking in native language) is
20 my relations, all my other relations over here. (Speaking
21 in native language), you know, I'm a southerner. (Speaking
22 in native language) is a northerner. But we're all the same
23 people.

24 Our people migrated down south many, many years
25 ago, but we're always familiar with the desert, and it was

1 explained by some of the people who gave testimony this
2 morning that people knew where the water holes were, people
3 knew the topography, landscapes, storyscape because of that
4 connectedness with the land and resources, the elements.
5 Through oral history, through personal journeys through the
6 desert, making connections, but, over time, that was lost
7 because of westernization and our people not being able to
8 teach the young ones about culture and ceremony and the
9 importance of our connection with the Creator.

10 So, I was -- I went to school at an Indian school
11 in Parker called Parker Valley Indian School. And, you
12 know, one of the first songs that I learned was 'Frere
13 Jacques.' To a bunch of us Indian kids, now, why were we
14 learning that? Part of the mindset of -- changing, altering
15 our minds to think, "be English, speak English, do
16 everything English, do things the appropriate way."

17 I also remember getting my mouth washed out with a
18 bar of soap for saying a dirty word, which was nothing to
19 us, but to others it was. It irritated the teacher; she
20 drug me down a hall by my ear and took me to the bathroom
21 and washed my mouth out with this lye soap. So, I was the
22 talk of the school; I was kind of the hero in the
23 kindergarten.

24 But, over the years I went to this was public
25 school. Many of us students -- Indians down in Parker went

1 to the public schools. They closed down the Indian school.

2 Before that Indian school, there was another Indian school
3 up in Parker, up by the -- the office. My mother went to
4 school there, and was forced to go to that school there, but
5 when she went, she didn't know that she had other sisters
6 there. When her father came to get her, he told her, "Go
7 get your sisters." Sisters? But he directed her, she went
8 and got them, and they all got together and they went home
9 over a holiday, but, later on, she was sent out to Sherman
10 Institute in Riverside, California. She graduated from
11 there in 1939. And, if you don't know about the Indian
12 institutions back in that day, it was primarily training us
13 to be slaves, primarily training our forefathers and mothers
14 to be housemaids, farmers, welders, cabinet makers, et
15 cetera, et cetera.

16 Over time, things changed. In 1968, I had an
17 opportunity to go away to Sherman, and I did, as my own
18 choice, and because of the connectedness with my relations
19 that were going to school there and just wanting to be with
20 family. So I went and I graduated from Sherman. And it was
21 a very interesting ride.

22 But at Sherman, they started reintroducing
23 culture, and, when culture was coming out, we stepped up and
24 we all joined in. So we had our first powwow at Sherman in
25 1970, and, since then, it's been going on ever since.

1 Incidentally, we changed the name of that school, and I was
2 one of the people who sat on the -- with the associated
3 student body to help change the name of that school, which I
4 hated. Sherman Institute, you know? It just didn't sit
5 right with me.

6 And we had an opportunity to get the school
7 accredited through the State of California as a high school,
8 and we did. We succeeded. It was one of the proudest days
9 of my life to see that name -- that title of the school
10 change on that water tank, from Sherman Institute to Sherman
11 Indian High School. We did it. We're just like anybody
12 else in the state, any other high school student, we're
13 going to get our diploma, we're going to be able to go home,
14 go to college, or whatever.

15 But, at any rate, over time, going back home,
16 working on the farms, driving heavy equipment, learning how
17 to farm again, learning culture - but all I knew was Parker
18 Valley, nothing beyond that. My family was from Chemehuevi
19 Valley; my mother was born and raised where Lake Havasu is
20 right now. So, when they inundated all of our river bottom
21 lands, they took away all the homelands and forced our
22 people out.

23 But it's funny that the State of California sent a
24 botanist and a scientist down the river in 1911 and 1912
25 studying about mammals, but no connection with the tribes,

1 nothing to do with the tribes, saying, "Hey, Chemehuevi,
2 we're going to take your land, and flood your lands, because
3 we're building a dam to provide water to Southern California
4 and electricity." They basically told them, "You're out."
5 So, allotments and everything that were there, the people
6 had to relocate. They were displaced.

7 But, eventually, we came back. We have 30,000
8 acres of land down there on our reservation, the Chemehuevi
9 Indian Reservation, thirty miles of shoreline on the
10 Colorado River, but it took people with the forethought and
11 vision that we need to organize, we need to get back to our
12 reservation. Because where that lake is now, beneath there
13 was a lush, lush valley. Green trees, green et cetera. River
14 flowed through it. High water came, people moved out, in a
15 little bit came back. But that was the lifestyle.

16 It had gardens, all the way from Cottonwood
17 Island, all the way down to the Mexican border along the
18 Colorado River, there were Chemehuevi villages with gardens,
19 and people sustaining themselves.

20 Out in the foothills, in the mountains, you see
21 petroglyphs, you see trails, and it took me a long time to
22 try to figure out what these petroglyphs are, but it's
23 amazing once you find out. I was able to discover three, I
24 say discover - three maps that I didn't know were out there
25 of the Colorado River, in three different locations in

1 Southern California -- well, actually one's in Nevada at
2 Spirit Mountain.

3 Up at Grapevine Canyon, there's a small map on the
4 canyon wall that depicts -- shows the river, and that
5 stretch of the river, from Bullhead City down toward Beaver
6 Lake. Another map I found, which is the biggest map I'd
7 ever seen, a petroglyph, is of the Colorado River flowing
8 from Lake Havasu, where Parker Dam is, with the Colorado --
9 the Bill Williams River flowing into it. All through the
10 Valley of Parker, all the way down to Yuma. All the way --
11 and when it gets down to Yuma, you see the Gila River coming
12 in.

13 So, how did our people know that? Because they
14 were there. They recorded that. It could have been our
15 people, it could have been the Maricopas, it could have been
16 Amacov, could have been the Quisas. But it doesn't matter,
17 because we all shared information.

18 And these are big signposts to us out there. What
19 is out there? There's food, there's resources, there's
20 water. You can take this trail, it'll take you here; this
21 trail will take you there.

22 Okay, to speed things up, I -- in 1992, I went
23 through a change, a spiritual awakening, if you will,
24 because of turmoil, but I had to revert back to traditional
25 knowledge. And we did, but we thought there was something

1 missing -- very important to our people, and that was the
2 songs, the Salt Songs.

3 And why it was so important is there wasn't any
4 singers down in Parker Valley. There wasn't any singers at
5 Chemehuevi Valley. The only lead singer that we knew of was
6 Willis Mayo from Kaibab Paiute. And that old man and his
7 wife would sit there and sing all night, and some of the
8 elders that knew the songs joined them.

9 I didn't know those songs, but I made a commitment
10 to learn the songs. So, I partnered with Vivienne Caron
11 Jake from the Kaibab Paiute Reservation and we formed the
12 Salt Song Project. And we were able to bring together the
13 fourteen different bands of the Southern Paiutes to revive
14 our songs.

15 And this cultural revival is very important to us,
16 and there was a new word coined a few years ago called
17 "reindigenization," and that's what we're doing, we're
18 reindigenizing ourselves about our culture - things that we
19 weren't able to connect with. And what Mr. Arnold just
20 explained about making trips or sojourns to sacred places
21 and trails, so we can make our special connections, our
22 personal connections with that particular place. And that
23 was one of the projects that we were doing with the Salt
24 Song Project. We need to make our connections.

25 But one of the things that we did, we worked with

1 an organization called the Cultural Conservancy out of San
2 Francisco, and they work with tribes for cultural revival --
3 cultural renewal. So, we worked with them, and we went to
4 Las Vegas, and a group of us recorded for two days with Mr.
5 Mayo at the lead and we distributed these CDs back to all
6 the different tribes, the fourteen different bands. So, in
7 turn, we can use technology of today for helping to educate
8 our people. So, this is what we did.

9 Another thing that came about after that was the
10 Salt Song Trail videos, which we did ceremony out at Sherman
11 Indian school. When I went to school there, I never knew
12 that there was sixty-some-odd children buried out there in
13 Arlington, right down the street. If it wasn't for a little
14 white boy, a boy scout, that was stumbling across there one
15 day, and started kicking those headstones, and thought "what
16 is this?" Took it too his scout masters, and they went and
17 they made a project, they cleaned it up.

18 Then it got even bigger, it grew, they involved
19 the city of Riverside and the Sherman Indian School Museum
20 and they raised money and they went and put a fence out
21 there. So, we were in Twentynine Palms, we decided "well,
22 we're so close. Let's go to Riverside, and do Ceremony."
23 So, we did, and just like that, within twenty-four hours we
24 were there, and we did Ceremony, but it was so powerful.

25 And I would like to enter this paper in to you as

1 part of my testimony because it's just little excerpts of
2 everything that we've done with the Cultural Conservancy
3 regarding the CDs and the videos that we did. But on the
4 video it shows me smiling. Why am I smiling? Because, when
5 we were finishing our song, eagles flew from the mountains
6 and blessed us. Those children that were buried there and
7 never had Ceremony, had Ceremony. They went to their
8 respective homes. The eagles flew; one eagle stayed by
9 himself, just suspended in midair, looking at us. And,
10 that's why I was so happy.

11 But other things that we've done, you know, we've
12 done a couple of other -- one more video, up at Stewart
13 Indian School at the invitation of the Stewart Alumni
14 Association, and we have a video of that. We had two --
15 actually, four of our people trained in video recording and
16 editing, et cetera, so the second video, our people did.

17 We also did Ceremony out at the Old Woman
18 Mountains. If you're not familiar with the desert, the Old
19 Woman Mountains was purchased by an organization called the
20 Native American Land Conservancy, a non-profit organization
21 which, I'm proud to say, I'm a board member of. And we were
22 approached by a land owner, and because of all of the
23 culturally significant things that are out there, we felt
24 that it was imperative that we secure it.

25 So, we raised money over a period of years, a

1 little over a quarter of a million dollars to buy that land,
2 and we did. We have it lock, stock, and barrel. We take
3 children out there in groups, and reintroduce them to their
4 culture, of what our people had to endure when they were out
5 in these rough areas with very little resources.

6 You would think that there's nothing out there,
7 but you climb the mountains, and there's pinyons up there.
8 You go to the desert floor, there's all the wildlife you
9 need out there, all the plants you need, like Richard was
10 explaining, are there. Everything is there for us; the
11 water is there. So, we use it to take people out there, to
12 educate them about the land.

13 Now, one of the things that the Salt Song Project
14 did is that we developed the map that you have seen up there
15 on the screen. We brought together the different bands, we
16 met at Moapa Paiute Reservation, and we came together and
17 all the elders came, and we were the ones who said, "Well,
18 let's do this map so that we can help educate our people,
19 and if they want to go out and make their special trip to
20 these sites, they can, and we'll help them, we'll direct
21 them."

22 But we made it very vague, and it isn't
23 pinpointing the trail exactly where it shows on the map. It
24 could be five miles, it could be twenty miles, it could be
25 fifty miles, in the viewscape or the corridor, it could be

1 very large. But along with that, there are quite a number
2 of other trails that intersect or interact -- connect to
3 these same trails.

4 MS. MacDONALD: Mr. Leivas?

5 MR. LEIVAS: Yes?

6 MS. MacDONALD: Could -- I'm over here -- could
7 you just get a little closer to the microphone?

8 MR. LEIVAS: Oh, I'm sorry.

9 MS. MacDONALD: Thank you.

10 MR. LEIVAS: All these other trails, they connect
11 in one shape or form. And it's all part of the circle that
12 we talked about, the Sacred Circle of the Salt Songs. But
13 it was because of that primary concern of Vivienne Jake and
14 myself that there were going to be no more singers.

15 And when I was invited to Kaibab to sing with
16 them, and learning the songs, she -- there weren't very many
17 people singing, men and women. And when Vivienne got up and
18 started talking, she was telling her people, very angrily,
19 "If you don't learn these songs, you're going to have a man
20 like this man come up here and sing for you."

21 (Laughter.)

22 MR. LEIVAS: Oh? That's good, you know, because
23 what it did was it invigorated them. Now when you go to
24 ceremonies, you can see twenty to thirty men Salt Singers,
25 you can see twenty to thirty women Salt Singers, and

1 everybody else participating in Ceremony.

2 And the ceremony is a Healing Ceremony for the
3 living, as well as for those who are deceased, and sending
4 them on the journey to the Spirit World. So we sing the
5 142-cycle song, which is, more or less, condensed now. It's
6 not the four-day ceremony, but we sing the 142 songs
7 overnight from sundown to sunup. And, in the morning before
8 the sun comes up, we finish off with the last four songs, in
9 what we say are the most important, because it talks about
10 our people on their journey, on their Spirit Journey, that
11 they're going back home, Mount Charleston, to Snow Mountain.

12 For the people who are living, it's a healing, and
13 the ceremony is called a (speaking in native language), it's
14 called a "Cry," and the reason for that is for people to
15 come, emit tears, release all that tension, anxiety, and in
16 the morning, you're better. You're able to get up -- the
17 next morning you're able to get up and go function, you've
18 laid your loved ones to rest. You went through Ceremony,
19 you're blessed.

20 But the first songs, the initial songs at the
21 beginning are a blessing, and requesting permission from the
22 Creator to sing them. And you're also inviting all the
23 spirits and they come. So, what do we do? We have to burn
24 our holy sacrament, the (speaking in native language) from a
25 pine, to ward off the bad spirits that want to come, and

1 they will come, so you have to be prepared.

2 And then there's other protocols that go along
3 with it, for women on their moon, young babies, little
4 babies, you know, they can't be in around stuff like this,
5 because they can be harmed. It can heal you; if you're not
6 receptive, you're not respectful of the songs and what we're
7 doing, it can hurt you. And it's simple as that. But it's
8 all about healing, and all about taking care of our loved
9 ones, and helping them on the journey.

10 So, I'll go ahead and cut it right there, but I
11 would also like to include an article that was written by a
12 woman by the name of Ruth Nolan. And it's just a story
13 about a little sing and presentation that we did down at
14 Twentynine Palms at the park up there, Joshua Tree National
15 Park. But I think it will give you a whole lot more insight
16 as to what the songs are, the connection, the spirituality,
17 and what it does to individuals. But I just picked this up
18 at my tribal office yesterday, so I'll go ahead and submit
19 this.

20 There's one last thing that I would like to
21 submit, and it is a song that I wrote in our language, the
22 Chemehuevi language. But, Richard mentioned that our people
23 had no word for the radiation, and this one is like an
24 environmental song, what I did, working with my mother and
25 my sisters, we sounded the song out phonetically, and sang

1 it and recorded.

2 But I'll go ahead and read it to you -- and we
3 also didn't have a word for the federal government, so we
4 just used the term loosely, "white man," (speaking in native
5 language).

6 *What have you done? What have you done, White Man?*

7 *What have you done? What have you done, White Man?*

8 *You've hurt the land. You've hurt the water.*

9 *You've hurt the mountains. You've hurt the people.*

10 And again that chorus, "What have you done?"

11 *You've haven't listened. You haven't heard.*

12 *You haven't seen. You haven't understood.*

13 And the chorus again.

14 *Our nations are sick, white men are sick.*

15 *All (speaking in native language) are sick.*

16 *By this bad spirit, all the people are sick.*

17 *Listen. Listen! We are speaking the truth.*

18 *We are speaking from the heart.*

19 *Are we going to help Mother Earth?*

20 And then the chorus again.

21 But it was because of all the issues that we were dealing
22 with, everything from the Nevada Test Site, you know, the
23 nuclear explosions that took place and you can see -- my
24 brothers have climbed the haystacks and they could see the
25 explosions up there, the glow. Little did we know there was

1 fallout going that way, or that way. Little did we know
2 that it was going to contaminate the water. And along with
3 the other things, with the water, little did we know about
4 all the other contaminants that were coming downstream on
5 the Colorado River. Everything from Uranium Mill Tailings,
6 to hexagrammic chromium, ammonium perchlorate, sewage,
7 whatever else, you know. Oh, and the last thing was the
8 pharmaceuticals from Las Vegas. And all these things are
9 ejected in the water from the point source, to San Diego, to
10 Tucson.

11 So, that was the reason for this song, as an
12 awakening to our people. Let's get together - let's come
13 together, and let's help heal Mother Earth. And what I see
14 with these proceedings and if the project goes through,
15 we're not helping heal Mother Earth, we're helping destroy
16 it. So that's why we're here; we have to voice our concerns
17 and opinions. And the Salt Song is for all of our people.
18 Thank you.

19 HEARING OFFICER CELLI: Thank you, Mr. Leivas.
20 Mr. Arnold, did you have anything further?

21 MR. ARNOLD: Yes, just a few concluding thoughts,
22 and then -- oh, there we go. Okey-dokey. A few concluding
23 thoughts here. First of all, Mr. Leivas had shared some
24 thoughts, again, normally that we don't do with the Salt
25 Songs. We feel that it's important to share some insight --

1 HEARING OFFICER CELLI: One second. We need this
2 monitor, Tony, right here. This one, Tony. Thanks, go
3 ahead, Mr. Arnold.

4 MR. ARNOLD: Is it going on now? I want to make
5 sure. Hello? Hello?

6 HEARING OFFICER CELLI: Keep working it.

7 MR. ARNOLD: Okay.

8 HEARING OFFICER CELLI: Okay, keep talking.

9 MR. ARNOLD: Okay, I'm talking. I'm talking to see
10 if it we're going to be --

11 HEARING OFFICER CELLI: There you go, that's the
12 one. Thank you.

13 MR. ARNOLD: Okay, so, I'm going to start from the
14 beginning of my presentation that happened about two hours
15 ago, if that's okay. It's short.

16 (Laughter.)

17 MR. ARNOLD: Come on, you guys have got to get
18 some smiles going in this place here, you know? That's part
19 of the problem, but for us, you know, humor is very
20 important. We need to make sure that we, no matter what
21 happens, we always remain to -- or retain that.

22 Okay, so, a couple things I wanted to share. Mr.
23 Leivas had talked about some of the things that occurred at
24 a couple of boarding schools. And the reason he brought
25 that up was because the songs, the Salt Songs that he was

1 referring to are so important. It's a way to put the souls
2 to rest, the ones that didn't get the opportunity to have
3 those things done - and those were in forced conditions
4 where people were relocated.

5 Had to go out there to restore the balance of the
6 area. Just to give you a little bit of background, you
7 know. People don't understand everything that happened,
8 especially for our parents' generation and back even further
9 and further; it was very militaristic as to what was going
10 on. It was a way to try to acculturate us, a way to make
11 sure that we would no longer be around, that you could -- we
12 may look different, but we would be just like you. And it
13 didn't work; it was an experiment that failed.

14 When my folks -- my mom had left here, and had --
15 they were on the run. They went to Tehachapi where they got
16 caught. And when they were caught there, they were then
17 taken down to boarding school at Sherman Institute. And
18 then they found out that she was Nevada Paiute, not
19 California Paiute, so then they took her up to Stewart.
20 Stewart is up by Carson City where there's a boarding school
21 that was opened up in 1890, closed in 1980.

22 In that experience, there were lots of things
23 where they were using Indian kids as guinea pigs. And I'm
24 not telling you this to get sympathy, but to get an
25 understanding of why we're so, sometimes, uneasy about

1 sharing information. And so, when they were doing all these
2 different things up there to kids, you know, the first thing
3 that happened was, of course, everybody's hair had to get
4 cut a certain way. Especially women, you know, the girls
5 were -- their hair was cut very short. Men's was even
6 shorter, just like you were in the military. You had to
7 march; you had to do all those kinds of things. A lot of it
8 -- some people have some very fond memories, interestingly
9 enough.

10 But they were also using Indian kids for guinea
11 pigs. So they had a lot of things where they were giving
12 people -- trying these different kinds of shots and things
13 on them. And kids were dying. And so they'd have these
14 little funerals across the way.

15 My mom would always talk about, they had to go
16 there -- they weren't sure what would happen. They'd go to
17 the infirmary, something would happen to you -- they'd give
18 you a shot, but people didn't want the shot. Sometimes you
19 became infected with something. So, then they would try to
20 come up with a cure. And the reason that they were doing
21 that was because they felt that it was a way to try to
22 eradicate the culture. And people just didn't know what all
23 of this was about.

24 And, I mean, I can sense and I can read and hear
25 the minds of people who probably don't understand, or

1 questioning what the heck does this have to do with a solar
2 project? It has a lot to do with it, because it has to do
3 with our culture. And it has to do with the perpetuation of
4 our culture, and the impacts to our culture. Just as
5 critical as it was when they were using us for guinea pigs,
6 it's just -- not that this project is going out and saying
7 they're using us for guinea pigs, but it's going to be
8 something that will have obviously adverse impacts to us.

9 You know, my mom got blessed with a little green
10 card; she still carries it to this day. Definitely she's in
11 her mid-nineties, and she's still "Dear Old Mom," and um --
12 but Dear Old Mom carries this little card that says, you
13 know, "You are now" - it has your name - "You are now a
14 citizen of the United States. You are entitled to all
15 rights and privileges thereof." And it was dated, let's
16 see, June the second, 1924.

17 And she still carries this in her little wallet.
18 And I told her, "You know, Mom, gee, that's a long time ago,
19 you don't have to carry that thing." And she said, "No, no,
20 they told me that I need to carry this, in case I was ever
21 stopped. Because you don't know what those people are going
22 to do, and they said that I'm always supposed to carry
23 this." "But, Mom, gosh, it's 2013; you don't have to do
24 that." So, Dear Old Mom will come back and say, "You know
25 what? I'm your mom, and you're my son. I'm telling you

1 that I have to carry this, understand?" "You're the mom,
2 and you bet ya."

3 So, a lot of those things are very deep-rooted
4 into people. The things that they had to go into, you know,
5 when she was just little, she got called into the
6 superintendent's office. The superintendent said, "Hey, you
7 know what?" Gosh I'm glad that -- "I'm sorry to report to
8 you" -- Now, just be mindful, these are like five- and six-
9 year-old kids -- "I brought you in here because I need to
10 tell you that your parents died." And, of course, being
11 little kids - one, you're already taken away from parents,
12 and you're then grief-stricken, and you're hearing all this.

13 Until about a few years later, some cousins come
14 up, and they say, "How come you haven't tried to run away,
15 how come you haven't tried to come back home?" "Well, our
16 parents died." "No, they didn't. They're still down there."
17 That's the kind of stuff that we had to deal with. That's
18 the kind of stuff that I had to grow up with, hearing those
19 stories.

20 I would hear about how -- they were telling us
21 that our religion -- we don't have a religion, they said.
22 You know, "We need to assign you a religion." Sometimes
23 they would have you count off "one, two, three, four, five,
24 one, two, three, four, five," go out into the parade ground.
25 "All the Ones, raise your hands; you're Catholics, here's

1 your book. Number Twos; you're Mormons, here's your book.
2 Number Threes; you're Baptists, here's your book."

3 They would do this. All the little kids knew was
4 that they got this book that had this gold binding on it,
5 thinking, "Oh, wow, this is really neat." They didn't know
6 what it was. Consequently - good, bad, or indifferent - I
7 was never brought up to read any of that stuff. It was that
8 I didn't need to know any of that. I needed to know about
9 what we know, what we believe. And that's why I come here,
10 and why I impart the information that I do.

11 Now, again, I didn't share that because of
12 sympathy, I did it for an understanding. Because you need
13 to understand; what those messages have in them is just as
14 valuable as the messages that you hear every Indian person
15 in here sharing about the Hidden Hills area.

16 You also heard - and I'm wrapping this up here -
17 with the map that -- the Salt Song map that was
18 intentionally vague that doesn't talk about areas. And I'm
19 the first one to tell you, he's absolutely right. It is
20 intentionally vague, it's not supposed to. But one of the
21 areas that is on that map -- that's not identified on that
22 map that I'm telling you that's in the songs, and I'm
23 telling you as an expert, is the Hidden Hills area. The
24 area where the project is going, and that's where we talk --
25 and that's where we sing about, and that's where, when the

1 world was new and the water was supposed to go a different
2 direction, is right in that area.

3 So you've got the benefit of that knowledge from
4 that particular perspective, of what it means to us, why we
5 talk about it, and why it's so important.

6 My last comment is that, when Mr. Leivas was
7 talking about the things that were happening were -- was a
8 way of cultural renewal. It wasn't really cultural --
9 cultural renewal was definitely a part of it, there's no
10 doubt about that, and I agree. But it was really a matter
11 of survival. And we have to do what we have to do in order
12 to make sure that our words are being heard, and they're
13 being shared with you in a way that, hopefully, you can
14 understand. We're trying to say it in your language, in a
15 way that makes sense to you, that, hopefully, all the
16 examples that we provided, all the information that we've
17 shared, all the lessons that are embedded within those,
18 hopefully, you will take with you, and much longer, and way
19 beyond the decisions that you're going to come to on this
20 project. Hopefully, it's going to go with you throughout
21 your life, and it's going to help you understand why Indian
22 people are the way that we are, why we are so impassioned
23 about what we do, why we want to be a part of the process,
24 why we need to be a part of the process, and why the
25 information that we have to share is so vital to understand.

1 Thank you.

2 HEARING OFFICER CELLI: Thank you, Mr. Arnold.

3 Ladies and gentlemen, at this time, we're going to take
4 evidence. Applicant, do you have a motion with regard to
5 Cultural?

6 MR. HARRIS: Thank you. The applicant will move
7 into evidence our exhibits for cultural resources as read by
8 Mr. Carrier.

9 HEARING OFFICER CELLI: Mr. Carrier, did you ever
10 get your glasses back?

11 MR. CARRIER: I did, thank you. Tony Rygg found
12 them in the parking lot off in the dirt. Thank you for your
13 concern.

14 HEARING OFFICER CELLI: Would it help if you put
15 them on?

16 (Laughter.)

17 MR. CARRIER: They're for distance.

18 HEARING OFFICER CELLI: Okay.

19 (Laughter.)

20 MR. CARRIER: The exhibits that have not yet been
21 read into the record are Exhibits 23, 25, 26, and 27.

22 HEARING OFFICER CELLI: That's all cultural?

23 MR. CARRIER: That's all cultural.

24 HEARING OFFICER CELLI: So the motion is to move
25 into evidence exhibits marked for identification: 23, 25,

1 26, and 27. Ms. Willis, does staff have any objection?

2 MS. WILLIS: No objection.

3 HEARING OFFICER CELLI: Ms. Crom?

4 MS. CROM: Submit.

5 HEARING OFFICER CELLI: Mr. Zellhoefer?

6 MR. ZELLHOEFER: No objection.

7 HEARING OFFICER CELLI: CBD?

8 MS. ANDERSON: No objection.

9 HEARING OFFICER CELLI: Ms. MacDonald?

10 MS. MacDONALD: No objection.

11 HEARING OFFICER CELLI: Exhibits 23, 25, 26, and
12 27 are received. Staff, do you have a motion with regard to
13 evidence?

14 MS. WILLIS: Yes, at this time we'd like to move
15 the cultural resources portion of Exhibit 300, the FSA, and
16 301, staff's rebuttal testimony. I think I'd like to also
17 move 333 just because it was used as a topic for discussion.

18 HEARING OFFICER CELLI: Thank you.

19 MS. WILLIS: And then, we'd like to leave a --
20 apparently, I guess, we'll have to reopen the record for 331
21 and 332.

22 HEARING OFFICER CELLI: Well, let's see here. I
23 just want to know what we're talking about --

24 MS. WILLIS: 331 was the "not yet marked up"
25 cultural section, and 332 is the ethnographic report that

1 all the parties actually have and have discussed. So I'd
2 actually like to remove 332 at this point.

3 HEARING OFFICER CELLI: Is 331 the same thing as
4 332?

5 MS. WILLIS: 331 is -- actually would be the same
6 thing as 300, except with a markup so that everybody
7 understands what, um, sections Dr. Gates is sponsoring.

8 HEARING OFFICER CELLI: So why would you withdraw
9 332? Isn't that Dr. Gates' --

10 MS. WILLIS: No, I was actually saying I'd like to
11 move that in as well.

12 HEARING OFFICER CELLI: Okay.

13 MS. WILLIS: That's the ethnographic report, is
14 332.

15 HEARING OFFICER CELLI: Okay, so ladies and
16 gentlemen, rather than hear everybody's objection to it,
17 because it doesn't exist yet, but what's going to happen is,
18 when staff is going to put together their cultural resources
19 section, they're going to put in, they're going to separate
20 by ink color the cultural sections that they were offering
21 as comment, apart from the other cultural resources section
22 that they're offering as testimony. And I'm asking staff to
23 move that in now, so the motion from staff is to move
24 exhibits 300, 301, 331, 332, and 333 into evidence. Is
25 there any objection, applicant?

1 MR. HARRIS: I'm seeking clarification. My
2 understanding was that we're not moving in 300 -- um, the
3 cultural testimony will be the markup, that'll be 331. So,
4 um, we would not move in 300, we'd move in the markup of
5 331. We would like the opportunity to review staff's markup
6 -- um, I think it was sent to all the parties for comment.
7 They don't have to accept everybody's comments, but we may
8 have a difference of opinion as to what constitutes
9 ethnography versus the other topic. So I'd like to suggest
10 the process for us to be able to review that.

11 HEARING OFFICER CELLI: I don't know about that.
12 No, you know what? As I understood it, 331 is just the same
13 thing as what is already in 300, with a change of ink color
14 for certain portions of it.

15 MR. HARRIS: And my issue is on the subjective
16 nature of who picks which ink is which, and I do -- we don't
17 have to agree with that.

18 HEARING OFFICER CELLI: Well, it's staff's
19 testimony, right? So, staff is deciding that some of their
20 testimony is now comment, and some of it is testimony.

21 MR. HARRIS: Your ruling was that the ethnography
22 section alone would come in. We agree with that ruling,
23 we're not disputing that ruling, but it's not black and
24 white as to what portions of the text would be highlighted
25 and which wouldn't. We ought to have an opportunity to say

1 we think the staff is overly inclusive or under-inclusive.

2 HEARING OFFICER CELLI: I have the cure for this
3 problem. What we're going to do then is include Exhibits
4 300 and 331 just so we have the two for reference, and then
5 you can comment or brief those problems as you would, so --

6 MR. HARRIS: Why does 300 need to come in at all
7 for that portion if 331 will control?

8 HEARING OFFICER CELLI: Just as a frame of
9 reference in comparison.

10 MS. MacDONALD: Objection. The original --

11 MR. HARRIS: It can be identified, but not
12 admitted.

13 MS. MacDONALD: Objection. The original deal was
14 --

15 HEARING OFFICER CELLI: Wait, Ms. MacDonald.

16 MS. MacDONALD: Okay.

17 HEARING OFFICER CELLI: I don't know that it's not
18 admissible.

19 MR. HARRIS: Well, it is absolutely inadmissible
20 without a sponsoring witness. And if you need us to brief
21 that issue, we will.

22 HEARING OFFICER CELLI: [Off mic.] That's right.
23 So, what we're going to do then is allow it as comment,
24 because that was the original offer.

25 MS. MacDONALD: Well, actually, not the whole

1 document. Not the whole section of cultural in 300, only
2 the portion that is comment and not Dr. Gates' testimony.

3 HEARING OFFICER CELLI: Okay, right.

4 MS. MacDONALD: And that's why we're clarifying it
5 in 331 upon request by the Committee. I don't see why 300
6 can't come in as well. It's the same thing; it's just
7 without comment on it.

8 HEARING OFFICER CELLI: Correct. So, the --

9 MR. HARRIS: The process to date has been parties
10 clearly identify what they want to put into the record,
11 other parties have the opportunity to object or not, and so
12 we ought to be able to see 331 and object or not, and you
13 can sustain the objection or not.

14 HEARING OFFICER CELLI: No, you reserve the right.

15 So I think for our purposes now, because really what I'm
16 trying to do, Mr. Harris, is I'm just trying to have a
17 finite record, know it is or isn't in the record, but --

18 MR. HARRIS: We share that interest.

19 HEARING OFFICER CELLI: But what I want to do is,
20 for purposes of your objection, because I have to rule on
21 your objection, is I would -- I would say that --

22 MR. HARRIS: You could defer ruling until we see
23 the document.

24 HEARING OFFICER CELLI: Yeah, I would say that we
25 would grant it -- to the extent that we would grant you the

1 reservation of the right to renew your objection later. So,
2 it's essentially overruled without prejudice.

3 MR. HARRIS: As to 331, is that correct?

4 HEARING OFFICER CELLI: Correct, as to 331.

5 MR. HARRIS: We renew our objection as to 300. It
6 will only cause confusion to people as to what they're going
7 to cite to, if they're citing the section 300, or Exhibit
8 300.

9 MS. WILLIS: Mr. Celli, I would disagree with
10 that. 300 was the testimony, and it was clearly marked
11 whose testimony and which portion, except for the
12 delineation of the words, that Dr. Gates was sponsoring
13 ethnographic portions. The applicant did not raise any --
14 any issue with this up until today. Our witness list was
15 clear, there's no declaration for any other witness other
16 than Dr. Gates, and it was clear that it was only --

17 HEARING OFFICER CELLI: Well, everything was clear
18 until you decided to call some of it comment.

19 MR. HARRIS: Yes, the entire reason for 331 is
20 it's not clear.

21 HEARING OFFICER CELLI: Right.

22 MR. HARRIS: That's the entire purpose of 331, and
23 I think adding 300 in is going to create confusion.

24 HEARING OFFICER CELLI: All right. I disagree
25 with that. I don't think it's confusing; you're going to

1 have one that's black ink and one that's --

2 MS. MacDONALD: I would like to weigh in on this.

3 Just --

4 HEARING OFFICER CELLI: Ms. MacDonald, go ahead.

5 MS. MacDONALD: Thank you. What I'm objecting to
6 is, at the start of this, we already had this conversation,
7 and my understanding at that time is all parties agreed that
8 there would be some portions that were submitted as public
9 comment and some were submitted as testimony. There was --
10 at that point in time, everything was agreed and so we moved
11 forward. Now we've moved forward, and now he's objecting to
12 it being submitted as public comment.

13 HEARING OFFICER CELLI: Let me just try to
14 simplify this for everybody.

15 MS. MacDONALD: Okay.

16 HEARING OFFICER CELLI: The problem is that we
17 don't have it in hand, so I'm not holding this, let's say,
18 black and red document with black ink and red ink that
19 separates it out. It's prospective, where, basically, staff
20 has said that they're going to provide that to everybody by
21 Monday. So, if there were, let's say, some change, or
22 something that happened that made Exhibit 331 not identical
23 to 300, then what I'm doing is allowing all of the parties --
24 and this is a right that everybody will have -- to object.
25 Okay, so I'm overruling the objection now without prejudice,

1 meaning that it can be renewed, because we don't know what
2 we're getting.

3 MS. MacDONALD: Okay, but is the 300 -- is Exhibit
4 300 being excluded completely?

5 HEARING OFFICER CELLI: No.

6 MS. MacDONALD: Okay.

7 HEARING OFFICER CELLI: I'm admitting it over
8 objection. Okay?

9 MS. MacDONALD: Thank you.

10 HEARING OFFICER CELLI: So, the objection is noted
11 as to -- so, just to be clear for the record, Mr. Harris,
12 you are not objecting to 331, you're objecting to 300.

13 MR. HARRIS: Yeah, we're objecting to 300, and we
14 would like the ability to review staff's production of 331
15 and object at that time.

16 HEARING OFFICER CELLI: Okay, very good. And so,
17 as we said: as to objection 300, overruled; 331, overruled
18 without prejudice. You can renew that objection on Monday.

19 Okay? Any objection, County of Inyo, to the admission of
20 Exhibits 300, 301, 331, 332, and 333?

21 MS. CROM: Submit.

22 HEARING OFFICER CELLI: Mr. Zellhoefer?

23 MR. ZELLHOEFER: I would just like to ibid. the
24 applicant's objections so that I could preserve my
25 objection.

1 HEARING OFFICER CELLI: Those objections are
2 overruled, but, as we said, you reserve the right. Center
3 for Biological Diversity, please?

4 MS. ANDERSON: No objection.

5 HEARING OFFICER CELLI: Ms. MacDonald?

6 MS. MacDONALD: No objections.

7 HEARING OFFICER CELLI: Mr. Arnold?

8 MR. ARNOLD: No objection.

9 HEARING OFFICER CELLI: Okay, Exhibits 300, 301,
10 331, 332, and 333 are admitted. Nothing from County of
11 Inyo. Mr. Arnold, do you have a motion as to exhibits or
12 have all of your exhibits --

13 MR. ARNOLD: Mine have already been submitted, and
14 I just have a procedural question. Mr. Leivas had asked
15 about those -- the information that he had and I'm not sure
16 how that goes.

17 HEARING OFFICER CELLI: I'll tell you what. He is
18 just your witness. You are the party. You can actually
19 move in evidence, he can't. So, you can move those
20 documents in, but the problem is that I'm not sure if
21 they're relevant. You have to establish the relevance.

22 MR. ARNOLD: Correct. And I believe what they
23 are, really, is informational --

24 HEARING OFFICER CELLI: Tony? I need this monitor
25 up.

1 MR. ARNOLD: Okay, we're still testing the mic, I
2 guess. Is it working? Can you hear me okay, or --

3 HEARING OFFICER CELLI: It's getting there. I can
4 hear you, it's just not optimal.

5 MR. ARNOLD: Okay, gotcha. Basically, the
6 information that he had was informational. So, I'd just
7 leave it at that. And he just wanted to share the
8 information.

9 HEARING OFFICER CELLI: So, there was -- one was a
10 brochure about the Salt Song Project?

11 MR. ARNOLD: Yes, uh, did he leave?

12 HEARING OFFICER CELLI: There was the song --
13 there was the Salt Song Project, and there was one other
14 document I thought he wanted to put in.

15 MS. MacDONALD: There were three, weren't there?

16 HEARING OFFICER CELLI: Right. That's what I
17 thought.

18 MR. ARNOLD: I've got his credit card, his ATM
19 account number --

20 (Laughter)

21 MR. ARNOLD: I've got -- it looks like there's
22 two, two brochures. One on the Native American Land
23 Conservancy, one on things down for his tribe there. He had
24 the words to the song that he had shared, and there was
25 another informational piece on the Cultural Conservancy Salt

1 Song Project, along with the background information that
2 talked about him with the Salt Song that breaks your heart.

3 HEARING OFFICER CELLI: And I need those. I have
4 to take possession of those, if we're going to mark them.
5 So Exhibit 804 is the -- what would you call the first
6 offered document?

7 MR. ARNOLD: Okay, the first document would be the
8 Native American Land Conservancy Brochure.

9 HEARING OFFICER CELLI: Native American Land
10 Conservancy Brochure.

11 MR. ARNOLD: As they say in court, may I approach
12 the bench --

13 HEARING OFFICER CELLI: Yes.

14 MR. ARNOLD: -- so I can give you this?

15 HEARING OFFICER CELLI: Well, not until you're
16 done doing this, because I need you on the microphone.

17 MR. ARNOLD: Okay.

18 HEARING OFFICER CELLI: Exhibit 805 -- so that was
19 804, 805 is what?

20 MR. ARNOLD: It's called the Havasu Landing Resort
21 and Casino, which is a Chemehuevi tribal operation.

22 HEARING OFFICER CELLI: And what is the relevance
23 of the Havasu Resort?

24 MR. ARNOLD: I believe it's just providing a
25 little bit of background as to the relationship of the

1 Chemehuevi Tribe, who they are, and their relationship to
2 the project. I mean it's really, as I said, it's more
3 informational on -- it's --

4 HEARING OFFICER CELLI: Okay, we'll call that the
5 Havasu Resort and Casino Brochure. And 806?

6 MR. ARNOLD: 806 is the Chemehuevi song that
7 Mr. Leivas had described, talking about the land, and what's
8 going to be happening to the land and resources.

9 HEARING OFFICER CELLI: Okay, so the motion is to
10 move into evidence Exhibits 804, 805, and 806. Any
11 objection, applicant?

12 MR. ARNOLD: There's more, though. I'm not done.

13 HEARING OFFICER CELLI: What was -- what else is
14 there?

15 MR. ARNOLD: I had the information on the Cultural
16 Conservancy which is the background for the Salt Song
17 Project.

18 HEARING OFFICER CELLI: I'm going to make that
19 807. So, Exhibit 807, what are you calling the document?

20 MR. ARNOLD: It is called the Cultural Conservancy
21 Salt Song Trail Project.

22 HEARING OFFICER CELLI: Now you may approach.

23 MR. ARNOLD: Actually, as soon as I give you the
24 last one.

25 HEARING OFFICER CELLI: Oh, and there's more?

1 MR. ARNOLD: Yeah, I'm telling you, this is --
2 this is fun now. Now I -- now I get it.

3 (Laughter.)

4 MR. ARNOLD: Okay, the last one that is being
5 submitted is -- the Salt Song to Break Your Heart is what
6 it's entitled. So, it's a description of the Salt Song as
7 described by Mr. Leivas.

8 HEARING OFFICER CELLI: That's not the same as
9 806, the Chemehuevi song by Mr. Leivas?

10 MR. ARNOLD: No, sir. One is a special song
11 talking about the environment and the repercussions, the
12 second one is his description of the Salt Song.

13 HEARING OFFICER CELLI: Thank you, Mr. Arnold.
14 I'm going to go around and ask the parties whether they
15 object, but meanwhile, if you could approach and, Ileene, if
16 you could grab them from him when he comes around? Any
17 objection, applicant, to the admission of Exhibits 804, 805,
18 806, 807, and 808?

19 MR. HARRIS: I've never seen these documents and,
20 so I'm going to reserve my right to object in recognition of
21 the prefile testimony requirement, I'd like to at least know
22 what I'm being asked to submit to.

23 HEARING OFFICER CELLI: Why don't you -- he needs
24 to take a look at that. All right, any objection, staff?

25 MS. WILLIS: No.

1 HEARING OFFICER CELLI: Any objection, Ms. Crom?

2 MS. CROM: Submit.

3 HEARING OFFICER CELLI: Any objection, Mr.
4 Zellhoefer?

5 MR. ZELLHOEFER: I don't know what I would be
6 objecting to.

7 HEARING OFFICER CELLI: Take a look. Come, take a
8 look if you would. Any objection, CBD?

9 MS. ANDERSON: No objection.

10 HEARING OFFICER CELLI: Ms. MacDonald?

11 MS. MacDONALD: No objection.

12 HEARING OFFICER CELLI: So, we're waiting on the
13 determination from applicant and Zellhoefer as to whether
14 they object to Exhibits 804, 805, 806, 807, and 808. And
15 just to be clear, Mr. Arnold, my recollection is you have
16 some proposed mitigation and that's already in the record
17 because you had -- that was in your originally submitted
18 testimony.

19 MR. ARNOLD: That's correct.

20 HEARING OFFICER CELLI: Okay.

21 MR. ARNOLD: Thank you.

22 MR. HARRIS: We're not trying to keep you here all
23 night, so, even without having seen them, I want to continue
24 to object, and preserve that right. So you can --

25 HEARING OFFICER CELLI: So your objection is

1 untimeliness?

2 MR. HARRIS: My objection is ambiguity.

3 (Laughter.)

4 MR. HARRIS: I have no idea what I've been asked
5 to put in the record today, and I -- you know, I have -- I'm
6 flabbergasted.

7 HEARING OFFICER CELLI: Well, let's -- let me just
8 put things in perspective. This is an administrative
9 hearing. We've just heard some testimony. We have some
10 documents that seem to have some very tenuous relevance.
11 They seem to be relevant, but their probative value seems to
12 be rather light; but, if you want to object, you may. The
13 Committee would probably receive them anyway, and give them
14 the weight the Committee felt they deserved.

15 MR. ZELLHOEFER: Mr. Celli, this is Jon
16 Zellhoefer. I have no objection to those.

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

18 MR. HARRIS: Okay, uh, which one's the six-page
19 one from the KCET?

20 HEARING OFFICER CELLI: The first one, 804, is the
21 Native American Land Conservancy.

22 MR. HARRIS: No, Salt Songs to Break Your Heart.

23 HEARING OFFICER CELLI: That is Exhibit 808.

24 MR. HARRIS: 808. Well, it's six pages long and we
25 have not been able to review it at this time, so we'll

1 preserve our objection on that one. As to the other ones,
2 um, I kind of want to object and preserve those objections,
3 but I agree -- should I start over?

4 HEARING OFFICER CELLI: Yes.

5 MR. HARRIS: As to Salt Songs to Break My Heart,
6 it was 806?

7 HEARING OFFICER CELLI: 808.

8 MR. HARRIS: 808. We will object -- continue to
9 object to that one. It's six pages long, we've just been
10 handed it and we haven't had a chance to review it.

11 HEARING OFFICER CELLI: So the objection is
12 untimely?

13 MR. HARRIS: Unread. Absolutely unread.

14 HEARING OFFICER CELLI: Okay.

15 MR. HARRIS: You know, not even in prefile, we
16 haven't had a chance to read it. And I don't want to keep
17 you people here all night. And I think, for the rest of
18 them, I'll continue to object and preserve my right, and you
19 can overrule me.

20 HEARING OFFICER CELLI: Well, we will overrule
21 that - without prejudice so you can renew it on Monday,
22 because hopefully by Monday everyone will have read these,
23 and would be able to make a case for whatever their
24 objection is for the record. Any objections, staff? Oh,
25 that's right, you already said -- and Zellhoefer. Okay.

1 804, 805, 806, 807, and 808 will be received. Then, at this
2 time, we will hand it over to Commissioner Douglas to
3 adjourn.

4 MS. ANDERSON: Actually, Hearing Officer Celli,
5 this is Ileene Anderson with the Center for Biological
6 Diversity, and I just wanted to check on one thing, and I
7 have -- and then I have a second comment. And I just wanted
8 confirmation that the socioeconomics remains open for growth
9 inducing so that the BLM environmental review of the
10 transmission sub-station and gas line components of that
11 project can be included. Can you confirm that?

12 HEARING OFFICER CELLI: Confirmed.

13 MS. ANDERSON: Okay, great.

14 MR. HARRIS: Well, wait a minute. For the purpose
15 of admission to the document only?

16 HEARING OFFICER CELLI: Only.

17 MS. ANDERSON: Okay, great. And then, um, the
18 second thing is sort of a -- is a recommendation from the
19 Center, and we would urge the Committee, and we may make a
20 formal motion next week to reopen the socioeconomics to
21 provide additional review of environmental justice issues.
22 So, just as a heads up.

23 HEARING OFFICER CELLI: Ms. MacDonald.

24 MS. MacDONALD: I had a few more exhibits. I
25 know, hard to believe with that list, but I still haven't

1 entered 753, 755, and 714.

2 HEARING OFFICER CELLI: Were these on cultural?

3 MS. MacDONALD: Yes. 753 is Dr. King's résumé,
4 755 is a letter --

5 HEARING OFFICER CELLI: These were pre-filed?

6 MS. MacDONALD: Yes, sir.

7 HEARING OFFICER CELLI: 753.

8 MS. MacDONALD: Yes, sir.

9 HEARING OFFICER CELLI: What were the others?

10 MS. MacDONALD: 755.

11 HEARING OFFICER CELLI: And?

12 MS. MacDONALD: And 714, and that's including all
13 the other ones, right?

14 HEARING OFFICER CELLI: Right.

15 MS. MacDONALD: Because -- well, because staff's
16 doing three hundreds, so I thought I'd better check. And
17 everything else I've filed goes with that.

18 HEARING OFFICER CELLI: I'll tell you what, I'm
19 going to -- the motions as to 714, 753, and 755, and then
20 between now and Monday -- I hope you're going to be able to
21 call in on Monday and participate by WebEx.

22 MS. MacDONALD: No. I can give you the whole list
23 right now. I just thought, because you were saying whatever
24 ones you haven't filed before to shorten things up. Those I
25 have not filed yet.

1 HEARING OFFICER CELLI: Well, but, we haven't
2 heard evidence on alternatives, for instance, yet.

3 MS. MacDONALD: Oh, right, this is just for
4 cultural.

5 HEARING OFFICER CELLI: Oh, okay, so it was -- is
6 it more than the three that you gave me for cultural?

7 MS. MacDONALD: In addition to things I've already
8 filed, those were three new exhibits, and then whatever else
9 I've filed also goes under cultural. Right?

10 HEARING OFFICER CELLI: Right.

11 MS. MacDONALD: Did I get that right?

12 HEARING OFFICER CELLI: Yes.

13 MS. MacDONALD: Okay.

14 HEARING OFFICER CELLI: So the motion is to move
15 into evidence exhibits marked for identification: 714, 753,
16 and 755. Any objections from the applicant?

17 MR. HARRIS: No, but I actually have a request,
18 too. Can we excuse our witnesses?

19 HEARING OFFICER CELLI: Yes, your witnesses are
20 excused.

21 MR. HARRIS: Okay. And the record is closed on
22 that subject?

23 HEARING OFFICER CELLI: After I take in the
24 evidence on it.

25 MR. HARRIS: Yeah, okay, that's fine.

1 HEARING OFFICER CELLI: Any objection to Ms.
2 MacDonald's three exhibits?

3 MR. HARRIS: No objection.

4 HEARING OFFICER CELLI: Staff?

5 MS. WILLIS: No objection.

6 HEARING OFFICER CELLI: Ms. Crom?

7 MS. CROM: Submit.

8 HEARING OFFICER CELLI: Mr. Zellhoefer?

9 MR. ZELLHOEFER: No objection.

10 HEARING OFFICER CELLI: CBD?

11 MS. ANDERSON: No objection.

12 HEARING OFFICER CELLI: Okay, 714, 753, and 755 --
13 oh, Mr. Arnold, I'm sorry.

14 MR. ARNOLD: Hey, it's okay, I'm getting used to
15 it.

16 (Laughter.)

17 HEARING OFFICER CELLI: Any objections?

18 MR. ARNOLD: No objections.

19 HEARING OFFICER CELLI: 714, 753, and 755.

20 MR. ARNOLD: Yeah.

21 HEARING OFFICER CELLI: That was no objection?

22 MR. ARNOLD: No objection.

23 HEARING OFFICER CELLI: Thank you. 714, 753, and
24 755 will be received.

25 MS. WILLIS: All right, just one point of

1 housekeeping before we close. I passed out a draft traffic
2 noise condition to the Committee and the parties for
3 discussion on Monday.

4 PRESIDING MEMBER DOUGLAS: Thank you, Ms. Willis.
5 So with --

6 MR. WHEATLAND: If I could speak to that. It is
7 marked "draft," but it's my understanding that the applicant
8 and the staff are agreed to the -- these two conditions in
9 response to the Committee's request that we meet and confer
10 in a workshop to discuss the impacts of traffic noise
11 related to the project. And it's my understanding that the
12 applicant and the staff have agreed to these two conditions
13 in response to the Committee's direction.

14 PRESIDING MEMBER DOUGLAS: Thank you, Mr.
15 Wheatland.

16 HEARING OFFICER CELLI: Thank you, Mr. Wheatland.

17 PRESIDING MEMBER DOUGLAS: All right. So, with
18 that, thank you again, everybody. Thank you to the members
19 of the public who've come here - I know some of you, from
20 very long distances, and we've really appreciated hearing
21 from everybody today, and we will --

22 MS. MacDONALD: Commissioner, I'm so sorry.
23 Rayetta Haskin just wanted me to make sure to mention that
24 she'd submitted a CDT guise under public comment. Did you
25 receive that? (Off-mic.) Okay, I'm so sorry. Thank you.

1 PRESIDING MEMBER DOUGLAS: All right. Thank you.
2 Thank you, Blake. All right, so with that, we will
3 reconvene in Sacramento on Monday, some of us in person and
4 others by phone. Thank you all very much, we're adjourned.

5 (The Evidentiary Hearing was
6 adjourned at 04:48 p.m.)

7 --oOo--

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, TROY A. 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 25th 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.

/s/ Rebecca R. Hudson

REBECCA R. HUDSON

March 25, 2013