

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

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

WEDNESDAY, FEBRUARY 27, 2002
10:08 A.M.

Reported by:
Peter Petty
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Arthur H. Rosenfeld

James D. Boyd

STAFF PRESENT

Robert Therkelsen

William Chamberlain

Jonathan Blee

Tim Schmelzer

Susan Gefter

Paul Kramer

Steve Munro

Robert Haussler

Gary Klein

Paul Roggensack

Chris Scruton

Rajesh Kapoor

George Simons

Joseph Wang

David Rubens

Virginia Lew

David Davenport

Richard Buell

Susan Patterson

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Gary Ledford
Jess Ranch
Intervenor, High Desert Power Plant LLC

Michael J. Carroll, Attorney
Latham and Watkins
representing High Desert Power Plant LLC

Thomas M. Barnett
High Desert Power Plant LLC

Reggie Lampson
Victor Valley Water District

Hassam Bugi
State Water Resources Control Board

Norman Caouette
Mojave Water Agency

Steven Kelly, Policy Director
Independent Energy Producers

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

2 10:08 a.m.

3 CHAIRMAN KEESE: We call this meeting of
4 the Energy Commission to order. Mr. Boyd, would
5 you lead us in the Pledge, please.

6 (Whereupon, the Pledge was recited in
7 unison.)

8 CHAIRMAN KEESE: Commissioner Pernell
9 will not be joining us today. He's out of town on
10 business. And at this moment I'd like us to just
11 take a moment of silence in memory of Richard
12 Rohrer.

13 (Whereupon, a moment of silence was
14 observed.)

15 CHAIRMAN KEESE: Thank you. Also at
16 this moment I'd like to move agenda item 16, the
17 minutes of January 3rd, January 10th, January
18 24th, February 7th and February 21st, and I'd like
19 a motion to approve the minutes in honor of
20 Commissioner Michal Moore.

21 COMMISSIONER LAURIE: So moved.

22 COMMISSIONER ROSENFELD: Second.

23 CHAIRMAN KEESE: Moved and seconded.

24 All in favor?

25 (Ayes.)

1 CHAIRMAN KEESE: Commissioner Moore has
2 left us since our last meeting. In fact, he left
3 us moments after our last meeting that he was not
4 able to be in attendance at. We certainly hope
5 Michal will be in town and we'll be able to see
6 him again.

7 We do welcome Jim Boyd as a full-scale
8 Commissioner. As those of you who participate
9 here know, Jim has been serving ex officio on this
10 Commission for the last couple of years, and is
11 very knowledgeable in our proceedings and is a
12 welcome addition. Welcome, Jim.

13 COMMISSIONER BOYD: Thank you, Mr.
14 Chairman. I think I'm the first apprentice
15 Commissioner there ever was.

16 (Laughter.)

17 CHAIRMAN KEESE: I'd seek a motion on
18 the consent calendar. Item (a) has been
19 withdrawn, so we're taking up on the item (b)
20 Electric Power Research.

21 Do I have a motion on the consent
22 calendar?

23 COMMISSIONER ROSENFELD: I move that --

24 CHAIRMAN KEESE: Motion by Commissioner
25 Rosenfeld.

1 COMMISSIONER LAURIE: Second.

2 CHAIRMAN KEESE: Second by Commissioner
3 Laurie.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted four
7 to nothing.

8 Item 2, the High Desert Power Plant.
9 Possible consideration of complainant Gary
10 Ledford's petition for review of the Committee
11 rulings and dismissals regarding the complaint on
12 the High Desert Power Project water issues.

13 And we will, at the same time, because
14 it's a common discussion, take up item 3, High
15 Desert Power Plant. Possible approval of the
16 Siting Committee's proposed decision on the
17 complaint filed by Gary Ledford regarding
18 compliance of the project with conditions of
19 certification for water resources.

20 After the discussion we will vote
21 separately on those issues.

22 COMMISSIONER LAURIE: Mr. Chairman, if I
23 may, --

24 CHAIRMAN KEESE: Commissioner Laurie.

25 COMMISSIONER LAURIE: Commissioners

1 Pernell and myself were assigned to hear the
2 complaint filed by Mr. Ledford on the High Desert
3 project.

4 Accordingly we set hearing dates and
5 ordered that information and documentation be
6 gathered. That was done. At the prehearing
7 conference we had a discussion regarding the
8 evidence in order to set parameters around the
9 hearing to be held.

10 It was the decision of Commissioner
11 Pernell and myself that based upon the complaint,
12 based upon the argument that there was, in fact,
13 no basis for warranting the evidentiary hearing,
14 as no legitimate claim could be made.

15 We therefore issued an order, and I
16 will, at this point, defer to Ms. Gefter for an
17 explanation. Ms. Gefter.

18 CHAIRMAN KEESE: One moment, Ms. Gefter,
19 before you start. I do understand that we have at
20 least four people on the phone who may or may not
21 participate in the discussion as we go on.

22 Mr. Paul Kramer, Mr. Norman Caouette,
23 Mr. Hassam Bugi and Reggie Lampson. So, we will
24 continue forward, but it's my understanding they
25 are on the phone. And should they be appropriate

1 to comment, we will go to them.

2 Ms. Gefter.

3 HEARING OFFICER GEFTER: I would
4 identify Mr. Kramer as Staff Counsel, and the
5 other three individuals represent the Water
6 Agencies that are involved in this matter.

7 CHAIRMAN KEESE: Thank you.

8 HEARING OFFICER GEFTER: What
9 Commissioner Laurie is referring to is there are
10 two rulings from the Committee. One is a ruling
11 on the pleadings which was issued on the day of
12 the prehearing conference.

13 And Mr. Ledford, the complainant, has
14 filed a petition for review of that ruling on the
15 pleadings. Subsequently the Committee issued a
16 proposed decision which incorporated the ruling on
17 the pleadings.

18 Both the petition for review and the
19 proposed decision are before the Commission today.
20 The Committee requests that the petition for
21 review be denied. And that the proposed decision
22 be adopted by the full Commission.

23 The complaint before you alleges
24 violations of seven conditions of certification
25 for the soil and water section of the

1 certification decision. The Commission certified
2 the High Desert Power project on May 3, 2000.

3 Mr. Ledford, who is the complainant in
4 this matter, was an active intervenor in the
5 underlying certification proceeding, and
6 challenged the company's water supply plan
7 throughout the entire proceeding. And many
8 evidentiary hearings, exhibits, evidence,
9 testimony were devoted to Mr. Ledford's concerns
10 regarding the water supply plan.

11 The project is currently in
12 construction. Mr. Ledford filed a complaint
13 alleging that seven conditions of certification
14 were being violated or were potentially being
15 violated.

16 The proposed decision dismisses
17 allegations regarding conditions 2, 11, 13 and 19
18 because the deadlines for compliance with those
19 conditions have not occurred, and therefore the
20 issues are not ripe for review.

21 With respect to condition 1(e) regarding
22 the size of the water supply pipeline and the
23 water treatment facility, Mr. Ledford's complaint
24 alleges that the pipeline and the treatment
25 facility are oversized. The condition requires

1 the treatment facilities to meet only project
2 needs.

3 In the underlying certification
4 proceeding these matters were litigated and
5 decided. And the proposed decision indicates that
6 Mr. Ledford may not relitigate the same issues
7 over again. So therefore that allegation is
8 dismissed with prejudice.

9 With respect to condition 17-1, which
10 requires an aquifer storage and recovery
11 agreement, that agreement was filed during the
12 certification proceeding and made part of the
13 record.

14 High Desert has also filed a codicil
15 that indicates compliance with this condition.
16 Therefore, the proposed decision dismisses the
17 allegation regarding condition 7-1 with prejudice.

18 With regard to condition 11, the
19 verification is inconsistent with the condition in
20 terms of the time for filing the required
21 documents. The proposed decision conforms the
22 verification language with the conditions -- the
23 language and the condition, and therefore the
24 proposed decision asks the Commission to adopt the
25 language change.

1 With respect to condition 12, that
2 condition requires interpretation. The language
3 is somewhat ambiguous and the decision discusses
4 the inconsistency in the language and concludes
5 that the water treatment process proposed by the
6 High Desert Power Plant would meet drinking water
7 standards and would protect public health.

8 The parties will no doubt discuss this
9 particular condition in greater detail. I'm just
10 summarizing it for the Commissioners.

11 Mr. Ledford had also requested subpoenas
12 during the process to require water agency
13 personnel and Commission Staff to testify at the
14 evidentiary hearing. Since the evidentiary
15 hearing was canceled based on the Committee's
16 review of the information presented to it, there
17 was no need to subpoena any witnesses.

18 Moreover, there is no indication that
19 the agencies would not continue to cooperate with
20 the Commission as they have done in the past.

21 Similarly with respect to CEC Staff, the
22 Committee would require CEC Staff to testify if it
23 were necessary. In this case it was not.

24 Therefore the proposed decision denies
25 the subpoena requests.

1 With respect to Mr. Ledford's petition
2 for review, as I indicated earlier, the issues
3 raised in the petition for review were
4 incorporated in the proposed decision and
5 therefore the Committee would request that the
6 Commission deny the Ledford petition for review
7 and adopt the proposed decision, including the new
8 verification language to condition Soil-and-Water-
9 11, and any addenda that may be discussed today
10 during the business meeting.

11 Present today is Mr. Ledford, the
12 complainant, and also Mr. Carroll, representing
13 High Desert. Mr. Munro from staff is here to
14 answer questions. And also Mr. Kramer is on the
15 phone to answer questions on behalf of staff.

16 The water agency representatives are on
17 the phone. There have been some developments with
18 the water agencies since the proposed decision was
19 published. And I think that it would be very
20 helpful to the Commissioners to inquire of the
21 water agencies the actions they have taken with
22 respect to the water treatment plant and the
23 required documentation that the applicant must
24 submit in compliance with the conditions of
25 certification.

1 CHAIRMAN KEESE: At what time?

2 HEARING OFFICER GEFTER: I'm sorry?

3 CHAIRMAN KEESE: You suggested it would
4 be appropriate --

5 HEARING OFFICER GEFTER: Oh, at what
6 time? Perhaps after --

7 CHAIRMAN KEESE: -- for the Commission
8 to --

9 HEARING OFFICER GEFTER: -- the
10 complainant and the company have made their
11 presentations, because then you would have the
12 questions formulated, and then you could --

13 CHAIRMAN KEESE: Thank you.

14 COMMISSIONER LAURIE: Well, Mr. Chairman
15 --

16 HEARING OFFICER GEFTER: -- inquire.

17 COMMISSIONER LAURIE: Susan, can you
18 summarize?

19 HEARING OFFICER GEFTER: Well,
20 certainly, I can, yes.

21 COMMISSIONER LAURIE: Why don't you
22 summarize what they would say for us now.

23 HEARING OFFICER GEFTER: Certainly. The
24 Lahontan Regional Water Quality Board has voted on
25 issuing a conditional waiver of waste discharge,

1 which includes in it a CEQA addendum in which they
2 reviewed the potential impacts of the water
3 treatment facility and found that there would be
4 no substantial impacts to the underlying aquifer
5 where the project's water supply would be stored.

6 The conditional waiver is a large
7 document where there's quite a bit of discussion
8 about the potential impacts of the water treatment
9 process. And as Mr. Ledford will describe to you,
10 there was a change in the water treatment process
11 from reverse osmosis to conventional methods which
12 includes ultra-filtration. It gets a little
13 technical. Perhaps the parties would go into more
14 detail if you wish to hear about it.

15 But, notwithstanding, the conditional
16 waiver has been approved. I don't believe it's
17 actually been published yet. Perhaps the
18 representative from Lahontan will be able to give
19 you some timeframe for when the document will be
20 published.

21 I also understand there has been a water
22 storage agreement that was approved between the
23 Victor Valley Water District and the High Desert
24 Company. Again, I don't believe that agreement
25 has been published, but it has been approved. And

1 the individual representing the Victor Valley
2 Water District could probably give you more detail
3 on that particular document.

4 CHAIRMAN KEESE: Thank you. Mr.
5 Ledford.

6 MR. LEDFORD: Should I stand?

7 CHAIRMAN KEESE: Whatever you're more
8 comfortable with. You're welcome to stand right
9 there or --

10 MR. LEDFORD: Good morning, Chairman
11 Keese --

12 CHAIRMAN KEESE: Good morning.

13 MR. LEDFORD: -- and fellow
14 Commissioners. And thank you for hearing me again
15 for a period of now something over three years.

16 I have a couple of housekeeping matters
17 if you will. In your agenda packet you will not
18 find my opposition to the proposed decision. I
19 have passed out copies of it. I don't know if
20 each of you have had an opportunity to review my
21 opposition or not.

22 However, I'd like to insure that the
23 record is clearly that my opposition is a part of
24 the record.

25 Because it wasn't a part of the agenda

1 packet and I didn't actually prepare to talk about
2 it, I will probably try and wing some of that as
3 we go along here this morning.

4 I also passed out -- in my agenda
5 packet, or in my opposition I have just two
6 exhibits. And exhibit A is a joint email between
7 Norm Caouette and Steve Munro, and it's dated in
8 December of 2000.

9 And exhibit B is a part of exhibit L to
10 the respondent's documents that were submitted as
11 a part of the evidentiary hearing process that did
12 not happen.

13 And a significant piece of that which
14 I've given to you in 11-by-17 format, which is the
15 format that was approved by the Commission, is
16 what is going to be affectionately referred to
17 this morning as the final approved drawings for
18 the water supply facilities. And that will
19 probably be the majority of my theme.

20 And one additional document which I did
21 not see until this morning when I was reviewing
22 the dockets file, and that particular document I
23 have given a copy to High Desert Power, a copy to
24 your staff, and I've also passed around a copy to
25 each of you and would like to insure that that's

1 part of the record, as well.

2 And that is an email between several
3 people, Mr. Najarian, Mr. Munro and the email was
4 originated by Patricia Moser. And Patricia Moser
5 is the assistant to the City Manager for the City
6 of Barstow.

7 And with that I'm going to move to the
8 rear podium where I have a Powerpoint presentation
9 which will hopefully guide me through this
10 process. And my understanding is I'm going to
11 make all of my argument basically on both issues
12 at one time, and the High Desert Power people will
13 follow on, is that correct?

14 CHAIRMAN KEESE: Correct. Yeah, it's a
15 little difficult to separate the two.

16 MR. LEDFORD: Obviously we can't have an
17 evidentiary hearing on this case this morning.
18 The argument that I have before you in my appeal,
19 if you will, this morning, is whether or not that
20 I have presented a prima facie case. Because it
21 appears to me that the Committee's recommendation
22 to the full Commission here this morning is the
23 reason that we didn't have an evidentiary hearing
24 was because that I had not presented a prima facie
25 case.

1 The Commission may recall when the
2 complaint was filed there was but three exhibits
3 attached to the original complaint.

4 Exhibit A was the one and only water
5 supply agreement that the Victor Valley Water
6 District ever had presented to the Mojave Water
7 Agency in relation to a water supply plan for the
8 Victor Valley Water District.

9 Within exhibit A, the complaint, the
10 prima facie complaint was the Victor Valley Water
11 District intended to store 130,000 acrefeet
12 cumulatively, and 50,000 acrefeet in any one year
13 during the time that the water supply contract,
14 which is a part of the decision, would be in
15 existence.

16 That is a significant change. It is
17 actually addressed in the condition that the
18 Victor Valley Water District could have a larger
19 contract, but it would have to go through a CEQA
20 process. And, of course, the conditions, as maybe
21 you recall, were that there was going to be no
22 growth-inducing impacts created by either the
23 power plant or by the water supply facilities.

24 So the prima facie evidence in the
25 original complaint was exhibit A, relative to what

1 the Victor Valley Water District intended.

2 Now, they withdrew that. When the issue
3 came up as to how is this all going to fit
4 together, they withdrew it. However, the public
5 agency is on public notice that that is what the
6 Victor Valley Water District has to accomplish in
7 order to provide water for their growth and for
8 their area within the confines of the water supply
9 agreement.

10 Exhibit B of the three exhibits was a
11 memorandum signed by Lorraine White and Caryn
12 Holmes, both staff people who participated in the
13 process, who raised the issues, the prima facie
14 case that relative to the water supply agreement
15 that it was not in compliance with the conditions.
16 And b) that the project facilities would not treat
17 the water in accordance with the condition.

18 So it was your staff that actually
19 raised the issues. I just tried to focus in on
20 them. Exhibit B was the prima facie case that
21 brought us to the next step.

22 And exhibit C was the first page of the
23 proposed waiver at the time, before the Water
24 Resources Control Board, that stated that the
25 water that High Desert Power was intending to put

1 in the ground would degrade the water.

2 Those are the three elements that really
3 fostered the look at all of the conditions.

4 Going to Soil-and-water-1E, which is a
5 real focus within the proceeding because we got to
6 a point where we'd been going on and on; had a
7 number of hearings; we were talking about that the
8 water supply facilities were oversized; we were
9 talking about the fact there'd been no growth-
10 inducing study, and there was a lot of
11 frustration.

12 And the Commission -- or the Committee
13 at the time, in my mind, believed that they could
14 condition, they could actually condition the
15 project in such a way that they could get rid of
16 these problems.

17 So condition E was put on that said the
18 water supply facilities would be appropriately
19 sized to meet the project needs. Retrospectively,
20 at least from my perspective, I would have liked
21 to have seen it say only. As we go along here
22 maybe that wouldn't have made any difference.

23 The next piece of that was the
24 verification. The project owner was to provide
25 final approved drawings. And this is my theme

1 this morning, the final approved drawings.

2 I am a developer; most of you know that.
3 I've been in the development building development
4 and design business for over 30 years. And I was
5 with the Army Corps of Engineers for five years;
6 I've built large commercial buildings. Currently
7 I'm building a residential subdivision type
8 project.

9 I have never seen a final approved
10 drawing that looks anything like the one that was
11 submitted as exhibit L before the Committee.
12 Before you today you have the final approved
13 drawing. The drawing that gave the compliance
14 division the ability to give a will-proceed letter
15 to build this High Desert Power project. And they
16 did. They started construction.

17 But they started construction on that
18 after what is now attached as exhibit B to my
19 opposition. Now, exhibit B is also one of the 60
20 exhibits that I had developed for the evidentiary
21 hearing.

22 But this particular exhibit was a
23 dialogue between Mr. Munro in compliance in
24 December of 2000 before the final plans had been
25 submitted. And it was an advice. Mr. Caouette,

1 who is on the phone here this morning, was
2 advising Mr. Munro that he had a concern over
3 whether or not there were going to be some CEQA
4 issues raised.

5 But the most significant piece of this
6 prima facie evidence that we're going to be
7 looking at in this document is the fact that his
8 staff had reviewed the plans and found that, this
9 is a quote:

10 "Our engineering staff has concluded it may
11 be possible to utilize the design criteria
12 currently planned for HDPP to include
13 capacity for the Victor Valley Water District
14 and still have capability to meet our
15 recharge objective."

16 That statement tells us that these
17 facilities are over-designed. When I started this
18 this morning I provided a document that was not
19 identified. I'd like to identify it as exhibit C
20 to my opposition.

21 It is a document that I did not see
22 until this morning. I recovered it from your
23 documents division. And it is an email between
24 Mr. Najarian, Mr. Munro and Patricia Moser.

25 And Patricia Moser tells these gentlemen

1 that -- and this is in November of last year, so
2 this is after the final approved plans, this is
3 after we have final approved plans, but she raises
4 concerns.

5 And her concerns are the City of Barstow
6 has sent somebody out and actually looked at the
7 site and looked at the plans; and they don't find
8 that there's any final approved drawings. And
9 this is in November of last year.

10 But even if they did find it, they want
11 to know, they're asking questions, they're asking
12 questions of compliance. Has the CEC, in fact,
13 reviewed the final design drawings that show the
14 size of all the water supply facility?

15 And then they go on to say it would seem
16 to be, on its face, an admission that the project
17 will have growth-inducing impacts. They're
18 building facilities that are over-designed for the
19 project.

20 Actually the reply to Patricia Moser is
21 that there's a complaint on file by me, and that
22 these issues are going to be addressed within the
23 complaint. But we never got to an evidentiary
24 hearing.

25 The final approved drawings. If you

1 were to look at my opposition papers you will find
2 that one of the things that is in there is that
3 the water treatment plant, the main part of the
4 plant, which is different than what was testified
5 at the hearings as to how this water treatment
6 plant was going to be designed. We had lots of
7 testimony that it was going to be two separate
8 plants. Now it's one plant.

9 But nevertheless, the major portion of
10 the plant that treats all of the water that comes
11 into the plant is designed to treat 11,000
12 acrefeet. It's very easy to calculate because it
13 tells you right on the caption what the gallons
14 per minute is.

15 I think I said this, but just so the
16 record is clear, the final approved plans that the
17 High Desert Power project had approved by this
18 Commission, and which was given the will-proceed
19 letter, had a reverse osmosis plant in it. There
20 was no question in High Desert Power project's
21 mind at the time that they submitted their final
22 approved plans, that a reverse osmosis plant was
23 what they had put through this process. And the
24 evidence in the record is extremely clear on that.

25 They changed the water treatment process

1 after they got approval to build this plant. They
2 didn't get permission. There is no letter in the
3 file anyplace that says, oh, by the way, can we
4 have permission.

5 They did start to go through a process
6 with the State Water Resources Control Board over
7 objection from many of their staff people up until
8 about August of last year.

9 So this water treatment plant would be
10 under construction for several months with a final
11 approved drawing requiring RO. They were
12 attempting to get ultrafiltration approved through
13 a waiver process, which I'm not real sure how that
14 works. I don't know how the State Water Resources
15 Control Board can overrule a condition that you've
16 already made.

17 I suspect that it could happen somehow.
18 But I also suspect that it would require at least
19 a reopening of the record, new testimony in this
20 record, and a changing of the condition, none of
21 which has been applied for or attempted to be
22 done.

23 We have, as prima facie evidence, or
24 absolute evidence, perhaps, Mr. Welch's
25 declaration to the Committee that states:

1 "The final design drawings for the project's
2 water supply facilities were submitted on
3 March 27th, and this submission indicated
4 RO."

5 And then he states the treatment method
6 was subsequently changed. How do you do that?

7 Conditions 11 and 12, which are the
8 other issues that you sort of have to take
9 together are the issues relative to the State
10 Water Resources Control Board.

11 And the first one in condition 11 was
12 that they had to have their approval within 60
13 days of the start of rough grading.

14 Taking the final approved plans to the
15 State Water Resources Control Board with the RO
16 process would have complied with this condition.
17 The fact that they made a change, or attempted to
18 make a change, which I'm going to assure you is
19 not finished yet, makes them not comply with the
20 condition.

21 They had the final approved plans. They
22 could have complied with the condition, but they
23 did not.

24 In condition 12, which is pretty much
25 the more sensitive issue, the issue that states

1 that the treatment of state project water is going
2 to be to background levels, this was an issue that
3 was not litigated so much, as the High Desert
4 Power project people testified under oath; the
5 condition itself has operative words that say
6 shall be.

7 You're kind of getting this little twist
8 here because it says the treatment of SWP water
9 prior to injection shall meet the levels
10 approaching background. And then it says, or meet
11 drinking water standards, whichever is more
12 protective.

13 Well, I guess that's the argument. But
14 if we're going to have an evidentiary hearing and
15 we're going to have an argument, I think we're
16 entitled to examine witnesses, not make
17 conclusionary statement. We're entitled to bring
18 in expert testimony. And we're entitled to bring
19 in any type of evidence to demonstrate why the
20 process should be what the evidence in the record
21 said it should be.

22 In your decision, when you made the
23 decision on the water issue, the very focus of
24 that decision was that your conditions, the
25 comprehensive requirements of your conditions

1 would preclude the use of the project facilities
2 from resulting in growth-inducing impacts. An
3 issue that we're not trying to relitigate today,
4 but an issue that we want to raise your awareness
5 to. Or from any adverse impacts on water
6 resources. And I say the word any. When I went
7 to school, any meant any.

8 And so that raises the question, how can
9 you make that change?

10 The State Water Resources Control Board,
11 the evidence within the record, the only evidence
12 is a letter between Hassam Bugi, and Hassam's on
13 the phone here this morning, was that the
14 applicant had proposed the RWD to treat the
15 imported state project water to a quality that is
16 equal to or better than the receiving groundwater.
17 That was the letter from the State Water Resources
18 Control Board. That was what the public was told
19 in these proceedings, and that is what we expect.

20 So how do we get to shall be the levels
21 approaching groundwater? Well, one of the ways
22 was that we actually took testimony. We asked
23 them. Another way was that they had their expert
24 witness prepare a document, exhibit 54; and figure
25 7 of exhibit 54 tells us exactly what the water

1 treatment plant is going to be.

2 And in exhibit 54 it states:

3 "To insure that the injected total dissolved
4 solids, chloride and sulfate approach
5 background water quality levels."

6 It also says that the water treatment
7 will include -- that's pretty much an operative
8 word here:

9 "will include rapid mixing, absorption
10 clarifier and granulated, articulated carbon
11 mixing media filtration and reverse osmosis."

12 That's what the public was told. And
13 with that, your staff concluded that based on the
14 Bookman-Edmonston report, that that water
15 treatment and monitoring program, that program
16 that was in the evidence, that program was
17 sufficient to insure groundwater quality
18 protection.

19 Also as a part of your decision is State
20 Water Resources Control Board resolution 6816.
21 And that resolution mandates the high quality
22 water of the basin will be maintained.

23 What High Desert Power has attempted to
24 do within the State Water Resources Control Board
25 hearings is to say that because they can save

1 money, because the power plant can save money and
2 they can save money, \$50 million over the term of
3 this project by making this change, because they
4 can save money and they're building a power plant,
5 somehow the degradation of water within the High
6 Desert's area is somehow benefitted. I don't
7 think that's what 6816 says. 6816 says it has to
8 benefit -- some change has to benefit all of the
9 people of the State of California.

10 High Desert Power knew exactly what they
11 were doing when they told us they were not going
12 to degrade the water.

13 Again, back to the testimony. When I
14 asked Mr. Welch about whether or not this project
15 was going to degrade the water, his testimony was:

16 "The current issue is to inject treated state
17 project water into the regional aquifer that
18 is essentially identical in quality."

19 Those words sound pretty emphatic to me,
20 "essentially identical", words under oath. He
21 didn't say, oh, by the way, there's 15 different
22 possibilities of treating water. He didn't say,
23 it might be almost the same. He said it's going
24 to be essentially identical.

25 In order to be essentially identical,

1 under the LORS section of your decision, these
2 requirements will insure that pollution will not
3 occur and the highest quality water will be
4 maintained.

5 The findings, the prima facie evidence.
6 Did I make a prima facie case? Am I entitled to
7 an evidentiary hearing? We can't have a trial
8 here today. The question is, did I raise issues
9 as to whether or not this project has complied
10 with the conditions, or will not comply with the
11 conditions, based on their actions.

12 Gentlemen, I respectfully submit that
13 the water treatment facilities are over-designed.
14 And that the Victor Valley Water District, the
15 Mojave Water Agency and the City of Victorville
16 intend to use those facilities.

17 I submit that the final approved
18 drawings, those drawings you approved for the
19 water supply facilities, which there has been no
20 change in, there's been no request, no letter,
21 require RO, and that is the method that should be
22 implemented.

23 The ultrafiltration process that the
24 High Desert Power project proposes today will
25 degrade the local water quality. And is not in

1 conformance with the testimony in the record, the
2 evidence submitted into the record. And the only
3 people that benefit are the High Desert Power
4 people.

5 Now, what happened, what happened when
6 the Committee issued its original order denying
7 the hearing and summarily dismissed a portion of
8 the complaint? What happened was that we got some
9 press down in our local area that was good news
10 for the power provider because the High Desert
11 Power people could tell the Mojave Water Agency
12 and the State Water Resources Control Board that
13 you were not going to hear this complaint. You
14 weren't going to give me an evidentiary hearing;
15 there was no chance that you were going to require
16 the RO process. You weren't going to review the
17 conditions because I hadn't made a prima facie
18 case. Actually it doesn't say that here, it just
19 says it was dismissed.

20 This particular press and this
21 particular action prejudiced my ability to deal
22 with these issues fairly before those two
23 agencies.

24 The Mojave Water Agency has actually
25 made two decisions in the recent months, one of

1 which was to provide water to the power plant; and
2 the second one which got challenged by the City of
3 Barstow on the Brown Act initially and some other
4 CEQA issues, was the water supply agreement. I
5 have also challenged those issues.

6 On the first issue the water supply
7 agreement to the City of Victorville, the City of
8 Barstow has filed suit, a CEQA suit on that issue.

9 On the second issue, the Mojave Water
10 Agency is going to re-hear the water supply
11 agreement tomorrow because of the alleged Brown
12 Act violations. I suspect they will again approve
13 it, and I suspect there will be CEQA challenges to
14 that agreement, as well.

15 But had this Commission held the
16 evidentiary hearing, and had we been able to get
17 to the meat-and-potatoes of these issues as to
18 compliance, I suspect that the vote may have been
19 much different. Because the original vote on the
20 waiver, which is the big issue on the RO side, was
21 four/four. Four of the Commissioners voted to
22 approve; four of the Commissioners voted not to
23 approve.

24 After the public testimony was closed,
25 after most of the public left the room, High

1 Desert Power came back in with a new proposal to
2 provide a \$500,000 study on TDS removal if the
3 State Water Resources Control Board would then
4 grant their waiver. With no public present, with
5 no further public participation, with no advice to
6 anyone, that body revoted seven-to-one, one
7 Commissioner saying he'd have nothing to do with
8 it.

9 Something's the matter with this
10 process. It's a matter of money. In the case of
11 reverse osmosis it's a case of \$2.9 million in
12 capital costs. Those issues were fully addressed
13 in the requirement that if this project was going
14 to degrade the water, if that was an issue you had
15 to recommend dry cooling as the alternative. And
16 we can go back and look at the record, but that's
17 what it says.

18 And in fact, \$2.9 million happens to be
19 the exact number that I used; CURE used a number
20 of \$1.9 million; and I think High Desert Power
21 said it was \$1.6 million.

22 At any rate, the issue of the capital
23 cost of providing RO was fully addressed. And the
24 reason that you didn't require the High Desert
25 Power project to use dry cooling was because they

1 had presented evidence that there would be no
2 environmental impacts whatsoever.

3 Finding number six in the waiver
4 specifically shows you what their objective is.

5 My request is simple. I filed a
6 complaint and I asked for an evidentiary hearing.
7 And this Commission issued an order that we'd have
8 an evidentiary hearing.

9 i've submitted more than ample evidence;
10 certainly more than ample prima facie evidence to
11 have a hearing. And I would like to have my
12 hearing. I'd like to have the hearing before the
13 full Commission.

14 And with that, I thank you.

15 CHAIRMAN KEESE: Thank you, Mr. Ledford.
16 Applicant?

17 MR. CARROLL: Thank you. Mike Carroll,
18 Latham and Watkins, on behalf of the applicant.

19 I'm not going to respond point-by-point
20 to Mr. Ledford's presentation. This is not an
21 evidentiary hearing, and I don't think it would be
22 appropriate to do that.

23 Suffice it to say that many of the
24 statements that were just made, the applicant does
25 not agree with. They are speculation, innuendo,

1 statements of staff personnel that were made
2 during the deliberative process that are not
3 reflective of agency final positions. So we
4 disagree with much of what was said, but as I
5 said, given this is not an evidentiary hearing, I
6 don't think it would be appropriate for us to go
7 point-by-point through that analysis.

8 The other thing that I would say with
9 respect to everything that was said, is that it
10 has all been said before. And I think that the
11 presentation that we saw this morning is perhaps
12 the best indication so far as to the lack of any
13 need to move forward with an evidentiary hearing.

14 Mr. Ledford, this morning, attempted to
15 again present the evidence that he believes
16 supports his allegations. As we can see, again
17 there's nothing new here. All of these matters
18 have been raised. They were raised during the
19 certification process, and the Committee, and
20 ultimately the full Commission rejected many of
21 these suggestions and allegations that Mr. Ledford
22 has made.

23 They were raised in his petition for
24 reconsideration of the certification of the
25 project to the full Commission. They were raised

1 in his appeal of the Energy Commission's approval
2 of the project to the California Supreme Court,
3 and rejected by the California Supreme Court.

4 They were raised in his complaint that
5 was reviewed by the Committee and rejected by the
6 Committee as reflected in the proposed decision
7 that you have here today. They were raised in his
8 petition challenging the order that was issued by
9 the Committee in complaint proceedings.

10 We have now heard these suggestions,
11 these allegations many many times over the course
12 of the last several years, and there is nothing
13 that was presented this morning that's new or
14 that's different.

15 And we've been through it. This
16 Commission has been through it. Two Committees of
17 this Commission have been through it. And
18 decisions have been rendered; and another proposed
19 decision is in front of you today.

20 With a couple of minor clarifications
21 that we can get into later when we start talking
22 about the details, we fully support the proposed
23 decision that's before the Commission. And we
24 don't believe that any further discussion,
25 frankly, of these issues is going to shed any

1 additional light on the issues that are before the
2 Commission.

3 And we would urge you to adopt the
4 Committee's proposed decision, and dispose of this
5 matter as expeditiously as possible.

6 Thank you.

7 CHAIRMAN KEESE: Thank you. Mr. Munro,
8 do you have anything to add?

9 MR. MUNRO: I believe these issues that
10 Mr. Ledford has brought up have been brought up
11 many times and considered in our decision-making
12 process, in the compliance process.

13 We also recognize that the Committee in
14 the siting case, and the Commission also heard the
15 issues and decided them. And it's not my position
16 to re-decide them.

17 And therefore I don't see anything that
18 would change any of our position paper that we
19 presented in the prehearing conference, and our
20 position that High Desert Power project has
21 complied with the requirements.

22 CHAIRMAN KEESE: Thank you. I think,
23 Commissioner Laurie, at this time it would
24 probably be appropriate to hear from the
25 districts? Do you --

1 COMMISSIONER LAURIE: Yes, sir.

2 CHAIRMAN KEESE: Do you have a
3 suggestion or --

4 COMMISSIONER LAURIE: No. I don't know
5 if any representative of the districts --

6 CHAIRMAN KEESE: Yes, we have Mr.
7 Caouette --

8 COMMISSIONER LAURIE: Oh, okay, no, I --

9 CHAIRMAN KEESE: -- of High Desert. We
10 have Mr. Bugi of the State Quality Control Board,
11 and we have Mr. Lampson of Victor Valley Water
12 District.

13 Why don't we start with Mr. Lampson of
14 Victor Valley Water. Sir? We will attempt to
15 place you on our speakerphone at this time.

16 I'm sorry, who's speaking?

17 Mr. Lampson?

18 MR. LAMPSON: Can you hear me?

19 CHAIRMAN KEESE: Yes, we can hear you
20 now.

21 MR. LAMPSON: Okay, I'm sorry, because
22 when they hooked me in they said (inaudible).

23 CHAIRMAN KEESE: You were until now.

24 MR. LAMPSON: Okay, well, thank you.

25 CHAIRMAN KEESE: Can you give us a

1 status report on this issue before the Victor
2 Valley Water District?

3 MR. LAMPSON: Yes, we have (inaudible)
4 with the Regional Board (inaudible) approve the
5 waiver a week or so ago. We have also approved,
6 in the midst of approving a storage agreement with
7 Mojave Water Agency. We've done that a number of
8 times in the last few weeks because there were
9 some details that needed to be worked out. And I
10 believe that's -- going to hear it again tonight.

11 I don't have any other things to add --
12 that's where we are at as far as the current
13 agreement -- being approved in this last couple of
14 weeks.

15 CHAIRMAN KEESE: Let me just ask a
16 question that somebody may want to clarify. Your
17 actions would be consistent with findings by the
18 District that there was no significant negative
19 impact from these actions?

20 MR. LAMPSON: That's correct. We, in
21 fact, changed our -- were supportive of the
22 ultrafiltration because with that treatment
23 process it better met drinking water standards
24 versus the -- proposal. So we were -- supportive
25 of the ultra-filtration method.

1 CHAIRMAN KEESE: Thank you. Any
2 questions by members of the Commission?

3 Thank you, Mr. Lampson.

4 MR. LAMPSON: Thank you.

5 CHAIRMAN KEESE: Mr. Bugi?

6 MR. BUGI: Hassam Bugi, Water Quality
7 Control Board.

8 CHAIRMAN KEESE: Thank you, sir.

9 MR. BUGI: Mr. Chairman, Members of the
10 Commission, I would just like to give you a brief
11 report on the Regional Board action on High Desert
12 Power Plant project from February 14th.

13 (Inaudible) took two actions,
14 (inaudible) to approve a single addendum finding
15 no cumulative negative effect of the project.
16 (Inaudible) approved.

17 The second action was to adopt
18 (inaudible) requirements of this project, and they
19 added additional an finding that Mr. Ledford
20 alluded to in his testimony.

21 That was the two actions the Regional
22 Board took --

23 CHAIRMAN KEESE: Thank you.

24 MR. BUGI: -- this project.

25 CHAIRMAN KEESE: Thank you. And are

1 there any questions from members of the
2 Commission?

3 COMMISSIONER BOYD: Mr. Chairman.

4 CHAIRMAN KEESE: Commissioner Boyd.

5 COMMISSIONER BOYD: I have one question,
6 and frankly I had this question of all the water
7 districts, the Regional Water Board, the staff and
8 the applicant, and that is that to hear assurances
9 that they're satisfied that the quality, you know,
10 the quality of the water is being protected here
11 to meet their standards, and that the public's
12 health is being protected in line with appropriate
13 water quality standards.

14 So the Regional Water Board is the
15 agency we look to, people look to in government
16 for those assurances, and I'd like to ask the
17 Water Board for those assurances.

18 MR. BUGI: When our Board adopted its
19 (inaudible) requirements essentially one, that the
20 project, as approved, by (inaudible) would not
21 cumulatively affect water quality.

22 CHAIRMAN KEESE: And I don't know if you
23 reviewed, but Mr. Lampson suggests, on behalf of
24 Victor Valley Water, that the current process is
25 superior to the previous process for drinking

1 water standards. And that they favored the
2 current process over the osmosis process.

3 Did your agency concur with that?

4 MR. BUGI: I really did not express any
5 opinion (inaudible) water quality aspect of the
6 project rather than superior or not superior.
7 That is not an issue with --

8 CHAIRMAN KEESE: So your Board found no
9 significant negative impact?

10 MR. BUGI: No cumulative negative impact
11 from the project.

12 CHAIRMAN KEESE: Thank you. Mr. Boyd,
13 does that --

14 COMMISSIONER BOYD: Thank you.

15 CHAIRMAN KEESE: -- satisfy you? All
16 right, thank you.

17 Now, I also have on the phone Mr. Kramer
18 and Mr. Caouette. Is there a reason to hear from
19 either of them?

20 MR. BARNETT: Sure.

21 CHAIRMAN KEESE: Is there?

22 MR. BARNETT: I think so. I think we
23 should hear from Mr. Caouette.

24 CHAIRMAN KEESE: Mr. Caouette? Can we
25 hear from Mr. Caouette, please?

1 MR. CAOQUETTE: We have a status update.
2 It's correct that we have -- we have a Water
3 Master which is an entity which is the board of
4 directors, has taken action on the storage
5 agreement between the Victor Valley Water District
6 and the Water Master.

7 I'd point out that that storage
8 agreement was very specific to the water
9 requirements of the High Desert Power project.
10 Specific to the conditions that the CEC placed
11 upon the project.

12 We have had some very minor changes to
13 the text of the water storage agreement. It's
14 correct that there was a question which we don't
15 agree with regarding potential Brown Act
16 violations. And consequently we have re-agendized
17 the water storage agreement for a Water Master
18 meeting this evening. And it's my expectation
19 that that will --

20 CHAIRMAN KEESE: Thank you. Do we have
21 any questions from members of the Commission?

22 Thank you, sir.

23 SPEAKER: Mr. Kramer would like to
24 speak.

25 CHAIRMAN KEESE: Then we will hear from

1 Mr. Kramer.

2 MR. KRAMER: -- with the High Desert
3 request and their position, and also with the --
4 requests they haven't spoken of yet, to slightly
5 modify the decision.

6 CHAIRMAN KEESE: I'm sorry, Mr. Kramer,
7 I believe we missed the first part of your
8 statement, so would you start again?

9 MR. KRAMER: Okay, yeah, I've just been
10 monitoring and I apologize for the noise earlier,
11 I thought the microphone was off and I was working
12 in my car, so I got out in the air. Now I'm using
13 the air conditioner.

14 Anyway, staff is in agreement with High
15 Desert's position that as expressed so far, and
16 just -- again, they bring two requests in their
17 response to slightly modify the conditions, and we
18 concur with both of those, as well.

19 CHAIRMAN KEESE: Thank you. I guess
20 then I heard the applicant has two minor
21 suggestions?

22 MR. BARNETT: Yes.

23 CHAIRMAN KEESE: Is this an appropriate
24 time to take those up? Yes.

25 MR. CARROLL: Thank you. The first

1 minor suggestion is with respect to compliance
2 with condition of certification 12. The proposed
3 decision dismisses the complaint as to the
4 allegations on noncompliance with condition 12
5 without prejudice.

6 I believe that the reason that it was
7 dismissed without prejudice is because the
8 deadline for filing the plan with the agency has
9 not yet passed. So the obligation is not
10 completely ripe, and I believe that that was the
11 primary basis upon which the allegation is
12 dismissed.

13 However, Chairman Keese and the
14 Committee, in the orders leading up to the
15 prehearing conference on this matter indicated
16 that the Committee and the Commission intended to
17 look at the substance of condition 12, even though
18 it was not yet ripe.

19 And, in fact, that did occur, and there
20 was a great deal of discussion about condition 12,
21 whether or not, even though the day before
22 formally submitting the plan to the Energy
23 Commission had not yet come to pass, certainly
24 everybody understood what that plant was going to
25 be. It was the proposal that was before the

1 Regional Water Quality Control Board and the
2 waiver of waste discharge requirements.

3 So everyone understood what the plan
4 would be when it was submitted, and there was an
5 analysis as to whether or not that plan would
6 comply with the substance of condition 12.

7 So having undertaken that analysis, we
8 believe that condition 12, as to the substance,
9 should be dismissed with prejudice. In other
10 words, if for some reason the High Desert Power
11 project failed to submit the plan to the Energy
12 Commission on a timely basis, which is highly
13 unlikely given it's now been approved by the
14 Regional Board, and will be submitted very
15 shortly, but if for some reason we did fail to
16 meet that obligation, then of course, another
17 complaint could be filed.

18 But having gone through this process we
19 don't think it would be appropriate that once that
20 plan is filed with the Energy Commission, for a
21 party to be able to file a complaint again
22 challenging whether or not that plant complies
23 with the substance of condition 12.

24 So we would ask that as to the substance
25 it be dismissed with prejudice.

1 CHAIRMAN KEESE: I understand your -- I
2 believe I understood. What you're saying is that
3 you would like it to be with prejudice as to the
4 substance, but without prejudice as to the
5 procedure? I believe it would be a very clever
6 attorney to craft that action here.

7 Let me just give my viewpoint of what we
8 are doing as a Commission here. We are looking at
9 a Committee action. And whether we see
10 significant evidence enough to overturn an action
11 of the Committee.

12 The language that we're being focused
13 on, for a number of the purposes here, is the
14 reduction to levels -- and I'll emphasize another
15 word, approaching background levels of receiving
16 the aquifer. That is not a black-and-white term,
17 approaching. Or meeting state drinking water
18 standards, which is a little bit more black-and-
19 white. That's defined. Whichever is more
20 protective.

21 We've heard from an agency, from two
22 agencies that there's nothing negative here.
23 We've heard from one the method is approved.

24 I don't think, for me, that I've heard
25 anything that suggests improper action, even comes

1 close to suggesting improper action by the
2 Committee.

3 I'm not sure that we really have to deal
4 with your issue. I would tend to think that if
5 this is dismissed without prejudice, that the only
6 issue left is whether you file it or not.

7 MR. CARROLL: Well, let me clarify,
8 because we are not disagreeing in any respect with
9 the proposed decision --

10 CHAIRMAN KEESE: I just don't see how we
11 could write it the way you've asked. Commissioner
12 Laurie, do you see?

13 COMMISSIONER LAURIE: Well, I'm hearing
14 the request. The request is really more relevant,
15 and perhaps I should have said this a few minutes
16 ago, for the next item, if we get to the next
17 item, regarding the adoption of the proposed
18 decision.

19 CHAIRMAN KEESE: Okay.

20 MR. CARROLL: That's true, this does
21 relate to number --

22 CHAIRMAN KEESE: All right, why don't
23 you bring up point two, now.

24 MR. CARROLL: Point two is with respect
25 to finding and conclusion number two, which talks

1 about the use of the water treatment facilities
2 for non HDPP, or nonproject purposes.

3 The statement is sort of a summary of
4 the requirement; the condition of certification is
5 somewhat more precise. And what we're suggesting
6 is that the finding and conclusion, as written,
7 could be construed to be contrary to the condition
8 of certification.

9 And we think that it would be
10 appropriate to modify slightly that finding and
11 conclusion so that it repeats verbatim the
12 language that appears in condition 19, just so
13 that there isn't any uncertainty in the future.

14 Again, this is probably more -- if we're
15 going to really bifurcate these two issues, it
16 probably is -- it's related to the proposed
17 decision, not to the petition on the appeal.

18 COMMISSIONER LAURIE: Recommendation,
19 Mr. Chairman. I would ask Mr. Haussler and Mr.
20 Munro to contemplate on applicant's comment to be
21 addressed at the time we hear the next item, if we
22 get to the next item.

23 CHAIRMAN KEESE: All right. I think
24 we've heard. Do you have anything else to add?

25 MR. CARROLL: No, we have nothing

1 further related to the petition or the Committee's
2 ruling, item number two.

3 CHAIRMAN KEESE: Okay. Mr. Ledford, I'm
4 going to give you a final couple minutes here.

5 MR. LEDFORD: Thank you, Mr. Chairman.
6 First, --

7 CHAIRMAN KEESE: Understanding that the
8 burden that we are under here, which is to
9 establish error on the behalf of the Committee.

10 MR. LEDFORD: Exactly. Exactly. The
11 question is whether or not I presented a prima
12 facie case. The Committee says that I didn't.
13 And apparently, at least from what I've heard you
14 to say so far, you haven't seen anything, either.

15 The High Desert Power project is
16 building a plant that doesn't comply with the
17 final approved drawings. If I can't lay that out
18 in one simple statement, the evidence, their
19 testimony. They are building a plant that is not
20 in compliance with the final approved drawings,
21 and you're letting it happen.

22 And if that isn't prima facie evidence
23 of that issue probably those other issues I'm not
24 going to be able to raise to a level, I mean I've
25 given you letters from people that aren't me, from

1 your own Commission Staff, the City of Barstow.

2 And if that isn't prima facie evidence,
3 I really don't know what is. I think it is. I
4 hope somebody else someplace down the line will
5 also think so.

6 In relation specifically to these
7 proposed changes, this is kind of the typical
8 thing that seems to happen. They've had the
9 decision for several days, many days. They've
10 actually filed a paper as to what they thought it
11 said. And this issue wasn't raised. If you're
12 going to consider some change, then I think that
13 whatever those changes are should be briefed and
14 we should have an opportunity to have a reply.

15 I'm sorry, I'm not a lawyer; I wasn't
16 prepared for whatever they had to say. I don't
17 think they're appropriate. Obviously I'm not
18 thinking that what you're going to do is
19 appropriate, so --

20 CHAIRMAN KEESE: Let's -- let's hang on,
21 we may give you another shot at the words, if
22 we're going to have words. Okay.

23 MR. LEDFORD: So, but I'd just like to
24 say that if there's going to be a change, you
25 should renote the hearing; it should be

1 rebriefed; and I should have an opportunity to
2 reply in writing.

3 CHAIRMAN KEESE: We'll see what we have
4 in the way of language here momentarily.

5 Any other questions by members of the
6 Commission here?

7 Ms. Gefter, would you take us, please,
8 through our first recommended action?

9 HEARING OFFICER GEFTER: Where you are
10 is item 2, which is the petition for review. And
11 the Commission has considered both the petition
12 for review, in conjunction with proposed decision,
13 which is item 3.

14 So to take them in order, the Committee
15 recommends that the petition for review be denied.
16 And so that would be the action to take on item 2.

17 CHAIRMAN KEESE: Do I have a motion?

18 COMMISSIONER LAURIE: If I may comment
19 prior to --

20 CHAIRMAN KEESE: Yes.

21 COMMISSIONER LAURIE: -- a motion, Mr.
22 Chairman. One, this doesn't help Mr. Ledford, but
23 I continue to have the greatest respect for the
24 talent and intelligence and acumen of Mr. Ledford
25 in making a case.

1 The problem has been, for the last three
2 years, is that in view of the different Committee
3 members that have sat on High Desert, and
4 ultimately the Commission, we respectfully
5 disagree with his interpretation of the facts.

6 The issue, the primary issue driving
7 this case has always been water. Water is an
8 issue that has been addressed by other
9 governmental agencies. And Mr. Ledford's primary
10 challenge has been with his disagreements with his
11 two local agencies, Mojave and Victor Valley.

12 We found no unlawful activity or
13 illegitimacy to their decision making, thus our
14 willingness to rely upon the facts as they
15 presented. And in the view of Commissioner
16 Pernell and myself, the issues raised by Mr.
17 Ledford are, to the greatest extent, a reiteration
18 of the arguments made during the course of the
19 hearing, which were not accepted by the Commission
20 and subsequently upheld by the court.

21 In our hearing, and upon our review of
22 the documentation, we truly felt that the issues
23 either were not timely, or had been adequately
24 dealt with in the previous proceeding. Thus, our
25 willingness to go to the extent of not conducting

1 the evidentiary hearing, because we did not
2 believe that what we had before us warranted that
3 process.

4 Thus, the nature of our proposed
5 decision. I would, in order to get the matter
6 before the Commission, -- well, strike that.

7 Let me defer to other Commissioners at
8 this point.

9 CHAIRMAN KEESE: Do we have a motion?

10 COMMISSIONER LAURIE: I would move to
11 deny Mr. Ledford's petition in regards to the
12 action of the Committee.

13 COMMISSIONER ROSENFELD: Second.

14 CHAIRMAN KEESE: Motion by Commissioner
15 Laurie; second by Commissioner Rosenfeld. Any --

16 COMMISSIONER BOYD: Mr. Chairman.

17 CHAIRMAN KEESE: Commissioner Boyd.

18 COMMISSIONER BOYD: I would like to just
19 say that I come to this Commission with a deep
20 concern with respect to California's water, it's
21 quantity and its quality, based on many years of
22 experience that put me in association with that
23 subject.

24 And as Commissioner Laurie knows, we've
25 had brief discussions about our mutual concern

1 about water and power plant uses of water. And
2 I've expressed myself on that subject to this
3 body, and in the previous capacity. And in a
4 previous capacity I have hosted meetings on the
5 same subject.

6 So, I came to this item new, and only
7 learning from the record that I've reviewed with a
8 concern, and with interest as perhaps reflected in
9 my questions. That we are preserving and
10 protecting water in all situations.

11 I have the utmost confidence in the
12 members of the Siting Committee, their integrity
13 and their personal concern for this issue. And on
14 that basis, and on the basis of what I've heard
15 today, I'm going to support the motion.

16 CHAIRMAN KEESE: Thank you. All in
17 favor of the motion?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Adopted four
20 to nothing.

21 Now, on the second motion.

22 COMMISSIONER LAURIE: Mr. Chairman, I
23 would move to adopt the proposed decision --
24 strike that. I'm sorry, we were going to have
25 further --

1 CHAIRMAN KEESE: Ms. Gefter.

2 COMMISSIONER LAURIE: -- discussion from
3 Ms. Gefter and staff's response to the applicant's
4 request.

5 HEARING OFFICER GEFTER: Okay. All the
6 parties, the staff, the applicant and Mr. Ledford,
7 the complainant, filed comments on February 21st.

8 In the comments the applicant proposed
9 two minor changes that were mentioned earlier to
10 the language of the proposed decision. Staff's
11 comments reiterated the request by High Desert.

12 Mr. Ledford's comments basically were
13 presented to you earlier this morning.

14 CHAIRMAN KEESE: All right, Mr. Munro,
15 is that an indication that staff agrees with
16 applicant --

17 MR. MUNRO: Yes.

18 CHAIRMAN KEESE: -- that we should have
19 consistent language. Is that -- let's --

20 MR. MUNRO: Could you restate? I was --

21 CHAIRMAN KEESE: All right. I'm
22 skipping the first point, which is with prejudice.
23 I don't know if staff has -- well, let's ask the
24 first point. Do you have an opinion as to his
25 suggestion that I believe it was item 12 should be

1 with prejudice?

2 MR. HAUSSLER: I'm Bob Haussler with
3 staff. Steve and I discussed this. We are in
4 agreement with the applicant's proposed change.
5 The reason being that because condition 19 allows
6 for and references condition 17, the use of
7 banking groundwater to offset that which is no
8 longer pumped from wells near the river, that they
9 are allowed to bank additional water beyond that
10 which the project needs to that extent. And so
11 the staff would agree with applicant's proposed
12 change.

13 Condition 19 should be included and
14 referenced, which also, itself, references
15 condition 17.

16 CHAIRMAN KEESE: Okay. I heard -- is
17 that --

18 MR. CARROLL: Well, that was the second
19 issue --

20 CHAIRMAN KEESE: That's the second
21 point, okay.

22 MR. CARROLL: Yes.

23 MR. MUNRO: The second issue, okay;
24 we're talking about Soil-and-water-12.

25 CHAIRMAN KEESE: All right, so you're

1 concurring with point two, that we should have
2 consistency?

3 HEARING OFFICER GEFTER: Yes, just for
4 the record let me --

5 CHAIRMAN KEESE: All right.

6 HEARING OFFICER GEFTER: -- just
7 clarify.

8 CHAIRMAN KEESE: All right, then let's
9 just deal with that one now.

10 HEARING OFFICER GEFTER: Yes. That
11 would be under findings and conclusions at page 15
12 of the proposed decision. And that would be
13 finding and conclusion number two. And that was
14 the comments that Mr. Haussler just made go to
15 that particular number two, findings and
16 conclusions.

17 CHAIRMAN KEESE: Okay. And the
18 indication was that this was previously filed, and
19 Mr. Ledford, I guess, had notice of it?

20 HEARING OFFICER GEFTER: Yes. The
21 aquifer storage and recovery agreement was part of
22 the certification record.

23 CHAIRMAN KEESE: Okay, and I'm not --
24 okay, --

25 MR. CARROLL: It's also correct that

1 both of these issues, and you know, I'm afraid
2 this is turning into more than certainly we
3 intended it to be. We view both of these are
4 minor clarifications --

5 CHAIRMAN KEESE: It sounds like --

6 MR. CARROLL: -- both of them were
7 raised in our filing on February 21st.

8 CHAIRMAN KEESE: It does sound quite
9 minor to me. Mr. Ledford, do you have any -- are
10 you --

11 MR. LEDFORD: Can I have a second?

12 HEARING OFFICER GEFTER: Oh, included in
13 the comments by High Desert on February 21st.

14 MR. CARROLL: If I may try to clarify
15 it, and I'm just going to restate finding and
16 conclusion number two. It states:

17 "The aquifer storage and recovery agreement
18 is in effect and prohibits HDPP from allowing
19 additional water to be treated by the
20 project's water treatment facilities for non-
21 HDPP purposes."

22 When you go to condition of
23 certification 19, it states that under certain
24 limited circumstances the water treatment
25 facilities can, indeed, be used for nonproject

1 purposes. And all we're suggesting is that
2 finding and conclusion two is somewhat of an
3 overstatement.

4 And so all we're suggesting is that the
5 end of finding and conclusion two, as it's
6 currently written, we just insert the language,
7 "except as provided in condition 19."

8 CHAIRMAN KEESE: Okay. That seems quite
9 simple and obvious. A patent ambiguity.

10 COMMISSIONER BOYD: Mr. Chairman.

11 CHAIRMAN KEESE: Commissioner Boyd.

12 COMMISSIONER BOYD: We've heard the
13 applicant and the staff that this is a very
14 legalistic issue. I would like to ask the
15 Commission's counsel for his view on what's being
16 proposed.

17 COMMISSIONER LAURIE: You're asking him
18 for what, Mr. Boyd?

19 COMMISSIONER BOYD: His views on the
20 proposal from a legal perspective.

21 COMMISSIONER LAURIE: Mr. Chairman, if
22 Commissioner Boyd is interested in that
23 perspective, I would request that recommendation,
24 that advice be privileged, and we seek that advice
25 in executive session.

1 MR. CARROLL: Perhaps we can dispose of
2 this in a simpler way. If the Committee or the
3 Presiding Member of the Committee can clarify on
4 the record that the findings and conclusions are
5 not intended to modify in any way the conditions
6 of certification as they currently exist, I think
7 that would be adequate. Then we wouldn't have to
8 amend the language.

9 I mean this really -- we did not intend
10 this to be as time consuming as it is. And we
11 don't want to take the Commission's time.

12 CHAIRMAN KEESE: Well, what we have here
13 is a patent ambiguity. We have rules here and we
14 have another statement. Is that --

15 COMMISSIONER LAURIE: I don't have an
16 understanding of the parameters of what Mr. Blee's
17 response might be. If it's simply as to the
18 language of the proposed changes, I don't have any
19 difficulty --

20 CHAIRMAN KEESE: I think --

21 COMMISSIONER BOYD: That's what I had in
22 mind.

23 CHAIRMAN KEESE: Yeah, the applicant has
24 suggested that they won't even recommend a change
25 if they can get a statement from the Committee,

1 and I guess that's you, Commissioner Laurie, that
2 you didn't intend, that this ruling does not
3 intend to change what, item two? condition two?
4 of the certification --

5 HEARING OFFICER GEFTER: May I

6 CHAIRMAN KEESE: Ms. Gefter.

7 HEARING OFFICER GEFTER: -- say
8 something since I was involved with the Committee
9 in writing the proposed decision. And basically
10 what, with respect to this one particular language
11 change what is proposed really makes this finding
12 consistent with the condition of certification.
13 There is actually no legal interpretation
14 necessary.

15 It should have originally said, except
16 as provided in condition Soil-and-water-19,
17 because the condition does allow HDDP -- High
18 Desert to allow additional water to be treated if
19 there is another CEQA analysis, and there is an
20 agreement.

21 So the proposed language is consistent
22 with the conditions, it doesn't change anything.

23 With respect to the second proposed
24 change, that's a lot more complicated. We're not
25 going to go there right now.

1 CHAIRMAN KEESE: All right, do you
2 want --

3 COMMISSIONER LAURIE: Commissioner
4 Boyd's question --

5 CHAIRMAN KEESE: -- do you wish --

6 COMMISSIONER BOYD: I was trying to save
7 Commissioner Laurie from having to also act as
8 counsel on this issue.

9 COMMISSIONER LAURIE: That would never
10 happen.

11 (Laughter.)

12 COMMISSIONER BOYD: I will certainly
13 defer to his wise advice and counsel on this
14 subject, and he has rendered such, I think, so.

15 COMMISSIONER LAURIE: It was the intent
16 of the Committee to adopt the language with the
17 understanding as iterated by Ms. Gefter, and that
18 language, as I've indicated, is on the record.
19 It's a question of if applicant thinks they need
20 more than that at this point.

21 MR. CARROLL: I think that is
22 sufficient.

23 CHAIRMAN KEESE: Thank you.

24 COMMISSIONER BOYD: Thank you.

25 CHAIRMAN KEESE: Now, Ms. Gefter, can

1 you help us out on the other point?

2 HEARING OFFICER GEFTER: All right.

3 CHAIRMAN KEESE: The with prejudice.

4 Again, somebody's going to have to convince me you
5 can just dismiss half of something with prejudice
6 and half without.

7 HEARING OFFICER GEFTER: Yeah. I
8 haven't consulted with the Committee on that
9 particular comment, the changes requested by the
10 applicant.

11 I think that it would make it more
12 complicated than it needs to be. I think that if
13 it's dismissed without prejudice and it ever came
14 before the Commission again, we would look at
15 whether or not an agreement had been filed on
16 time. We would not necessarily look behind the
17 agreement.

18 So I don't think it's necessary to
19 change the language in the decision.

20 CHAIRMAN KEESE: That would be my
21 feeling. Commissioner Laurie.

22 COMMISSIONER LAURIE: If I were involved
23 in that review, Mr. Chairman, that is the question
24 that I would ask.

25 CHAIRMAN KEESE: Thank you. I think --

1 MR. CAOUILLE: We withdraw the request.

2 This was intended --

3 CHAIRMAN KEESE: Thank you.

4 MR. CARROLL: -- to not take up
5 Commission time in the future, and it's taking up
6 more time now, so.

7 CHAIRMAN KEESE: Thank you.
8 Commissioner Laurie, this sounds like an
9 appropriate time for -- Ms. Gefter, do you want
10 to lay before us, then, number two?

11 HEARING OFFICER GEFTER: The matter
12 before the Committee in item 3 is the -- the item
13 before the Commission in item 3 is the proposed
14 decision by the Siting Committee which dismisses
15 the complaint in its entirety. And also denies
16 the request for subpoenas. And it also had
17 requested that petition for review be denied,
18 which has already occurred.

19 So at this point the Commission is asked
20 to adopt the proposed decision.

21 COMMISSIONER LAURIE: It also has some
22 modified language, does it not?

23 HEARING OFFICER GEFTER: And there is
24 some -- what the proposed decision also requests
25 is the Committee made the verification to

1 condition Soil-and-water-11 consistent with the
2 language of the condition, rather than the
3 verification was inconsistent.

4 So the language that is proposed in the
5 proposed decision would change the verification
6 language. And that should be --

7 CHAIRMAN KEESE: Thank you. Do I have a
8 motion?

9 COMMISSIONER LAURIE: Move the proposed
10 decision.

11 COMMISSIONER ROSENFELD: Second.

12 CHAIRMAN KEESE: Motion by Commissioner
13 Laurie; second by Commissioner Rosenfeld.

14 Any further conversation?

15 All in favor?

16 (Ayes.)

17 CHAIRMAN KEESE: Opposed? Adopted four
18 to nothing.

19 COMMISSIONER LAURIE: Mr. Chairman, on
20 Commissioner Boyd's comment regarding water, that
21 is one of the critical issues facing the licensing
22 process in the State of California.

23 The issue of what policy are we to apply
24 in regards to not necessarily water quality, which
25 seems to be fairly well covered by regulation, but

1 rather water supply.

2 To what extent should we, as a matter of
3 policy, limit the utilization of fresh water/state
4 water to cool power plants.

5 That is an issue of import to all the
6 members of the Commission. The Siting Committee
7 has had questions before now. It will entertain
8 participation by all members interested. And I
9 would look forward to full public discussions of
10 the issue by the full Commission.

11 CHAIRMAN KEESE: Thank you, Commissioner
12 Laurie. Thank you, Mr. Ledford. I'm sure you
13 didn't intend to educate the Committee, -- the
14 Commission, itself, but I think we are becoming
15 educated in water issues.

16 MR. LEDFORD: If I could say just one
17 thing. I sometimes wonder why, I mean, as a
18 developer, developers hate CEQA with a passion,
19 and we, as a society, have saved the snail-
20 darters, the Mojave ground squirrel, three-toed
21 frog, some innocuous mosquito someplace, and spent
22 hundreds of millions of dollars doing it.

23 But when it comes to protecting our
24 water resources and our air quality, sometimes I
25 don't think that we've effectively done it.

1 I mean, as a developer, the CEQA
2 challenge is one that is arduous; it is, most of
3 the time, one that is totally unpalatable from the
4 development industry. It's one that the power
5 project has done its fair share of going through.

6 Our disagreement isn't that they didn't
7 go through it; the disagreement is that there was
8 conditions imposed that they didn't comply with.

9 And so a great degree those conditions,
10 as Mr. Laurie has said, are conditions that other
11 agencies are supposed to be doing something about.
12 The problem is that they took your CEQA compliance
13 document and said, that's it, that's done, we
14 don't have to do anymore.

15 There's going to be a number of CEQA
16 challenges relative to those issues that are just
17 coming forward. So that's not before you and I
18 don't expect it to be.

19 But I want to thank you for letting me
20 do whatever I did, good or bad, Mr. Laurie. And
21 for participating in a process that I would, as a
22 developer, never participate in because let me
23 tell you, for me to take a project through the
24 City of Victorville would be a futile effort.

25 (Laughter.)

1 MR. LEDFORD: They would not want to see
2 me with a project or I'd have an interesting CEQA
3 process to approach.

4 Thank you very much.

5 CHAIRMAN KEESE: Thank you, Mr. Ledford.
6 And thank you, also, to the representatives of the
7 water districts who participated by phone. Thank
8 you.

9 Item 4, Electricity Innovation
10 Institute. Possible approval of contract 500-01-
11 025 for \$1,100,000 to conduct collaborative
12 research and development and demonstration
13 projects. Mr. Klein.

14 MR. KLEIN: Good morning. The first
15 item on this is that the amount that we've
16 requested in the agenda item is \$1.1 million. The
17 actual amount would be less than that. It would
18 be \$1,076,325. Just want to correct that item.

19 The purpose of this contract is to
20 perform collaborative research, development and
21 demonstration projects with the Electricity
22 Innovation Institute under PIER.

23 This means that it meets the PIER goal
24 of having a research portfolio that effectively
25 balances the risks, benefits and timed horizons in

1 various public interest energy research
2 investments that will provide tangible benefits
3 for California energy ratepayers.

4 The matched funds provided by E2I in
5 this agreement come from one of the benefits of
6 the Commission's membership in the National
7 Research Program of the Electric Power Research
8 Institute, EPRI.

9 We have a contract with them, number
10 500-00-023; it's a two-year contract. And one of
11 the benefits of membership is that we get matched
12 funds go into a tailored collaborative pool to be
13 used for additional research to more adequately
14 address California's energy issues.

15 We participate in national research
16 through the research targets with EPRI, and this
17 provides the ability to tailor those funds.

18 So in order to access these funds the
19 member must contribute an additional dollar for
20 every dollar that they wish to access in the
21 tailored collaborative pool.

22 Last year E2I joined the EPRI family of
23 companies as a not-for-profit subsidiary with the
24 specific intent of working more closely with the
25 public sector and meeting the public sector's need

1 for public access to the research results.

2 EPRI has agreed to provide the matched
3 funds to E2I for purposes of supporting this joint
4 research program.

5 This collaborative research program
6 benefits the state by leveraging additional research
7 from funds already expended in the membership
8 agreement, and by obtaining for the public greater
9 access to the research results.

10 The contract is funded by the Commission
11 in the amount of \$1,076,325. And by E2I for the
12 same amount.

13 We're requesting a decision in favor of
14 this.

15 CHAIRMAN KEESE: Thank you. The PIER
16 program.

17 COMMISSIONER BOYD: Mr. Chairman.

18 CHAIRMAN KEESE: Commissioner Boyd.

19 COMMISSIONER BOYD: New guy on the block
20 needs to ask a question about how the individual
21 projects are approved. Do they go through the
22 committee and approved by the research committee,
23 or what is process on the actual tasks that are
24 carried out?

25 MR. KLEIN: In this particular case

1 we're proposing that the projects will go to the
2 committee for approval. They're researched, and
3 that's where we take all of our research projects.

4 COMMISSIONER BOYD: Thank you.

5 MR. KLEIN: For the \$2 million we expect
6 there to be somewhere under ten projects over the
7 course of a couple of years. They average a
8 couple hundred thousand dollars apiece, so it's
9 about ten projects in this case.

10 CHAIRMAN KEESE: Thank you. Do I have a
11 motion?

12 COMMISSIONER ROSENFELD: I move the
13 contracts.

14 COMMISSIONER LAURIE: Second.

15 CHAIRMAN KEESE: Motion, Commissioner
16 Rosenfeld; second, Commissioner Laurie.

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Approved,
20 thank you.

21 MR. KLEIN: Thank you very much.

22 CHAIRMAN KEESE: Item 5, Lawrence
23 Berkeley National Laboratory. Possible approval
24 of contract 500-01-024 for \$500,000 to conduct the
25 Energy Efficiency Data Centers project.

1 MR. ROGGENSACK: Good morning, Mr.
2 Chairman, Members of the Commission. My name is
3 Paul Roggensack, I'm with the PIER industrial,
4 agricultural and water team.

5 Item number 5 is a proposed contract
6 with Lawrence Berkeley National Laboratory to
7 conduct research on data centers in the State of
8 California.

9 Data centers have been expanding --
10 growing rapidly with the worldwide web in the last
11 ten years.

12 This contract will enable the Lab to
13 conduct research to benchmark and develop metrics
14 to enable data center designers and planners to
15 better estimate their power needs. And the Lab
16 will also develop a roadmap to identify energy
17 issues with data centers.

18 This is a contract for half a million
19 dollars and a one-year term. And it meets the
20 PIER objectives of improving the state's
21 efficiency and reliability and cost value.

22 This contract will also result in a
23 reduction in 30 percent of energy use by the data
24 centers.

25 CHAIRMAN KEESE: Thank you.

1 MR. ROGGENSACK: Any questions?

2 CHAIRMAN KEESE: Motion?

3 COMMISSIONER ROSENFELD: I move the --

4 COMMISSIONER BOYD: I'll second.

5 CHAIRMAN KEESE: Motion by Commissioner
6 Rosenfeld; second by Commissioner Boyd.

7 I'm going to make a comment which I made
8 to staff yesterday. I spoke to a national
9 convention of data centers last year. And in
10 surveying the audience prior led me to ask a
11 question, was there anybody in the room who cared
12 about energy efficiency. And, in fact, I stated
13 it. I said, I know there's no one in this
14 audience who cares about energy efficiency. Would
15 anybody care to challenge me. And the answer was
16 no.

17 They are so wrapped up in other
18 activities that they don't understand what's
19 happening. And it's happening for a long term.
20 So I think this is an extremely appropriate and
21 well-timed initiative. I applaud you.

22 All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed? Adopted.

25 COMMISSIONER LAURIE: Mr. Chairman, I'd

1 be more interested in hearing about your
2 presentation to the National Association of
3 Daters, and that --

4 (Laughter.)

5 COMMISSIONER LAURIE: -- sounds like an
6 interesting conference.

7 CHAIRMAN KEESE: I obviously misspoke
8 myself.

9 (Laughter.)

10 CHAIRMAN KEESE: Item 6, Lawrence
11 Berkeley National Laboratory. Possible approval
12 of contract 500-01-023 for \$639,386 to develop and
13 evaluate electrochromic window systems.

14 Mr. Scruton.

15 MR. SCRUTON: Good morning, I'm Chris
16 Scruton with the PIER buildings team. And I'm
17 recommending approval of this contract with
18 Lawrence Berkeley Labs, and I'd be happy to answer
19 any questions you might have about the project.

20 CHAIRMAN KEESE: Everybody familiar with
21 the project?

22 COMMISSIONER BOYD: I'm familiar with
23 the project. I do have a question, again.
24 Another one of the new guy on the block questions.

25 Some idea from you on the ease or the

1 enthusiasm with which this technology, if and when
2 proven by this research contract, will be adopted
3 and accepted by the building community, itself.

4 MR. SCRUTON: Well, that's a very
5 appropriate question because that's exactly the
6 issue that this project is intended to address.

7 In the last five years there's been a
8 major push by Department of Energy and HUD to
9 bring these electrochromic windows, which were
10 previously kind of laboratory curiosities, into a
11 functioning device that could actually be used in
12 an office building or a residence.

13 But there are significant issues which
14 are remaining; and primarily those are issues of
15 system integration. One of the things that's
16 required with this type of active window is
17 integration with lighting control strategies.
18 Another is that there's a need to model the
19 potential reductions on the HVAC equipment. There
20 is needed research on occupant response to the
21 different illumination levels that are given by
22 these windows.

23 So there are a lot of sort of collateral
24 issues that need to be investigated. And those
25 are primarily the issues that this contract is

1 going to investigate.

2 In addition, there will be informational
3 resources developed to serve as guidelines for
4 architects, engineers, DOE fenestration guide, so
5 that the building public will be informed as to
6 how to use these windows.

7 So those are the issues that are being
8 addressed by this contract.

9 CHAIRMAN KEESE: Thank you. Do I have a
10 motion?

11 COMMISSIONER ROSENFELD: I move the
12 contract.

13 CHAIRMAN KEESE: Motion by Commissioner
14 Rosenfeld.

15 COMMISSIONER BOYD: Second.

16 CHAIRMAN KEESE: Second by Commissioner
17 Boyd. All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed? Adopted.
20 Thank you.

21 MR. SCRUTON: Thank you.

22 CHAIRMAN KEESE: Item 7, Southern
23 California Edison Company. Possible approval of
24 contract 500-01-026 for \$178,000 to develop the
25 measurement procedures to assess the overall

1 efficiency of a compressed air central plant.

2 MR. KAPOOR: Good morning, my name is
3 Rajesh Kapoor. I work with PIER industrial,
4 agriculture and water group.

5 The proposal of this project is to
6 establish the benchmark and the measurement
7 procedures to optimize the efficiency of the
8 compressed air systems.

9 The compressed air system includes
10 dryers, compressors, filters and -- tanks, et
11 cetera. At present there is no such benchmark
12 exists in California industry, and there are no
13 measurement procedures to optimize the efficiency
14 of the compressed air systems.

15 And compressed air is the fourth largest
16 commonly used utility after electricity, water and
17 natural gas.

18 By establishing the benchmark and the
19 measurement procedures, California utilities will
20 allow the rebate program to industrial customers
21 to optimize the efficiency of the compressed air
22 systems.

23 At present there are around 10,000
24 customers in the SCE, Southern California Edison
25 territory; and around 50,000 customers, industrial

1 customers, are in PG&E territory; and around
2 15,000 customers in the other territories like
3 SMUD and San Diego Gas and Electric.

4 The potential energy savings is around
5 20 percent, which is to around 400 megawatt
6 savings for the whole California.

7 The plan is to future project in one
8 year all the manufacturing facilities, process
9 industries and other different kind of industrial
10 benefit from this project. The plan is -- there
11 are two workshops will be conducted; one in
12 northern California and one in southern
13 California, to train the industrialists so that
14 they can achieve the -- so they can adopt the
15 procedures and establish the benchmark.

16 Are there any questions?

17 CHAIRMAN KEESE: Thank you. Any
18 questions? Do I have a motion?

19 COMMISSIONER ROSENFELD: I move the
20 contract.

21 CHAIRMAN KEESE: Motion by Commissioner
22 Rosenfeld.

23 COMMISSIONER BOYD: Second.

24 CHAIRMAN KEESE: Second by Commissioner
25 Boyd. All in favor?

1 (Ayes.)

2 CHAIRMAN KEESE: Opposed? Adopted four
3 to nothing.

4 MR. KAPOOR: Thank you.

5 CHAIRMAN KEESE: Thank you. Item 8, San
6 Diego State University. Possible approval of
7 contract 500-01-018 for \$120,000 to assess the
8 potential to utilize the ocean wave energy
9 resources off California's coast.

10 MR. SIMONS: Good morning.

11 CHAIRMAN KEESE: Good morning.

12 MR. SIMONS: I'm George Simons; I'm with
13 PIER renewables group.

14 This contract is really a resource
15 assessment technology status and evaluation, and
16 deployment issue study for ocean wave energy off
17 the California coast.

18 We've been approached by technology
19 developers for about the past year and a half with
20 requests for funding technology development for
21 ocean energy.

22 What we've decided is that before we put
23 any money into technology development, we really
24 have to have a better understanding of the
25 resource along the California coast; the status of

1 the technology with respect to performance and
2 cost; and what would be the deployment issues.

3 And so, in essence, that's what this
4 contract does. We have hired or we will be hiring
5 San Diego State University to administer the
6 contract. They have a team of experts, Scripps,
7 Virginia Tech Research Institute, the Naval Post
8 Graduate School, to go ahead and do the
9 assessment.

10 So, for \$120,000 in essence what we get
11 is this study.

12 CHAIRMAN KEESE: Thank you. Motion?

13 COMMISSIONER ROSENFELD: I move the
14 contract.

15 CHAIRMAN KEESE: Motion, Commissioner
16 Rosenfeld.

17 COMMISSIONER LAURIE: Second.

18 CHAIRMAN KEESE: Second, Commissioner
19 Laurie.

20 All in favor?

21 (Ayes.)

22 CHAIRMAN KEESE: Opposed? Adopted four
23 to nothing. Thank you, George. I also have been
24 approached by quite a few people interested in
25 ocean wave energy. So I think this is a great

1 start.

2 COMMISSIONER BOYD: George, I have an
3 entire file I'm going to will you on this subject
4 that --

5 (Laughter.)

6 COMMISSIONER BOYD: -- from many
7 proposers.

8 CHAIRMAN KEESE: Item 9 is moved to the
9 business meeting on the 3rd.

10 Item 10, Energy Conservation Assistance
11 Act account. Staff recommendation to approve a
12 loan to Sonoma State University for \$157,000 and a
13 loan to Roman Catholic Diocese of San Jose for
14 \$150,000 under the Energy Conservation Assistance
15 Act account.

16 Good morning, and what are we loaning
17 money for here?

18 MR. WANG: Good morning, Commissioners.
19 My name is Joseph Wang. I'm with nonresidential
20 office. And Sonoma State University and Roman
21 Catholic Diocese in San Jose submitted a loan
22 application. They want to install PV systems on
23 the roof.

24 And one system will be using -- tiles,
25 and the other will be using regular PV panels.

1 And both of them have received 50 percent PV
2 rebates from PG&E. And they will fund the
3 remaining of the project cost with CEC loans and
4 their own funds.

5 We have reviewed their studies and
6 recommend that loans be approved.

7 CHAIRMAN KEESE: Thank you. Have a
8 motion? Commissioner Rosenfeld.

9 COMMISSIONER ROSENFELD: I move the
10 staff recommendation.

11 COMMISSIONER BOYD: Second.

12 CHAIRMAN KEESE: Second, Commissioner
13 Boyd. Comments? All in favor?

14 (Ayes.)

15 CHAIRMAN KEESE: Opposed? Approved,
16 four to nothing. Thank you.

17 MR. WANG: Thank you.

18 CHAIRMAN KEESE: Item 11, local
19 jurisdictional energy assistance loan account,
20 (energy partnership program). Possible approval
21 of a \$1 million loan to the City of Carson for the
22 installation of energy efficient lighting in their
23 buildings and conversion of existing incandescent
24 traffic signals to light-emitting diodes. Looks
25 like saving a quarter million dollars a year.

1 MR. RUBENS: Good morning,
2 Commissioners.

3 CHAIRMAN KEESE: Good morning.

4 MR. RUBENS: My name's Dave Rubens and
5 I'm with the nonresidential office, and I'm the
6 manager of this project.

7 I am requesting a loan of \$1 million to
8 the City of Carson. As you read, the City of
9 Carson is involved in converting its existing
10 incandescent traffic signals to those high
11 efficiency light-emitting diodes, the LEDs, at
12 about 115 intersections; and installing energy
13 efficient lighting in 17 buildings.

14 The project collectively will save the
15 City of Carson \$240,000. And a payback is about
16 4.2 years. The peak demand will be reduced by
17 approximately 230 kW.

18 These projects meet the loan program
19 requirements; and the staff recommends approval of
20 these projects. The loan to be financed 100
21 percent for the project costs. This loan request
22 has been approved by the Commission's Energy
23 Efficiency Policy Committee.

24 If you have any questions, I'm here to
25 answer them.

1 COMMISSIONER ROSENFELD: I move approval
2 of the loan.

3 CHAIRMAN KEESE: Motion by Commissioner
4 Rosenfeld. Second by Commissioner?

5 COMMISSIONER BOYD: Second.

6 CHAIRMAN KEESE: Boyd.

7 (Laughter.)

8 COMMISSIONER BOYD: Question.

9 CHAIRMAN KEESE: Question by
10 Commissioner Boyd.

11 COMMISSIONER BOYD: Could you give me an
12 exact or even a ballpark testament on the percent
13 of the California's traffic signals that have now
14 gone to LED versus conventional incandescent
15 lighting?

16 MS. LEW: My name is Virginia Lew. I'm
17 in the nonresidential buildings office. And it's
18 probably somewhere around 30 to 40 percent are
19 LEDs. I mean there's more in northern California
20 in the PG&E service territory primarily because
21 they've had a lot of rebate programs in the past.
22 And lesser amounts in southern California.

23 COMMISSIONER BOYD: Thank you.

24 COMMISSIONER ROSENFELD: Virginia, I'd
25 like to expand on Commissioner Boyd's question.

1 How much of that is the result of just the last
2 summer when we had these AB-970 programs?

3 MS. LEW: Yeah, I think the majority of
4 them actually occurred during this last summer. I
5 mean in addition to the Energy Commission's LED
6 grant program, the investor-owned utilities also
7 had a number of programs that they put in, nearly
8 over \$20 million of rebate funds.

9 And so the majority of the LED
10 conversions have occurred during the last summer,
11 especially in the green areas; and also in some
12 cases the ambers, as well.

13 COMMISSIONER ROSENFELD: Thank you.

14 CHAIRMAN KEESE: Thank you.

15 COMMISSIONER BOYD: Just as an
16 observation that the last year has made me very
17 sensitive to subject, and I note everywhere I go
18 what the status is. And I'm impressed by the
19 number of LED signals that I've seen.

20 But I must confess, my travels of late
21 have been confined to northern California, so
22 maybe I'm getting the greater percentage.

23 Thank you.

24 MS. LEW: Thank you.

25 CHAIRMAN KEESE: Thank you. I believe

1 we have a motion and second.

2 All in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed? Adopted four
5 to nothing. Thank you.

6 Item 12, Energy Conservation Assistance
7 Act. Possible approval of a loan to Loyola
8 Marymount University for \$1,125,000 for
9 installation of energy efficient lighting at the
10 Los Angeles campus.

11 MR. DAVENPORT: Good morning; my name is
12 David Davenport and I'm also with the
13 nonresidential buildings unit.

14 I'm coming before you this morning to
15 ask for a \$1,125,000 loan to Loyola Marymount
16 University. The lighting efficiency project will
17 encompass 38 buildings across the campus in
18 approximately 900,000 square feet.

19 We estimate the lighting retrofit will
20 save the university approximately \$158,000 a year;
21 it will result in a simple payback of 8.2 years.

22 The retrofit will reduce annual energy
23 usage by 1.1 million kilowatt hours. And reduce
24 peak load by approximately 340 kilowatts.

25 The funding will come from the Energy

1 Conservation Assistance Account, and carry an
2 interest rate of 3 percent.

3 CHAIRMAN KEESE: Thank you.

4 COMMISSIONER ROSENFELD: I move the --

5 CHAIRMAN KEESE: Motion by Commissioner
6 Rosenfeld.

7 COMMISSIONER BOYD: Second.

8 CHAIRMAN KEESE: Second by Commissioner
9 Boyd.

10 All in favor?

11 (Ayes.)

12 CHAIRMAN KEESE: Opposed? Adopted four
13 to nothing. Thank you. My alma mater thanks you.

14 Item 13, --

15 COMMISSIONER BOYD: I wondered if there
16 was a conflict there.

17 (Laughter.)

18 COMMISSIONER BOYD: It's a positive one.

19 CHAIRMAN KEESE: Item 13 is moved to the
20 3/20 business meeting.

21 Item 14, power plant siting regulations.
22 Possible adoption of an order instituting
23 rulemaking regarding the power plant siting
24 regulations.

25 COMMISSIONER LAURIE: Mr. Chairman, if I

1 may?

2 CHAIRMAN KEESE: Commissioner Laurie.

3 COMMISSIONER LAURIE: Commissioner
4 Pernell and myself desire to open a rulemaking for
5 the purpose of discussing some current issues.
6 Among those current issues right now are
7 threefold, and there's no recommendation at this
8 point. Just simply for the purpose of discussing
9 and getting input. And then may or may not be
10 recommendations forthcoming.

11 But generally the three issues that have
12 been discussed, because of internal or external
13 input, have been questions of data adequacy.
14 Staff has some issues and concerns in regards to
15 current regulations.

16 Two, the complaint process. Currently
17 our regulations require, upon the submittal of a
18 complaint that you go through a very formalized
19 process such as what we have just gone through. I
20 think that needs examination.

21 And the third issue is relating to the
22 question of longevity or the life of a certified
23 license. Currently that life is five years.
24 Under one of the Governor's executive orders, in
25 dealing with a certain type of approval, we're

1 required to post milestones, requiring
2 construction in less than that period. Well, the
3 question now arises as to whether we are
4 authorized to continue with those milestones,
5 should we continue with those milestones. And
6 that's the purpose for the rulemaking as of today.

7 So, what we would do, if the request to
8 open the OIR is granted, is we would open these
9 questions. First get staff thought. Open it up
10 to the public. And if it's deemed worthy of
11 further discussion, have those discussions with
12 the full Commission at some point in time.

13 CHAIRMAN KEESE: Mr. Buell.

14 MR. BUELL: Yes, my name is Richard
15 Buell. I really have nothing to add to
16 Commissioner Laurie's statement. That's accurate.

17 We have a draft order in the backup
18 package that would initiate the OIR process.
19 There's some minor corrections to the document in
20 the backup package to clarify the comments to the
21 process could be added via electronic filing.

22 So, with that, I would recommend the
23 Commission adopt the order.

24 COMMISSIONER LAURIE: There are --

25 CHAIRMAN KEESE: Okay, minor amendments.

1 COMMISSIONER LAURIE: -- individuals in
2 the audience that may want to comment, Mr.
3 Chairman.

4 CHAIRMAN KEESE: Okay. We've heard from
5 Commissioner Laurie; we've heard from staff.
6 Anybody in the audience care to comment? Steve.

7 MR. KELLY: Steve Kelly, Independent
8 Energy Producers Association. And I haven't had a
9 chance to fully review the outline of the hearing,
10 but I would just like to remind the full
11 Commission, certainly the Committee that will be
12 involved with this, that one of the important
13 impediments to bringing on new generation in
14 California is the regulatory uncertainty that
15 pervades this state.

16 So, as we move forward in any rulemaking
17 on siting issues, as well as anything else, it's
18 important that we do that with the understanding
19 that what we are trying to do is put in place a
20 regime or a paradigm for which the generation
21 community will know in advance what they're
22 dealing with, and can expect that there will be
23 some persistence with those rules.

24 We just completed a proceeding, or a
25 discussion last year on siting issues where some

1 of these came up. I know those issues are not, as
2 far as I understand, are not the topic of the
3 future rulemaking here. But it's important for
4 everybody to recognize the need for some
5 permanence in some of these rules, so that people
6 can do effective planning; work through the siting
7 process, which, as we heard this morning seems to
8 have taken three years in some cases and issues
9 are still being addressed; and it impedes the
10 ability for companies to effectively develop the
11 projects that are needed for California.

12 So, I just remind you of that.

13 CHAIRMAN KEESE: Thank you.

14 COMMISSIONER LAURIE: I do not disagree
15 with Mr. Kelly's statement.

16 CHAIRMAN KEESE: Thank you. All in
17 favor -- oh, I'm sorry, do we have --

18 COMMISSIONER LAURIE: Move --

19 CHAIRMAN KEESE: -- motion first.

20 COMMISSIONER LAURIE: Move the request
21 to --

22 CHAIRMAN KEESE: Motion by Commissioner
23 Laurie.

24 COMMISSIONER LAURIE: -- open the OIR.

25 COMMISSIONER ROSENFELD: Second.

1 CHAIRMAN KEESE: Second by Commissioner
2 Rosenfeld.

3 All in favor?

4 (Ayes.)

5 CHAIRMAN KEESE: Opposed? Adopted four
6 to nothing.

7 Item 15, the 2001 PIER annual report.
8 Possible approval of the 2001 PIER annual report.
9 Ms. Patterson. I'm sure everybody at this table
10 has read the report in detail.

11 MS. PATTERSON: In detail, thoroughly.
12 Good morning, Commissioners, and congratulations
13 on your appointment, Commissioner Boyd. Welcome
14 to the Energy Commission.

15 COMMISSIONER BOYD: Thank you.

16 MS. PATTERSON: I'm Susan Patterson,
17 manager of the technology transfer program for the
18 Public Interest Energy Research program. And I
19 have the 2001 PIER annual report to the
20 Legislature here for your consideration.

21 The version that you're looking at is
22 the final draft. The version in the agenda backup
23 package is a week or so old, which is about eight
24 drafts previous.

25 The two-volume report consists of volume

1 one, which you have, an overview, current status
2 and future direction for the PIER program.

3 The second volume is a detailed
4 description of each of the 198 projects that have
5 been funded through PIER, and that's required by
6 law, Senate Bill 90.

7 As you know, research results don't
8 happen over night. This year's report highlights
9 the success stories that are emerging after four
10 years of RD&D. Positive results and successful
11 technology demonstrations that have widespread
12 applications will continue to be promoted through
13 our business incubators, venture capital forums,
14 and our own website reports and fact sheets.

15 To date, PIER has spent over \$180
16 million in the funding of these 198 projects.

17 I'd like to also thank a couple of my
18 colleagues for their hard work. Dave Navarro, for
19 volume two, doing all of the project descriptions;
20 Art Firebaugh of the cross-cutting section for
21 handling all the production; and Lawrence Kinser
22 of our PIER project information management group
23 for all of the data collection.

24 And I'm hoping that you will consider
25 this for adoption.

1 CHAIRMAN KEESE: Thank you.

2 COMMISSIONER BOYD: Mr. Chairman.

3 CHAIRMAN KEESE: Commissioner Boyd.

4 COMMISSIONER BOYD: Thank you, Ms.

5 Patterson, for your introductory comments. I
6 appreciate them.

7 However, something else you said, since
8 I stayed up late one night to read this document,
9 and now you tell me I read something eight volumes
10 or eight drafts old.

11 Are there any significant changes
12 between what I read and what I was delivered an
13 hour before the hearing?

14 MS. PATTERSON: No. No.

15 COMMISSIONER BOYD: For the record?

16 MS. PATTERSON: No, what --

17 COMMISSIONER BOYD: No. Thank you.

18 CHAIRMAN KEESE: Editorial changes.

19 MS. PATTERSON: Yes.

20 COMMISSIONER BOYD: Thank you,
21 appreciate that.

22 CHAIRMAN KEESE: Do I have a motion?

23 COMMISSIONER ROSENFELD: I move --

24 CHAIRMAN KEESE: Motion, Commissioner
25 Rosenfeld.

1 COMMISSIONER ROSENFELD: -- adoption of
2 the report.

3 COMMISSIONER LAURIE: Pleased to second,
4 Mr. Chairman.

5 CHAIRMAN KEESE: Second, Commissioner
6 Laurie.

7 All in favor?

8 (Ayes.)

9 CHAIRMAN KEESE: Opposed? Let me just
10 interject something here for the Executive
11 Director, or the Associate Executive Director. I
12 understand that the PIER program put together a
13 comprehensive report and a little show-and-tell
14 for Senator Sher?

15 MS. PATTERSON: That's correct.

16 CHAIRMAN KEESE: It lasted a couple
17 hours. Did the members of the Committee see that
18 report -- that show?

19 COMMISSIONER ROSENFELD: I was there.

20 CHAIRMAN KEESE: You were there?

21 COMMISSIONER ROSENFELD: Yeah, you were
22 there, Bob. I'm not sure, at least I was there.

23 CHAIRMAN KEESE: I --

24 COMMISSIONER LAURIE: No, --

25 CHAIRMAN KEESE: I was going to make a

1 suggestion that there be an announcement whether
2 it would be beneficial for Commissioner Boyd and I
3 and Commissioner Pernell and Roberta, perhaps to
4 -- and perhaps others to see this to have a more
5 general background. And that we might try to set
6 that up in conjunction with one of our Commission
7 meetings so we did it in the afternoon in an open
8 forum. If that would be appropriate?

9 CHIEF DEPUTY DIRECTOR THERKELSEN: This
10 is Bob Therkelsen speaking for Steven Larson.
11 Yeah, we'll go ahead and set that up for one of
12 the upcoming business meetings.

13 CHAIRMAN KEESE: Let's try one where
14 everybody's there. I don't know, perhaps the
15 Committee, itself, wants to abstain from watching
16 it, but I think if we have a comprehensive program
17 that was presented, it would be nice for all of us
18 to --

19 COMMISSIONER LAURIE: I would like to
20 see that presentation.

21 CHAIRMAN KEESE: -- have a shot. Okay.
22 Leave that to staff to do. Thank you.

23 MS. PATTERSON: Thank you.

24 CHAIRMAN KEESE: We've taken care of the
25 minutes. Energy Commission Committee and

1 Oversight. Leg.

2 MR. SCHMELZER: Mr. Chairman and
3 Commissioners, the Legislative Committee has one
4 item for your consideration today.

5 This is Assembly Bill 81 by
6 Assemblywoman Migden. What this legislation does
7 is it provides that the proposed state assessment
8 of power plant tax revenues that's currently
9 proposed by the Board of Equalization, be
10 allocated on a situs basis to the local agencies
11 that are most affected by the power plants.

12 Without this legislation, if these
13 regulations were to go into effect the power plant
14 tax revenues would be allocated countywide.

15 The rationale for support of this
16 legislation is to help to insure that mitigations
17 and necessary services can be paid for out of the
18 tax revenues that come from the power plant. And
19 in addition, to help engender local support for
20 these projects.

21 And the Committee has recommended a
22 support position. This has been considered by
23 both the Siting and the Legislative Committee.

24 COMMISSIONER LAURIE: Mr. Chairman, if I
25 may comment --

1 CHAIRMAN KEESE: Commissioner Laurie.

2 COMMISSIONER LAURIE: -- briefly. The
3 first file that was ever handed to me as a lawyer
4 was as a deputy county counsel in Imperial County.
5 The file was the Sun Desert Nuclear Power Plant.

6 Imperial County opposed Sun Desert
7 Nuclear Power Plant because the power plant was to
8 be located in Riverside County and therefore its
9 tax revenues would not be of benefit to Imperial
10 County.

11 All my experiences in the 27 years since
12 have built upon that lesson learned.

13 I think revenues are a relevant factor
14 in power plant licensing, to the extent that the
15 burdens of a project that can be mitigated by
16 revenues, which is the intent, then I think a
17 barrier would be lifted.

18 Thus, my basis for supporting the
19 proposed legislation.

20 CHAIRMAN KEESE: Thank you. Do I have a
21 motion?

22 COMMISSIONER ROSENFELD: What are we
23 moving to --

24 CHAIRMAN KEESE: We're moving a position
25 that has been articulated by Mr. Schmelzer on

1 support of the recommendation, on the Migden Bill
2 AB-81.

3 COMMISSIONER LAURIE: I would move the
4 recommendation --

5 CHAIRMAN KEESE: Motion by Commissioner
6 Laurie.

7 COMMISSIONER ROSENFELD: Second.

8 CHAIRMAN KEESE: Second by Commissioner
9 Rosenfeld.

10 All in favor?

11 (Ayes,)

12 CHAIRMAN KEESE: Opposed? Adopted four
13 to nothing. Thank you.

14 MR. SCHMELZER: Thank you very much.

15 CHAIRMAN KEESE: Item 18, Committee
16 structure. Recommend the following changes in
17 Committee structure:

18 On the Transportation and Fuels
19 Committee, Commissioner Boyd, Presiding;
20 Commissioner Keese, Associate.

21 On the Electricity and Natural Gas
22 Committee, Commissioner Keese, Presiding;
23 Commissioner Boyd, Associate.

24 With regard to the Transportation and
25 Fuels Committee, that Committee will be assigned

1 global climate change issues henceforth.

2 With regard to the Environmental and
3 Energy Infrastructure and Licensing Committee with
4 Commissioner Laurie currently Presiding and
5 Commissioner Pernell Associate, this Committee
6 will oversee the renewables program; this
7 Committee will oversee distributed generation
8 issues; and this Committee will oversee the export
9 program.

10 Other Committees will remain essentially
11 the same. We will have an order out this
12 afternoon that will detail the responsibilities of
13 the Committee. I believe we've had discussions
14 with all the offices and we are attempting to make
15 more generic assignments of Committee
16 responsibility.

17 I think it would be appropriate, while
18 I'm going to make some recommendations regarding
19 siting cases in a moment, I think it would be
20 appropriate to approve these Committee assignments
21 as proposed.

22 COMMISSIONER LAURIE: Move the proposal,
23 Mr. Chairman.

24 CHAIRMAN KEESE: Motion by Commissioner
25 Laurie.

1 COMMISSIONER ROSENFELD: Second.

2 CHAIRMAN KEESE: Second by Commissioner
3 Rosenfeld.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Thank you.

7 With regard to siting cases, assignments
8 that have taken place in the past:

9 On Morro Bay Commissioner Keese will
10 take the Presiding position; and Commissioner Boyd
11 will be Second.

12 On the Pastoria Expansion, which
13 Commissioner Laurie Presides, Commissioner Boyd
14 will go on as Second.

15 On the Rio Linda case, which
16 Commissioner Rosenfeld now Presides, Commissioner
17 Boyd will go Second.

18 On the Colusa case, which Commissioner
19 Rosenfeld Presides, Mr. Boyd will go Second.

20 On the Los Esteros case, which Chairman
21 Keese is Presiding, Commissioner Boyd will go
22 Second.

23 On the GWF Henrietta Project, on which
24 Commissioner Rosenfeld Presides, Commissioner Boyd
25 will go Second.

1 On the Inland Empire case, which
2 Commissioner Pernell Presides, Commissioner Boyd
3 will go Second.

4 On the Avenal case, Mr. Boyd will
5 Preside; Commissioner Keese will leave Presiding
6 and go to Second.

7 On the Tesla Power Plant case,
8 Commissioner Laurie Presides, Commissioner
9 Rosenfeld will be Second.

10 Can I have a motion to that effect?

11 COMMISSIONER LAURIE: So moved, Mr.
12 Chairman.

13 CHAIRMAN KEESE: Motion, Commissioner
14 Laurie.

15 COMMISSIONER ROSENFELD: Second.

16 CHAIRMAN KEESE: Second, Commissioner
17 Rosenfeld.

18 All in favor?

19 (Ayes.)

20 CHAIRMAN KEESE: Opposed? Adopted four
21 to nothing. Thank you.

22 I'm looking at Mr. O'Brien. We covered
23 it? Thank you, Mr. O'Brien.

24 Any other discussion on Committees?

25 Chief Counsel's report.

1 MR. BLEES: Two items, Mr. Chairman.
2 The first concerns the closed session that the
3 Commission held at the previous business meeting.
4 You took action at that meeting, and therefore you
5 should report on the action that was taken.

6 I believe my office provided you with
7 appropriate language or I can just read it,
8 myself.

9 CHAIRMAN KEESE: We would be pleased to
10 have you read into the record the action we took.

11 MR. BLEES: Sure. At the previous
12 business meeting the Commissioners adjourned to
13 closed session.

14 During the closed session the
15 Commissioners took action in approving a draft
16 letter to be sent in conjunction with Riverside
17 County concerning a proposed power plant project
18 on tribal land.

19 The second item I have is that I believe
20 that Mr. Larson was going to request a closed
21 session on another legal matter.

22 MR. THERKELSEN: That's correct.

23 MR. BLEES: I'll turn it over to Mr.
24 Therkelsen.

25 CHAIRMAN KEESE: So you're suggesting

1 then when we end here that we go into executive
2 session on a legal matter?

3 MR. BLEES: Yes. And Mr. Therkelsen can
4 go into more detail if he needs to.

5 CHAIRMAN KEESE: Thank you.

6 CHIEF DEPUTY DIRECTOR THERKELSEN:
7 That's correct. Steve was recommending a brief
8 closed session to deal with another legal issue.

9 CHAIRMAN KEESE: We will do that.

10 COMMISSIONER LAURIE: Do we have to
11 announce the basis for that, Mr. Chairman?

12 MR. CHAMBERLAIN: I believe it is
13 adequately described in the agenda.

14 One more thing that I wanted to announce
15 is that last Friday the Sacramento Superior Court
16 did dismiss the Metcalf proceeding that had been
17 filed in that court. This is the identical
18 complaint that was -- almost identical, that was
19 filed in the Supreme Court, which is still
20 pending.

21 But the Sacramento Superior Court
22 determined that it didn't have jurisdiction based
23 on section 25531.

24 CHAIRMAN KEESE: Thank you. Executive
25 Director's report.

1 CHIEF DEPUTY DIRECTOR THERKELSEN: I
2 have nothing else to report.

3 CHAIRMAN KEESE: Public Advisor's
4 report.

5 MS. MENDONCA: Mr. Chairman, nothing at
6 this time, thank you.

7 CHAIRMAN KEESE: Okay. Mr. Ledford has
8 asked for a moment to comment in the area of
9 public comment. You're learning our agenda
10 process, aren't you?

11 MR. LEDFORD: Oh, I'm enjoying today, is
12 that okay?

13 Two things. One, I didn't want to
14 address one of the two issues the first time I was
15 up here because I thought it would goof up what I
16 was trying to do, even though I thought it was a
17 related issue.

18 And I decided not to get up when you
19 were talking about amending your procedures, even
20 though I had a public comment.

21 So, I'll take that first. I agree that
22 a more clear definition needs to happen, at least
23 on water. And everybody knows that's my issue, so
24 I'm not here to talk about power plants, per se.
25 We need power, and I'll be the first to admit I

1 know little about power.

2 In our particular situation in our case
3 down there we never got a will-serve letter; still
4 don't have a will-serve letter. And a multitude
5 of water agencies that had to participate in
6 somehow coming up with a plan are still grappling
7 with that issue.

8 I would like to suggest that in the
9 water scenarios, and I know this does happen in
10 other of your cases where you do allow water,
11 although at least some of you are now saying maybe
12 water's not a good idea, that's my issue, is that
13 you do insure that you have a will-serve letter,
14 and that the CEQA issues related to water for
15 those agencies are dealt with by those agencies.

16 Now, you actually do that for air
17 quality, for instance, at least in our area our
18 Air Quality District did its own CEQA analysis, at
19 the same time, kind of paralleling.

20 So, this is like a recommendation, I
21 guess, in this little public forum, that on the
22 water issue, that before you accept a will-serve
23 letter or before you approve a project for power,
24 that the will-serve letter and the CEQA
25 requirements that would underlie that would be

1 conducted by the public agencies.

2 Because what I've seen in our particular
3 situation is we still are grappling with those
4 issues. We will be grappling with them for some
5 time to come.

6 And had we simply said, you guys go do
7 the CEQA stuff; you analyze it; you give us a
8 will-serve letter; you look at the regional
9 issues, which because of the way your process
10 works, you're focused on the power plants.

11 I probably wouldn't be here wasting my
12 time or yours.

13 Another issue that is troublesome from
14 the public's perspective, is what's happening in
15 this kind of fast-track scenario that's going on.
16 And in the case of High Desert Power project, when
17 they went out and graded their site, they graded
18 an additional 7.1 acres that wasn't a part of
19 their project.

20 And I just, I was reviewing the dockets
21 records this morning and I found this letter, and
22 it appears that the staff is actually making new
23 conditions and approving the change months, in
24 this case nine months, after the grading was
25 completed, doing some CEQA evaluation based on the

1 Governor's order, saying that there's documents
2 filed with the Resources Commission. Basically I
3 don't find those things. I don't find an original
4 letter that says it's going to be done. I just
5 find something that's conclusionary.

6 Something seems the matter with that
7 part of the process. And I admit to you, this is
8 the first time I saw it. I'm not even saying it's
9 prima facie evidence. But I think that what is
10 actually happening with the High Desert Power
11 project was that they intended to build High
12 Desert Power Two, it was on your website for a
13 number of months. They announced it publicly.
14 There was many many press releases that said they
15 had all their approvals except for air quality.

16 And I suspect that this 7.1 acres was
17 actually a construction of a power project
18 underway that you had not ever seen.

19 Thank you very much.

20 CHAIRMAN KEESE: Thank you, Mr. Ledford.
21 That will close our agenda. I will note for the
22 record the passing of former Commissioner Art
23 Kevorkian this week.

24 We will adjourn subject to going into
25 executive session in my office.

1 (Whereupon, at 12:17 p.m., the business
2 meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of March, 2002.

PETER PETTY

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