

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for the) Docket No.
Blythe Solar Energy Project) 09-AFC-6
by Palo Verde Solar I, LLC)
_____)

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

TUESDAY, AUGUST 31, 2010

2:00 p.m.

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

COMMITTEE MEMBERS

Karen Douglas, Chairman and Presiding Member

Robert B. Weisenmiller, Associate Member

HEARING OFFICER, ADVISORS

Raoul Renaud, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Chuck Najarian, Advisor to Commissioner Douglas

STAFF, CONSULTANTS AND STAFF WITNESSES

Lisa De Carlo, Staff Counsel

Alan Solomon, Project Manager

Beverly Bastian

Carolyn Chaney Davis

Amy Golden

Alvin Greenberg, PhD

Susan Sanders, PhD
Aspen Environmental Group

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Scott Galati, Attorney
Galati and Beck

Alice Harron
Elizabeth Ingram
Solar Millennium, LLC

INTERVENOR

Not present

ALSO PRESENT

Mike Boyd (via teleconference)
Californians for Renewable Energy

Alfredo Figueroa (via teleconference)

Dale Evenson (via teleconference)
Riverside County Fire Department

I N D E X

	<u>Page</u>
Proceedings	1
Call to Order and Introductions	1
Opening Remarks by Hearing Officer Renaud	3
Cultural Resources	8
Applicant's Proposed Language	20
Worker's Safety and Fire Protection	24
Traffic and Transportation	33
Soil and Water	36
Biological Resources	44
Public Comment	
Mike Boyd	48
Alfredo Figueroa	52
Adjournment	53
Reporter's Certificate	54

EXHIBITSFor the Staff

<u>Number</u>	<u>Description</u>	<u>Identified</u>	<u>Received</u>
217	Phase 2 Study	5	5

1 MS. INGRAM: Oh, I thought they were. The green
2 light is on. I apologize. I probably wasn't close enough.

3 HEARING OFFICER RENAUD: All right. Go ahead.
4 Thank you. And staff.

5 MS. De CARLO: Good morning or good afternoon I
6 should say. Lisa De Carlo, Energy Commission Staff Counsel.

7 MR. SOLOMON: And Alan Solomon, Project Manager
8 with the Siting Division.

9 HEARING OFFICER RENAUD: All right, welcome. We
10 also are connected this afternoon by our WebEx conferencing
11 system. Those participating can participate by computer and
12 see any documents that may be presented and also listen and
13 speak via telephone.

14 Is there anyone on the phone who would care to
15 introduce themselves? This is entirely optional but if you
16 would like to let us know you're there, please speak up.

17 MR. EVENSON: This is Dale Evenson, Riverside
18 County Fire.

19 HEARING OFFICER RENAUD: Welcome.

20 MR. BOYD: Mike Boyd, President of Californians
21 for Renewable Energy Inc., CARE.

22 HEARING OFFICER RENAUD: Thank you, welcome.

23 DR. GREENBERG: Alvin Greenberg, Energy Commission
24 staff, author of Worker's Safety Fire Protection section and
25 the Hazardous Material Management section.

1 HEARING OFFICER RENAUD: Thank you. Welcome sir.

2 MS. DAVIS: Carolyn Chaney Davis, CEC, Biological
3 Resources.

4 HEARING OFFICER RENAUD: Welcome, thank you. All
5 right. I think that covers the introductions then.

6 As I stated, this is the Committee Conference.
7 This is an optional proceeding. It's not required but we
8 try to hold these after issuance of a Presiding Member's
9 Proposed Decision and before the decision, proposed
10 decision, goes to the Commission for a final vote.

11 This PMPD was issued on August 11, 2010 and
12 following that is a 30 day comment period during which
13 comments will be received by the Committee.

14 The final Commission vote on this will be taken at
15 the September 15, 2010 Business Meeting.

16 This Committee Conference is noticed for the
17 purpose of discussing the comments that have been received
18 to date.

19 What the Committee does with all the comments that
20 are received is consider them all and possibly incorporate
21 them into an errata that would go along with the Presiding
22 Member's Proposed Decision and go to the Commission for the
23 final vote.

24 An errata can contain all kinds of things from
25 correction of typographical errors to clarifications of

1 wording, changes or clarifications to conditions of
2 certification and a large number of matters.

3 And to date we have received comments from both
4 parties, the applicant and from the staff and we thank you
5 very much for those. And I think our, most of our time this
6 afternoon will be taken with discussing those.

7 We also, of course, will hold the public comment
8 period as we always do and allow members of the public to
9 address the Committee.

10 I suggest, well I guess I have gathered, we have
11 gathered, that Biological Resources will be the largest,
12 single discussion area with respect to today's proceeding.

13 And so I'm going to propose that we do that last.
14 And we'll take care of all the other things which are not
15 going to be nearly as time consuming first.

16 And I don't have any particular order to do these
17 in but I do have a list. And I think you're all going to be
18 pretty, both the parties are going to be pretty familiar
19 with what these are.

20 At the last session of the evidentiary hearings on
21 July 16th we either had just received or were awaiting the
22 final, the Phase 2 Study concerning transmission, and left
23 the record open for the purpose of putting that into
24 evidence along with the staff analysis of that.

25 We marked it as Exhibit 217 and it's been moved

1 into evidence. Is there any objection to that being
2 admitted?

3 MR. GALATI: No objection.

4 HEARING OFFICER RENAUD: Thank you. That will be
5 admitted then. I made a note to correct the footprint,
6 project footprint acreage noting on Efficiency Table 1 on
7 page 78. But since then we've become aware that the
8 footprint acreage is incorrect in a number of places.

9 And so we'll certainly correct it there. But I
10 think what we ought to do is agree on the number because
11 there have been variations in it.

12 Applicant, what would you --

13 MR. GALATI: Yeah, I --

14 HEARING OFFICER RENAUD: -- suggest we use?

15 MR. GALATI: -- I think our disturbance acreage is
16 7,025 acres.

17 HEARING OFFICER RENAUD: That's what I thought.
18 Staff do you agree with that?

19 MS. De CARLO: Yes I believe so. I would not
20 though, however, for the Efficiency section. The project
21 footprint that they utilized for their analysis is different
22 because it was based on, they did a calculation to determine
23 the efficiency per megawatt based on the land use.

24 And so they focused solely on those facilities of
25 the project that would be used to generate electricity. So

1 that's why their designated footprint was a lot smaller than
2 the 7,000.

3 HEARING OFFICER RENAUD: So, would I presume then
4 that 5,950 is a correct number?

5 MS. De CARLO: Yes.

6 HEARING OFFICER RENAUD: All right.

7 MS. De CARLO: For efficiency purposes.

8 HEARING OFFICER RENAUD: Good. Then we'll leave
9 that.

10 Let's see. I was trying to look for, all right.
11 On the, there were a number of references to the Phase 2
12 Study throughout the PMPD which made it sound as though it
13 were coming.

14 And it, in fact, had come or it has come as of the
15 date the PMPD was published and you've noticed a number of
16 places to correct that. And we'll do that.

17 No objection, I presume, from either staff or
18 applicant.

19 MS. De CARLO: Not from staff.

20 MR. GALATI: Yeah, no objection.

21 HEARING OFFICER RENAUD: All right. Good. And in
22 the Cultural Resources Section we had a couple of things.

23 The first was on the discussion of alternatives.
24 The staff analysis discussed alternatives in each of the
25 topic areas.

1 And in the PMPD we combined those all into an
2 Alternative Section.

3 And in the Alternative Section of the PMPD which
4 begins on page 24 we discussed. really, the two alternatives
5 that were left after all the others were eliminated.

6 And one was the reconfigured alternative which was
7 the same 1,000 megawatts on the same site but rearranged,
8 basically, to put it very simply.

9 And with respect to cultural resources impacts the
10 Committee concluded that, based on the evidence that was in
11 the record, impacts which had been determined to be
12 significant under the proposed project would remain
13 significant under the reconfigured project and there would
14 be really no difference with respect to cultural resources
15 impacts.

16 The alternative that was discussed in the PMPD has
17 been called the Reduced Acreage Alternative. Again, it's on
18 the same site but would involve just Units One, Two and Four
19 and would leave out Unit Three.

20 So the 750 megawatts instead of 1,000, again,
21 based on the evidence in the record, the Committee concluded
22 that since it's on the same site and the ground would be
23 disturbed, that the impacts to cultural resources, even if
24 they were slightly less due to the slightly less, slightly
25 smaller area of ground disturbance would still be

1 significant and came to the same conclusion that there would
2 still be significant impacts.

3 And we have, I see we have with us today Beverly
4 Bastian who was the author of the Cultural Resources Section
5 in the staff analysis.

6 And I wondered if you had anything to say to the
7 Committee about what you, your read of those two analyses,
8 those two conclusions that I just mentioned.

9 Are they, do you agree with those and do you have
10 anything to add? Microphone, yes.

11 THE REPORTER: It wasn't working earlier.

12 HEARING OFFICER RENAUD: Okay. Can someone else
13 give her a microphone? Thank you.

14 MS. BASTIAN: Yes. Thank you Hearing Officer. I
15 do agree with the conclusions on the general section in
16 Alternatives with regard to cultural resources.

17 And I have taken the opportunity to write up,
18 briefly, something that I would like to include as in an
19 errata that addresses these very things and concludes that
20 the impacts to cultural resources of each of these, the
21 reconfigured and the reduced acreage alternatives would be
22 significant similarly as to the proposed project.

23 And the contribution of each of these two, the
24 cumulative impacts for, in a regional sense, would be the
25 same as for the proposed project.

1 HEARING OFFICER RENAUD: All right. Thank you
2 very much. And I take it that's in the form of a memorandum
3 of some sort.

4 MS. BASTIAN: It is. I have that to add to the
5 record.

6 HEARING OFFICER RENAUD: All right. Thank you.
7 Well we'll get that from Ms. De Carlo later.

8 MS. BASTIAN: Okay.

9 HEARING OFFICER RENAUD: And the Committee will
10 consider that and incorporate it into the errata as
11 appropriate. And we thank you for your information here.

12 MS. BASTIAN: Thank you.

13 HEARING OFFICER RENAUD: I appreciate that. Okay.
14 Also on Cultural Resources as long we're on that topic, two
15 of the conditions of certification, Cultural 1 and Cultural
16 2 have caused the Committee some questions.

17 And I think I can sum those questions up in simply
18 saying that they are currently pretty open-ended about how
19 things will happen, who will do them and when they will.

20 And we'd like to see if there's any, at this
21 point, any further specificity that can be added to those
22 conditions.

23 MS. BASTIAN: Yes, thank you. There are two very
24 elaborately detailed programs that were included in the RSA.

25 They start on page 115 and they go through page

1 124, successively. The one for the prehistoric landscape
2 and the second for the World War II landscape.

3 So there is an elaborate description of who is
4 going to do these and exactly what they're going to do and
5 their interaction with staff as the responsible party, if
6 you will, for overseeing these programs being fulfilled as
7 they have been funded under CUL-1 and CUL-2.

8 The decision to on staff's part to leave this
9 detailed program, both of these detailed programs out of
10 CUL-1 and CUL-2 was quite deliberate and based on the fact
11 that a really crucial aspect of the success of these
12 programs is the hiring of regional specialists of such a
13 calibre that they're the known experts on the material
14 resources of these, of this area.

15 And they will be the ones, we felt they, they
16 should be the ones to have more input to what would go on in
17 these programs.

18 And if we put them in the conditions then the
19 programs would be locked in the detail that we've written
20 out and it would make it difficult to have the appropriate
21 input of these experts.

22 And secondarily, BLM is at this time in the
23 process of doing their programmatic agreement for Blythe and
24 it's expected that they will deal with these landscape
25 resources as well.

1 And we didn't want to have to carefully negotiate
2 the details of all of this in our Conditions of
3 Certification and then have to redo that with BLM for the
4 PA.

5 Excuse me, and moreover, staff will be involved
6 very extensively in the implementation of the programs as
7 they're funded under those two conditions.

8 HEARING OFFICER RENAUD: Mr. Galati.

9 MR. GALATI: Yeah. And we support that approach
10 as well for a couple of reasons.

11 One, the obligation of CUL-1 and CUL-2 are for us
12 to fund it not to actually do the study.

13 And what comes out of the funding is once the
14 appropriate people are hired is they will tell our cultural
15 specialists the type of research questions and the things to
16 look out for in the field so that when we implement the rest
17 of the conditions that they are answering the kinds of
18 questions that CUL-1 and CUL-2 are posing.

19 So the way we saw it was CUL-1 and CUL-2 helped
20 direct us and so they work for Energy Commission staff or
21 BLM help direct us and our people on what to look for.

22 Once the information is gathered it is given to
23 the people working under CUL-1 and CUL-2 so that they can
24 continue their broad look and their broad approach.

25 And Beverly did I oversimplify that?

1 MS. BASTIAN: No. I would just add that beyond
2 the immediate involvement with these regional specialists in
3 the each of the projects, and incidentally, this same
4 program or these same programs are to be implemented for
5 Genesis and we will be recommending them for Palen as well
6 because these are the three projects whose cumulative
7 impacts these programs are intended to mitigate.

8 Once our program specialists have carried out the
9 role that Mr. Galati has added here they will go on to take
10 the information, the archeological data that the three
11 projects generate and combine that with all of their library
12 and archival research to create a national register
13 nomination for each of these cultural landscapes.

14 So there's a sort of a feedback relationship going
15 on between these landscape level people and the three
16 projects-specific sets of cultural resources conditions.

17 MR. GALATI: Right. And then lastly, if the
18 program specifics were in the Cultural in CUL-1 and CUL-2
19 here and they were to change then each of the applicants
20 would be needing to come and make amendments over something
21 that maybe the cultural resource specialists all agree
22 should happen a certain way.

23 So I see this like funding the Common Raven Plan.
24 We don't know exactly what U.S. Fish and Wildlife Service
25 will do, the exact programs that they will use for the

1 money.

2 The condition doesn't specify what those are. But
3 it does require us to pay that fund because it's a
4 cumulative sort of approach.

5 And so we thought that was consistent.

6 HEARING OFFICER RENAUD: The way I see these two
7 they require the project owner, that the project owner shall
8 contribute. So that's firm.

9 And there's an amount of money. So that's firm.

10 The only thing that isn't firm is when or how soon
11 after being asked to. Would it be appropriate to put
12 something like that in? Or is the, did the parties feel
13 that there will be sufficient teeth behind the whatever is
14 done to ensure that these payments do get made promptly or
15 when they're due.

16 MR. GALATI: We thought there were enough teeth
17 because we've already been communicating with the Energy
18 Commission and are waiting for an invoice to file our third
19 payment up front to get them on board so we can do the rest
20 of the work under three, four, five and eight.

21 We can't really do the rest of the work until
22 these people are on board and help direct it.

23 So we're ready to write a check.

24 MS. BASTIAN: And it is in the process. It is in
25 process already. But I still needed the flexibility instead

1 of the specificity of a due date because, frankly, we've not
2 undertaken this sort of thing before here at the Energy
3 Commission and working through hiring people through our,
4 under our Aspen Contract to do this work and setting up
5 accounts and getting invoices put out by the Financial
6 Services Unit has taken a little time.

7 And I might have, I would have had trouble meeting
8 a very specific deadline at this point. I had high hopes it
9 would be sooner than it is but I'm assured that as of today
10 that we can now write contracts with two of the people that
11 we need.

12 One of them is already working and the fourth
13 person that is needed to do the part that Scott is waiting
14 on and that will be covered by this first installment on the
15 project's payment to fund these activities is available and
16 I hope we'll have him on hand in about two weeks.

17 And meanwhile I'm hoping the invoice will go out.
18 It's been promised.

19 HEARING OFFICER RENAUD: If the Committee were to
20 insert something like, promptly upon request, the project
21 owner shall contribute, et cetera. Would that be okay with
22 staff and applicant?

23 MR. GALATI: It would be okay with the applicant.

24 HEARING OFFICER RENAUD: All right.

25 MS. BASTIAN: It's --

1 HEARING OFFICER RENAUD: Does anybody up here,
2 Committee advisors want to pursue this, Ms. Allen, feel
3 free. I know you've studied this a bit more bit.

4 MS. ALLEN: Ms. Bastian could you give the
5 Committee a rough estimate on how long envision the
6 documentation and nomination process taking?

7 For example, is this something that you envision
8 might be completed by the end of the coming year, the end of
9 2011? Or do you envision that it's a process that might
10 take several years?

11 MS. BASTIAN: I'm quite certain it will take
12 several years because, at least, as it is planned now, and
13 understand this is, again perhaps, subject to what the
14 specialists want to do with respect to changing the details
15 of it but as it is planned now the nomination would not be
16 undertaken until all of the data recovery from the sites on
17 all three of these projects was completed.

18 And it's my understanding that the projects
19 themselves in their timetable and their phasing and the way
20 that we worked it out with them to only do the cultural
21 resources data recovery on those sites that they would
22 affect in each of their phases as they were to occur.

23 Data recovery might not be completed for two or
24 three years. I think that's how far out it's projected to,
25 the completion of all four of the fields here.

1 And that's when the nomination would start, that
2 process would start then.

3 So this, for the people carrying this out, the
4 landscape level studies, they will work intensively in the
5 next couple of months, three months, and then maybe have a
6 bit of a lull and then pick it up again and then have a lull
7 and then, however much that has to happen.

8 Again, three projects, three schedules until all
9 of the data are collected and can be summarized and put into
10 this nomination.

11 MS. ALLEN: Thank you for that additional
12 information. Could you give us a little more of your
13 thinking on the scenario that's outlined in the very last
14 paragraph of CUL-1 and a similar paragraph is CUL-2 as to
15 what would happen if one of the three I-10 area projects was
16 not built.

17 MS. BASTIAN: Is that to say with respect to what
18 the impact of that would be on the completion of the program
19 that we have in mind?

20 MS. ALLEN: Yes. And whether you've had any
21 conversations with the applicant about how they see this
22 paragraph being implemented.

23 MS. BASTIAN: I have not had a conversation with
24 the applicant about that. And what I was, any anticipations
25 I had there had to do with for whatever financial or other

1 reasons perhaps the one or more of these projects were not
2 to actually be built and I was thinking primarily of the
3 effects on my effort to get this documentation program
4 completed.

5 First, of course, if two of them were not to be
6 built the cumulative impact issue would be different.

7 And perhaps these programs would not be considered
8 necessary. That would put a very different light on it.

9 If one of them were not to be built it would
10 certainly affect the level of funding for these projects.

11 And my anticipation in that would be that we would
12 have to scale back on some of the activities that we were
13 planning for in these. The more, let's say the less-
14 essential but nice-if-we-can-do-them parts of the programs.

15 MR. GALATI: And Ms. Allen my perspective on this
16 is that once the people are on board there's a certain level
17 of effort that would have to be taken place whether it was
18 one project or three projects just to get up and running and
19 to ask the right questions.

20 But as the program started to go forward if one of
21 the projects didn't come on, the ability to evaluate the
22 data that's recovered from that facility you wouldn't be
23 doing that.

24 That's why the refund would be a prorata share if
25 you had started the project and started the process and then

1 dropped out or --

2 So that's how I saw it. Obviously, every
3 applicant would be taking a risk that they might be the only
4 project, start the program and then ask for, maybe it goes
5 away. I don't know.

6 But I think, you know, I think it is planned that
7 they'll be more than one project. So I think it would just
8 be scaled down proportionate to the amount of resources that
9 are being evaluated.

10 MS. ALLEN: Thank you. I think the regional
11 approach is a new area of work for all of us. So I look
12 forward to seeing how it unfolds.

13 MS. BASTIAN: Thank you.

14 HEARING OFFICER RENAUD: Okay. Thank you. We'll
15 stay on Cultural here. Starting on page 18 of applicant's
16 comments and on page 67 of staff's comments are some further
17 proposed changes. Mostly in the really corrections.

18 Have you each had the opportunity to review the
19 other's comments? Mr. Galati.

20 MR. GALATI: Yes, we've gotten through Cultural
21 for the staff changes and we agree with those changes. We
22 don't see anything that either is not supported in the
23 record or is not just clarification.

24 I did want to make a modification. What I sent
25 you had a mistake in it.

1 The request for a modification on page 370 which
2 is the leading equipment. The HTF freeze protection heat-
3 exchanger should also be deleted.

4 As we, I don't believe that's shown as a strike
5 through.

6 HEARING OFFICER RENAUD: It is on mine.

7 MR. GALATI: Okay. Yeah.

8 HEARING OFFICER RENAUD: So all that would be left
9 of that phrase would be, a heat transfer fluid, HTF system.

10 MR. GALATI: Yep, thanks.

11 HEARING OFFICER RENAUD: All right. And staff?
12 You're okay with applicant's changes on Cultural?

13 MS. BASTIAN: Yes. I guess it was my error in not
14 realizing the private in-holdings were not going to, any
15 part of them, were going to be used.

16 I misunderstood that.

17 HEARING OFFICER RENAUD: Okay. Good.

18 MS. BASTIAN: And I certainly have no problem
19 about how the equipment should be properly listed.

20 HEARING OFFICER RENAUD: Very well. Well we'll
21 include those changes in the errata then. Thank you for
22 your input on those things.

23 Any questions from Committee on Cultural? Very
24 good.

25 Okay, let's see. Okay. Turning to applicant's

1 comments, page five, General Conditions of Certification.
2 Applicant has requested some additional language regarding
3 the, really, the authority of the CPM, the Compliance
4 Project Manager.

5 It's the language that's shown in bold at the
6 bottom of page five in that paragraph.

7 Does that, have you had a chance to look at that
8 staff?

9 MS. De CARLO: We have and we object to the
10 proposed language. It's just going to be too complicated
11 for compliance staff to keep track of what filings are semi-
12 completed versus fully completed, what's still outstanding.

13 We're going to have a lot of these solar projects
14 making filings at the same time and having a provision like
15 this would, we believe, cause too much potential confusion.

16 It was proposed in the Genesis proceeding and
17 according to the Genesis PMPD the Committee in that
18 proceeding did not accept the proposed language.

19 So we're recommending the Committee here do the
20 same and reject the -

21 MR. GALATI: Yeah, I want to address this. First
22 of all from the Genesis proceeding. I didn't see that it
23 was considered. So I don't know if the Committee has
24 rejected it on purpose or rejected it on accident. I'll
25 find out on the eighth.

1 I want to put this in perspective. Wouldn't it be
2 a shame if we had BIO-28 which allows phased mitigation and
3 Cultural which allows you to avoid resources in a particular
4 area by staying 100 feet away from them, but I couldn't
5 start construction because my fugitive dust control plan did
6 not address Unit Four?

7 That would be a shame, wouldn't it?

8 So I guess I'd have to hire the engineer and tell
9 him, you need to design Unit Four as fast as your designing
10 Units One and Two so I can prepare a stormwater plan, for
11 example, for Unit Four and you get at those drawings done
12 enough because, you see, I know what the Commission staff,
13 compliance staff is expecting.

14 And they're not expecting the diagram I have in
15 the AFC. They're expecting design drawings.

16 So why would we spend the time, money and delay
17 the project to prepare a particular plan for Unit Four which
18 isn't going to start for construction for over a year?

19 Or three years, yeah. So if you look here I
20 didn't ask, I said, the CPM could reject it if we didn't
21 make our case that it was easily discernible.

22 I'm also glad to see Mr. Najarian because I
23 believe that the CPM has done this on many, many occasions.

24 For example, I'm not talking about CBO stamped
25 plans which have to include but there are many times where

1 you sit down with your CPM, you show a compliance matrix.

2 And in the compliance matrix is a very complicated
3 table that lists each condition, each plan, when you're
4 going to submit it and it's oftentimes where you say, look I
5 have this information now and I will give you the next
6 information later. Will this stop my notice to proceed?

7 And in some cases, up to the CPM's discretion, the
8 CPM can let you start construction even though there's
9 future compliance plans, revisions and things like that.

10 To me, we've contemplated a Phase 1A, a Phase 1B
11 and Phase 2 on this project. And it just would be a shame
12 that because of procedure and fear that it would be too
13 complicated that we're not even allowed to try.

14 Remember what we've asked here. If what we're
15 proposing is too complicated, the CPM could say, no. And
16 that is reasonable, fair and it would be an awful shame if
17 we couldn't start construction this year because we're
18 working on plans for Phase 3 and 4.

19 HEARING OFFICER RENAUD: Thank you. Staff, you
20 know, it does appear to leave all of this to the discretion
21 of the CPM.

22 Doesn't the CPM have a fair amount of discretion
23 already?

24 MS. De CARLO: They do. And then that would beg
25 the question of why is it necessary in this proceeding to

1 spell that out if it's worked well in the past?

2 If the Committee does want to go down that route
3 that way and specify that in this particular instance such
4 flexibility should be clearly marked in the PMPD then I
5 would suggest we specifically reference this idea of the
6 phasing, of the necessitating this particular language.

7 MR. GALATI: To clarify why I asked for the
8 language, is because what's plagued me as my hair has gotten
9 grey and fallen out is, not everybody around me has been
10 working at the Commission this long.

11 So a lot of times how things have worked in the
12 past are not always remembered by new staff.

13 And so it was clear to me when I brought this
14 issue up, the push back that I got from staff was just
15 amazing.

16 And so it was clear to me that people did not
17 believe the CPM had this authority. And that's why I put it
18 right here as opposed to putting it in every condition.

19 So it was just a restatement of how we did things
20 in the past to bring everybody up to speed.

21 HEARING OFFICER RENAUD: Well, all right. Any
22 questions from the Committee? All right, okay. No
23 questions? All right. I think what we'll do is the
24 Committee will take your comments under advisement and we'll
25 address one way or the other in the errata. But thank you

1 for your input on that.

2 Okay. Let's see. All right, well let's turn to
3 Worker's Safety and Fire Protection.

4 Applicant has suggested, let's see, let me remind
5 myself what this was, suggested some changes to page 180 and
6 185 of the PMPD.

7 And I wonder if staff has had an opportunity to
8 review those?

9 DR. GREENBERG: This is Alvin Greenberg. And,
10 yes, staff has had an opportunity to review these.

11 HEARING OFFICER RENAUD: All right. Good. Any
12 comments, thoughts on those for us?

13 DR. GREENBERG: Yes. On page 180 I have no
14 objection with it at all to change the, instituting the
15 change proposed by the applicant.

16 However, on page 185, the verification, the
17 proposed revision to the verification of a Condition of
18 Certification, Worker's Safety Six I do have an issue with
19 that.

20 The applicant is requesting that the secondary
21 emergency access road be provided to the Riverside County
22 Fire Department and the CPM 60 days prior to site, prior to
23 delivery (loud music playing in background) of heat transfer
24 fluid as opposed to what is written in the PMPD.

25 HEARING OFFICER RENAUD: Mr. Greenberg.

1 DR. GREENBERG: Yes.

2 HEARING OFFICER RENAUD: We're getting a lot of
3 noise from the --

4 DR. GREENBERG: Yeah, I noticed that.

5 HEARING OFFICER RENAUD: -- hold on one second.
6 Those of --

7 DR. GREENBERG: Thank you.

8 HEARING OFFICER RENAUD: -- you participating by
9 telephone, one of you apparently put us on hold and we're
10 hearing your music. We're hearing others talking. We're
11 hearing someone doing a lot of movement of their telephone.
12 We can hear everything that you're doing and you're making
13 it quite difficult for us to hear the proceedings.

14 If you need to make noise would you please mute
15 your telephone. Don't put it on hold but mute it.
16 Otherwise would you please remain silent or as if you were
17 here in the room watching the proceedings. We appreciate
18 it.

19 Okay, Mr. Greenberg, go ahead.

20 MR. BOYD: Well hold on a second. This is Mike
21 Boyd. I'm muting my phone off. I believe that Mr. Figueroa
22 is talking. And do you guys have the capability to mute on
23 your end? Because I don't know if Alfredo has that
24 capability.

25 HEARING OFFICER RENAUD: Well, we'll try. Okay,

1 thank you for that comment.

2 MR. BOYD: But you know, so when you call the
3 public please allow me time to unmute. Thank you.

4 MR. FIGUEROA: Excuse me. This is Alfredo
5 Figueroa.

6 HEARING OFFICER RENAUD: Yes Mr. Figueroa. We're
7 in the middle of the proceeding here. Could you wait --

8 MR. FIGUEROA: Oh I thought somebody was, called
9 my name.

10 HEARING OFFICER RENAUD: Yes, Mr. Figueroa.

11 MR. FIGUEROA: Yes sir.

12 HEARING OFFICER RENAUD: Could you please wait
13 until the public comment period and then we'll call on you.

14 MR. FIGUEROA: Oh, okay. Thank you.

15 HEARING OFFICER RENAUD: In the meantime we can
16 hear everything you're doing there. So if you could --

17 MR. FIGUEROA: Oh, was I had a tape on it --

18 HEARING OFFICER RENAUD: Yeah, if you could keep
19 it down we'd appreciate it.

20 MR. FIGUEROA: Thank you. You bet I will.

21 HEARING OFFICER RENAUD: All right. We'll look
22 forward to hearing from you later.

23 MR. FIGUEROA: Thank you.

24 HEARING OFFICER RENAUD: Okay. Thank you.

25 All right, Mr. Greenberg, Dr. Greenberg, go ahead

1 please.

2 DR. GREENBERG: Thank you very much. Yeah, it was
3 quite difficult to talk over that.

4 The present condition calls for submittal of plans
5 for the secondary emergency access road 60 days prior to
6 site mobilization.

7 The applicant feels that the secondary access road
8 is not necessary until the delivery of heat transfer fluid
9 and is suggesting removing the word, site mobilization, and
10 instead, having this verification requirement 60 days prior
11 to delivery of heat transfer fluid.

12 That poses certain problems. First off, I'm not
13 entirely sure of the timeline for the building of the main
14 road and then, following that, the secondary access road.

15 But more importantly the secondary access road is
16 not just required or necessary until there are large amounts
17 of heat transfer fluid on the site.

18 There still is the need for the Riverside County
19 Fire Department to respond in an appropriate timeline for
20 rescue, for emergency medical services long before the heat
21 transfer fluid is received on site should the main road be
22 blocked for whatever reason.

23 I'd also like to point out that there will be a
24 fuel depot during construction that will contain in excess,
25 slightly in excess of 20,000 gallons of diesel and a lesser

1 amount of, of course, gasoline.

2 So there will be larger amounts of flammable,
3 hazardous materials on site than we usually have during
4 construction.

5 So for those reasons I would oppose changing this
6 verification, and instead, keep it as is written prior to
7 site mobilization.

8 HEARING OFFICER RENAUD: Care to respond,
9 applicant?

10 MR. GALATI: Dr. Greenberg I will, as you know,
11 admit to I picked delivery of HTF thinking that's why the
12 secondary access road -- let me tell you what the problem
13 is. And maybe there's another situation.

14 The problem is that the secondary access road as
15 we get into the design in working with the county and fire
16 department there might be some problems with the width of
17 it. There might be the problems with the design of it that
18 need some time to take out, to work out.

19 Not that we can't work them out, we're just
20 worried about being able to 60 days prior to site
21 mobilization and then having final plans done 30 days prior
22 to site mobilization.

23 So if we could have, somehow have, more time. If
24 we could pick another reasonable time frame that would allow
25 us more time to work with, and I hear Dale Evenson, and Dale

1 we have Elizabeth Ingram in the room as well and I know that
2 you guys have been talking about this issue. If we could
3 have some more time to make sure the secondary access road
4 meets the county requirements which might take a variance on
5 the width and also meets the fire department's needs then
6 that would help us.

7 DR. GREENBERG: Certainly. Mr. Galati I can
8 certainly agree to whittling down this time frame. I have
9 spoken about these similar issues with Compliance and
10 Compliance is, I'm not going to quote them directly on this
11 particular request, but on other requests of a similar
12 nature they've told me that they can really cut back on the
13 time that's necessary for a turn around.

14 So what kind of time frame are you looking at?

15 MR. GALATI: Can we, yeah we, how about the, we
16 were thinking about the end of Phase 1A.

17 Phase 1A starts and puts in, for example, the
18 linear feature, the well and then starts on the shared
19 facilities building. But I'll let Elizabeth Ingram provide
20 more information on that.

21 MS. INGRAM: Can everyone hear me?

22 HEARING OFFICER RENAUD: Yes.

23 MS. INGRAM: Okay. This microphone appears to be
24 working. Phase 1A includes the construction of the road,
25 use of one of our, drilling of several wells.

1 There will be some mass grading in a small portion
2 of Unit One towards the power block and assembling of
3 foundations and then the shared facilities area and the
4 construction of the assembly hull.

5 But that's primarily the activities in Phase 1A
6 that will go through the first part of next year.

7 MS. HARRON: This is Alice Harron. It's a small,
8 it's a short, relatively short period of time. But it will
9 give us the time to work out the items that Mr. Galati was
10 describing.

11 That's all we're really asking for is just that
12 amount of time.

13 MS. INGRAM: And I'd like to add that, Mr. Evenson
14 can speak up if you'd like as well, but we have been
15 consulting with Riverside County Fire Department and we've
16 proposed some options but we've hit some additional
17 requirements by additional, another agency. The Road
18 Permitting Group at the county that, if you follow the way
19 that the verification reads now we need to turn in our
20 proposal in two weeks.

21 And we just are not sure that that's enough time.

22 And we'd like some more time to work this out between the
23 two county agencies so that we design the proper secondary
24 access road.

25 DR. GREENBERG: Two questions. And this is Alvin

1 Greenberg again. When will the fuel depot go in?

2 MR. GALATI: I think we might have to get back on
3 that. Is that the critical timeline for you?

4 DR. GREENBERG: The second one would be, my second
5 question is, when would you do some, any type of deep
6 trenching?

7 In other words, that puts workers in risk. The
8 soils out there in the desert are very dry and loose. And I
9 want to make sure that the workers can get immediate
10 response should there be a cave in, a trenching accident.

11 And that's what, you will need the fire department
12 to respond to that. And I know we're getting into a what-if
13 scenario of what if the main road is blocked and just as
14 there is a trenching cave in but we do need to address this
15 situation in the timeline of when you'll be doing that and
16 how deep the trenches would go.

17 MR. GALATI: If the Committee would allow us, we
18 would like to file tomorrow a proposal trying to address
19 what Dr. Greenberg just said and see if we can't come,
20 answer some of the questions that he has and then possibly
21 propose a verification that would be consistent with that.

22 Would that be okay?

23 HEARING OFFICER RENAUD: Yes, that's fine, thank
24 you. Obviously, the comment period is still open so things
25 can be submitted anytime during that period.

1 And we appreciate that, thank you. And thank you
2 Dr. Greenberg.

3 DR. GREENBERG: And that's certainly okay with me.
4 And we can really work out a compromise here that will
5 address the real-life situations and yet not be too onerous
6 to the applicant.

7 HEARING OFFICER RENAUD: Okay, thank you. I know
8 one of our callers is with Riverside County Fire. Were you
9 here for that purpose Mr. Evenson?

10 MR. EVENSON: I am here for that purpose. This is
11 Dale Evenson. And I raised my hand on the screen.

12 HEARING OFFICER RENAUD: I see, yes you did.

13 MR. EVENSON: I don't know if that goes through or
14 not.

15 HEARING OFFICER RENAUD: I guess I'm calling on
16 you now. Thank you. What would you like to add here?

17 MR. EVENSON: Okay. No, I just wanted to say that
18 I've been working with the applicant and we do have a
19 meeting tomorrow. And there seems to be a discrepancy
20 between the fire department's requirements which are less
21 than county transportation's requirements.

22 We'll try to work that out tomorrow. And we'll
23 work with the applicant and Dr. Greenberg to get this done
24 as quickly as we can.

25 HEARING OFFICER RENAUD: We appreciate that very

1 much. And thank you for joining us.

2 MR. EVENSON: You're welcome.

3 HEARING OFFICER RENAUD: All right. Sounds like
4 we're done with that one. Let's move on to Traffic and
5 Transportation. I'm looking at page 19 of applicant's
6 comments.

7 The second item, the glint and glare. We know
8 there was disagreement between the parties about the impact
9 committee. The PMPD indicates the Committee decision or
10 finding that there was potential glint and glare impact and
11 in connection with aviation.

12 And applicant, I think, feels perhaps slighted
13 that we didn't acknowledge their position in the PMPD. And
14 I can certainly understand that and has just asked that we,
15 at least, set forth their contentions.

16 The Conditions of Certification are apparently
17 agreed to and I'm not sure why I'm asking staff if that's
18 okay with you but I might as well. Do you have any comments
19 or objections to our doing as Mr. Galati asks?

20 MS. De CARLO: No, no objections to reflecting the
21 applicant's position on the issue.

22 I do have a couple of minor changes to TRANS-9
23 that were actually agreed upon. We did it in writing at the
24 last minute so that's why it's probably not reflected in Mr.
25 Galati's proposal.

1 I could read those now if the Committee would
2 like.

3 HEARING OFFICER RENAUD: Okay. All right.

4 MS. De CARLO: Okay, so this is for the third
5 bullet point under TRANS-9. Access, should actually be,
6 axis, a-x-i-s.

7 MR. GALATI: They told me to correct that nine
8 times (laughing). And I just apparently can't.

9 MS. De CARLO: And then after, azimuthal angle,
10 you should insert, of the sun.

11 HEARING OFFICER RENAUD: That's azimuth angle?

12 MS. De CARLO: Yeah.

13 HEARING OFFICER RENAUD: Okay, of the sun.

14 MS. De CARLO: Of the sun. And those were the
15 only two changes.

16 HEARING OFFICER RENAUD: All right. Applicant is
17 okay with those?

18 MR. GALATI: Yes, now that I didn't have to
19 correct them.

20 HEARING OFFICER RENAUD: All right, we've got
21 that. Applicant also in the same topic, let's see, let me
22 make sure I'm not skipping anything, requested a change to
23 TRANS-9 on page 20.

24 Is that, I don't think that's the same thing we
25 were just talking about with the wording that you, or

1 spellings but staff have any comments on that?

2 MR. GALATI: I think if you take what I put in
3 TRANS-9 and make the changes that Ms. De Carlo just read
4 into the record to that version of TRANS-9, that should
5 replace the TRANS-9 in the PMPD.

6 MS. De CARLO: Yeah, I'm sorry. I wasn't clear
7 about that. Yeah, the changes were to the applicant's
8 proposed changes and with our proposed changes that would
9 all encompass.

10 HEARING OFFICER RENAUD: Same with 10?

11 MS. De CARLO: Ten is fine. It doesn't need any
12 alteration.

13 MR. GALATI: I also asked for a change to TRANS-8.
14 I didn't want you to skip over that. It was a verification
15 change on the timing of a navigation easement.

16 A navigation easement is a notice to the world
17 that people have a right to fly over air space.

18 And they're typically done when you complete the
19 structure as part of a certificate of occupancy.

20 So I asked for, the condition asked for, prior to
21 the operation of any phase of the project that it be done.
22 We asked that it be, the verification be the same because it
23 was prior to construction.

24 HEARING OFFICER RENAUD: Any objection to that
25 staff?

1 MS. De CARLO: I don't see a problem with that
2 change.

3 HEARING OFFICER RENAUD: All right then I'll do
4 that. Okay, we're working our way toward Biological
5 Resources. I think I've pretty much gone through
6 applicant's comments except for the biological issues that
7 we'll, well no, now Soil and Water, of course, sorry about
8 that.

9 All right. Let's move on to Soil and Water then.
10 This is sort of like the issue I brought up on glint and
11 glare.

12 In the PMPD the analysis and the findings reflect
13 potential for the project's use of groundwater to effect or
14 to result in recharge coming from the Colorado River if I am
15 stating that correctly.

16 And the applicant is strenuously pointing out that
17 their position is that it does not, that will not happen.
18 That the evidence supports their position. That we should
19 at least change the wording throughout the section to
20 reflect that the -- to replace the references to the
21 Colorado River with the Basin.

22 The Committee's take on that initially is that
23 replacing the River with the Basin still leaves open the
24 possibility that the Basin isn't being recharged by the
25 River. But at least it also leaves it more open for the

1 applicant's position as well and this would not change any
2 of the conditions of certification.

3 Staff, do you have any comment on that issue that
4 has been raised by the applicant?

5 MS. De CARLO: With the exception of one minor
6 change we are in agreement with the applicant's proposed
7 changes. We believe they would just reflect the difference
8 of opinion that applicant and staff has with regard to the
9 potential for impact but doesn't change the ultimate
10 conclusion and the need for mitigation.

11 The one change I would request the Committee
12 consider is on page 17 of the applicant's proposed changes,
13 finding number 5. The applicant proposes to insert the
14 sentence: "The uncontroverted evidence is that the proposed
15 project does not require an entitlement of Colorado River
16 water to pump groundwater."

17 HEARING OFFICER RENAUD: Yes.

18 MS. De CARLO: We would suggest the inclusion of
19 the word "currently." So: "The uncontroverted evidence is
20 that the proposed project does not currently require an
21 entitlement."

22 MR. GALATI: That's fine with us. And to I guess
23 further belabor the point. That finding, that finding is
24 probably one of the most important, to give you sort of a
25 real world gut check. When the PMPD came out Ms. Harron

1 immediately got a request from due diligence counsel, where
2 is your entitlement to the Colorado River for your DOE loan
3 guarantee and for the financing that you are trying to go
4 for. Which we have been saying and had legal opinions that
5 we don't need an entitlement. So this is very, very helpful
6 and we appreciate that coming into the decision. And I
7 think it also clarified things on the federal level as well
8 so thank you.

9 HEARING OFFICER RENAUD: Well thank you.
10 Obviously it's up to the Committee to decide what the
11 uncontroverted evidence is and I am not guaranteeing that
12 your suggested language will appear. But it's good to have
13 your suggestion and it is good to get staff's response to it
14 as well; that is helpful. And we will consider what you've
15 requested.

16 On page 18, again, of the applicant's comments
17 there's a request for a change to the verification to Soil
18 and Water 10. Staff, what is your take on that?

19 MS. De CARLO: We don't object to that change.

20 HEARING OFFICER RENAUD: All right, good.

21 On page 366 applicant has said that we need to
22 include the waste discharge requirements from Appendix B, C
23 and D of Exhibit 202. I looked at those. I'm not sure if
24 you're suggesting -- exactly what you're suggesting. That
25 we insert them, refer to them?

1 MR. GALATI: Here's where things are a little bit
2 different than normal for me. I believe that the Energy
3 Commission is actually issuing the waste discharge
4 requirements. Those are actually part of your license and
5 we will not be getting a separate permit from the Regional
6 Water Quality Control Board. And that's why staff included
7 those as an appendix. We went through them, we had
8 discussions about them. I thought you needed to include
9 those as the requirements of our permit into the decision.

10 HEARING OFFICER RENAUD: Well it certainly
11 couldn't hurt and it would add clarity so I don't see any
12 reason why we wouldn't do that. And we do appreciate your
13 calling that to our attention.

14 Ms. De Carlo, did you want to add to that?

15 MS. De CARLO: No. We are trying to clean up our
16 permitting process for our in lieu, you know, to be truly in
17 lieu and not continually refer to other agencies' permits.
18 So this is an attempt to -- we would tell the applicant to
19 go get their WDR. Now we are incorporating that into our
20 Commission decision. So these WDRs we see as similar to
21 conditions of certification.

22 HEARING OFFICER RENAUD: Good, thank you very
23 much. All right, great.

24 Staff, let me ask you before we move on to the
25 biological resources. Did you see anything else in the

1 applicant's comments that you wanted to address? Most of
2 the other suggestions for changes appear to be
3 clarifications, to me, or corrections.

4 MS. De CARLO: Yeah, no, outside of Biological
5 Resources I believe we have discussed any of the staff's
6 objections to their proposed changes.

7 HEARING OFFICER RENAUD: And likewise to applicant
8 for staff's?

9 MR. GALATI: I will have to go back and take a
10 look. I thought that their -- as long as the Soil and Water
11 changes weren't inconsistent with the changes we, and I
12 didn't think that they were. So I think that we're down to
13 the Biology conditions.

14 Did you see anything else in there? There was
15 something about a 100-year storm that we are checking on on
16 the design of the evaporation ponds but I think we have to
17 get back on that.

18 HEARING OFFICER RENAUD: Would that be in Soil and
19 Water?

20 MR. GALATI: Yes. There was a, there was a
21 request in Soil and Water to make a change to some of the
22 text. Not a condition but some of the text and discussion
23 in the PMPD about the evaporation ponds being designed for a
24 100 year flood. We just wanted to check that that is, in
25 fact, a requirement.

1 HEARING OFFICER RENAUD: That looks like it might
2 be on page, starting on 65.

3 MS. INGRAM: What I'm referring to is there's two
4 references. One is in staff's comments on page 325 of the
5 PMPD and the other was on pages 333 to 334. There was just
6 references and we just would like to double-check that. But
7 the rest, I think, are fine.

8 HEARING OFFICER RENAUD: All right. So you want
9 to get back to us on those?

10 MS. INGRAM: Yes, please.

11 HEARING OFFICER RENAUD: Later in the day?

12 MS. INGRAM: Yes, please.

13 HEARING OFFICER RENAUD: I see what you're
14 referring to, yes.

15 MR. GALATI: Yes.

16 HEARING OFFICER RENAUD: Basically change "large"
17 to 100 year.

18 MS. De CARLO: And my understanding from staff was
19 that was just a clarification of the record. That wasn't an
20 actual substantive change than what had previously been
21 discussed.

22 MR. GALATI: Yeah, we just have to --

23 HEARING OFFICER RENAUD: All right, just --

24 MR. GALATI: We just have to check with our person
25 if that is what it is designed to.

1 HEARING OFFICER RENAUD: Okay, let us know. And
2 just because we move on to Biology doesn't mean you can't
3 come back for something else.

4 MR. GALATI: Okay. Before we move on to Biology I
5 have another mistake in mine. On page 3 of the applicant's
6 comments under the section, Fuel Supply and Use, page 12.
7 We asked for a change to the diameter of the pipeline that
8 could be connected. I should have asked for up to 12 inch.

9 We asked our engineers what is the largest that the
10 pipeline could be now that it is being formally designed.

11 I point out that you dig a trench with a 12 inch
12 bucket and you put a 10 inch line in or you put a 4 inch
13 line in, I think it's the same disturbance. But I just
14 wanted to not -- if we came back with a 10 inch line I
15 didn't want to have to come to the Committee for an
16 amendment.

17 HEARING OFFICER RENAUD: All right. I take it
18 staff has no objection to that.

19 MS. De CARLO: Yeah, I don't see a problem with
20 that. I do have a question if that has concluded.
21 Underneath that the proposed change at the bottom of page
22 three. You strike out 24 months but there is no inserted
23 alternative number of months.

24 HEARING OFFICER RENAUD: Good point.

25 MS. INGRAM: We were just striking the two.

1 MS. De CARLO: Oh, the two was only struck out,
2 okay.

3 MR. GALATI: Yeah.

4 HEARING OFFICER RENAUD: So we're changing 24 to
5 4? Or changing whatever. It's going to be 4, is what
6 you're asking.

7 MR. GALATI: Correct.

8 HEARING OFFICER RENAUD: Is that right?

9 MR. GALATI: Yes.

10 HEARING OFFICER RENAUD: Good.

11 MR. GALATI: Yes. I have two more changes that we
12 caught. On page 75 of the PMPD under Power Plant
13 Efficiency. There is a line that says there are two steam
14 turbines per power block. There's just one steam turbine
15 per power block for a total of four steam turbines. To make
16 that change.

17 And on page 511 in Cultural. The first paragraph
18 lists -- I think actually it's Visual. It lists heights of
19 items and the first one says, 140 foot steel transmission
20 line poles when they are up to 145 feet.

21 HEARING OFFICER RENAUD: What page was that again,
22 please?

23 MR. GALATI: That was on page 511 of the PMPD,
24 item number one. Oh yes, and we also needed to strike out
25 item number three which refers to a HTF heater, which we had

1 removed from the project. So three is struck and one is
2 made from 140 to 145.

3 HEARING OFFICER RENAUD: And I think the heater
4 thing is in your changes, right?

5 MR. GALATI: It is in most places but this is an
6 area where I didn't catch that.

7 HEARING OFFICER RENAUD: Okay. And is that also
8 on 511 then?

9 MR. GALATI: Yes.

10 HEARING OFFICER RENAUD: All right. All right,
11 thank you. Staff, I didn't see anything in yours that's not
12 Biology that we haven't covered yet or that isn't acceptable
13 to applicant.

14 MS. De CARLO: I think that's correct.

15 HEARING OFFICER RENAUD: Sound good?

16 MS. De CARLO: We've covered everything else.

17 HEARING OFFICER RENAUD: All right, okay, good.
18 Okay, we'll take a deep breath and move on to Biological
19 Resources. Hold on one moment.

20 Staff's comments on Biology are extensive.
21 Something on the order of 50-plus of the pages of the
22 comments are in the Biological Resources area. I went
23 through them. Most of them looked to me like clarifications
24 and corrections and I wonder if the applicant wants to
25 comment on any of the staff's proposed changes?

1 MR. GALATI: I would ask the Committee for a
2 moment to be able to talk to staff. Because what looks like
3 it might be innocuous change and may be intended to be an
4 innocuous change might have some pretty serious
5 ramifications. Some of the condition changes might -- it
6 might be that staff didn't intend that. And that we might
7 be able to change a word or two or change the order of
8 something and resolve it.

9 HEARING OFFICER RENAUD: All right.

10 MR. GALATI: So could we have maybe a half hour to
11 talk to staff.

12 HEARING OFFICER RENAUD: That sounds like it could
13 be very productive and so we'll call this a Committee-
14 sponsored workshop for you to make sure you're understanding
15 one another with respect to the changes that have been
16 suggested. We'll be in recess until 3:45.

17 (Off the record at 3:13 p.m.)

18 (On the record at 4:38 p.m.)

19 HEARING OFFICER RENAUD: We are on the record.

20 THE REPORTER: We are on the record.

21 HEARING OFFICER RENAUD: Very good. On the record
22 resuming the Committee Conference. I thought we would
23 finish anything else we need to get done and then take
24 public comment.

25 Before we leave the topic of Biological Resources.

1 If you're looking at BIO-21, I'm not sure you've gotten to
2 that yet.

3 MR. GALATI: Almost.

4 HEARING OFFICER RENAUD: There are some references
5 to the NFWF subaccount. That issue has also come up with
6 respect to -- in the Beacon Solar Project. So you might
7 want to refer to the language that was issued by that
8 Committee and shoot for consistency with that.

9 MR. GALATI: Okay, we'll look at that.

10 HEARING OFFICER RENAUD: Just an advisory from the
11 Committee. All right.

12 Is there anything not Biological Resources that
13 the parties would wish to bring up at this point?

14 MR. GALATI: I'm assuming that staff was okay with
15 our change in Land Use since it's the same change that we
16 asked in Cultural. And that is just an acknowledgement that
17 the project does not involve work on private land.

18 HEARING OFFICER RENAUD: Yes. I assume you were.

19 MS. De CARLO: Yeah, if that's an accurate
20 representation that's fine.

21 MR. GALATI: It is, yeah.

22 HEARING OFFICER RENAUD: Yes, I had taken that as
23 more of a correction than anything else. I think anything
24 the Committee hasn't mentioned from either of your comments
25 are things that we viewed as not controversial and good

1 suggestions and we thank you. But if there's any of those
2 that any of you would like to raise, it would be a good
3 time.

4 MR. GALATI: There is nothing else from the
5 applicant.

6 HEARING OFFICER RENAUD: Staff.

7 MS. De CARLO: The things we haven't discussed
8 with regards to the applicant proposal we are fine with,
9 except for Bio, obviously.

10 HEARING OFFICER RENAUD: All right, very good, all
11 right.

12 Well then, I think the thing to do is open for
13 public comment. It looks like we don't have any members of
14 the public here to comment. I believe we will have some
15 people on the phone who would like to comment. I'm just
16 wondering if I should, maybe I should try and get a list of
17 who is on the phone who would like to comment. Then I can
18 call you when it's your turn. Let's see. Mike Boyd, are
19 you there?

20 MR. BOYD: Yes, sir.

21 HEARING OFFICER RENAUD: Okay, I know you're going
22 to want to comment.

23 MR. BOYD: Yes, sir.

24 HEARING OFFICER RENAUD: Well, I assume. Right?

25 MR. BOYD: Yes, sir.

1 HEARING OFFICER RENAUD: Okay. Alfredo Figueroa,
2 will you be wishing to comment?

3 MR. FIGUEROA: Yes.

4 HEARING OFFICER RENAUD: All right, thank you. Is
5 there anyone else who wishes to --

6 MR. FIGUEROA: Did you hear me? I had it plugged.
7 Yes, I'm sorry. I had the --

8 HEARING OFFICER RENAUD: I heard you.

9 MR. FIGUEROA: Oh you did? Oh great, thank you.

10 HEARING OFFICER RENAUD: We'll call you when it's
11 your turn.

12 MR. FIGUEROA: Thank you.

13 HEARING OFFICER RENAUD: Anyone else? I'm seeking
14 anyone else who is on the phone who would like to make a
15 public comment to the Committee.

16 All right, let's go. Let's limit the comments as
17 close to five minutes per person as we can. Mr. Boyd, would
18 you like to proceed?

19 MR. BOYD: Certainly. First, I want to raise the
20 issue of -- and this is the issue that apparently the BLM
21 and the CEC have failed to address. Who can participate in
22 tribal consultations. And so the question is this: Can
23 applicants for a federal permit carry out tribal
24 consultations? And the answer to that question is, no.
25 Federal agencies cannot unilaterally delegate their

1 responsibilities to conduct government-to-government
2 consultation with Indian tribes to non-federal entities.

3 It's important to remember that Indian tribes are
4 sovereign nations. Their relationship with the federal
5 agency exists on a government to government basis. For that
6 reason some tribes may be unwilling to consult with non-
7 federal entities associated with a particular undertaking.
8 Such non-federal entities include applicants for federal
9 permits as well as contractors who are not government
10 employees but are hired to perform historic preservation
11 duties for a federal agency. In such cases the wishes of
12 the tribe for a government to government consultation must
13 be respected and the agency must carry out tribal
14 consultation for that undertaking.

15 In this case what we have is a different approach.
16 First off, the BLM including -- in its final EIS for this
17 project includes what's called a programmatic agreement.
18 And that programmatic agreement essentially is intended to
19 allow the applicant and the CEC staff to participate in a
20 Section 106 consultation, which is typically supposed to
21 take place between the federal agencies.

22 And in this, in this programmatic agreement that
23 is being put forward it says, whereas the BLM in
24 consultation with SHPO and ACHP and pursuant to 36 CFR 100.4
25 -- it basically -- what it says is the California Energy

1 Commission may certify the Blythe Solar Project located on
2 public land, pursuant to the Warren-Alquist Act. For the
3 purposes of consistency proposes to manage all historical
4 resources in accordance with stipulations of this agreement.

5 Okay, so here we have the CEC essentially being given the
6 authority to manage these historic resources.

7 And then the next is: Whereas the BLM in
8 coordination with the Energy Commission has authorized the
9 applicant to conduct specific, identified efforts for this
10 undertaking, including a review of existing literature and
11 records, cultural resources, ethnic graphic studies,
12 geomorphological studies to identify historic properties
13 that may be located within the area of potential effect,
14 APE.

15 And then it's agreeing to let the applicant have
16 the archeological consultants complete all the
17 investigations.

18 So essentially this agreement is allowing,
19 contrary to the law, that the applicant and the CEC staff to
20 engage in consultation with the tribe. And it's no surprise
21 that there is no tribes that I'm aware of that are
22 participating in this programmatic agreement.

23 Now to be more specific to the PMPD. The PMPD
24 section on Cultural Resources specifically relies on
25 Commission staff's consultant and applicant's consultant. A

1 prime example I'll take is page 389 on determination of
2 ineligible resources. On the basis of the information
3 provided by AECOM, which is the applicant's consultant, or
4 otherwise gathered, staff determined -- Staff, who is not
5 really qualified to make this determination, determined
6 ineligible for the CRHR the Kokopilli and Cicimiti geoglyphs
7 identified by representatives of La Cuna de Aztlan Sacred
8 Sites Protection Circle as a Native American sacred site
9 possibly subject to impacts from construction in the BSPP
10 linear facilities corridor.

11 So the fact of the matter is you guys are saying
12 that you can go in there and destroy that stuff if you want
13 to because you don't consider it a significant resource that
14 needs to be protected, okay. And you're relying on a
15 programmatic agreement which is totally illegal because you
16 guys can't participate in a consultation. You're a state
17 agency, not a federal agency. Only the BLM can participate
18 in a consultation; programmatic agreement or no programmatic
19 agreement.

20 Essentially that's my comments on your PMPD.
21 Let's leave it at that and let Alfredo have a chance to say
22 anything. Thank you.

23 HEARING OFFICER RENAUD: Thank you, Mr. Boyd, for
24 your comment.

25 Alfredo Figueroa, you're next.

1 MR. FIGUEROA: Thank you very much. Well, Mike
2 said a lot. And I have, I have the consultation with Indian
3 tribes handbook right here in front of me.

4 But I was just going to say, the majority of you
5 people have seen our aerial video and have seen our
6 PowerPoint. Like Mike said, we have had, you know,
7 Mr. Kadish and Mr. George Kline tour with us. Not just the
8 Kokopilli and Cicimiti sites but also the temples and these
9 other sites, the trails and all that, which we have over 25.

10 And let me tell you, if they didn't see what was there well
11 I don't know what else you had to do.

12 Like the videos and the PowerPoint where we showed
13 the majority of the people there at the UCR Extension at
14 Palm Desert. I was there available for questions. But the
15 lady I know, Ms. Bastian, she was going to sleep so she
16 didn't pay too much attention I don't imagine. But I know
17 what she wrote in her cultural resources report.

18 But anyway, we are willing to have you come down
19 so we can show you people. We had also -- you know. I know
20 I heard that they are reducing some of the area. But that
21 still doesn't fulfill any kind of justification to destroy
22 all these sites. So we are totally in opposition and we are
23 going to continue in this. We are just beginning with our
24 struggle.

25 And that's all I have to say. But, you know,

1 talking about the state being in a financial dilemma. This
2 is just going to get them worse. You know, if you people
3 would recognize these facts then we could get these things
4 over and done with. And thank you very much.

5 HEARING OFFICER RENAUD: Thank you for your
6 comment. Do we have anyone else calling in who would care
7 to make a comment to the Committee?

8 All right, thank you. Well that will close our
9 public comment period.

10 Is there anything further for the Committee
11 Conference before we adjourn that?

12 Commissioner Weisenmiller, any comments?

13 ASSOCIATE MEMBER WEISENMILLER: Again, I'd
14 certainly like to thank the participants, particularly the
15 public comment this afternoon. And also encourage the staff
16 and the applicants to keep marching through and sort of
17 resolve any of the technical differences on the comments and
18 certainly to file the comments in a timely fashion.

19 HEARING OFFICER RENAUD: All right, thank you.
20 Well then we'll adjourn the Committee Conference. The
21 Committee sponsored workshop can continue as long as you
22 need to. Carry on. Thank you, we're adjourned.

23 (Whereupon, at 4:52 p.m. the Committee
24 Conference was adjourned.)

25 --oOo--

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; 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 conference, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of September, 2010.

JOHN COTA