

**DOCKET**  
**08-AFC-13**

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November 30, 2009

Mr. Christopher Meyer  
CEC Project Manager  
Attn: Docket No. 08-AFC-13  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Mr. Jim Stobaugh  
BLM Project Manager  
Attn: Docket No. 08-AFC-13  
Bureau of Land Management  
P.O. Box 12000  
Reno, NV 89520

RE: SES Solar One Project  
Transcript from the September 16<sup>th</sup> Data Request and Issues Resolution Workshop

Dear Mr. Meyer and Mr. Stobaugh,

Tessera Solar hereby submits the transcript from the September 16<sup>th</sup> Data Request and Issues Resolution Workshop. I certify under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge.

Sincerely,

Felicia L. Bellows  
Vice President of Development

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CALICO - SOLAR ONE  
DATA RESPONSE AND ISSUES RESOLUTION WORKSHOP  
--000--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAMPTON INN AND SUITES  
2710 LENWOOD ROAD  
BARSTOW, CALIFORNIA

WEDNESDAY, SEPTEMBER 16, 2009

11:21 A.M. - 4:00 P.M.

REPORTED BY:  
AMY P. SMITH  
CSR #12154

Job No. 091609APS

1 A P P E A R A N C E S

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3 FOR THE CALIFORNIA ENERGY COMMISSION:

4 CHRISTOPHER MEYER CEC, PROJECT MANAGER, CEQA  
CARYN HOLMES LEGAL COUNSEL

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5 WILL WALTERS AIR QUALITY SPECIALIST  
6 MIKE MC GUIRT CULTURAL RESOURCE EXPERT  
7 IRENE JAMES IM JAMES ENTERPRISES, LLC

8 FOR THE APPLICANT TESSERA SOLAR:

9 FELICIA BELLOWS TESSERA VP FOR DEVELOPMENT  
10 CAMILLE CHAMPION TESSERA PROJECT MANAGER  
11 KEN KOSTOK TESSERA SR. DIRECTOR  
12 ALLAN THOMPSON TESSERA LICENSING COUNSEL  
13 BOB THEKELSEN TESSERA ENERGY DEPT.  
14 SEAN GALLAGHER TESSERA VP PUBLIC AFFAIRS

15 FOR URS CORPORATION:

16 BILL MAGDYCH PROJECT MANAGER  
17 CORRINE LYTLE ASSISTANT PROJECT MANAGER  
18 PAT MOCK LEAD BIOLOGIST  
19 GARY FINK CULTURAL RESOURCE  
20 SPECIALIST

21 FOR THE COUNTY OF SAN BERNARDINO:

22 RUSSELL E. BLEWETT PLANNING COMMISSIONER  
23 DEBBIE VENA PLANNING COMMISSION

24 FOR CALIFORNIA UNION FOR RELIABLE ENERGY:

25 LOULENA A. MILES LEGAL COUNSEL  
SCOTT CASHEN BIOLOGICAL CONSULTANT

FOR CALIFORNIA DEPARTMENT OF FISH AND GAME:

BECKY JONES

FOR U.S. FISH AND WILDLIFE SERVICE:

ASHLEIGH BLACKFORD  
RICK RANSFIELD

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1 A P P E A R A N C E S  
2 (CONTINUED)

3 FOR BUREAU OF LAND MANAGEMENT:

4 JIM STOBAUGH PROJECT MANAGER  
Page 2

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5 JIM CARTER BUREAU OF LAND MANAGEMENT  
CHRIS OTAHAL WILDLIFE BIOLOGIST  
6 JIM SHEARER ARCHEOLOGIST  
LARRY LA PRE WILDLIFE BIOLOGIST  
7 MICKEY QUILLMAN CHIEF OF RESOURCES &  
DEPUTY FIELD MANAGER

8 ALSO PRESENT:

9 E. SEEHAFFER ENVIRONMENTAL COORDINATOR  
BRAD MASON VISUAL RESOURCES MANAGER  
10 LOREEN MC MAHON ASSOCIATE PUBLIC ADVISER

11 TELEPHONIC APPEARANCES:

12 NEGAR VAHIDI ASPEN  
JOY NISHIDA CEC BIOLOGIST  
13 BILL CONDOMOTO CEC VISUAL RESOURCE EXPERT  
JULIE MITCHELL URS AIR QUALITY  
14 MATT MOORE URS WATER RESOURCES  
MARK STORM URS WATER RESOURCE  
15 NOEL CASTILLO TRAFFIC  
TRICIA WINTERBAUGHERS HAZMAT & WORKER SAFETY  
16

17 PRIVATE PROPERTY OWNERS AND/OR MEMBERS OF THE PUBLIC:

18 PATRICK JACKSON  
SARKIS AVANIAN  
19 MARY BILLIGEN  
FREDERICK STERN  
20 WAYNE SNIVELY  
JOE ORAWCZYK  
21

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23

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1 WEDNESDAY, SEPTEMBER 16, 2009, BARSTOW, CALIFORNIA

2 11:21 A.M.

3 --oOo--

Page 3

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5 MR. MEYER: Okay. Okay. Okay. we're going to  
6 start off with some introductions, so if we could have  
7 everyone -- everyone just sort of grab their seats and  
8 so people next to you can hear.

9 This is a Joint BLM, Energy Commission Staff  
10 workshop. It's a Data Response and Issues Resolution  
11 workshop.

12 what that is, is the Energy Commission and  
13 BLM put together a series of data requests on several  
14 technical areas, and we presented those to the  
15 Applicant, Stirling Energy Systems, and they provided  
16 us responses. And we have some additional questions,  
17 clarifications on those.

18 Everything that the Energy Commission, BLM  
19 does in this proceeding, we are doing in sort of as  
20 transparent a manner as possible. So we have workshops  
21 like this, which are -- basically, what they are is,  
22 they're a meeting between the different parties, which  
23 could be the Applicant, BLM, Energy Commission, CURE,  
24 which is one of the Intervenor, and Mr. Jackson, which  
25 is another formal Intervenor.

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1 And so as we're meeting back and forth, this  
2 affords the public to see exactly what's going on in  
3 this case.

Page 4

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4           So we'll start off with some introductions.  
5    Again, my name is Christopher Meyer. I am the Energy  
6    Commission's project manager on this case, and I will  
7    let Jim introduce himself.

8           MR. STOBAUGH: Hello, and welcome to everyone.  
9    Sorry if I blew anybody out there.

10           I am Jim Stobaugh, the assigned project  
11   manager for the Bureau of Land Management on this  
12   project.

13           As Christopher is talking about, BLM has  
14   been invited here to participate with CEC and the  
15   Applicant in the response to the data request or how  
16   the responses have gone, and then possibly any  
17   additional prospective from the BLM's perspective, as  
18   well.

19           Let me ask, there's some folks here from the  
20   Barstow field office, as well as the California Desert  
21   Districts, as well, and Mickey Quillman is here from  
22   the Barstow field office.

23           I'm going to ask you, if you can, to help  
24   out with some of the introductions of some of the BLM  
25   folks that are here from his field office.

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1           Thanks.

2           MR. QUILLMAN: I'm Mickey Quillman, chief of

Page 5

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3 resources and deputy field manager for the Barstow BLM.  
4 with us here today from the Barstow office  
5 are Chris Otahal, wildlife biologist; Larry LaPre,  
6 wildlife biologist with the desert district; Jim  
7 Shearer, archeologist.

8 And in the back of the room, it's  
9 E. Seehafer, who was our environmental coordinator.

10 Is there anybody I missed?

11 Oh, back in the back is Brad Mason our VRM,  
12 visual resources manager and recreation department.

13 Barstow is where the Right-of-way  
14 Application for use of these public lands that BLM  
15 administers was filed. And it involves 8,230 acres  
16 thereof of public lands within the -- of course, the  
17 Barstow -- 37 miles east here of Barstow, and so that's  
18 the role of the Barstow field office, who will be  
19 playing as the lead office in processing this  
20 Application under the Federal policy -- Federal Land  
21 Policy and Management Act, which is the authority that  
22 we're having to process this under.

23 Okay, Christopher. Thank you.

24 MR. MEYER: And with the Energy Commission, I have  
25 my legal counsel for the Energy Commission, Caryn

1 Holmes, to my left. And to her left is will walters,  
2 who's our air quality specialist.

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3           we also have some of our technical staff on  
4 the phone, and then more people will be joining us.

5           Oh, and pretending he doesn't know me  
6 sitting far away is Mike McGuirt, who's down at the  
7 table raising his hand there. He is our cultural  
8 resource expert for the Energy Commission.

9           And anyone from the Energy Commission on the  
10 phone, if you can hear me, can you identify yourselves.

11          MS. NISHIDA: This is Joy Nishida.

12          MR. MEYER: Joy Nishida is the Energy Commission  
13 biologist also assigned to the project, so she'll be  
14 addressing biological questions, and we'll address how  
15 to make sure that the court reporter can hear people on  
16 the phone.

17          MR. CONDOMOTO: Bill Condomoto.

18          MR. MEYER: Thank you for joining us, Bill.

19                 Bill Condomoto is the visual resource expert  
20 for the Energy Commission.

21                 Anyone else?

22                 Okay. we'll have more people joining us.  
23 People will be calling in a little later because  
24 they -- we're going to be dealing with a few areas  
25 first, and then they'll join in.

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1           I'm going to turn over the introductions to

2 Stirling Energy Systems, and then we'll do  
3 introductions with the Intervenor.

4 MS. CHAMPION: Good morning, everybody. My name  
5 is Camille Champion. I'm the project manager for  
6 Tessera Solar.

7 I'm sorry. I'm not really good with  
8 microphones.

9 with me today, I'd like to -- I saw them  
10 walk by, and I think they will be entering the room  
11 soon, Felicia Bellows, who is the lead VP of  
12 development for Tessera Solar; and Sean Gallagher who  
13 is the VP of public affairs.

14 In the room, we have Bob Thekelsen, as well  
15 as Allan Thompson and Ken Kostok, who will represent  
16 our energy department.

17 MS. MILES: Hi. My name is Loulena Miles, and I'm  
18 an attorney here representing California Union for  
19 Reliable Energy. And this is Scott Cashen. He's a  
20 biological consultant who's been assisting us in  
21 developing data requests and analyzing the biological  
22 resources sections of the AFC and related documents.

23 MR. JACKSON: Yes. My name is Patrick Jackson,  
24 and I'm a private property owner that will be in the  
25 middle of this project.

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2 URS Corporation. I'm the project manager for URS,  
3 supporting a lot of the environmental analyses.

4 with me today is Corrine Lytle, our  
5 assistant project manager. Also, Pat Mock, our lead  
6 biologist; and Gary Fink, our lead cultural resource  
7 specialist.

8 And in addition, on the phone we should have  
9 Julie Mitchell. And who else?

10 we'll go with that.

11 MS. LYTLE: Could I have the names, please, of the  
12 people from URS that have called in?

13 MR. MOORE: Matt Moore of water resources and Mark  
14 Storm.

15 MS. LYTLE: Noel, are you there?

16 MR. CASTILLO: I'm here. Noel Castillo, traffic.

17 MS. MITCHELL: Julie Mitchell, air quality.

18 MR. LYTLE: Tricia Winterbaughers, HAZMAT and  
19 worker safety.

20 And we'll probably have additional people  
21 who will be calling in, too, after we get done with air  
22 quality and bio.

23 MR. MEYER: Now, do we have anyone from resource  
24 agencies that would like to identify themselves?

25 MS. JONES: Becky Jones, California Department of

1 Fish and Game.

2 MS. BLACKFORD: Ashleigh Blackford, U.S. Fish and  
3 wildlife Service.

4 MR. RANSFIELD: Rick Ransfield, Fish and wildlife  
5 Service.

6 MR. MEYER: And any elected officials who wish to  
7 identify themselves, representatives of local agencies?

8 MR. BLEWETT: Russell Blewett, vice chairman  
9 San Bernardino County Planning Commission and planning  
10 commissioner for the High Desert.

11 MR. MEYER: Thank you for coming, sir.

12 UNIDENTIFIED SPEAKER: Are the local landowners  
13 identified on this meeting?

14 MR. MEYER: Yeah, landowners are actually already  
15 in the record. It's just we're looking to figure who  
16 is here representing the agencies right now.

17 There is -- there will be a sign-in sheet,  
18 and so we'll have a record of all the property owners  
19 that are here, and I think there's a place on that for  
20 any comments, if you want to write anything down.

21 UNIDENTIFIED SPEAKER: Yeah, we did. But  
22 basically we're just seeing, will the property owners  
23 be able to ask questions in the meeting today?

24 MR. MEYER: Oh, actually I'll go through the  
25 process in just a moment, sir.

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1 I was just doing introductions, and I'm  
2 going to go through now and talk about the -- how we'll  
3 run this.

4 UNIDENTIFIED SPEAKER: All right.

5 MR. MEYER: Okay. Thank you.

6 Okay. Thank you for your patience. Now  
7 we'll start, and I'll give you a brief idea of how  
8 we're running this.

9 we'll go through each technical area. We're  
10 going to start with air quality and then go on to  
11 biology, not particularly in alphabetical order. Those  
12 are just the priorities as far as scheduling.

13 The Energy Commission staff will ask  
14 questions, clarifying questions of the Applicant to  
15 whom we issued the data requests about the responses we  
16 received from them. And that will give an opportunity  
17 for them to provide these in a public setting.

18 Once the Energy Commission staff is done  
19 with the questions on each technical area, we'll turn  
20 it over to the intervenors, if they have questions on  
21 that particular area. If not, then we'll -- if we can  
22 do it without getting too segmented, we're going to try  
23 to open it up to the public to have any questions on  
24 that specific area.

25 This is not a scoping meeting. This is not

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1 a public forum for general, just, comments, questions  
2 on the project. This is a working meeting on specific  
3 issues.

4           If you have any just sort of general scoping  
5 comments that were not already put on the record  
6 through your scoping period and you want to give them  
7 to me -- you know, a letter, e-mail, comment cards,  
8 anything that you fill out -- I will make sure that it  
9 gets onto the docket so it becomes part of the official  
10 record.

11           So if you'll notice, she has comment cards  
12 there. In the notice you have my e-mail address.  
13 Anything you e-mail to me, I will basically put that  
14 as -- docket it as part of the record, if you ask me  
15 to, as a comment.

16           If you just send me an e-mail and you don't  
17 want it docketed, that's fine. But if you want  
18 anything -- any of your comments, put them in writing.  
19 It's definitely the best way to get them to us.

20           That way anyone who doesn't, you know, go  
21 through, you know, every line of the transcripts  
22 here -- I don't know that they would be able to find  
23 each comment.

24           But if you send me a comment saying, I have  
25 comments on biology, cultural, water, I can make sure

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1 that those technical experts get it. And then also I  
2 share it with Jim, so he can make sure that any of his  
3 staff, that he feels needs to get it, see that as well.  
4 So written is definitely the best way.

5 This meeting is just -- when you hear us  
6 talking about back and forth on just air quality -- one  
7 of the issues that we talk about, if you're not clear  
8 on what we're talking about, then at the end of that  
9 topic we'll open it up if anyone from the public has a  
10 question on that issue.

11 If it gets, you know, too difficult to sort  
12 of try to deal with public comments after each area,  
13 then we'll just -- we'll hold it to the end, if we have  
14 time at the very end of this meeting, and get through  
15 things in an expeditious manner; then I'll open it up  
16 for a brief, you know, period just for, you know, a few  
17 minutes for each member of the public if they have just  
18 a general issue, topic, or question or comment that  
19 they want to put out to the group.

20 But, once again, this is not a formal  
21 hearing. There are no commissioners here. These  
22 are -- our job for the people here are just to get to  
23 the facts of the project, to fully disclose that to the  
24 public, and get as much information as possible so we  
25 can make recommendations to those individuals at the

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1 Commission and the BLM who will ultimately be making  
2 the decision on the project.

3           So at this point I'm going to pass it along  
4 to will walters, who is our air quality expert, to  
5 answer the questions on air quality.

6           MR. WALTERS: All right. Good morning. I think  
7 it's still morning. I'm only going to go through the  
8 data responses where I have either issues that I want  
9 to discuss or follow-up questions.

10           I'm going to start with the data responses  
11 for Number 3 and Number 4.

12           First, I just have a general comment about  
13 the fact that the emission estimates right now -- the  
14 worst-case emission estimates for PM and -- and for  
15 noxide -- particulate matter, PM -- are very, very  
16 close to the threshold for general conformity.

17           I haven't been able to -- to do a thorough  
18 review yet of issue calculations, but just to let the  
19 Applicant know that I will be doing that.

20           And because they are as close as they are to  
21 the threshold, it's going to make it -- make me go  
22 through it that much finer than I would need to  
23 otherwise because we want to make sure that we aren't  
24 going over those values, and we need to do a general  
25 conformity analysis as part of this project. So that's

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1 just a comment.

2           The next issue I have actually has to do  
3 with the responsiveness for -- for Data Request 4, and  
4 the issue there is the fact that -- that potentially  
5 there are two things going on in terms of the potential  
6 change for the PM status.

7           There is the SIC itself, which could be  
8 coming actually fairly soon, and the re-designation for  
9 nox-base on the change in the federal ozone standard  
10 down to .075 PPM. That's the March date.

11           But the SIC re-designation could happen  
12 at -- more towards October, November, December of this  
13 year. And that is actually the one where they've  
14 requested the change in designation, which would lower  
15 the thresholds for noxs down to 25 tons per year,  
16 which, you know, clearly based on these emission  
17 calculations would be exceeded during construction.

18           So we want to make sure that -- that we have  
19 an approach ready to deal with that, assuming that it  
20 does happen before the Record of Decision from the BLM  
21 is done for this project.

22           It's my feeling that I believe what would  
23 happen is, we would go to the District, and they would  
24 make a finding per the requirement of that rule that  
25 these emissions are within their SIC budget, and that

1 would provide a compliance determination. But that is  
2 something that still needs to be investigated for the  
3 project.

4           And next I had a follow-up question on Data  
5 Response -- for the Data Request 9, and it would be for  
6 the Item B.

7           It was my thought or -- or in my review I  
8 thought that concrete had been identified to be used  
9 wherever necessary based on the soils at the site, if  
10 the soils were not such that just pounding a footing in  
11 would be enough for stable -- you know, keep the  
12 SunCatcher stable. So I guess what -- what my question  
13 is, has the Applicant done enough soil work to know  
14 that, in fact, they will not need concrete throughout  
15 the thousands and thousands of acres of the site for  
16 every SunCatcher footing that has to go in?

17           UNIDENTIFIED MALE SPEAKER: We would still need to  
18 do additional geo-technical work, but our plans are not  
19 to -- you know, our intentions are not to use a rebar  
20 or concrete cage solutions. We're also investigating  
21 other alternatives for foundations that are coming to  
22 light now, some other ones, like a pedestal-type  
23 foundation that could be utilized.

24           MR. WALTERS: Okay. But currently rebar still  
25 might have to be used. We can't rule it out?

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1 UNIDENTIFIED MALE SPEAKER: We can't rule it out.  
2 There's some pre-cast stuff and there's some other  
3 solutions out there that provides some other -- more  
4 cost-effective solutions and timely solutions than  
5 probably --

6 MR. WALTERS: All right. The response was very  
7 definitive, so I just wanted to --

8 UNIDENTIFIED MALE SPEAKER: Okay.

9 MR. WALTERS: -- figure out if it should be that,  
10 and definitively why it probably should have been.

11 My next question is on the -- the response  
12 to Data Request 14, and I just wanted to make clear  
13 what we were going for in terms of the condition of  
14 certification.

15 what we were thinking of proposing is that  
16 we were proposing a feasibility study, not something  
17 that would be an absolute requirement.

18 what we're trying to do -- it's because  
19 obviously vehicles -- alternative-fuel vehicles are  
20 continually improving in terms of what's available.

21 You know, we would like, you know, in the  
22 intervening few years before the vehicles -- the  
23 on-site vehicles would have to be purchased for this  
24 facility, that electric vehicles or hydrogen vehicles  
25 of types and sizes may become available and may be cost

1 effective, so we just want that investigated at the  
2 time or just prior to the time of purchase of vehicles.

3           And if they're not cost effective, then --  
4 then you would go, you know, with your original  
5 proposal of new vehicles.

6           So that's -- I just want to clarify that  
7 that's what we're trying to do. We're not making a  
8 decision now, because -- because of what's going on  
9 with technology and the acknowledgment of what's going  
10 on with technology.

11           I understand there's a lot of work being  
12 done at the port of Long Beach in LA in terms of larger  
13 electric vehicles. They're working to get them into  
14 the port, and I think the research that gets done and  
15 practical use at the port may be useful in the next  
16 couple of years to see if there are large enough  
17 vehicles to do the washing, et cetera, with the  
18 electric-based vehicles.

19           UNIDENTIFIED FEMALE SPEAKER: That's fine. That  
20 makes sense to us.

21           MR. WALTERS: The next one is for Data Request 15,  
22 and -- and I have a follow-up on that.

23           This is the first mention I see either on  
24 this project or the FCS-2 project of the use of  
25 geo-textiles, and there wasn't a lot of background or

1 additional information provided on exactly which ones,  
2 how they would be used, you know, the specific  
3 conditions and the roads in which they'd be used.

4           So I would like a little more detail on  
5 that, and, in particular, the types of products which I  
6 think would be of interest to me, as well as biology  
7 and some other folks who were doing analyses.

8           If we could get an idea of exactly what it  
9 is that you put in the ground -- is it a plastic-based  
10 material? Is it, you know, something else? You know,  
11 in terms of how it's going to react and what  
12 requirements may be necessary at the end of the  
13 project, you know, when it goes for decommissioning.

14           So maybe I'd like just more information on  
15 the geo-textiles, such as providing, you know, maybe  
16 websites to products that might be proposed, as well as  
17 identification of types of products that you would be  
18 limiting yourself to, whether it is -- you know, what  
19 kind of -- what kind of fiber, types of materials you  
20 would be using -- looking at.

21           MS. CHAMPION: Okay.

22           MR. WALTERS: The next one I want to discuss is  
23 Data Response 23.

24           MS. MITCHELL: Will Walters, this is Julie  
25 Mitchell from URS.

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1           Okay. Will, on Data Request 15, on the  
2 geo-textiles, if -- if the Fued Company that's going to  
3 be doing the roadwork is still investigating a number  
4 of different textiles, do you want a list of all of  
5 those textiles or maybe a generic description of what  
6 they think will be used?

7           I mean, I think at this point it's still  
8 kind of preliminary on what their -- on the exact -- on  
9 the exact application.

10          MR. WALTERS: Well, what I would be looking for  
11 for my part certainly would be how -- how those  
12 geo-textiles would work with the -- the stabilizer and  
13 how the roads would then be constructed with the  
14 geo-textiles.

15           But I think it would also be useful to have  
16 some generic information in terms of what -- what the  
17 products are. You know, what their biological  
18 activity, reactivity, inertness, lifetime, that kind of  
19 thing, you know, in general would be without  
20 necessarily having to specify a hundred different  
21 products.

22           You can just say, we're looking at these  
23 kind of polymers or these kind of range of polymers or  
24 we're looking at these kind of other types of fibers,  
25 and here's the generalized kind of effect that we would

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1 expect, and here's what we would recommend during  
2 decommissioning of the project.

3 MS. MITCHELL: Okay.

4 MR. WALTERS: Now, next is the data response to  
5 Number 23. And I guess I didn't really feel that this  
6 was actually responsive to the -- to the question, and  
7 maybe if I had more time to look at the calculations,  
8 but I'll just ask the question, and that is: Are you  
9 still using the 4 percent in those conditions in which  
10 you have not stabilized the roads yet?

11 MS. MITCHELL: No, is the answer.

12 MR. WALTERS: Okay. Then what is the assumption  
13 now for those early stages in construction when you're  
14 in an area where you're working soil and therefore  
15 don't have stabilizers in? What is the silt content  
16 function you're using?

17 MS. JAMES: Is this a long discussion, Julie? If  
18 so, I'll go get the microphone.

19 MS. MITCHELL: No. It won't be a long discussion,  
20 I just have to find the right actual value.

21 MS. JAMES: She's looking for an actual value.

22 MR. WALTERS: All right. Well, we can go on. I  
23 only have a couple more things to discuss, so I can  
24 wait and we can try to get that at the end, after I  
25 finish the other discussion.

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1 MS. JAMES: Julie, will you make note of that, and  
2 just let me know, and we'll -- I'll bring the  
3 microphone over and get it into the record.

4 MS. MITCHELL: Okay. Sure.

5 MS. JAMES: He's going to go on with another  
6 question.

7 MS. MITCHELL: Okay.

8 MS. JAMES: Thank you.

9 MR. WALTERS: And the next is just a follow-up in  
10 terms of Data Responses 46 and 47. There was a note.  
11 There was -- it was communication, and I don't know the  
12 exact form of communication, with the District in terms  
13 of other sources near the site for a cumulative impact  
14 analysis.

15 I don't have a lot of doubt that -- that the  
16 accuracy is correct, but I would like a copy of the  
17 communication if it was -- if it was e-mail  
18 communication or if it was a letter. And if it was a  
19 phone communication, I would -- I would at least like  
20 to know, that because it wasn't specified in the  
21 response.

22 MS. MITCHELL: Okay. So if it's a phone record,  
23 you just want a date and the person who we communicated  
24 with?

25 MS. JAMES: If it's a phone call, would you just

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1 like the date and the person it was communicated with?  
2 MR. WALTERS: Yeah. That would be fine.  
3 MS. JAMES: That's acceptable, Julie.  
4 MS. MITCHELL: Okay. Thank you.  
5 MR. MEYER: Julie, this is Christopher. If you've  
6 seen online the general format of our -- now I --  
7 MS. JAMES: Report of conversation.  
8 MR. MEYER: Yeah, just a report of conversation,  
9 just if you have that sort of level of information,  
10 that would be very helpful.  
11 MS. JAMES: Could you hear that from Christopher?  
12 MS. MITCHELL: Yes, I did. Thank you.  
13 MR. MEYER: My mother said I never really actually  
14 needed a microphone.  
15 MR. WALTERS: All right. The last issue I have is  
16 really kind of a general issue for everybody who may  
17 have gotten the modeling CD, and that's just to notify  
18 that the CDs -- that some of them, if not most of them,  
19 have some issues and some corrupt files, if not all of  
20 them being corrupt, so if you do have that modeling CD  
21 and want -- if you have a corrupt copy of that modeling  
22 CD and want a revised, corrected copy, you should  
23 ask --  
24 MS. LYTLE: Corinne Lytle. I'll be sure to get  
25 you a good copy.

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1 MR. WALTERS: And so, essentially, those are the  
2 things I wanted to discuss. And I guess if we would  
3 see if we have that silt content.

4 MS. JAMES: Julie, do you have the silt-content  
5 response yet?

6 MS. MITCHELL: No. I was writing down notes.

7 MS. JAMES: That's okay. If you could -- I'll  
8 make a note of that and before we're done we'll get  
9 back to you or if we get a break --

10 MS. MITCHELL: I have it right now. It's  
11 8.5 percent.

12 MS. JAMES: 8.5 percent.

13 MS. MITCHELL: Yes.

14 MS. JAMES: Thank you, Julie.

15 MS. MITCHELL: You're welcome.

16 MR. MEYER: Okay. At this point that concludes  
17 staff's questions on air quality.

18 Does CURE have any questions on their -- did  
19 you have data responses -- data request on air quality?

20 MS. MILES: No. And we have no questions.

21 MR. MEYER: So at this point does anyone from the  
22 public have any questions about what we just -- oh, I'm  
23 sorry. Mr. Jackson.

24 MR. JACKSON: No.

25 MR. MEYER: Just throw something at me if, you  
Page 24

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1 know, if you have -- if you have something. I'll  
2 remember to ask you next time.

3 MS. JAMES: I'll remember you, Patrick.

4 MR. JACKSON: I'll get you.

5 MR. MEYER: Okay. Just one thing I didn't  
6 mention -- I mentioned it to the parties earlier, but  
7 you will notice that we're just discussing things that  
8 were dealt with in communication -- in written --  
9 formal written requests and formal written responses.

10 I'm not throwing them any curves like asking  
11 them questions on something that we didn't submit to  
12 them as a formal comment, because we understand that if  
13 we don't give them a formal comment or a formal  
14 request, they don't have a chance to prepare an answer  
15 for us. Otherwise, we just have a lot of, sorry.  
16 we'll get back to you.

17 So that's why you'll notice that we're  
18 following the formal data request and data responses  
19 that are on the website that you will see if you go  
20 online.

21 If you have any questions on how to find  
22 those, please contact me during a break, and I'll run  
23 through it.

24 So at this point --

25 MS. LYTTLE: we also brought hard copies of all the

25

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1 data responses filed to date, and they're in the back  
2 if you guys want to grab some and look at them so you  
3 can follow along with us as we go.

4 MR. MEYER: So at this point does anyone from the  
5 public have any questions about the air quality issues  
6 we've been talking about?

7 Okay. In that case, if everyone here and  
8 everyone -- is there anyone on the phone that has  
9 any -- I guess that's just your part.

10 So I think we're done with air quality at  
11 this point. We're going to move on to biology, so  
12 we'll start with Joy Nishida on the phone, going  
13 through the air -- excuse me -- the biological resource  
14 questions on the data responses.

15 MS. NISHIDA: Thank you, Christopher.

16 Okay. First -- first question is regarding  
17 data request -- I understand that --

18 MS. JAMES: Can you repeat that? Could you start  
19 over again? I'm sorry. I was just trying to get the  
20 microphone so everyone could hear you.

21 MS. NISHIDA: Okay. Yeah.

22 This is Joy Nishida of the CEC.

23 First one is Data Request Number 61. I  
24 understand that -- that the consultants are currently

25 going out up to the site to do -- to take streambed

26

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1 measurements and all that work in anticipation for a  
2 Streambed Alteration Agreement; is that correct?

3 MR. MAGDYCH: That is correct.

4 MS. NISHIDA: Okay. I'm just wondering because  
5 the -- I'm working on FCS-2 down in El Centro. I  
6 understand that SunCatchers will be placed in the  
7 washes for FCS-2.

8 Will SunCatchers also be placed in the  
9 washes for the FCS-1?

10 MR. MAGDYCH: First of all, let me explain what  
11 we're doing. We met with Becky Jones of Fish and Game  
12 a few weeks ago in the field, and -- and we have a  
13 strategy for identifying jurisdictional streambeds for  
14 a Streambed Alteration Agreement, and we're continuing  
15 to work closely with Becky to do that.

16 Along those lines, we have some broad wash  
17 features, and we also have some patterns of drainage  
18 that have very non-distinct -- they're really not  
19 channels, but they are definitely drainage paths.

20 we will be identifying those and working  
21 those into the Streambed Alteration Agreement  
22 application.

23 So along those lines, yes, there will be

24 SunCatchers placed within those features, similar in  
25 that content with Solar 2, although Solar 2 is a

27

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1 completely different project with very different field  
2 conditions.

3 MS. NISHIDA: Okay. I'd like to go on to Data  
4 Request 52. This is regarding the Mojave fringed-toed  
5 lizard impact avoidance during operation.

6 Okay. Now, on your response it says, "the  
7 occupied habitat will be fenced with a three-wire  
8 fence." So this fence is -- you know, I'm unfamiliar  
9 with this. Is this just -- it's going to allow  
10 permeability; correct?

11 MR. MAGDYCH: Correct.

12 MS. NISHIDA: Okay. Now, will you be using some  
13 sort of soil glue of some sort for -- for stabilizing  
14 the roads for mirror washing?

15 MR. MAGDYCH: The answer to that is, the primary  
16 roads that run between the dishes will be -- our  
17 current plan is to stabilize with a soil-tact product,  
18 so, yes. The basic answer is yes.

19 MS. NISHIDA: Okay. So -- and then what? You're  
20 planning on doing the mirror cleaning mainly at  
21 nighttime?

22 MR. MAGDYCH: Yes.

23 MS. NISHIDA: Okay. what -- all right. And --

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24 and so what -- during the -- during this nighttime  
25 cleaning, there's going to be periods of time where

28

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1 the -- the lizard will be out on the road.

2           From what I understand, the -- the hardened  
3 soil tends to retain the heat a little bit longer than  
4 surrounding areas, so you're going to find that it  
5 attracts reptiles longer into the night.

6           So what -- specifically, what restrictions  
7 will be in place during operations to avoid -- avoid  
8 these lizards should they -- should they be out of  
9 their little sand dune areas?

10           MR. MAGDYCH: I think Pat Mock should address  
11 that, and with regard to the fringe-toed lizard, those  
12 are in -- they're primarily in very focused areas,  
13 which should be away from the roadways, but, Pat, why  
14 don't you go ahead.

15           MR. MOCK: Yes. I think that the assumption was  
16 that the vast majority of the area surrounding the one  
17 patch of fringed-toed lizard habitat was going to be  
18 more dominated by SunCatchers rather than a road.

19           And so we can modify from the sign, if  
20 necessary, to put some kind of a buffer zone in terms  
21 of road -- the road network to -- to make sure there's  
22 some distance between the road and the actual habitat

23 that's going to be occupied by the lizards.

24 In terms of B&P type avoidance measures,

25 look, I think the only practical measure we have is to

29

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1 make sure they're driving at reduced speed limits to  
2 presumably allow the lizard to get out of the way as  
3 the vibrations of the vehicle go by.

4 But at nighttime there's not much avoidance  
5 type of behavior that humans can do to avoid some kind  
6 of road-kill situation, except for slowing down on the  
7 roadways. And that would be true for any -- any --  
8 anything where we have a sensitive species that might  
9 cross the roadways.

10 MS. NISHIDA: Okay. You know, at this point, I  
11 don't -- I don't really have any -- any other questions  
12 regarding my data requests.

13 Christopher, if you can open it up to  
14 other -- other agency personnel, that would be great.

15 MR. MEYER: Okay. At this point we're going to  
16 turn it over to CURE to talk about their issues, their  
17 questions on their data responses.

18 To let the public know, CURE, as an  
19 intervenor also issued several data requests of the  
20 Applicant on the project, and they received responses,  
21 and now this is their opportunity to ask questions  
22 about those responses.

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23                   So -- and after we get through those formal  
24 responses, then we'll go over to the resource agencies  
25 about any questions, comments they have.

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1                   And just to let them know, people from the  
2 resource agencies, if, during this back-and-forth on a  
3 specific one, you want to make a comment on that  
4 question or exchange, raise your hand. We'll get you  
5 in right there. You don't have to wait.

6                   MS. JAMES: Okay. Scott.

7                   MR. CASHEN: Can you hear me through the  
8 microphone?

9                   MR. MEYER: Yes.

10                  MR. CASHEN: Okay. We have a few maps that we'd  
11 like to hand out that I think will be helpful in some  
12 of the questions that we have to ask, and we don't have  
13 enough for everyone, so we ask that you share, and most  
14 of them are right from the AFC, so if you have a copy  
15 of that you may not need them, and then there is one  
16 new map that -- that I generated with information from  
17 the CMDDD.

18                  But just to follow up on Joy's questions,  
19 there is a Streambed Alteration Agreement being  
20 submitted; is that -- is that correct?

21                  MR. MAGDYCH: Yes. Yes.

Page 31

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22 MR. CASHEN: Okay. And does that mean that  
23 there's been a jurisdictional determination on water  
24 there, or what does that --  
25 MR. MAGDYCH: With regards to State jurisdiction,

31

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1 the California Department of Fish and Game has  
2 indicated that it wishes to assert jurisdiction, and we  
3 will prepare a Streambed Alteration Agreement according  
4 to that.  
5 MR. CASHEN: Okay. And do you know when that --  
6 that application will be available or finished?  
7 MR. MAGDYCH: We're working on it now. I would  
8 hope within the next month.  
9 MR. CASHEN: Okay.  
10 MR. MAGDYCH: That's approximate.  
11 MR. CASHEN: And then with regard to the -- the  
12 fringed-toed lizard, so we know that the fringed-toed  
13 lizards require fine, loose windblown sand, and this  
14 gets to -- as soon as Loulena is done handing out the  
15 maps there, I'll ask the question so everyone can look.  
16 MR. JACKSON: I have a question.  
17 MS. JAMES: Mr. Jackson would like to comment.  
18 MR. MEYER: Go ahead.  
19 MR. JACKSON: You told me to interrupt.  
20 MR. MEYER: I wasn't talking to you, though.  
21 MR. JACKSON: The Streambed Alteration Agreement,

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22 that will be posted on CEC's website?

23 MR. MAGDYCH: Yes. That will be docketed.

24 MS. JONES: Does that mean the notification will  
25 be posted? Because, officially, we cannot issue a

32

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1 Streambed Alteration Agreement until any sequent  
2 documentation is done, which would be the California  
3 Energy Commission Process.

4 MR. MAGDYCH: I think he was referring to  
5 application.

6 MS. JONES: Okay. That's why I was asking this.

7 MR. MAGDYCH: The application for the streambed  
8 alteration agreement will be docketed.

9 MR. JACKSON: And the application agreement also?

10 MS. JONES: That would have to be after the CEC  
11 process is completed, because we cannot finalize the  
12 document until we have the sequent document.

13 MR. JACKSON: Thank you.

14 MR. CASHEN: I'll go ahead and ask the questions  
15 so we don't delay too much.

16 But Figure 5.6-2 shows a proposed --

17 MS. HOLMES: Excuse me. Scott, can you tell me,  
18 are you talking about something that you've just handed  
19 out or something in the AFC?

20 MR. CASHEN: Well, both, if it's in the AFC.

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21 MS. HOLMES: It's identified as figure 5.6?  
22 MR. CASHEN: "Dash" 2, and we made a copy in case  
23 people don't have the AFC with them.  
24 MS. HOLMES: Thank you.  
25 MR. CASHEN: So that figure shows the proposed

33

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1 Satellite Services Complex, which is kind of a little  
2 rectangle right above the "not a part" -- the lower  
3 "not a part" section.

4 And then if you flip to the back side of  
5 that page, which is AFC Figure 5.6-4, there's the -- it  
6 shows the paths of occupied fringed-toed lizard  
7 habitat, and I'm just curious how close those two --  
8 two items are to each other.

9 Because from the map, it looks like the  
10 Satellite Services Complex is --

11 MR. MAGDYCH: Excuse me. There's a simple answer.  
12 The Satellite Services Complex is no longer part of the  
13 project.

14 MR. CASHEN: Okay. Great.

15 So the other question with regard to the  
16 fringed-toed lizard is, can you talk about how the --  
17 the indirect effect to fringed-toed lizards habitat  
18 would be mitigated, specifically the -- the creation or  
19 the generation and maintenance of dust, the fine  
20 windblown sand, and whether the SunCatchers will serve

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21 as a windbreak that might affect that process.

22 MR. MOCK: I believe, given the semi-open nature  
23 of the project, there's no true barrier, per se, of --  
24 for wind to build up behind any of these structures,  
25 since they're off the ground, and so we don't

34

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1 anticipate any significant barrier to sand transport  
2 across the site, per se.

3 It's a fairly windy site, and then there's  
4 erosional transport that's going to continue to be  
5 allowed to go on through on-site -- on-site storm  
6 events that would transport sand down the stream.

7 The one -- the one patch of habitat that  
8 we've identified is between the two transportation  
9 features of the railroad and the highway, and so those  
10 presumably are the main barriers to the sand transport  
11 for that specific site already.

12 So it's only going to be sand transport  
13 locally that -- that would be of concern. So we  
14 honestly don't know what the actual effect would be of  
15 this, since this type of facility has never been built  
16 before in relationship to this issue.

17 So, certainly, a conservative approach would  
18 say that there's probably some potential effect that  
19 would have to be monitored and determine whether it's

20 significant, and maybe some off-site mitigation would  
21 be required for -- despite the fact that we're avoiding  
22 the actual direct impact to that patch of habitat.

23 MR. CASHEN: So, Patrick, just to clarify your  
24 response there, it -- it seems to me that the processes  
25 that form the habitat could be, you know, many years,

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1 and any indirect effect of the project could also be  
2 many years. And so I guess I want to know, are you  
3 planning on doing any monitoring? And, if so, what --  
4 what would be the time frame for the monitoring and  
5 what sort of remedial actions would -- would the  
6 project's applicant be prepared to do if that  
7 monitoring revealed that -- that maybe the SunCatchers  
8 were, indeed, blocking sand transport and the occupied  
9 patch of habitat was diminishing?

10 MR. MOCK: Given that it's a single patch -- it's  
11 about 16 and a half acres or so, something on that  
12 order of magnitude -- and I think there's -- there's  
13 definitely a potential for the -- it being a relatively  
14 small, isolated patch already because of the railroad  
15 and the highway, that it might -- the population might  
16 blink out at some time.

17 whether it's due to a natural blinking out  
18 or something caused by the project, we probably would  
19 never be able to determine which -- what was the actual

20 cause.

21                   So an ongoing monitoring program -- you  
22 know, maybe every three years we would survey the patch  
23 of habitat for its occupation, and if it -- if it's  
24 determined that it blinks out soon after the  
25 implementation of the project, you could presume a

36

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1 cause and effect.

2                   And the mitigation program in terms of  
3 habitat -- off-site habitat acquisition should maybe  
4 include a component that includes acquisition of -- of  
5 lizard habitat that currently is not planned for  
6 conservation and would benefit the species.

7           MS. JONES: would it be possible to determine  
8 where the sands are going to the dunes now come from so  
9 we can see how the project build-out would impact the  
10 dunes where the fringed-toed lizards are?

11           MR. MAGDYCH: Becky, if you look at the patterns  
12 of the more active dunes, they're off in the ACEC, you  
13 can get a sense for the primary wind direction and so  
14 forth. But the wind does move around, so the  
15 transport, you know, it goes around.

16                   But you can see some -- almost like windrow  
17 or wind-fencing effect on a few of the high acres over  
18 on the ACEC where the loose, unconsolidated sands are

19 more to the eastern side and southern side.

20           And if you compare the -- the feature over  
21 on the project site, you will find that it's highly  
22 stabilized with shrub vegetation already, which also  
23 suggests that it's -- it's not a -- it's not an active  
24 growing, loose sand dune feature. It's probably going  
25 in the other direction.

37

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1           So, you know, I think right now the opinion  
2 that we have, that we've discussed with some of our  
3 geomorphologists, is that it's not an active growing,  
4 accreting structure. So we'd -- we'd have to look into  
5 it further then to try to give you a better answer.

6           MS. JONES: Because that would be important in  
7 assessing any cumulative impact possibly to -- from the  
8 project and knowing what -- if there's going to be  
9 other development on the other side of the highway.

10          MR. CASHEN: Okay. I have a few questions about  
11 the rare plant survey and the impact assessment  
12 associated with those.

13           And I apologize to -- to those of you who  
14 already know what the difference between a sample and  
15 census is, but I felt like -- just quickly for those of  
16 you who don't, so a sample is when you -- you go out  
17 and you survey portions of an area and you make the  
18 assumption that what you've surveyed is a

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19 representative of the whole area. And then a census is  
20 actually a total count, where you're assuming that  
21 you've counted every single thing with inside that  
22 area.

23 And I think that we've determined that the  
24 rare plant surveys that were conducted for the project  
25 were a sample.

38

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1 Can you talk about what portion of the site  
2 was sampled so that we can get an idea how much of the  
3 site is being used to represent what's out there.

4 MR. MOCK: As we explained in our response -- and  
5 it's in the AFC documents, we -- we took the larger --  
6 the larger SES assessment area, which included not only  
7 the -- the AFC area, which is the focus of this  
8 workshop, but we also surveyed the AFC area, which is  
9 on the area east of the transmission line, as well as  
10 the additional area to the west, which may be included  
11 in future projects.

12 And then we -- we laid out a grid pattern  
13 across that landscape, and each grid itself is about  
14 240 acres in size, and we used that grid cell as our  
15 planning tool in terms of helping us focus our effort  
16 equally across that landscape.

17 And so we tried to dedicate a certain amount

18 of field hours to each of those grid cells to detect  
19 sensitive resources within those cells.

20           And so typically we'd send -- we would send  
21 two biologists, two botanists for our plant surveys,  
22 into those given cells for a day or two, depending on  
23 the time, and -- and also the -- some of the cells were  
24 a little more challenging in terms of access and -- and  
25 coverage, so they spent more time in some cells greater

39

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1 than others just because of the topography.

2           And so the -- the -- the general field  
3 effort is evenly distributed across the site, but we  
4 still considered it a sample, since searching tens  
5 of -- several thousand acres at a time is challenging  
6 and daunting, and to expect a hundred percent survey  
7 coverage, it's just not practicable.

8           And so I would say it's still a sample, but  
9 that sampling effort is evenly distributed across the  
10 area that we actually surveyed.

11       MR. CASHEN: Yeah. I guess what the question  
12 really is, you know, there's various sampling efforts,  
13 and so if you're trying to gain information about a  
14 population, depending on the amount of variation you  
15 expect within that population, you might have a sample  
16 that covers 10 percent of the population, 30 percent,  
17 50 percent, you know, 90 percent.

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18                   And so I guess the question that I'm -- or  
19 what I'm trying to figure out here is, is what percent  
20 of the total project area was sampled for rare plants?

21                   And the reason that I think that this is  
22 important is that in the AFC, the impact assessment for  
23 plants, there's a couple statements such that, you  
24 know, the impact to the crucifixion thorn is considered  
25 less and significant because it's only one individual,

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1 and -- and you guys only detected one individual out  
2 there.

3                   But if it's a sample, then we know that not  
4 the whole area was -- was surveyed, and so you can't  
5 necessarily treat your impact assessment as if you have  
6 a census when you've conducted only a sample, and  
7 knowing what percent of the site was sampled.

8                   So if 10 percent of the site was sampled and  
9 you found one crucifixion thorn plant, then you would  
10 make the assumption that there were ten individuals out  
11 there, if your sample was representative of the whole.

12                   And so I'm trying to get an understanding of  
13 what percent of the site was sampled and how the impact  
14 assessment can be justified knowing that you conducted  
15 a sample instead of a census.

16                   MR. MOCK: Would you direct us to the data request

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17 so we can look at the response that you're referring  
18 to.

19 MR. CASHEN: About the sampling effort or about  
20 the impact assessment, because there's two different  
21 data requests.

22 MR. MOCK: Okay. Well, then give us both.

23 MR. CASHEN: Okay. Just give me a minute.

24 MR. MOCK: Well, let me say this: You know, if  
25 it's specific to the crucifixion thorn, I don't think

41

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1 that that's that big of an issue because it's a  
2 fairly -- fairly large shrub where it actually becomes  
3 a tree form in some cases, so if there was a lot of  
4 crucifixion thorn out there, we probably would have  
5 noted that.

6 I mean, it's not a very hard species to  
7 detect it if it's in large -- large numbers or  
8 clustered as a large population.

9 And since we only found one, I think the  
10 presumption is, there's not that many out there to  
11 begin with, given that we've surveyed the site in a  
12 fairly even way geographically.

13 Of course, things that are much smaller,  
14 like annual plants that are really small and also have  
15 a tendency of not necessarily blooming or being  
16 detectable in any given year, it's more problematical

17 of whether we detected any major population clusters on  
18 the site or not.

19 That's -- those -- the annual plants are  
20 much more sensitive to weather conditions from one year  
21 to the next, so detectability is going to be more  
22 problematical.

23 But the fact that we -- we detected fairly  
24 large clusters of the more sensitive species that the  
25 BLM is concerned about would indicate that we've done a

42

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1 fairly good -- good job at identifying where, at least,  
2 the heavy occupied areas are for those species.

3 MR. MEYER: And just to clarify, from the Energy  
4 Commission's standpoint, you know, the information  
5 provided by anyone on these projects is going to  
6 basically be taken as part of our analysis.

7 And when our bio staff, cultural, or any  
8 staff looks at the analysis in determining what  
9 conditions of certification and mitigation measures  
10 need to be implemented or, you know, reviewed for  
11 implementation, one of the things we're going to look  
12 at is the -- you know, how complete the information  
13 was.

14 You know, if it was a bad year for a certain  
15 plant, if -- just because it says only one individual

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16 is found, we're going to take that into consideration  
17 in developing our mitigation and -- and the BLM as  
18 well. So that's one thing.

19 And just because they may not have found  
20 something, we're going to look at, were there  
21 mitigating circumstances why there might have been a  
22 low occurrence or a -- they may not have found as many  
23 as you might have thought. We're not going to just  
24 say, okay. They only found one, and we're going to  
25 develop our mitigation measures based on that. It's

43

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1 going to be a much more complex analysis.

2 But, you know, we're making notes on this  
3 stuff now, so we're going -- everything, you know,  
4 we're hearing now we're sort of taking into account.  
5 We're writing our analysis.

6 I just want to throw that out there for  
7 everyone. Thank you.

8 MR. CASHEN: Okay. Data Requests 53 through 55,  
9 and then also 63.

10 MR. MAGDYCH: Could you please repeat those.

11 MR. CASHEN: So CURE Data Request 53, 54, and 55,  
12 as well as CURE Data Request 63.

13 So two of the rare plant species that were  
14 detected on the site were the white Margin Beardtongue  
15 and the small-flowered androstephium.

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16                   And we have a map here that shows the CMDDD  
17 occurrences of the those two plant species in the  
18 vicinity of the project area.

19           MS. JAMES: Could you tell everybody which map  
20 you're looking at?

21           MR. CASHEN: Sorry. It's a single sheet, and  
22 these came right from the California National Diversity  
23 Data Base, and I believe that these records include  
24 the -- the survey results, so these -- a lot of these  
25 are -- are occurrences that were detected during the

44

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1 project surveys.

2                   So of the -- of the -- of those two, the  
3 small-flowered androstephium, in particular, has a  
4 fairly high number of occurrences within the project  
5 area itself.

6                   And we're -- we're concerned, I guess, that  
7 there hasn't been adequate mitigation proposed to  
8 offset the impact of that species -- to both species,  
9 and we're concerned about the -- the jeopardy that the  
10 project will pose to the continued existence.

11                   The proposed mitigation in that AFC included  
12 propagation of plants, and -- and studies that were  
13 conducted by the Rancho Santa Ana Botanical Gardens  
14 have shown that that doesn't really work with the

15 species.

16                   And so I'm wondering if you could talk a  
17 little bit more about how the project will mitigate  
18 impact to -- to these two rare plant species, in  
19 particular, and how that mitigation will meet CEQA  
20 requirements.

21           MS. BLACKFORD: Can I ask a question first?

22                   This handout, are the two maps on each --  
23 they look identical to us. Am I missing something?

24           UNIDENTIFIED MALE SPEAKER: Actually, I think what  
25 happened is, Jim has front and back of one map. I have

45

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1 front and back of another one, so...

2           MS. MILES: Can you just make sure that after the  
3 workshop we get a complete set?

4                   We can put these together here so everybody  
5 should know who's looking at these maps.

6           MR. MEYER: And it would be helpful actually if  
7 you guys, just as, you know, a really easy little memo  
8 to me, electronically submit these. I'll put them into  
9 the docket so they become part of the record.

10           MR. CASHEN: So I'll just quickly clarify, so it  
11 was a photocopying error. One map shows the vicinity  
12 of the -- or the occurrences of these two plants in the  
13 vicinity of the project area. And then the other map  
14 shows all known occurrences in California.

15                   So it gives you a perspective of how widely  
16 distributed these two plants are within the entire  
17 state.

18           MR. MAGDYCH: Is there a specific question?

19           MR. CASHEN: Yeah, the question was --

20                   Do I need to wait for the microphone?

21                   So the question is, is the proposed  
22 mitigation -- the mitigation that is proposed in the  
23 AFC has not been shown to work in the past, and so the  
24 question is, how will mitigation meet CEQA requirements  
25 and offset the impact to these species?

46

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1           MR. THOMPSON: Is that a data request that you  
2 asked us?

3                   Again, do you have a number of the data  
4 request where you made that statement?

5           MR. CASHEN: Okay. Give me a minute.

6                   It looks like it was 68, 69, and 70.

7           MR. MOCK: I think the context of when you're  
8 dealing with the site in terms of the regional impact  
9 of developing the site is in the context of the west  
10 Mojave Plan which the Federal government has approved,  
11 and in approaching this assessment for things like  
12 these rare plants, there have been conservation  
13 measures implemented as part of the west Mojave Plan

14 such as the establishment of the ACEC, specifically for  
15 these rare plants and the fringed-toed lizard as -- as  
16 some conservation measures to mitigate the cumulative  
17 impact to these species.

18 Certainly, part of the mitigation program is  
19 off-site acquisition of additional habitat, as dictated  
20 by the west Mojave Plan.

21 The presumption, I believe, of the west  
22 Mojave Plan is those conservation actions that require  
23 off-site mitigation would benefit these rare plant  
24 species and other non-species that are a regional  
25 concern.

47

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1 So it's -- whether a specific project has  
2 to -- has to buy land that support the specific species  
3 that have project support is not stated in the west  
4 Mojave Plan.

5 I think the overall idea was looking from a  
6 regional perspective; here are the conservation lands  
7 that are being acquired and here are the lands that  
8 could be developed and the mitigation generated from  
9 those, that development, which would contribute toward  
10 the conservation -- regional conservation program  
11 dictated by the west Mojave Plan.

12 So whether you want one-to-one mitigation  
13 requirements on a project-by-project basis or -- or a

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14 contributing to the overall development of  
15 implementation of the West Mojave Plan is something for  
16 BLM and the Fish and Wildlife, Fish and Game to  
17 determine how -- how that implementation is actually  
18 going to happen.

19 MS. JONES: On that note, I will make a quick  
20 comment. As we've seen on other solar projects, Fish  
21 and Game doesn't always go along with the one-to-one  
22 mitigation for impact on projects.

23 We've had other solar projects where it was  
24 one-to-one mitigation through a BLM planning process,  
25 but we requested three-to-one mitigation for that or

48

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1 more. So our mitigation may vary on that.

2 MR. RANSFIELD: One other -- two other issues.  
3 The West Mojave Plan, in planning for that -- for the  
4 overall use of the desert, we -- BLM, Fish and  
5 Wildlife, Fish and Game -- never anticipated that we  
6 would be seeing projects of this scale over and over  
7 and over again in the desert.

8 So, you know, in terms of Pat's comments  
9 that, you know, there's mitigation built in, sort of  
10 true, but the scale was -- the analysis of scale was  
11 not present in the West Mojave Plan.

12 Another issue would be -- is going back to

13 the sand dune areas. If you look at this other map  
14 that's been sitting on our desk, it shows a whole  
15 series of the debris basin on the upstream side of the  
16 area.

17 If you look in the Coachella valley where we  
18 also have fringed-toed lizards, we found that when we  
19 blocked the sand source that comes from the mountains  
20 down the slope, if that sand is blocked up there,  
21 there's nothing for the wind to blow.

22 So if you then consider the whole sand or  
23 blow-sand system here, what could be the potential  
24 effects in the BLM's area of environmental concern to  
25 the east, because a lot of the plants there are also

1 sand associated, wind-blown sand species, so I think  
2 that we need to be really careful about making  
3 statements like that and make sure that all the impact  
4 analyses is done fairly to bear out that -- that we  
5 aren't going to lose those from direct effects.

6 MR. MAGDYCH: I'll just make an additional comment  
7 that I think speaks to things we do have to address as  
8 this process moves forward.

9 This particular type of development does  
10 have an advantage in that approximately -- with regard  
11 to herbaceous vegetation in particular, approximately  
12 50 percent of the site within the total project area

13 will be left in a state where those are -- that  
14 herbaceous vegetation can persist, can continue.

15           So just because the project overlays some of  
16 these areas does not mean that there herbaceous plant  
17 species will be eliminated.

18           MR. CASHEN: Bill, I -- I think we know that  
19 that's true, but I believe that the response to the one  
20 CURE data request that indicated that -- that all the  
21 rare plants on site would be impacted -- or we could  
22 assume they would be impacted.

23           I can look that up.

24           MR. MOCK: That was a worst-case assumption, and  
25 so we really don't know what the actual effects are

50

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1 going to be, given -- given that's shading effects  
2 and -- and adjacent -- adjacent activity associated  
3 with developing the road network to access the -- the  
4 SunCatchers.

5           The actual SunCatcher areas are not going to  
6 have the road network associated with them, so there's  
7 going to be a herbaceous vegetation layer associated  
8 underneath the SunCatchers.

9           So it's only the -- the road of -- the road  
10 network that goes in between the arrays of SunCatchers  
11 where that's a complete loss.

12 while there's a loss of shrub vegetation --  
13 shrub species vegetation under the SunCatchers, and  
14 then you have these smaller -- about 74 foot wide  
15 swaths of vegetation where there's no -- no vegetation  
16 treatment anticipated.

17 And so it's going to be a mosaic of intact,  
18 but all these narrow patches of desert shrub vegetation  
19 and then these areas underneath the SunCatchers that  
20 are going to be mostly herbaceous component vegetation,  
21 and then you have your roads.

22 So those are the three main components of  
23 the -- in terms of the grand scale of things that we're  
24 anticipating, so there's going to be resource retained,  
25 but we're saying that we don't know the exact impact,

51

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1 and so as a worst-case scenario, the vast majority of  
2 the resource retention may be of marginal value, but we  
3 really don't know.

4 MS. JONES: Do you know if the vegetation retained  
5 will be able to grow to its normal height, or will that  
6 have to be trimmed down?

7 MR. MOCK: I think the plan is to trim it down  
8 initially and then allow it to grow back up to three  
9 feet in height.

10 MR. MAGDYCH: Let me clarify. This is -- this is  
11 a question that also came up in the public hearing, and

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12 we have to be able to clarify that a little bit better,  
13 and the figures that are in the documents -- various  
14 documents to date are accurate.

15           But, basically, if you consider that you  
16 have a row of SunCatchers, a service road in -- running  
17 parallel to those SunCatchers, a row beyond that, and  
18 then an open area followed by another row of  
19 SunCatchers with a service road and the additional row  
20 of SunCatchers, basically that middle area where  
21 there's no road will not be trimmed.

22           The area between the two rows of SunCatchers  
23 with a road in between will be trimmed. The initial  
24 trimming will be during construction, and it will be  
25 down to approximately three inches. It's not a precise

52

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1 number.

2           But some sort of probable mechanical  
3 trimming will be used to take it down, and that will  
4 trim down all the shrubs in that area. Those shrubs  
5 are -- if they're able to re-sprout, they will come  
6 back up. It's our understanding that when they get  
7 close to about three feet in height that additional  
8 trimming could be required. The question is, how long  
9 that would take, if it would take a long time.

10           So we're currently assuming that about

11 two-thirds of the area gets trimmed and about one-third  
12 of the area is untrimmed.

13 MS. JONES: Okay.

14 MR. CASHEN: The impact assessment and what I've  
15 just heard from Patrick here seems to rely heavily on  
16 the efficacy of the West Mojave Plan, in particular the  
17 ability of the Pisgah ACEC to provide for the  
18 conservation of these plant species, and I'm not sure  
19 how the cumulative impact analyses addresses the  
20 projects that have been proposed for the Pisgah ACEC.

21 And if you look at Figure 5.6-7, it shows  
22 that most of the Pisgah ACEC is, in fact, proposed for  
23 solar -- solar development.

24 So this map here that -- that shows the  
25 project's site in the red.

1 MR. MAGDYCH: well, of course, the major  
2 application in the ACEC for solar development was a  
3 stirling development.

4 You've withdrawn those; correct?

5 MS. CHAMPION: Yes.

6 MR. MAGDYCH: So that takes that off the plate.

7 MR. CASHEN: So is there a revised -- is there a  
8 revised version of this map then that might be more  
9 applicable to -- to looking at the cumulative impact --  
10 impacts?

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11 MR. MAGDYCH: Not at this time.

12 MS. LYTLE: The data you're requesting is  
13 available via the BLM LR 2000 data base, which shows  
14 current, you know, BLM applications, which would apply  
15 to the ACEC, and it's a public resource. You can  
16 certainly go and look it up.

17 MR. MOCK: I think in our cumulative assessment we  
18 said that any -- any development within ACEC, DWMA or  
19 critical habitat would be considered probably a  
20 cumulative effect, as that would be significant and  
21 unavoidable, and so it's -- it would be something that  
22 the agencies need to consider of whether that's an  
23 appropriate proposal to have development in areas where  
24 we've already designated as DWMA or ACEC or critical  
25 habitat.

54

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1 MR. CASHEN: I think if we -- if we look at this  
2 map in conjunction with this map, which I'm not sure  
3 how much of these proposed projects are now really on  
4 the table or not, we're looking at the really possible  
5 chance that we're going to have local extrication of  
6 these species.

7 And we know that these species do not have a  
8 very wide range in California, and so what the -- what  
9 the -- the wider consequence of that is unknown.

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10 But it certainly looks like a lot of  
11 projects are proposed right over the top of where most  
12 of these occurrences of these two plants are.

13 I guess my final two questions about the  
14 plants have to do with the West Mojave Plan and the  
15 project's compliance with the West Mojave Plan. In  
16 particular --

17 MS. JAMES: Scott, is this the same question that  
18 you've already made a request, or are these new ones --  
19 new numbers?

20 MR. CASHEN: These are new numbers.

21 MS. JAMES: Could we give the numbers first?  
22 would that help, guys? Let's do the numbers  
23 first, and then we'll be able to find where they are.

24 MR. CASHEN: Okay. The first one has to do with  
25 Data Request 152, and that -- the question was to -- if

55

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1 you can discuss the project's compliance with the  
2 plan's requirement to conserve all known occurrences of  
3 crucifixion thorn on public land and the point of  
4 occurrences near the Pisgah Crater.

5 MS. JAMES: Let's answer that first, and then  
6 we'll get the other one.

7 MR. CASHEN: Sure.

8 MR. MOCK: Did you have a question about our  
9 response?

10 I mean, the project area that we're  
11 discussing is not within a -- a wildlife management  
12 area or an ACEC, and our interpretation of the west  
13 Mojave Plan was -- is -- is that those areas were not  
14 subject to that concern.

15 MR. CASHEN: well, perhaps somebody from the BLM  
16 can help clarify this then. The way that I -- I read  
17 this portion of the West Mojave Plan is, it is not  
18 specific to just the ACEC or the DWMA. It says, "All  
19 known occurrences on public land." And maybe the BLM  
20 can help clarify that.

21 MR. LA PRE: well, it would help me if you  
22 repeated the question.

23 I can say at the outset that the West Mojave  
24 Plan did have the objectives that -- that are  
25 described, and that is preserving the important

56

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1 occurrences within ACEC's wildlife habitat management  
2 areas and critical habitat.

3 And the Pisgah ACEC, in particular, was  
4 established to protect the fringed-toed lizard and the  
5 small-flowered androstephium and the white Margin  
6 Beardtongue and a couple other species that are in  
7 there.

8 So what was that you were citing about all

9 occurrences?

10 Yeah. I think that's a true statement.

11 That one plant was not known at the time of the West  
12 Mojave Plan. There were some isolated occurrences  
13 south of Fort Irwin, and there was one isolated plant  
14 near Newberry Springs.

15 So you were -- you were asking whether or  
16 not the intent is to conserve all known occurrences of  
17 the crucifixion thorn?

18 MR. CASHEN: Yeah. I'm trying to make sense of  
19 what -- what it says here in the West Mojave Plan and  
20 how that applies to the project, and, in particular,  
21 you know, I'm talking about Chapter 2. It starts --  
22 this is Table 2-11.

23 It starts on Chapter 2, page number 2-46, of  
24 the West Mojave Plan, and the table covers it. The  
25 title of the table is "Authorized Take of Species," and

57

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1 it goes through the various species covered by the  
2 plan.

3 It discusses what the authorized take is,  
4 and then it talks about the -- the habitat conservation  
5 that will be implemented in order to authorize that  
6 take.

7 With respect to the crucifixion thorn, you  
8 know, I just read you that. It says, "Take allowed on

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9 private land within its range as long as it does not  
10 degrade the conservation areas." "Only two private  
11 land point occurrences are known."

12 And then under "Habitat Conserved," it says,  
13 "All known occurrences on public land. Point  
14 occurrences near Pisgah Crater and crucifixion  
15 woodlands south of Fort Irwin."

16 So I'm trying to figure out if that  
17 conservation measure that was part of the West Mojave  
18 Plan applies to the project.

19 And while I have the microphone, I'll also  
20 read you what it says about white Margin Beardtongue.  
21 "Take would be allowed for maintenance of existing  
22 facilities within the BLM utility corridor and on  
23 private land within its range. Limited to 50 acres of  
24 occupied and potential habitat."

25 Under "Conservation," "All known occurrences

58

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1 in washes south of Cady Mountains, known occurrences  
2 within the proposed Pisgah Crater ACEC."

3 MS. JAMES: would you like to see these? I can  
4 bring the sheets over to you.

5 MR. CASHEN: The second one relates to CURE Data  
6 Request 153 with the white Margin Beardtongue.

7 MR. LA PRE: All that is true. I was the author

8 of that language. And, yeah, the intent was to protect  
9 those plants, both those species on public lands and  
10 allow for an incidental take on private land.

11 The west Mojave Plan did not become a  
12 habitat conservation plan, so projects on private land  
13 are on their own.

14 with respect to the one plant, that  
15 crucifixion thorn, the strict reading of that language  
16 is, yes, it is covered by the west Mojave Plan. Don't  
17 mess with it.

18 MR. MAGDYCH: Larry, as I heard the reading of  
19 that, that was written at a time when you knew specific  
20 locations and you said "all known locations," so were  
21 you referring at that point to just the location you  
22 knew at that time?

23 MR. LA PRE: well, the keyword there is "known,"  
24 and we produced a map that didn't get published in the  
25 plan of all these rare plant occurrences and so forth,

1 and we did plot where the ones were that that sentence  
2 referred to, "all known," and it was this occurrence  
3 near -- two spots near Fort Irwin -- south of Fort  
4 Irwin.

5 MR. MAGDYCH: I would also add that especially  
6 with something like the crucifixion thorn -- of course,  
7 being a larger plant, if it's within a trimming area,

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8 it could be at risk; but with a pre-construction  
9 identification of specific individuals, one or a few,  
10 it certainly would be possible to identify those and  
11 avoid taking those out, including placement of some  
12 facilities.

13 Now, probably where we would have difficulty  
14 avoiding would be storm-water controls along the  
15 northern part of the site.

16 MR. LA PRE: Yeah. I personally think you could  
17 build the SunCatchers around it. But if you can't, the  
18 Bureau has this ACEC and one in Imperial County of --  
19 it's quite a bit larger to protect the crucifixion  
20 thorn, and we have identified areas in the Needles  
21 Resource Area where it's protected.

22 And we're not going to argue over one plant.

23 MS. JAMES: Thank you.

24 MR. CASHEN: Okay. The final question again  
25 relates to the West Mojave Plan.

60

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1 MS. JAMES: Data request number?

2 MR. CASHEN: Oh, yeah.

3 MR. MEYER: Give us the number.

4 MR. CASHEN: Can I ask a question and then give  
5 you the number?

6 MS. JAMES: The hall monitor says, yes.

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7 MR. CASHEN: The question is, the west Mojave Plan  
8 requires botanical surveys that conform to Fish and  
9 Game survey guidelines, and -- and those do not appear  
10 to have been implemented for this project.

11 So, again, the question is: Does the  
12 project comply with the west Mojave Plan in this case?

13 And I'll give you the number.

14 MS. JAMES: Understand the question? Do you need  
15 clarification before I run back?

16 MS. JONES: I know he said about -- is he asking  
17 if surveys within the West Mojave Plan comply with Fish  
18 and Game surveys? I wasn't quite sure.

19 MR. CASHEN: The West Mojave Plan states that  
20 botanical surveys conducted for projects should follow  
21 the guidelines established by Fish and Game.

22 The botanical survey guidelines established  
23 by Fish and Game in this case were not followed. And  
24 so the question is: Does that mean that the project is  
25 not complying with the west Mojave Plan's requirement

61

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1 to follow those guidelines?

2 MS. JAMES: Number?

3 MR. THOMPSON: In our response to you did we say  
4 that we did not follow to guidelines?

5 MR. CASHEN: Yes.

6 MR. THOMPSON: would you point that out?

Page 62

Solar1.TXT

7 MR. MAGDYCH: What number is it?

8 MS. JAMES: He's still looking.

9 MR. MAGDYCH: Let's all get on the same page.

10 MR. CASHEN: Okay. Okay.

11 MR. MEYER: I did also want to be clear that --  
12 between them stating that they didn't follow the  
13 protocols and what they stated they did does not appear  
14 or needs an interpretation by the resource agencies as  
15 to whether or not you have followed their procedures,  
16 because I really --

17 From the Energy Commission and the BLM,  
18 we're going to be looking towards the resource  
19 agencies, Fish and Game, Fish and wildlife as to  
20 whether -- how they interpret -- whether the survey's  
21 done at their protocol.

22 So I don't want to make an interpretation as  
23 far as the Energy Commission staff as to whether or not  
24 what the Applicant did met the resource agency  
25 protocols for these species.

62

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1 MS. JAMES: Scott?

2 MR. CASHEN: There might be a better question, and  
3 I'm going to continue to look, but data request -- and  
4 the response to Data Request 46 was, "There are no  
5 required protocols for focus special status plant

6 surveys required by the CEC, Fish and Game, BLM or Fish  
7 and wildlife service."

8 MS. JAMES: Everybody get the number?

9 Scott, can you just one more time give what  
10 question you're asking them to respond.

11 MR. CASHEN: Well, the specific question was: The  
12 west Mojave Plan requires that botanical surveys for --  
13 for project areas comply with the survey guidelines  
14 established by Fish and Game.

15 And the -- those guidelines were not  
16 followed in this case, and so the question was: Does  
17 that mean that the project is not complying with that  
18 particular condition of the west Mojave Plan?

19 MR. MAGDYCH: Let me try to answer that question.

20 First of all, what we're saying is, there's  
21 no published protocols for those types of surveys.

22 We did, however, run our survey protocol  
23 past all the agencies prior to conducting the survey,  
24 and we received concurrence from all the agencies that  
25 those were satisfactory protocols.

63

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1 So even though there's no formal protocols,  
2 the first surveys we performed were accepted by the  
3 agencies beforehand.

4 MR. RANSFIELD: We did talk to URS before the  
5 protocols were done.

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6           To clarify two points, the Fish and wildlife  
7 surveys could not require any sort of protocol survey.  
8 we can't do it.

9           Our guidelines for plants are to use the  
10 California Native Plant Society protocols, and I'm not  
11 exactly familiar with those, what they are.

12           I would also say that in talking to URS, you  
13 know, for annual plants, the capability of surveying  
14 varies from year to year in the desert, and as we -- as  
15 URS was preparing for the surveys in 2007, I remember  
16 talking to them and saying, there's no point in  
17 surveying this year, and the surveys -- Bill will  
18 remember or Pat -- we, essentially, abandoned surveys  
19 for annual plants at that time. And then when more  
20 rainfall fell in 2008, they went back out.

21           But I don't remember, you know, specifically  
22 going over, you know, trans-sec or anything like that  
23 with plants surveys.

24           MR. LA PRE: Those guidelines that were prepared  
25 by the Native Plants Society and adopted by Fish and

64

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1 Game were not followed to the letter because this is a  
2 very large project, and it had a sampling scheme,  
3 instead of a hundred percent survey scheme.

4           On a project like this, we look at the --

Page 65

5 the overall effort, which we're pretty happy with. The  
6 primary points being, are the -- is it a year of  
7 adequate rainfall so the plants would be up, and was  
8 the season or the month correct so that they would be  
9 detectable.

10 That said, the BLM has had some of its own  
11 questions for the Applicant which were just answered  
12 yesterday, and we -- we have not given final approval  
13 to any of the bio studies for this project.

14 On the question of rare plants, though, we  
15 look at the most important things: Did you go to  
16 the -- the places where the rare plants are? which in  
17 this case is mostly the below-sand areas. And did you  
18 look during the right season and during a good year?  
19 And that appears to have been done quite nicely.

20 MS. JAMES: Did you find the first number yet?

21 MR. CASHEN: I'm still looking for that.

22 And I don't necessarily want to get hung up  
23 on details here, and part of this is just my own  
24 confusion in trying to understand what applies and what  
25 doesn't apply. And I'm just -- you know, from what I

65

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1 read in the west Mojave Plan, the surveys are supposed  
2 to follow Fish and Game survey guidelines, and then the  
3 CEC also has a citing guideline that required the  
4 project Applicant to -- to adhere to established

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5 protocol survey guidelines and to consult with the  
6 appropriate resource agencies for those guidelines to  
7 determine whether such guidelines exist.

8           And it doesn't seem to be happening, and I'm  
9 trying to understand if this is -- is indeed an issue,  
10 if this is something that, yeah, that's what the CEC's  
11 guideline says; yeah, that's what the West Mojave Plan  
12 says, but nobody pays attention to that; or whether  
13 this is really something that, you know, should have  
14 been followed.

15           And we've been trying to, through our data  
16 requests -- and I can provide some number in a second  
17 here -- establish how the surveys were actually  
18 conducted.

19           We know roughly the time of year they were  
20 conducted. We know that the -- the whole survey area  
21 was broken up into these 240-acre cells and that two  
22 cells were surveyed per day by two biologists, but we  
23 haven't had any luck in getting any more specific  
24 information on how the surveys were actually  
25 conducted -- were there line transect, and, if so, how

66

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1 far apart were they, how fast did they walk, or were  
2 sample plots used, or what exactly the techniques that  
3 were implemented in the field were.

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4                   And I think that that is fairly important to  
5 understanding how valid the data is, and maybe you can  
6 address that question right now, and I'll give you the  
7 number.

8           MS. JAMES: So you owe me two numbers at this  
9 point. So you need to keep track so we'll be sure  
10 we're responding back correctly.

11                   who wants to respond that?

12           MR. MOCK: Okay. Each day that the botanist went  
13 out they were out assigned two cells to survey in a  
14 day. A pair of biologists went out. They have -- they  
15 had their cell points, the corners of each of the cell  
16 in their GPS units, and they would go to those cells,  
17 and they would search in about a four- to five-hour  
18 period that 240-acre area.

19                   It was up to that -- those field biologists  
20 to do an adequate coverage within that time period to  
21 where they would presumably focus on the areas where  
22 they would be most likely to support the species they  
23 were looking for.

24                   So for the two more sensitive plant species,  
25 those are going to be the species -- the areas that

67

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1 would be dominated by water flow areas, like where they  
2 tended to occur at the higher -- higher elevations of  
3 where water flows, and that's where we found them.

Page 68

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4           The crucifixion thorn, they could be almost  
5 anywhere, and so it's -- that's pretty much of a random  
6 thing, but it's a fairly sizable shrub, and so it's not  
7 really that difficult to detect it if you're -- if  
8 you're covering an area in a decent way.

9           So -- so if you -- if you assume 240 acres  
10 in a five-hour period, you can calculate two people,  
11 ten hours, 240 hours -- acres. You're doing a  
12 couple -- several acres an hour. And that would be  
13 the -- essentially, the rate of coverage that they were  
14 covering if they were to cover the entire plot in an  
15 even way.

16           But it's unlikely -- it's more likely they  
17 were focusing on more microhabitat areas where the  
18 likelihood of the plant occurring was, and so they may  
19 have spent more time in areas where there -- where --  
20 where the plants are more likely to be, and less likely  
21 in the areas that might be more rocky or didn't  
22 indicate likelihood of detection, and so they -- they  
23 spent less time there.

24           But the emphasis was trying to have an even  
25 effort across the entire landscape, and, hence, why we

68

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1 broke it down into 240-acre cells and tried to focus  
2 that effort evenly so we can have an equal chance

3 across the landscape.

4 MS. JAMES: Numbers?

5 MR. CASHEN: Yeah. Those questions relate to CURE  
6 Data Request 42 through 52, and not every single one of  
7 those numbers necessarily applies, but it's -- it's  
8 within those -- that range of data requests.

9 MS. JAMES: Next one. Start with the data request  
10 number.

11 MR. CASHEN: Yeah. We're going to shift to some  
12 questions about desert tortoise, which starts with CURE  
13 Data Request Number 1.

14 MS. JAMES: Data Request 1 through 34.

15 MR. CASHEN: The first question just has to do  
16 with some clarification on -- on the maps, in the AFC,  
17 specifically Figure 5.6-4 and 5.6-5.

18 Figure 5.6-5 shows --

19 MS. JAMES: Hold it up so --

20 MR. CASHEN: Oh, okay. This is the one that has  
21 the block of colors. And the red color indicates, I  
22 guess, the highest concentration of tortoises.

23 It doesn't seem to coincide necessarily with  
24 what's shown on 5.6-4.

25 Maybe can you just explain what we're seeing

1 here?

2 MS. JAMES: Everybody locate the right exhibit?

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3 UNIDENTIFIED FEMALE SPEAKER: what data request  
4 was it?

5 MS. JAMES: 1 through 34.

6 MR. MEYER: Can we be a little bit more specific.  
7 I can't keep up with that.

8 MR. CASHEN: well, there is not a specific data  
9 request.

10 MR. MEYER: Okay. why don't we just, you know,  
11 have that as a -- a question for people to ponder, and  
12 then we'll give the Applicant some time to reply to  
13 that at a later date, but we'll need a -- we'll need a  
14 formal data request.

15 It is something that has been covered  
16 already.

17 MR. CASHEN: Okay. Then the next one is --  
18 relates to Data Request Number 30.

19 MR. MEYER: Okay. Before we jump on that, I  
20 just -- I want to take a quick break here.

21 we're going to lose one of your resource  
22 agency staff, so I want to turn this over to Becky  
23 Jones real quick and ask: Is there anything that you  
24 specifically wanted to cover right now to make sure we  
25 get everything you're entering through the biology

70

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1 report before you have to leave?

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2 MS. JONES: Probably not at this time. I will be  
3 submitting some written comments, but I just haven't  
4 had a chance to get to those yet.

5 But, yeah, I can't -- some of this stuff  
6 is -- you know, besides what's been addressed in some  
7 of the other requests, I have a few other things, but  
8 they're fairly minor compared to most of the other  
9 questions that have been posed that were ones that I  
10 would have, so...

11 MR. MEYER: Okay. If you send them to me, any  
12 comments or questions, I'll get them out to everyone.

13 MS. JONES: Okay.

14 MR. MEYER: I think Bill has a question for you.

15 MR. MAGDYCH: Hey, Becky, one of the things we're  
16 curious about -- and this will also extend over to the  
17 U.S. Fish and Wildlife Service -- is just for the more  
18 formal processes for you, just your time table that  
19 you'll -- you know, how long is it going to take you to  
20 get in and do a more -- more complete assessment so  
21 that we can make sure we're responding to all of your  
22 questions?

23 And then for service we'll be asking, of  
24 course, about the triangle TA and so forth, and of  
25 course, that obviously involves Chris and -- with the

71

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1 BLM, as well, so...

2 MS. JONES: Basically, what I need to do now is  
3 sit down and write up a comment. We do have some  
4 concerns about the big horn sheep, and, you know, some  
5 of the proposed mitigation and stuff like that.

6 But we'll be writing a letter on that,  
7 hopefully -- as I keep telling you -- within the next  
8 couple of weeks. You've been hearing that for a month,  
9 but I do plan on getting those out soon.

10 MR. MOCK: I think one -- one issue that is still  
11 outstanding that we'd like to get some input on is the  
12 options for fencing, whether we are going to exclude  
13 the tortoise from the site after construction is  
14 completed, a permitted exclusion fence, as opposed to a  
15 construction exclusion fence, and what's the  
16 opportunity for -- or -- or opportunity to, perhaps, do  
17 a more adaptive management approach and not maintain an  
18 exclusion fence, at least in the -- until we've had the  
19 opportunity to assess the resource usefulness or the  
20 value of the site after construction and during  
21 operation for the tortoise.

22 There is a potential because so much  
23 herbaceous forage habitat is going to be retained on  
24 site -- there is a potential for some care and capacity  
25 to be retained. Although, we don't know how much that

1 might be.

2                   And so is it appropriate to maybe defer the  
3 decision on the permanent exclusion fencing until after  
4 we have a -- some more data to know whether that's an  
5 appropriate measure or not?

6           MR. RANSFIELD: On that one, there's no final  
7 Agency decision, but it, you know, preliminary based on  
8 the picture in my mind, I see a continuing long-term  
9 risk to tortoises on site, and we would be looking at  
10 moving them off site, if the project is permitted.

11                   In terms of consultation timelines, Energy  
12 Commission, Fish and Wildlife, and BLM have worked up  
13 a -- a schedule of consultation timelines and need for  
14 review and all that stuff that we will do our best to  
15 stick to. And that's available from BLM or us if you  
16 want to take a look at that. But everything depends on  
17 when things come in and when they go.

18           MS. BLACKFORD: In addition to that, it's my  
19 understanding that there's a new biological report that  
20 has recently been submitted, and until BLM approves  
21 that biological report, we are, you know, working with  
22 BLM to make sure that all the information is -- is  
23 there.

24           MR. LA PRE: Our district manager, otherwise known  
25 as the boss, is -- is quite interested in this going

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1 through -- going through design, the light on the  
2 ground design, where some habitat remains, and -- but  
3 he needs to be convinced. I can't speak for him, but I  
4 can tell you what I have talked to -- with him about.

5           If he is convinced that there will actually  
6 be herbaceous plants and space for the tortoises and  
7 fringed-toed lizards and the crucifixion thorn to live  
8 within the project, then that is -- is our preference.

9           We will follow the guidance of Fish and  
10 wildlife Service with respect to the desert tortoise.  
11 If there's too high a risk over time, that more would  
12 die on the site than taking them off the site, then we  
13 want to do it. So we'll take their advice on that,  
14 but...

15           So the answer to Pat's question is, we're  
16 not convinced yet that enough living space will remain  
17 under the SunCatchers to constitute habitat for the  
18 plants and wildlife.

19           MR. MOCK: I agree, and neither am I convinced  
20 that there is, but it's just a matter that we really  
21 don't know, and until you implement the program and  
22 monitor and determine with some actual monitoring data  
23 of what -- which alternatives is most appropriate,  
24 requiring an exclusion fence up front precludes you  
25 from doing a monitoring program that actually will

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1 determine whether that fence was appropriate or not.

2 MS. JONES: The one other issue I have that, of  
3 course, is going up, and, there again, kind of dealing  
4 with the fencing too is, any wildlife corridors through  
5 the area would be an issue and how that is going to be  
6 dealt with on the project.

7 MR. MAGDYCH: And let me take just a moment to try  
8 to summarize a few things that I know we've been  
9 talking about in-house.

10 One, we do see the railroad and I-40 as  
11 substantial obstacles for movement, especially for  
12 desert tortoise. There are culverts that are sizable  
13 that certainly there's no reason a tortoise couldn't  
14 pass through that, or just about anything else for that  
15 matter, including an occasional big horn sheep, if one  
16 wanders down that way.

17 We do not believe that that's the -- that  
18 that's a major avenue north and south for desert  
19 tortoise, in particular, because we believe both the  
20 railroad and I-40 individually pose substantial  
21 barriers to movement.

22 And then combined you've got a synergistic  
23 effect which makes it even more difficult for those  
24 animals to move back and forth in the north/south  
25 direction.

75

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1           It doesn't mean that some don't. We think  
2 some probably do on occasion, but it's just not a  
3 substantial movement corridor.

4           In the revised bio report that we're working  
5 with BLM on and -- and for the CEC's purposes, that  
6 will be docketed after it's accepted by the BLM. As  
7 soon as we get through that, we're trying to describe  
8 better where we understand the more likely corridors  
9 will be. So we do plan to address that.

10           We currently -- currently believe it's more  
11 over towards the ACEC and then also along the north  
12 part of the site into the northwestern areas. There's  
13 sort of a pass area in the mountains in that direction.

14           So from a corridor point of view, we don't  
15 believe for just about anything that there's an  
16 important north/south corridor through the site. We do  
17 believe the east/west movement is more significant.

18           For tortoises, we believe there's probably  
19 some potential for a natural habitat to allow them to  
20 come back in after construction is completed. They  
21 need to be moved out during construction.

22           We think that if they recolonize after  
23 construction that there is a potential for them to  
24 persist with a net increase in the population because  
25 that area won't be taken completely out.

1           There is some risk of mortality during  
2 operation if the tortoise is in there, and that's just  
3 something that we may need to consider and address how  
4 much you want to accept that risk.

5           For things like big horn sheep, we're  
6 currently of the opinion that the project will not  
7 substantially affect big horn sheep, even if the whole  
8 area has an exclusion -- a fence that would exclude .  
9 them.

10           On the other hand, there is a possibility to  
11 open up portions or all of the fencing to allow big  
12 horn sheep to get through, as well. We don't think big  
13 horn sheep are going to be particularly put off by the  
14 SunCatchers.

15           And, you know, if you have any comments on  
16 those particular items, we'd like to hear them now.

17           MR. OTAHAL: This is Chris Otahal, wildlife  
18 biologist at BLM.

19           We have received a revised biological  
20 assessment type of document this morning, as a matter  
21 of fact -- I have not looked at it -- that are -- have  
22 a few of these issues. URS and I have been discussing  
23 these issues fairly extensively over the last several  
24 months, and we have not had a chance to actually look  
25 at revised bio-tech reports.

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1           So the agencies don't have any feedback at  
2 this point, but we are looking at the new data that you  
3 have provided.

4           MS. JAMES: Becky?

5           MS. JONES: Not that I can think of at this time.

6           MS. JAMES: Did you want to ask the biologist on  
7 the phone -- Chris, did you want to ask the biologist  
8 on the phone if they have any comments while they were  
9 listening?

10          MR. MEYER: Yeah. Joy?

11          MS. JAMES: Joy, are you still there? Joy?

12          MS. NISHIDA: I'm here. Sorry.

13          MS. JAMES: Just wanting to make sure that you  
14 could have heard what was discussed. And did you have  
15 any comments?

16          MS. NISHIDA: No. I -- I heard everything, and no  
17 comment at this point.

18                 Christopher, I need to get to my doctor's  
19 appointment in about 30 minutes, so I will be cutting  
20 out at about 1:30.

21          MR. MEYER: Okay. Let's try to wrap up the  
22 biology pretty quick here, so -- and then we'll take a  
23 short break.

24                 So why don't we go back to CURE and...

25          MR. CASHEN: Just to clarify, Bill, what you just

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1 mentioned about the possibility of allowing tortoises  
2 to recolonize to the site, I guess, through the  
3 culverts, does that mean that they would be moved off  
4 site to avoid direct impact and then potentially have  
5 to cross the highway or the railroad tracks to  
6 recolonize the site.

7 MR. MAGDYCH: There's been no determination as to  
8 where they will be moved. Certainly, there's  
9 opportunities to move them to the ACEC adjacent to the  
10 site, as well as off the site to the north or to --  
11 perhaps, more likely to the northeast -- I'm sorry --  
12 the northwest, not the northeast.

13 However, that needs to be worked out, and we  
14 look forward to working with the agencies on finding  
15 the best locations for that.

16 Now, we're not assuming that the tortoises  
17 are going to -- those tortoises that are moved off site  
18 are going to come back to the site. In fact, I don't  
19 think we particularly expect them to do that.

20 But there will be tortoises in the adjacent  
21 area that are there now, and they -- you know, if we  
22 don't put up an exclusionary fence for tortoises, then  
23 those tortoises could move into the area.

24 Similarly, anything coming from south of the  
25 freeway, if it can pass through a culvert and then pass

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1 through the train track culverts, then it would have  
2 access to the -- to the whole site, if the exclusionary  
3 fence is not in place.

4 MS. JAMES: Anything else, Scott?

5 MR. CASHEN: Relating to CURE Data Request  
6 Number 30, the translocation plan, can you give us an  
7 idea of when translocation or the proposed  
8 translocation plan is going to be issued?

9 So far the only information that we have on  
10 the translocation plan is the statement that it would  
11 be solar to the Fort Irwin plan. And the Fort Irwin  
12 plan I think has generally been viewed as less than  
13 successful due to the high mortality of tortoises that  
14 were moved.

15 Can you discuss what -- what you will do  
16 to -- to capitalize on the lessons learned from that  
17 plan and incorporate those lessons into your  
18 translocation plan?

19 MR. MOCK: Absolutely. I don't think we'd want to  
20 repeat any -- any missteps that would have happened  
21 before, but lessons learned should always be taken into  
22 account for future planning, so certainly any kind of  
23 concern that -- that --

24 Our goal is to have a -- have those  
25 translocated tortoise survive and reproduce in the

1 locations where we translocate them, but, you know,  
2 biology isn't -- isn't perfect all the time, and you  
3 have to do the best you can with what data you have.

4 MR. CASHEN: So is there a time line for the  
5 production of a proposed plan?

6 MR. MOCK: I think we need to have further  
7 discussions with the agencies to identify what -- what  
8 their -- what the outline for that protocol will be,  
9 and what -- what necessary measures, both from the  
10 context of spacial context, where are we going to  
11 relocate them, and what would be the -- the appropriate  
12 protocol in implementing that.

13 And then once we have those -- those  
14 discussions with the agencies, we can actually put that  
15 plan together and put it into a public comment.

16 MS. BLACKFORD: I know that right now the Desert  
17 Tortoise Recovery Office is working on some guidelines  
18 for translocation and that they're expecting to develop  
19 some rough bullet points that are going to be coming  
20 out in the next couple of weeks.

21 After they have produced that, it still  
22 needs to be passed by BLM and Fish and Game to get  
23 their input on that, as well.

24 But there are going to be some more formal  
25 guidelines coming up shortly, so that will help tailor

1 all this.

2 MR. OTAHAL: I would also add that we don't even  
3 know if there is a need for a translocation plan at  
4 this point, because, for example, if we leave up the  
5 impermeable fence, that may preclude the need of  
6 actually having a formal translocation plan, that would  
7 be just moving animals out of the way during  
8 construction, and then they would recolonize the site.

9 So we need to answer that first question  
10 before we actually start moving forward on the second  
11 question.

12 MR. CASHEN: Okay. With respect to wildlife  
13 corridors and CURE Data Request 91 and 114, the  
14 response to -- to the data request indicated that there  
15 would be corridors remaining north and east of the  
16 project site.

17 And can you show us where those would be,  
18 because it's -- it's not clear that any corridors would  
19 remain, especially considering the cumulative impact  
20 map that was provided in the AFC.

21 We're also concerned that the -- the fencing  
22 of the site and the leaving the culverts unfenced for  
23 wildlife to move onto the site, which what was  
24 discussed in the AFC, is problematic because it creates  
25 a classical ecological sink.

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1                   And the reliance of animals to be able to  
2 move north of the site is also potentially problematic.  
3 If you look at that map, you can see that the habitat  
4 conditions north of the site are quite a bit different  
5 from the -- those within the site.

6                   So is there ecological evidence that  
7 supports the conclusion that animals would be able to  
8 move north of the site instead of through the site?

9                   It was mentioned that you thought that the  
10 east/west movement was the most vital here, so that --  
11 this would particularly be important to consider in  
12 that case.

13           MR. BOB (UNKNOWN LAST NAME): Bob, Tessera Solar.

14           MS. JAMES: Go ahead.

15           MR. BOB (UNKNOWN LAST NAME): This is Bob. I was  
16 just checking in.

17           MS. JAMES: Hi, Bob.

18                   Do you want to answer this?

19           MR. MOCK: There is a -- still a substantial area  
20 north of the actual -- the disturbance boundary. We --  
21 you have to make sure that you understand there's a --  
22 there's a buffer zone that we assessed for the indirect  
23 effect, but those areas aren't directly affected by the  
24 construction. And so there's those areas, and then  
25 there's also been, in certain areas, substantial

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1 additional habitat north of the site that actually will  
2 allow for some east/west movement.

3           And so those would be the presumed areas  
4 where wildlife would be passing through, if -- if the  
5 boundary of the actual project development area  
6 excludes wildlife from the site.

7           And so that -- that's the presumption we  
8 have is there's a sufficient movement area north of the  
9 site that would allow that east/west movement.

10           In terms of north/south movement, the ACEC  
11 would -- is the obvious location east of the site where  
12 there's some north/south movement, and that's where the  
13 big horn sheep movement is already occurring.

14           And then there's some opportunity to the  
15 northeast, that path that Bill's talked about. That's  
16 where we see them going, getting around some of those  
17 more topographically challenging areas to make it to  
18 the area to the west of the site.

19           MR. MAGDYCH: I'd like to comment too. You  
20 mentioned again -- you mentioned again the cumulative  
21 impact based on the map and those developments.

22           Now, when you're looking at cumulative  
23 effects, of course, you have to look at it in some  
24 sense of foreseeable projects. And, unfortunately, we  
25 don't have a high degree of certainty outside of the

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1 Tessler Solar proposed project of whether or not any of  
2 those other projects will happen.

3           we know that at least some of the companies  
4 involved with those have faced economic problems and so  
5 forth. It's just a big uncertainty.

6           we do know that we're one of the first ones  
7 in line here, so in evaluating cumulative effect, I  
8 think the best we can do in some of these instances is  
9 clear things up, like the fact that the Tessler  
10 proposed development on the ACEC has been removed, so  
11 that opens that up.

12           For the other projects, though, really that  
13 falls I think on the shoulders of the resource agencies  
14 and -- and the CEC and the like to make sure that as  
15 additional development occurs that they are looking at  
16 this incremental increase that occurs each time new  
17 projects come in. Otherwise, it's a little outside of  
18 the scope of this evaluation for this project.

19           MR. MEYER: And I can speak to that, that Jim and  
20 I are constantly in communication on how the Energy  
21 Commission/BLM will be addressing cumulative impacts,  
22 and we're constantly trying to figure out which  
23 projects that are in the que are possibly going to fall  
24 out, which are going to go forward, what ones may not  
25 be, you know, really well known, but we have a high

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1 likelihood -- or there's a high likelihood that they're  
2 actually going to come in and actually file an  
3 application either with us or with the BLM or with  
4 someone else in the area, if it's outside the  
5 jurisdiction of the Energy Commission or BLM.

6           So we will constantly track that, and so  
7 what you see in the application is maybe a snapshot of,  
8 you know, when the application was done of what the  
9 cumulative project would be. That is not what the  
10 Energy Commission staff is going to base our analysis  
11 on the BLM's going to base their analysis -- our joint  
12 analyses basically on.

13           We're going to be constantly revising that  
14 so that when we produce, you know, our draft document,  
15 it will be accurate, and there might even be some  
16 revision between draft and final if one of those  
17 projects dropped out or if there's a new one and we  
18 have to get -- it has a significant change over the  
19 draft document, we may need to do a little bit of an  
20 additional analysis on maybe a new project or one that  
21 drops off.

22           So that's something that we'll be working  
23 on. We'll be working with the resource agencies, you  
24 know, on the specific biological and cultural issues to  
25 see if any of the cumulative project changes impacts

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1 something that we're all concerned about.

2 MR. CASHEN: The -- the West Mojave Plan also  
3 requires raptor-safe electrical distribution lines  
4 associated with new construction. Is that -- it was  
5 unclear whether -- whether those would be implemented  
6 for the project.

7 MS. JAMES: Is there a data request number?

8 MS. CASHEN: Well, I mean --

9 MS. JAMES: Everybody needs to flip through their  
10 book.

11 MR. CASHEN: The data request was -- had to do  
12 with the project complying with the West Mojave Plan.  
13 I can give you a specific number on that.

14 MR. MOCK: The answer to your question is yes.

15 MR. CASHEN: Okay. I was hoping it would be that  
16 simple.

17 MR. MOCK: I mean, our intent is to avoid the  
18 mortality of raptors. We must -- must because they're  
19 a protected species. The mortality of raptors,  
20 especially nesting raptors, are to be avoided. That's  
21 a state requirement, so any kind of design feature that  
22 would put a raptor at risk would have to be modified to  
23 make them not at risk.

24 MS. JAMES: Next?

25 MR. CASHEN: This has to do with Data Request 147  
Page 88

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1 through 149.

2                   And can you -- can you clarify what the --  
3 the baseline condition of invasive weeds are at the  
4 site, specifically the species that are present and  
5 their abundance and distribution?

6                   The AFC mentions a weed-management plan. I  
7 think an important part of any weed-management plan is  
8 having an understanding of what the baseline conditions  
9 are and not -- that was not clear in the AFC, what the  
10 baseline conditions on invasive weeds were at the site.

11                  MS. JAMES: So who are you asking for an  
12 interpretation?

13                  MR. CASHEN: I'm asking, I guess, maybe Patrick  
14 would be the best person to address that.

15                  MR. MOCK: Well, typically the weeds aren't very  
16 abundant out there. I mean, they are there, but in  
17 terms of they're not the dominant vegetation, and  
18 that's the main goal is not to have the weeds take over  
19 and become the dominant vegetation out there.

20                  And so the presence of -- of weed species  
21 is -- is low, and that -- and the intent of the  
22 weed-management plan is to keep it that way. We're not  
23 going to totally exclude weeds out there. That's just  
24 not practicable, but you're not -- the intent of the

25 plan is to keep weeds down to where they're not

88

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1 affecting the biological value and functioning of the  
2 habitat that's retained on site or areas adjacent to  
3 the project that were -- that aren't being directly  
4 affected by the site.

5 MR. CASHEN: I think we, you know, potentially get  
6 into trouble when we use qualitative terms instead of  
7 quantitative terms, and so I just wanted to clarify,  
8 there are no quantitative measures of distribution in  
9 abundance of the weeds out at the site at this point;  
10 is that correct?

11 MR. MOCK: No. That's never been our intent of  
12 doing that, no.

13 Now, certainly -- certainly that could be  
14 something that could be a condition of approval prior  
15 to construction so we have a baseline condition. Sure.

16 MR. CASHEN: Okay.

17 MR. MAGDYCH: But right now the weed distribution  
18 on site is so low that it didn't seem to be warranted.

19 MR. MEYER: I can -- I can speak to the condition  
20 certification. The typical condition of certification  
21 would be written in such a manner that the operation --  
22 construction operation impact to the project would not  
23 lead to an increase in invasive weeds, and in many  
24 cases require them to --

25 Even if they're invasive weeds that they

89

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1 encounter that might have been there prior to the  
2 project, if they're going through the area and that's  
3 an area that they're impacting, controlling those.  
4 And, in many case, they'll actually end up with a net  
5 decrease in invasives on the project over the baseline.

6 So we don't, a lot of times, say we want to  
7 know that you have, like, you know, 2-3 percent  
8 invasives on the site. We just look at where they're  
9 actually having impacts and make sure that none of it  
10 is project-related impact, whether it's roads, changing  
11 drain-outs, creating a wet area where there wasn't one.

12 All of those areas that the project -- that  
13 would basically impact -- you know, that wouldn't occur  
14 but for the project, that there is some mitigation to  
15 address invasive species and not increase the impact on  
16 invasive species of the project.

17 MR. CASHEN: Yeah. Just I guess -- you know, you  
18 mentioned one of the conditions of approval was there  
19 was no increase in -- in weeds, but how do we know if  
20 there's an increase if there's no baseline?

21 MR. MEYER: Basically what we're looking at is  
22 having a weed-management plan. You know, the idea is  
23 developing a plan that mitigates, you know, the types

24 of activities that would create weeds. So, yeah,  
25 you're right.

90

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1           It's like, they're -- we're not looking and  
2 saying, you know, you have six million weeds. We want  
3 to keep it at six million or below, because over, you  
4 know, 13 square miles, you know, going through there  
5 and like numbering it...

6           I can tell you that there's no way that --  
7 if I put a mitigation measure in there like that, it  
8 would look really pretty, but I'm not allowed to put an  
9 unenforceable one that sort of looks good, but there's  
10 no way that I have the resources or the agencies have  
11 the resources to go out there and implement or to  
12 actually check it. Because on one like that, I would  
13 have no way of actually verifying whether they were in  
14 compliance or out of compliance.

15           So on a situation like that, what the Energy  
16 Commission typically does, we have mitigation measures  
17 that deal with the -- sort of the causal factors of  
18 increases in invasive species. We require them to deal  
19 with that to --

20           say, if you've seen like nitrogen loading,  
21 things of that nature, where, if they do certain  
22 activities poorly, we know from history they're going  
23 to increase the invasive species.

24 MR. CASHEN: Uh-huh.

25 MR. MEYER: You know, wheel washing, things like

91

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1 that, so we look at it as best management practices,  
2 things of that nature. Because otherwise, any other  
3 sort of quantitative measure, it would be really  
4 unenforceable in a realistic standpoint.

5 So we look at ones that are very easy to  
6 enforce, and then if we look at a situation where  
7 they're following all the best management practices and  
8 the BLM and Energy Commission note that in our visits  
9 in the field and checking on everything that we have an  
10 increase in invasive species, then at that point we  
11 need to take a look at how we're going to address that.

12 So it doesn't -- just because it's not a  
13 condition of certification, it doesn't mean that we  
14 say, okay. They -- they've met all of the letters of  
15 the condition. If the problem still exists, then the  
16 BLM and Energy Commission need to meet with -- if the  
17 project is approved, then we would meet with the  
18 operator of the project to determine, you know, if  
19 there's something that needs to be done to fix that  
20 issue.

21 MR. STOBAUGH: Yeah. We're at -- you know,  
22 realize we're at the point of just gathering data and

23 gathering -- so that we can make an analysis, and  
24 that's part of what this workshop, as well as responses  
25 to applications are.

92

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1           But like CEC, BLM if it -- if it looks at  
2 approving this project, we'll have stipulations applied  
3 to the issuance of a Right-of-Way Grant, which we have  
4 many instruction memorandums about concerning policies,  
5 such as weed prevention -- or weed prevention programs,  
6 such as avian raptor protection.

7           All of the -- many of the issues you've  
8 brought -- outlined, we have very large pages and pages  
9 of stipulations which we can go through based upon the  
10 analyses of the findings from all the surveys, as well  
11 as the analysis done throughout the environmental  
12 impact statement and apply those stipulations to  
13 issuances of the grant.

14           And part of that is also developed from the  
15 plan and development we've received from the Applicant  
16 through their technical skills, knowledge, and  
17 abilities about how they're going to construct,  
18 operate, maintain, and even decommission this project.

19           So there's a whole lot of policy and manuals  
20 in place that we will be going through based upon the  
21 analysis in determining the stipulations needed to  
22 protect or minimize, you know, impacts, if this were

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23 permitted.

24 MR. CASHEN: The final question has to do with  
25 bats, and I'll get you the number in one second. So

93

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1 this has to do with Data Request 159 through 161.

2 Can we get some -- well, bat rates are known  
3 to -- that occur in the Pisgah ACEC, and the Applicant,  
4 in response to the one data request, also mentioned  
5 that there's a possibility for bat roosts in the Cady  
6 Mountains.

7 Can you clarify what the project impact to  
8 bats would be and what mitigation would be proposed,  
9 perhaps, in the form of surveys to avoid impacts to the  
10 bat roosts?

11 MR. MOCK: I think the site is -- such that  
12 there's very little opportunity for bats to roost  
13 actually on site, so any bat-related impacts presumably  
14 are to their foraging habitat and not to actual roosts  
15 sites.

16 There are a few potential areas that could  
17 be surveyed as a pre-construction activity, but it  
18 makes up probably less than one percent of the site,  
19 and so it would be a feasible measure to document any  
20 actual roost sites that are -- might be on site, but  
21 we -- based on the suitability -- habitat suitability,

22 there's very little area that is likely to support bats  
23 as a roosting species.

24 MR. MAGDYCH: Pat, I would also add that the  
25 design plan, anything that's more likely to potentially

94

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1 have roosting is avoided already.

2 MR. MOCK: True.

3 MR. MAGDYCH: So we have a few little exclusionary  
4 areas along the north part of the site that are already  
5 excluded from any sort of development.

6 MR. MOCK: Exactly.

7 MR. MAGDYCH: And the areas that are proposed for  
8 development would not have the opportunity for the bat  
9 roosting.

10 MR. MOCK: Exactly.

11 MR. CASHEN: And does that include the  
12 transmission lines? And are there associated  
13 biological resource survey reports that accompany the  
14 transmission lines and the upgrades to the transmission  
15 line corridor?

16 MR. MAGDYCH: I'll just say the -- the processing  
17 of -- of the transmission line is being conducted  
18 separately, and I can't really give you an update on  
19 that.

20 However, I will speak generally. There's  
21 nothing in this project, or for that matter when

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22 upgrades are prepared, that should substantially affect  
23 those transmission lines. At least to the extent that  
24 something like re-conductoring does not have any effect  
25 on the lines.

95

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1 MS. JAMES: Is that the last one or more?

2 MR. CASHEN: No. That's it. Thank you.

3 MR. MEYER: Okay. Any comments on biology from  
4 the resource agencies? Any additional?

5 Okay. Mr. Jackson?

6 MR. JACKSON: None.

7 MR. MEYER: Okay. Are there any questions from  
8 the public on the biological issues?

9 Please identify yourself so the court  
10 reporter can get it or just say "member of the public,"  
11 if you don't want to give your name.

12 MR. STERN: I'm Frederick Stern from Newberry  
13 Springs. My question is to Ms. Miles, the attorney for  
14 California Unions for Reliable Energy, regarding  
15 biological and plant issues.

16 while the project Applicant has stated that  
17 they would like to hire locally, and we're in dire need  
18 of jobs in the High Desert due to the recession, is  
19 it -- is it your purpose to throw road blocks in the  
20 Applicant's permit approval plan until they agree to do

21 primary hiring outside of the -- outside of our area in  
22 union hiring halls, and, if so -- presumably so, where  
23 would those hiring halls be?

24 Thank you.

25 MS. MILES: The California Unions for Reliable

96

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1 Energy is at this point looking at this project for  
2 biological impacts, as well as any other impacts,  
3 transmission lines corridors, whether this technology  
4 is reliable, whether it's been tested.

5 I mean, I'm actually looking at a broad  
6 range, and I can see biology has been sort of over  
7 emphasized so far in these hearings, but will be  
8 submitting data requests on a number of other topics.

9 And CURE will not be withdrawing  
10 participation on these issues until they are resolved.  
11 So just to put that matter to rest, CURE is  
12 participating on biological impact and will not  
13 withdraw from these proceedings until there has been  
14 improvements in the project in relation to the  
15 biological impacts that we are identifying.

16 Secondly, in regard to whether local workers  
17 will be hired, I can't specifically answer that at this  
18 moment. I can tell you that if local workers are  
19 qualified, then I think -- you know, if they are --

20 You know, CURE definitely is representing

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21 the interest of the unions that are part of the CURE  
22 coalition, so...

23 . You know, but I know that CURE does care  
24 about local workers being hired in the projects, and  
25 that's something that goes into the idea of

97

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1 sustainability of these projects.

2 That's one of CURE's primary objections --  
3 objectives in participating in these proceedings, is  
4 making sure that projects are sustainable; that they're  
5 sustainable from an economic prospective, as well as  
6 sustainable from an environmental prospective.

7 So CURE wants to support communities. They  
8 want to support communities' environment and also the  
9 economy.

10 MS. JAMES: Follow up?

11 MR. STERN: Thank you for that partial answer.

12 I wondered if you'd like to answer the rest  
13 of the question? where do you intend, if you have your  
14 druthers, that these construction workers are going to  
15 be hired -- from what union hiring halls and what towns  
16 and cities or states are you going to hire these  
17 workers for this project?

18 MS. MILES: I would be happy to answer that  
19 question. I'm sorry. I don't have that part of your

20 answer. But I'm certainly happy to talk to you  
21 offline.

22 I don't deal with that part of CURE's  
23 participation, but I could certainly put you in touch  
24 with someone who does. My job is really to look at the  
25 environmental impacts of these projects solely.

98

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1 MR. SNIVELY: Wayne Snively, also of Newberry  
2 Springs. It's not a direct question to you, but there  
3 are a number of small contractors in our Newberry area  
4 that would like to make contact and like to find out  
5 who will they contact when -- after this project has  
6 been approved, if they could apply to see if they could  
7 be eligible to bid on some of the contracts.

8 Thank you.

9 MR. MEYER: Okay. I think at that point, unless  
10 there are any other public comments on biology, we're  
11 going to take a ten-minute break. Sorry it's not  
12 longer.

13 We're sort of running a little behind here,  
14 so just take ten minutes to be able to stretch your  
15 legs, get a drink, get a sandwich. There will be a  
16 30-second delay while I run to the bathroom in front of  
17 everyone, but...

18 Why don't we come back here at about five  
19 minutes to 2:00, and we'll reconvene and start with the

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20 next section. we'll start with cultural.

21 (Recess taken.)

22 MS. VAHIDI: This is Negar Vahidi with Aspen, land  
23 use consultant to the Energy Commission.

24 I just have a couple of clarifying questions  
25 which should be fairly quick with regard to Land Use

99

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1 Data Requests and corresponding responses Number 62  
2 through 67. This mainly is kind of a clarification on  
3 what the Applicant refers to as the project boundaries  
4 versus the project fence line.

5 As I understand it, lands that are within  
6 the fence line are technically the project site where  
7 all of the activities are proposed, and that includes  
8 8,230 acres; correct?

9 MS. CHAMPION: Correct.

10 MS. JAMES: Yes.

11 MS. VAHIDI: Okay. So on that note, if you could  
12 pull up Land Use Figure 5.9-3 from the AFC.

13 MS. JAMES: Give us a minute.

14 MS. VAHIDI: Sure.

15 Okay. Is that black line that it's  
16 indicated as "project boundary" is that the project  
17 fence line.

18 MR. SETH (UNKNOWN LAST NAME): Yes, I believe so.

19 MS. VAHIDI: Okay. So -- but the question is --  
20 and that's -- that's the clarification. The reason why  
21 I brought this up is, if you look up towards the  
22 western side of the map where that big "Not a part,"  
23 NAP parcel is, those three parcels at the bottom that  
24 are considered not a part that are within the project's  
25 fence line, those are private parcels, and they would

100

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1 proximately total that hundred acres of land.

2 I'm just wondering, what is going on there,  
3 and is it or is it not a part? If it's not a part,  
4 then is it within the fence line? Could you clarify  
5 that?

6 MR. SETH (UNKNOWN LAST NAME): well --

7 MS. JAMES: Seth, wait one second, please.

8 MS. CHAMPION: So those three parcels -- those  
9 three private parcels that are south, they are not a  
10 part of the project. They are not within the project  
11 boundary, but they would be within the fence -- they  
12 would be within the fence line boundary.

13 MS. VAHIDI: Okay. So just to clarify, because of  
14 the language used in AFC, you're saying there are no  
15 private parcels that are within the fence line; is that  
16 correct?

17 MS. CHAMPION: within the project boundaries.

18 There are no project parcels within the project

19 boundaries.

20 MS. VAHIDI: But the project -- you just said the  
21 project boundary -- the fence line is actually the  
22 black line on the map. Okay. So I'm just trying to  
23 clarify -- I just need to know what the actual project  
24 site boundaries are?

25 MS. JAMES: Can you hold one second? I just need

101

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1 to walk over with the microphone.

2 MS. CHAMPION: The project boundary and fence line  
3 boundary are not exactly the same.

4 The project boundary encompasses more than  
5 the 8,230. The project boundary goes around additional  
6 land that includes BLM land, as well as some of the  
7 private parcels. The fence line boundary identifies  
8 those parcels in which we plan to construct the  
9 project.

10 The reason that there's different --

11 MS. VAHIDI: I can't hear anything you just said.  
12 I'm sorry. There's a lot of feed on the microphone.

13 MS. JAMES: One second. They're going to come  
14 over here and talk more directly into the speaker  
15 phone.

16 MS. VAHIDI: Thank you.

17 MS. CHAMPION: Can you hear me now?

18 MS. VAHIDI: Yes.

19 MS. CHAMPION: Okay. Okay. So the project

20 boundary and fence line boundary do different --

21 So the fence line boundary and project

22 boundary do differ. The reason is that the fence line

23 boundary identifies those parcels -- those parcels of

24 land in which we plan to construct the project within.

25 The project boundary encompasses both BLM land, as well

102

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1 as private land.

2 The reason for this is that we do not  
3 initially intend to utilize the not-a-part areas, the  
4 private lands.

5 However, we do plan, if necessary, to go  
6 forward and pursue some of those private parcels, if we  
7 can, for future development.

8 So right now, the fence line boundary  
9 identifies mainly the 8,230 acres of BLM land in which  
10 we plan to construct the project. And the project  
11 boundary identifies additional parcels, which we may  
12 eventually include within the project.

13 MS. VAHIDI: Okay. So on that note, on Figure  
14 5.9-3 -- I'm just trying to be clear.

15 So those three parcels ending 128, 129, and  
16 103, which are just south of that big not-a-part  
17 parcel, which is 112, those three are not within the

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18 fence line?

19 MS. CHAMPION: Can you repeat the question for the  
20 those parcels? You're asking if they're within the  
21 fence line or the project?

22 MS. VAHIDI: The parcels -- and this is listed in  
23 data request -- in the land use data request. Parcels  
24 ending in -- private parcels ending in 28, 29 and 03,  
25 which are located just south of not-a-part parcel 12,

103

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1 private parcels, according to the AFC, on Figure 5.9-3  
2 they are located within the black line indicated as  
3 project boundary.

4 Are those three parcels not a part of the  
5 project and not within the project fence line?

6 MS. CHAMPION: They are not a part of the project,  
7 so they would not be within the fence line.

8 The reason -- and let me explain why those  
9 parcels -- as you will see on the map, where the 112  
10 private parcel is, just to the west of that is  
11 additional land that BLM has that we have under  
12 application.

13 what we would look to utilize those three  
14 parcels -- the 128 and 129 and 103 -- for would be to  
15 access from the eastern part of the project to the  
16 western part of the project. That would solely be

17 utilized for the access to get from the eastern to the  
18 western part. Hence, the reason that it's within that  
19 boundary.

20 MS. VAHIDI: Okay. So if it's just used for  
21 access, you do intend to use and place project  
22 components on 05?

23 MS. CHAMPION: Again, we would have to pursue  
24 access through the private parties, which we're  
25 undergoing right now. That would have to be dependant

104

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1 upon if we can actually get access from the private  
2 landowners.

3 MS. VAHIDI: Okay. Could you clarify? Do you  
4 right now have any components proposed for that 105  
5 parcel in your site plan?

6 MS. CHAMPION: In terms -- when you say  
7 "components," you mean parts of the project?

8 MS. VAHIDI: Yes.

9 MS. CHAMPION: Yes. We plan to utilize that part  
10 of land for the project. Yes.

11 MS. VAHIDI: Okay.

12 MS. CHAMPION: In what capacity, however, to be  
13 determined.

14 MS. VAHIDI: Do you know when it's to be  
15 determined?

16 MS. CHAMPION: I think -- I think we'd have to  
Page 106

Solar1.TXT

17 look at our -- as we continue to develop our  
18 engineering design plans, we'll have to see if it could  
19 be utilized for SunCatcher units or for any other  
20 capacity for the project.

21 So we actually have not done full design --  
22 engineering designs to date, but we plan to pursue  
23 that, and I don't have a date in front of me to tell  
24 you when we plan to have it a hundred percent designed.

25 MS. VAHIDI: Okay. So this is a question for

105

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1 Christopher. That parcel to the east will have to be  
2 analyzed as part of the -- the joint documents;  
3 correct?

4 MR. MEYER: Yeah. At this point the Energy  
5 Commission -- at this point, barring any further  
6 information from the application, the Energy Commission  
7 and BLM will most likely -- and, again, if it's  
8 referred to at this point, look at the highest level of  
9 impact for those -- that parcel, you know, basically  
10 putting SunCatchers on it, rather than looking at the  
11 impacts of, you know, maybe a lay-down area so that if  
12 later in the project the Applicant determines that  
13 they're just doing a lay-down, we're not looking at an  
14 increase in impact over the analysis that was done.

15 So unless, you know, we get further guidance

16 from the Applicant, we'll be looking at sort of, you  
17 know, what is the worst-case scenario of impact on that  
18 parcel.

19 MS. VAHIDI: And let me clarify the reason I'm  
20 asking the question. It's not Parcel 105 that I'm  
21 concerned about. It's the three private parcels and  
22 that narrow strip to the south of 112.

23 Mainly because they are private parcels, the  
24 Applicant would have to show site control, meaning that  
25 they will actually have access or give some indication

106

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1 of the fact that, you know, they -- if they're going to  
2 be using that eastern parcel, they're going to -- you  
3 know, you need to access it, you have to show access  
4 through these private parcels or some sort of -- not a  
5 guarantee, but some sort of time line so that we could  
6 put that into the -- into the fact document.

7 And that's the only reason I brought it up,  
8 so if you can provide any information, that would be  
9 great.

10 MS. CHAMPION: Yeah. We can. We can. We  
11 actually know who the private landowners are and have  
12 had contact with the private landowners.

13 MS. VAHIDI: And maybe you could -- could you  
14 describe for me what discussions you've had with the  
15 County, as well, regarding anything that you would need

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16 to do with those three parcels once you do gain access  
17 to them?

18 Are they going to become -- I mean, in  
19 essence, if you're going to use the eastern parcel, are  
20 you going to want to acquire those three -- a portion  
21 of those three parcels as part of your project site?

22 MS. CHAMPION: That's correct.

23 MS. VAHIDI: Okay. And if so, will you use a lot  
24 line adjustment, merge the parcels? what would you do?

25 MS. CHAMPION: Okay. So right now in the initial

107

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1 discussions we've had with the private landowners, two  
2 of the three have been willing to sell their parcels to  
3 us.

4 If the other was not a willing seller, then  
5 we would look to get right of way.

6 MS. VAHIDI: Okay. How would you go about -- we  
7 basically need to know how you would go about that?

8 We need the intricate details on that. You  
9 don't have to answer now. You can just, you know,  
10 provide something as a follow-up, but --

11 MS. CHAMPION: Yeah. We can definitely -- we can  
12 definitely provide the information that we have to date  
13 and follow up with you on that.

14 MS. VAHIDI: Okay.

15 MS. JAMES: Other questions?

16 MS. VAHIDI: Okay. So I guess the -- after today,  
17 you'll get back to me regarding the matter of the  
18 parcels when you -- you know, how you would go about  
19 acquisition and if you can't acquire, how you would go  
20 about getting right of way through those, so on and so  
21 forth; correct?

22 MS. CHAMPION: Yes. Absolutely.

23 MS. VAHIDI: One other issue that I'd like to  
24 bring up, and I think you are aware of it. It was not  
25 part of the data request. It's in regards to a May 28,

108

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1 2009, memorandum from the US BLM State Director whose  
2 district managers and field offices and so on, the  
3 subject which is interim policy on management of  
4 donated land or land acquired with land and water  
5 conservation funds. I just want to make sure you are  
6 aware of that memo, and I think you are.

7 MS. CHAMPION: Yeah, we are.

8 MS. VAHIDI: So one question I have for you is,  
9 looking at the -- the map of the donated land and --

10 MS. JAMES: what number?

11 MS. VAHIDI: well, you know, Christopher, I don't  
12 know where this map came from. It's not numbered. It  
13 was just e-mailed to me along with a memo.

14 MR. MEYER: This was a map that came out as, I  
Page 110

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15 believe, guidance from --

16 I think this is a map that came out as  
17 guidance from BLM with the conservation land. It may  
18 have originated with the wildland Conservancy.

19 Does anyone have any detail on that maps?  
20 It's the map that shows the donated land that would be  
21 in the project area.

22 MS. VAHIDI: If anyone has their computer on, I  
23 can e-mail it.

24 MS. JAMES: Christopher, do you want her to e-mail  
25 it to you?

109

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1 MR. MEYER: Yeah. Have her --

2 MS. JAMES: Could you e-mail it to Christopher,  
3 please.

4 MS. VAHIDI: Sure.

5 MS. JAMES: Thank you.

6 MS. VAHIDI: At any rate -- and, again, you don't  
7 have to answer this now, but just to be -- briefly tell  
8 you, there appears to be mitigation land from within  
9 Phase I lands of the proposed project site. Most of  
10 the mitigation land and lands that are the donated  
11 lands are located towards the eastern side of the  
12 project site.

13 And the reason I'm bringing this to your

14 attention is because the BLM memorandum specifically  
15 states that land acquired by BLM under donation  
16 agreements, land acquired for mitigation compensation  
17 purposes or land acquired with LMUCF funds are to be  
18 managed as avoidance/exclusion areas for land use  
19 authorization that could result in surface disturbing  
20 activity.

21               So I just wanted to point this out to the  
22 Applicant because, you know, we have to look at that in  
23 the PSA, PLAQ, TSI section for land use and how the  
24 Applicant is planning on dealing with this. Again, you  
25 don't have to answer now. It might be too much

110

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1 information.

2               MS. JAMES: Actually, Jim Stobaugh from BLM is  
3 going to respond to you. If you hold on a second, I'm  
4 going to pass the microphone to him.

5               MS. VAHIDI: Okay.

6               MS. JAMES: Let me know if you can't hear.

7               MR. STOBAUGH: Yeah. That was a California  
8 instruction memorandum policy that came out right in  
9 June, and part of it asked the Applicant -- but there  
10 are lands that have been donated and some lands  
11 acquired -- there are lands part of the Catellus areas  
12 that there -- that we are -- from the policy, we have  
13 to look at how would such proposal -- what sort of

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14 impacts would such a proposal have consistent with the  
15 policy regarding the purposes of which those lands were  
16 acquired, which was conservation purposes. That is  
17 still actually being discussed, I think, with the  
18 Applicant itself in a response.

19           And -- I don't know -- did Sean or somebody  
20 maybe want to respond. But we're in the midst of still  
21 looking at it as part of the analysis of what this --  
22 this proposal and the type of impacts it may have on  
23 those lands, how it may be consistent with the  
24 California policy as -- as written.

25           So there's no -- no answer at this point in

111

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1 time yet, until we have the ability to see what the  
2 response is and then the analysis that would go with  
3 it.

4           MS. VAHIDI: Okay. Great. So I guess when BLM  
5 finds out, then you will let us know as well.

6           MR. STOBAUGH: Sure.

7           MS. JAMES: Yes.

8           Did you have other questions?

9           MS. VAHIDI: No. That's it. That should do it.  
10 Yeah. If you could just get back to me on those items,  
11 it would be great.

12           MS. JAMES: No problem. It's been noted and

13 written down.

14 MS. VAHIDI: Thank you.

15 MR. MEYER: Now we'll go to CURE for any data  
16 responses on theirs.

17 MS. MILES: I actually just had a clarifying  
18 question about some -- I heard earlier that there was  
19 data that had been received, I think, by BLM from the  
20 applicant yesterday or today. And I was just  
21 wondering, is that going to be a part of the docket?  
22 Is that going to be docketed?

23 MR. STOBAUGH: Are you talking about the technical  
24 biological report?

25 MS. MILES: No. I think there were --

112

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1 MR. STOBAUGH: Well, that was -- the technical  
2 biological report is what was received today. That's  
3 what's being --

4 MS. MILES: Okay. There were no data requests or  
5 response to that or anything --

6 MR. STOBAUGH: No. That's what's -- we had  
7 requested that type of development, and Chris Otahal  
8 alluded to it just a little bit earlier, but it's  
9 requested we have some assessment basically of the  
10 Applicant, and what are the, you know, the biological  
11 resources out there, and what may be -- the potential  
12 effects there may be. And that draft, technical report  
Page 114

Solar1.TXT

13 has just been received, so we're still seeing what it  
14 says and -- and whether it's complete or sufficient.

15 MS. MILES: Okay.

16 MR. MEYER: And, basically, once that report has  
17 been approved by the BLM -- once the BLM says that they  
18 accepted that report, then I'll see it. I haven't --  
19 at this point, until the BLM, you know, makes -- has  
20 their edits dealt with, then it will become sort of a  
21 public document, and then I get to see it, and then  
22 we'll put it -- we'll docket it as part of the record.

23 MS. MILES: Okay.

24 UNKNOWN FEMALE SPEAKER (PHONE): Karen has no land  
25 use issues.

113

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1 MS. VAHIDI: If you're still talking about land  
2 use, I can't hear whoever's talking, if it applies  
3 to --

4 MS. JAMES: It is applicable, but I'm trying to  
5 see if they have questions, and I'm going to take the  
6 microphone over there next.

7 MS. VAHIDI: Okay. Thanks.

8 MS. MILES: Just one question. I apologize. I  
9 can't tie it to a data request, so perhaps that will  
10 invalidate it, but it was about the resource  
11 conservation land use zoning district for the County of

12 San Bernardino, and I was wondering if that has been  
13 changed for this particular area, or what the status is  
14 of that.

15 MS. LYTLE: Seth, are you going to answer that?

16 MR. SETH (UNKNOWN LAST NAME): What was -- I'm  
17 sorry. I didn't catch the first part. What was that?  
18 What was that in regards to?

19 MS. LYTLE: Are there any plans to change the  
20 zoning --

21 Can you hear me?

22 MR. SETH (UNKNOWN LAST NAME): Repeat the  
23 question.

24 MR. LYTLE: Are there any plans to change the  
25 zoning of the land within the vicinity of the project

114

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1 under the jurisdiction of San Bernardino County?

2 MR. SETH: No. There's no plan for zone changes.

3 MS. MILES: Okay.

4 MR. JACKSON: Come on over here.

5 MS. JAMES: Patrick and I are old friends.

6 MR. JACKSON: Let me get the data request first --  
7 the number. Okay. And I have to read these. Okay.  
8 So the first one deals with -- in response to Data  
9 Request 34. In response to CEC and BLM Data Request  
10 Set 1, Parts 1 and 2, Data Requests "dash" 1 through  
11 48, 81 and 109 to 112, dated August 2009, and posted  
Page 116

Solar1.TXT

12 September 3rd, 2009, and responding to Data Request 34,  
13 the Applicant submitted Figure 5.2-2 entitled "Plot  
14 Plan and Fence Line Solar One Project," which is shown  
15 on page 48 of the 240-page document.

16 This plot plan, along with figure 5.2-4 on  
17 page 49 entitled "Model Receptor Grid Solar One  
18 Project," both dated August 12th, 2009, do not show  
19 Hector Road and show the entire project will be fenced,  
20 and Sections 1 and 36 will be landlocked.

21 The next issue regards Data Request 115.

22 MS. JAMES: Do you want a response to the first  
23 one before you go on?

24 MR. JACKSON: No. All of these deal with the same  
25 issue.

115

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1 In response to CEC and BLM --

2 MS. JAMES: Hold one second. Chris wanted --

3 MR. MEYER: Yeah. Actually, if you just refer to  
4 the data request, you can ask your question. You don't  
5 have to actually read through them, unless you want to  
6 clarify -- bring some points out to clarify, you don't  
7 actually have to read them, since they have them, but  
8 if you want to, if it's easier for you, you can go  
9 ahead.

10 MR. JACKSON: Okay. I'm not used to this. Okay?

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11 I don't want to be here. Okay. So this deals with  
12 Data Request 34, Data Request 115, and Data Request 81.  
13 They all deal with the Applicant's responses.

14 In the first exhibit I mentioned, along with  
15 the -- the TRAF-1 site plan that they submitted and in  
16 addition to that the erosion-control plans for Solar  
17 One all show -- excuse me -- all do not show Hector  
18 Road. And they all show that Parcels 1 and Parcels 36  
19 will be landlocked.

20 Now, there has been a long-going issue as to  
21 who has the right to use Hector Road. A year ago, it  
22 was fenced off. It was gated at the crossing. A year,  
23 I've been trying to get access to my property over  
24 Hector Road. The responses have been anything but  
25 responsive.

116

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1 I've been told that I cannot use Hector Road  
2 because it's not a County-maintained road. There are  
3 hundreds of miles of County -- non-maintained County  
4 roads in San Bernardino County. Yet, they're saying  
5 that I can't use a road to my property that I've used  
6 for years because it's not County maintained.

7 They're also contending that they had no  
8 authority over the crossing at Hector Road. I've been  
9 going out to Hector for 16 years, and I had no trouble  
10 using that crossing. And now there's a gate there, and  
Page 118

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11 for a year I've been trying to get the gate removed.  
12 I've been told that the Applicant has no  
13 involvement whatsoever in that gate, but if you  
14 refuse -- review Appendix D, the Applicant's  
15 agreement -- private crossing agreement with Burlington  
16 Northern, you will see that the Applicant paid \$93,000  
17 to have that crossing installed and those gates added.

18 In addition to that, the Applicant is  
19 responsible for maintaining and providing insurance and  
20 maintenance of that crossing. And yet they still will  
21 not allow me, a private property owner, to use that  
22 road to get to my property.

23 Now, here we've talked about movement of  
24 tortoises and movement of big horn sheep, but not the  
25 movement of private property owners.

117

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1 Please explain to me why the Applicant is  
2 preventing private property owner access to their  
3 property?

4 MS. JAMES: Are you done? Okay.

5 MR. SETH (UNKNOWN LAST NAME): I was not aware --

6 MS. LYTTLE: Seth, it's a question for the  
7 Applicant, not Tessera consultants.

8 MS. JAMES: Seth, hold on. Tessera will be  
9 responding, not you. Okay?

Page 119

10 MR. SETH (UNKNOWN LAST NAME): Okay.

11 MS. BELLOW: Okay. So what we have is, is we have  
12 an arrangement with BNSF to actually have a crossing  
13 there. And we have an agreement, and that's absolutely  
14 correct. There's that sign, and we have a key there,  
15 and that sort of thing.

16 However, we can't -- that's just for us. We  
17 can't allow -- we can't give you a key because we're  
18 not authorized to. In order to do that, you would have  
19 to contact BNSF.

20 If they want to allow us to do that, that's  
21 fine, but we can't do that legally today because of our  
22 agreement with them that governs, you know, that  
23 crossing with them.

24 MR. JACKSON: I don't understand how SES, Solar  
25 One and Tessera and Burlington Northern Santa Fe

118

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1 Railroad can, on their own, take a road that has been  
2 used for 50 years by -- and say it belongs to nobody  
3 else but them.

4 The issue is on the -- on the railroad -- if  
5 you check your facts, you will see that the railroad --  
6 a predecessor to the railroad sold Sections 1, 29, and  
7 33 to a private property owner in 1958. He in turn  
8 sold those sections, along with other sections, to two  
9 developers -- Beverly Hills land developers who sold

10 them to individuals.

11           If my understanding of -- of California  
12 law -- I'm sure Allan will correct me if I'm wrong,  
13 that when you sell land -- right? -- along with that  
14 land goes the right to access to a public road.

15           In 1958, when that sale happened, there was  
16 only one road in that area, and that was Hector Road.  
17 And that only led to one other main thoroughfare.  
18 That's historic Route 66, which we all know today.  
19 Right?

20           There's always been a crossing there. It's  
21 been used for mining. It's been used for cattle  
22 grazing. It's been used by private property owners to  
23 access their land, and it's been used by the public to  
24 access the Cady Mountain area.

25           So why are you saying now that only you can

119

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1 use it and nobody else can?

2           MS. BELLOWS: We're not saying that. In fact, you  
3 know, we don't have any issue at all -- whatsoever with  
4 what you're proposing, other than the fact that we  
5 personally, the Applicant, cannot give you access to  
6 that gate. Okay?

7           You would have to -- again, you need to go  
8 talk to BNSF. I don't know why they would have an

9 issue either, but that's -- that's not for me to  
10 address.

11 MR. JACKSON: Please explain why you paid \$93,000  
12 for a crossing and you say that you have no authority  
13 to allow me to cross it.

14 MS. BELLOWS: The agreement that we have is for  
15 our sole purposes. So in other words, I can't give,  
16 you know, someone else authorization to pass through  
17 there. It would be against -- against the agreement  
18 that we have.

19 There is nothing that we -- I mean, if you  
20 would like us to help facilitate some conversations  
21 with BNSF, we can do that. We can certainly talk to  
22 them today, and we'd be happy to help you, but I can't  
23 give you just blanket authorization to cross without  
24 them saying okay.

25 MR. JACKSON: There are several private property

120

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1 owners that are watching me and you today, because  
2 they're very concerned about the access to their  
3 property. Okay?

4 I've been trying for over a year --  
5 right? -- to get the story on these gates. I'm trying  
6 to get an answer from you why you have constructed  
7 these gates and now say that only you can use them,  
8 when people have been using them for years.

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9 MS. BELLOWS: But it's not us. It's not us that's  
10 saying that.

11 MR. JACKSON: Okay. I contacted -- I contacted  
12 the railroad. Right? And they said -- guess what? --  
13 I've got to contact you. Guess what? I could show you  
14 e-mails and the letter.

15 Guess what? They say I have to contact the  
16 BLM to get access to my land. I've already talked to  
17 Rich Rawley. I've already communicated with the BLM.  
18 They say that I have the right for the casual use of  
19 Hector Road to get to my property. Right?

20 It's not -- it's not deniable that I have a  
21 right to use that road.

22 In response, I get, no. The PUC controls  
23 railroad crossings. I contacted the PUC, and they have  
24 no record of that crossing. They say there's accidents  
25 at that crossing. That's why we put the gates up.

121

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1 There's never been a vehicle accident at that crossing.  
2 They said the only recorded incident at that crossing  
3 was in 2006 when a train derailed, blocked the  
4 crossing.

5 So, again, all these issues -- I've been  
6 trying for a year -- right? -- to get answers, to get  
7 this situation -- issue resolved, and all I feel

8 like -- I and the others, we feel like we're just  
9 running into block walls.

10 MR. MEYER: Mr. Jackson, maybe I could help a  
11 little bit. In response to your letter, I contacted  
12 the PUC first to verify. Since it's not a public  
13 crossing -- it's a private crossing -- they informed me  
14 that they have no jurisdiction over it. They said it's  
15 private. If it was a public crossing, it would fall  
16 under their jurisdiction, but since it's private, it's  
17 under BNSF.

18 I contacted BNSF to ask about the same  
19 issue, and they stated that they did put -- well, they  
20 did require, you know, the Applicant -- I'm not sure  
21 exactly if the Applicant actually put it up or if they  
22 paid BNSF to put it up; that would be for the Applicant  
23 to answer. But because the Applicant was going to use  
24 it, you know, BNSF actually told me that they made the  
25 decision to put the crossing there and required the

122

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1 Applicant to have actually a separate, you know, locked  
2 access through there. So, you know, as they confirmed  
3 it, it was for the sole use.

4 I asked them about your situation, and their  
5 explanation -- from BNSF, what they verbally  
6 communicated to me, was that the crossing was private,  
7 for their maintenance use only, which is why Stirling

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8 had to go to them and get approval to use that crossing  
9 at all. And that they would be willing, if you came to  
10 them and asked them and went through their permit  
11 process -- permit process to get that crossing, that  
12 they would look at that.

13 And if you put the permit process -- you  
14 know, the permit in to BNSF to look at, to do that,  
15 then at that point BNSF is just looking to the  
16 Applicant and BLM for -- you know, to make sure that  
17 there's not some conflict there.

18 Then, at least, you know, the BLM and Energy  
19 Commission can help you out in that aspect of it; but,  
20 unfortunately, I don't have any leverage or authority  
21 over BNSF if they decide they're going to put up a gate  
22 on a private crossing and not allow access.

23 And then they also were saying that they --  
24 since the county stopped using -- or stopped  
25 maintaining that road, therefore it would no longer be

123

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1 a public crossing by rights. And that's -- this is  
2 outside my area of expertise, which is why I asked the  
3 Applicant to put together that response. It was  
4 docketed, and you probably saw a copy of that letter.

5 And so at this point I'm just wondering, you  
6 know, if there's anything in there that's glaring that

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7 is incorrect. And not just for you and I to answer,  
8 but for, you know, both -- you know, for BNSF or the  
9 Applicant, you know, anyone else who might know -- have  
10 more information on this issue.

11 But from reading the correspondence and  
12 talking to BNSF, it sounds like what they're expecting  
13 is -- the next step is for you to file and -- you know,  
14 through their application process, and ask permission  
15 to go across there.

16 And if approved, you would get your own lock  
17 on that gate so that you would have, sort of, your  
18 unique sole access, just as the Applicant has, to go  
19 across that private crossing. And then if they come  
20 back and say, well, you've given us your application,  
21 but we want to hear from the Energy Commission or BLM  
22 or the Applicant, then we can bring it into this  
23 proceeding. As far as if that doesn't work, then it's  
24 something that I have more ability to help with.

25 MS. BELLOWS: If you would like us to go with you

124

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1 and sit down with BNSF, we certainly can go as well.  
2 And I'm going to be here this next week. I'd be happy  
3 to set up a meeting and sit down with you and try to,  
4 you know, make that happen for you, with you.

5 MR. JACKSON: What about the other 85 private  
6 property owners? What do they get? Do they all have

7 to line up together to apply to the railroad? I'm not  
8 the only person out there that has this issue. This is  
9 a group issue. This can be a class-action issue.  
10 Right now it's headed to a quiet-title issue, and we  
11 don't want to go there. We know that it is very time  
12 consuming and very costly.

13 I've been trying to resolve this, and I  
14 think that if the Applicant sits down and talks with  
15 Burlington Northern -- right? -- and tells them that  
16 it's not just Patrick Jackson out there, the looney,  
17 that there's other people out there that want access to  
18 their land, and they're prepared to fight for it, then  
19 we could get this resolved without taking it to the  
20 next step.

21 Are we in agreement on that?

22 MS. BELLOWS: I don't think we can do it certainly  
23 without you. Okay? So to the extent that you're  
24 unable to go -- if you'd like us to facilitate a  
25 meeting and go with you to a meeting, we'll be happy to

125

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1 do that.

2 And more importantly, to the extent you have  
3 the other landowners' names who are interested in  
4 access, I think that's better for your case, because  
5 instead of them looking at a lock just for you, they're

6 looking at access for them, as well.

7 But, again, we'd be happy -- we're going to  
8 be here next Wednesday. We can check with BNSF to see  
9 if they're available to meet with us then.

10 MR. BLEWETT: I'd like to ask the gentleman, have  
11 you had any contact with Supervisor Mitzelfelt's  
12 office?

13 MR. JACKSON: I've written to the County.

14 MR. BLEWETT: Okay. May I make a suggestion? My  
15 suggestion is, call Jesse Flores and Supervisor  
16 Mitzelfelt's office -- he's over that area -- and tell  
17 him what the problem is and tell him I referred you,  
18 and you can get my card afterwards.

19 MR. JACKSON: One last question. I know everybody  
20 wants to get out of here.

21 You said it's a private crossing. As of  
22 this morning there were four locks. Who has the keys  
23 to those locks? Who's been using that crossing, if  
24 it's private?

25 MS. BELLOWS: I know we have a key, but I don't

126

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1 know of any other people that have keys to that.

2 MR. STOBAUGH: As far as the railroad -- I mean,  
3 as far as a public crossing goes, the jurisdiction as  
4 far as the BLM and being able to provide any legal  
5 crossings, you either have an established County or a

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6 State road as being legal, public access, or somebody  
7 actually having a BLM right-of-way crossing BLM lands,  
8 and then our jurisdiction would -- comes up to each  
9 side of the railroad. The railroad itself, of course,  
10 is where it ends. And that's where BNSF has to come  
11 into play in that regard.

12 So that's sort of how the public  
13 availability is, and to my understanding, as far as  
14 crossing the railroad, that legal access is not there.  
15 As far as, you know, the casual use, it's not  
16 necessarily BLM authorizations. That's just physical  
17 access to cross.

18 But to authorize that legally still takes  
19 the Burlington Northern to justify if or how such  
20 crossings of the railroad occur, what conditions they  
21 can be, such as lights, bars, things like that.

22 MR. MEYER: That's pretty much what I was  
23 thinking.

24 But as far as your earlier question on who  
25 has the other locks, that is really a BNSF issue. And

127

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1 it might be -- when you meet with the Applicant and  
2 BNSF, just bring it up to them, and they might be able  
3 to identify who. But I'm guessing that it's the  
4 Applicant, you know, possibly the BLM, possibly --

5 definitely their maintenance crews, but I -- it's just  
6 speculation, so really that's -- they're the only ones  
7 who would really have information on that.

8 If you're done with your general question,  
9 are you comfortable opening it up to the public?

10 MR JACKSON: Let's move on.

11 MR. MEYER: Okay. We'll move to the public on  
12 this one.

13 MR. AVANIAN: Good afternoon. My name is Sarkis  
14 Avanian, and I'm one of the property owners who happens  
15 to have property right smack in the middle of the  
16 project.

17 And I have two questions. The first one is,  
18 when did the public County road become a private road?  
19 And who gave you the right to block in my access to my  
20 property by you placing a fence over there?

21 Can you please address those questions?

22 MS. JAMES: So your first question is --

23 MR. AVANIAN: Well, you're telling me that -- at  
24 Hector Road currently there is a gate in front of it  
25 that we cannot cross because you need a key. It's a

128

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1 private crossing. But Hector Road is a  
2 County-maintained road. Even though they may not  
3 maintain it -- even though they're not maintaining it,  
4 it's a County road. It's on the maps. It was on there

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5 when we first purchased it.

6 we have a right to use it. That's how I get  
7 access to my property. Now you're telling me, no you  
8 can't because it's a private crossing.

9 And I understand we're on the record, and  
10 I'd like to go on the record, Mr. Meyers, and get your  
11 point of view as to what makes you think that we have  
12 no right to cross the crossing?

13 MR. MEYER: I'll probably just clarify between  
14 point of view and just the information.

15 The information I have right now from  
16 speaking to BNSF and the PUC is that it is a private  
17 crossing.

18 I don't have the information. And one of  
19 the reasons we're having this meeting and this dialogue  
20 is to try to ferret out the information of what  
21 happened. When was that a public road? When did it  
22 become a private road? Was it a private road that just  
23 had public use that was not, you know, prohibited?

24 And those come into, you know, issues -- as  
25 I said, I can't really have an opinion on it, because I

129

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1 don't have the information. What I need to do is get  
2 that information out so that the BLM and Energy  
3 Commission can do an analysis for our project -- for

4 our document to see what impacts this project will have  
5 on -- on this access issue.

6 So at this point it's like I don't have  
7 enough information on, you know, what the history is,  
8 and we need to get more information on that to figure  
9 out if it's something that's under the jurisdiction of  
10 the Energy Commission or not or --

11 And the BLM will be making the same, you  
12 know, determination. Is it something under their  
13 control, or is it something under BNSF's control, or is  
14 it something that the County might be able to help more  
15 as far as the history of that.

16 And that's -- I think that suggestion was  
17 very good that talking to the County supervisor in the  
18 planning department and people who know that area who  
19 can figure out what happened there and, you know,  
20 essentially, why it happened.

21 MR. AVANIAN: Mr. Meyers, with all due respect,  
22 while you're trying to figure exactly what's going on  
23 with that area, us as the landowners, we have no access  
24 to our land.

25 How do you address that at this present

1 time? If you can answer that question, how do we  
2 access our land? I want to access my land.

3 MR. STOBAUGH: Let me -- it's my understanding --  
Page 132

Solar1.TXT

4 and I'm limited in my understanding out there -- Hector  
5 Road from where it comes off I-40 up to the south side  
6 of the railroad is what you're referring to as the old  
7 County road?

8 MR. AVANIAN: No. Actually also the north side of  
9 the road -- of the tracks, and according to the map --  
10 Hector Road is on the map. But a few of the maps  
11 that's provided by the Applicant, Hector Road has  
12 completely been eliminated.

13 And if you look at the project itself, the  
14 project site and the fence site, my property is located  
15 in the area; that if you do put a fence on the project  
16 site you are completely eliminating my access to my  
17 property through Hector Road. That means, I've got to  
18 get my four-wheel and go around on the BLM property  
19 just to get access to my land.

20 And my question is, who has a right -- me as  
21 a citizen that owns a property in that area, that I  
22 paid taxes to -- to come to me and say, you know what?  
23 You cannot access your property because we think that  
24 property is a private crossing? When in fact it's not.

25 And my question to you is, since you're the

131

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1 project manager and you are the head of BLM and you're  
2 trying to make the differentiation on this, is when all

3 the facts are not there, when all the conclusions --  
4 you're still in the process of determining whether or  
5 not to say "yah" or "nay" -- why in the midst of this  
6 decision-making the Applicant, and a year ago or  
7 whatever, what have you, goes in and spends all this  
8 money with their own funds to place a gate and keep a  
9 key and claim that, hey, you have to talk to BNSF?

10 If the BNSF was the question -- there's so  
11 many roads on the BNSF crossing that allows them to  
12 cross without a gate, why does it have to be in that  
13 specific area, on that specific road, on that specific  
14 time?

15 Can you please address that?

16 MS. HOLMES: I can't address that.

17 MR. AVANIAN: Why not?

18 MS. HOLMES: I was hoping to be able to address an  
19 earlier question you asked about the County's process,  
20 and in the documentation that the Applicant provided,  
21 there is an e-mail from the County that says that they  
22 used to maintain the road up to the -- up to the  
23 crossing, and they stopped doing so in 2004. They, in  
24 essence, abandoned it. I don't know why the County did  
25 that. I would suggest that you ask them why they did

132

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1 that.

2 MR. AVANIAN: But that doesn't say that it's a  
Page 134

Solar1.TXT

3 private road. It's still a County road. Just because  
4 they're not maintaining it, it doesn't mean, us, the  
5 private landowners, cannot use it.

6 MS. HOLMES: You have to take that up with the  
7 County.

8 MR. AVANIAN: But it's not the County who placed  
9 the locks. They're the ones who placed the lock.

10 MS. HOLMES: Let's separate out -- there's two  
11 separate issues here that I think are getting confused,  
12 and it might help to separate it out.

13 One is the road, and the other is the  
14 crossing. And from BLM's perspective, as I understand  
15 it, they are very different. And I think in terms of  
16 who has proprietary rights it is different. It's  
17 either --

18 BLM is saying that once you get up to the  
19 point of the crossing, they have no jurisdiction over  
20 that. They have no proprietary interest in that. That  
21 belongs to the railroad.

22 MR. AVANIAN: My question to you is, you are in a  
23 position on making a determination whether or not to  
24 grant or not to grant this project.

25 Correct me if I'm wrong. Is that right?

133

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1 MS. HOLMES: We will be at some point. We're not

2 now.

3 MR. AVANIAN: Okay. You haven't come to that  
4 decision yet; right?

5 MS. HOLMES: Correct.

6 MR. AVANIAN: You have to still do that; right?  
7 So in the midst of the process you should be  
8 completely aware exactly what's going on in this  
9 project area; correct or not?

10 MS. HOLMES: I don't know what you mean by  
11 "completely aware" of everything.

12 MR. AVANIAN: If the Applicant is producing to you  
13 documentation that this is what they're going to do,  
14 this is what the project is, this is what's going to  
15 happen, they are putting you in as control of the  
16 management of that project to get an approval, you  
17 should be in the process of understanding exactly what  
18 they're doing, why they're doing, when they're doing,  
19 and how they're going to do it; correct?

20 MS. HOLMES: We are, in terms of certain specific  
21 areas that we've been directed to look at, including  
22 environmental impact, reliability, things of that  
23 nature.

24 MR. AVANIAN: Okay. So if that's the case, if  
25 they come around and place a block in one of the roads,

2 , there or a fence there?

3 MS. HOLMES: well, I think that we've heard --  
4 we've heard what they had to say. They went to get a  
5 legal crossing over the railroad, and they have entered  
6 into a contractual arrangement with Burlington Northern  
7 Santa Fe, and this contractual arrangement that they've  
8 entered into, which apparently BNSF has the right to  
9 ask for, requires them to maintain a lock on the  
10 crossing that they're using.

11 we don't typically get involved in  
12 proprietary disputes.

13 MR. AVANIAN: You know, with all due respect, this  
14 is the runaround that we get, and unfortunately --  
15 unfortunately you are forcing me to dip into my pocket  
16 and --

17 MS. HOLMES: I'm sorry. I can't hear you.

18 MR. AVANIAN: I said, this is the back-and-forth  
19 that we've been getting from everybody on this project,  
20 as landowners. It is so unfortunate that us, as the  
21 landowners and the citizens in this area, that we have  
22 to go back and forth to different areas, to different  
23 departments to get an answer, and every time we do, we  
24 get the runaround.

25 It's very, very unfortunate. I'm very, very

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1 disappointed in this matter. And I want to go on the  
2 record stating that. This is unbelievable. I'm a  
3 private party, and you, including everybody else, do  
4 not have a right to tell me what I can or cannot do on  
5 my property, especially blockading my property, putting  
6 a fence around my property or blockage any kind of a  
7 road to access my property when legally I have a right  
8 to use it.

9 Thank you.

10 MR. ORAWCZYK: Yes. My name is Joe Orawczyk,  
11 o-r-a-w-c-z-y-k.

12 The -- just a couple of observations. They  
13 used to have access until the Applicant came along and  
14 entered into a contract with the railroad. Now they  
15 don't have access. So it's a direct result of the  
16 action of the Applicant that caused them to be  
17 restricted from accessing their own land.

18 I suspect, Patrick, that the delay and  
19 the -- the failure to communicate or the failure to  
20 resolve this works in interest of causing you to sleep  
21 on your right, which is a legal way of saying, well,  
22 yeah. That used to be the precedent, but now it's been  
23 a couple years so now the new precedent is that it's  
24 blocked, so, you know, unless and until you actually  
25 enter into litigation, I suspect they're just

136

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1 constantly delaying this to the point where they create  
2 a new -- a new norm. Thank you.

3 MS. JAMES: Response?

4 MS. BELLOWS: Sorry. I didn't catch your name  
5 earlier. If you would give me your contact  
6 information, and what we can do is, we can -- when we  
7 set up a meeting together with BNSF, we make sure that  
8 you can participate, as well.

9 MR. ORAWCZYK: Sure.

10 MS. BELLOWS: I can -- we can certainly help out  
11 with that.

12 MR. AVANIAN: You know, I can get -- every  
13 landowner up there, I've already spoken to a couple of  
14 them myself personally.

15 As a matter of fact, I wasn't even aware of  
16 it until I was contacted like a year ago to get  
17 permission for some agency to do environmental studies  
18 on my property. I did not have any type of a clue as  
19 to what the magnitude of this project was. Their  
20 intention was, was trying to beat around the bush and  
21 get access to property. It's right there when I  
22 learned what's going on.

23 So I had to find my way as to dig in the  
24 dirt, per se, as to what is it, why is it, how is it,  
25 and when is it. With that in mind, I would have

137

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1 contacted the landowners, and unfortunately to state  
2 that, they all are in the same boat as me. They have  
3 absolutely no clue.

4 And I'm not an attorney. And when I try to  
5 dig into these documents, it's thousands and thousands  
6 and thousands of pages of documents, trying to find an  
7 answer; and when you can't, when we come to you, we get  
8 the runaround like this.

9 And then I try to go on my property and I  
10 see there's blockage there, you know what that does to  
11 me? The first thing is, you know, I'm going to hire an  
12 attorney to fight you guys. That's my first  
13 inclination.

14 MS. BELLOWS: And I understand. But, again, going  
15 back --

16 MR. AVANIAN: I don't want -- I do apologize for  
17 interrupting you, but then again there is this; some of  
18 you over here are attorneys, some of you are  
19 representing the County, some of you are representing  
20 the State, some of you are public officials. I don't  
21 want to be in excess (sic) to say, you know what? I'm  
22 a tax payer. You are employed by me. I pay your  
23 taxes. That's not the situation.

24 But you are forcing us to take the route to  
25 go to our representatives, to go to our assemblyman, to

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1 go to our representative to fight against you, and,  
2 believe me, I will do that.

3 MR. BELLOWS: You're certainly free to go ahead  
4 and do that. That's not my issue.

5 My issue is, that we are here to help you.  
6 If we are -- if there is something we can do to help  
7 out in an effort to facilitate a discussion with BNSF,  
8 we'll be happy to do that, and that's the best that I  
9 can do.

10 MR. AVANIAN: BNSF is not the issue. You are the  
11 issue.

12 MS. BELLOWS: I do not believe that's the case.  
13 But if you can -- during our discussions with BNSF, if  
14 you could prove that to me, then I'll be glad to do  
15 what I can on that end.

16 MR. AVANIAN: Do you know offhand how many  
17 crossings are there on BNSF -- on that -- on that whole  
18 desert, all the way from Barstow to Needles? And do  
19 you know how many gates are there?

20 Can you answer me that question?

21 MS. BELLOWS: No. I will tell you, though, that  
22 what we attempted to do when we began the whole process  
23 was, we sat down with BNSF and asked them if we could  
24 cross, and they told us under what conditions we could  
25 cross, and that's why we have an agreement with them.

139

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1           They didn't tell us if we could cross  
2 wherever. If they told us that, we would never have  
3 put up anything. Why would we? No one would pay  
4 \$93,000 for crossing; right?

5           MR. JACKSON: Back over here.

6           MR. BLEWETT: Technically, they have a -- if  
7 you've used it for years, in normal real estate you  
8 would have a prescriptive easement to use that  
9 property.

10          MR. AVANIAN: We have.

11          MR. BLEWETT: You do? By law you have it. But  
12 you have to go to court and -- and perfect it.

13          MR. AVANIAN: And that's what they are forcing us  
14 to do. It's not the matter of we don't want to ask.  
15 They are forcing us to go to --

16          MR. BLEWETT: The one thing I'm not clear on, I  
17 know railroads have special powers, because like public  
18 utilities, they're very, very difficult for governments  
19 to deal with, quite frankly, but they have a lot of  
20 juice, and they almost -- and I'm explaining the truth  
21 to you. And Burlington Northern has a lot of power,  
22 and -- and they will tell us to go jump in the lake if  
23 they don't agree with us. However, there are certain  
24 things --

25                    Had I known this about two months ago, I

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1 could have held up six switching stations that they  
2 desperately wanted. You know, we could have  
3 negotiated. But right now there's nothing on my plate  
4 that they want.

5 MR. AVANIAN: The railroad crosses through the  
6 city, the railroad crosses through small towns, big  
7 towns, you name it, any crossing, and at every crossing  
8 there is a specific procedure that they follow, that  
9 they utilize. Okay?

10 But none of the crossings prevent anybody to  
11 cross. In this case, they are preventing us by placing  
12 a lock there, which they do not have a right to place a  
13 lock. We're not talking about placing any kind of  
14 regulations. We're talking placing an actual lock.

15 MR. BLEWETT: I understand. My suggestion is,  
16 let's get all people together, all the stakeholders. I  
17 think you definitely need to contact the supervisor's  
18 office so that they can contact the railroad. Maybe  
19 they can -- there's going -- the railroad's going to  
20 need something, believe me, some time and --

21 MR. AVANIAN: With all due respect, I don't know  
22 if you read all the reports, but there was an e-mail  
23 that I read a few weeks ago back, and I don't have the  
24 documentation in front of me, but BNSF responded, if  
25 the landowners want to take this up to court, well, by

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1 all means, let them take it to court. That was the  
2 exact response of the BNSF.

3 MR. BLEWETT: I understand.

4 MR. AVANIAN: And it's unfortunate that it's  
5 forcing me to dip into my pocket, to hire my attorney  
6 to fight them.

7 MR. BLEWETT: And I understand that.

8 MR. AVANIAN: And me, as being a tax payer, before  
9 I do that, I'm going to see how many people are here  
10 that would be supportive of us, being in the public  
11 office, that see --

12 MR. BLEWETT: well, I'm a dedicated volunteer,  
13 so...

14 MR. AVANIAN: Thank you.

15 MR. BLEWETT: The bottom line is, the suggestion  
16 is, call Supervisor Mitzelfelt's office. Ask for Jesse  
17 Flores. Use my name. Tell him that I suggested that  
18 you call him.

19 And maybe something can be done. Maybe they  
20 can start pursuing it. I will mention it to them  
21 myself.

22 MR. AVANIAN: Thank you.

23 MR. JACKSON: According to the supplement to the  
24 Private Crossing Agreement it expired on March 31,  
25 2009. Is the agreement still in effect? And, if so,

1 when does it expire?

2 MS. BELLOWS: I think they extended it 18 months.

3 MR. JACKSON: It's ongoing?

4 MS. BELLOWS: It is. We just renewed it, and then  
5 it just goes back into place for 18 months.

6 MR. MEYER: Okay.

7 MR. STOBAUGH: One other thing is, it's my  
8 understanding that this railroad is part of an 1875  
9 grant -- 1871/1875 grant which came through a  
10 Congressional railroad grant.

11 So they honestly did turn it over, where  
12 basically they -- they have an exclusive easement, if  
13 you would, to the railroad. And they really are in the  
14 driver's seat about if their railroad is crossed.  
15 Their authority is what requires -- and whatever  
16 conditions they wish to impose on anyone crossing, to  
17 anyone, any form of government in this country right  
18 now.

19 MR. JACKSON: I'd like to add to that, if he's  
20 going to get his last two cents in.

21 First of all, I submitted a letter to the  
22 Applicant, and I explained by legal precedence that the  
23 railroad does have rights to their easement. But  
24 there's several court cases that state they do not have  
25 the rights to the land, other than what was granted to

1 them.

2 MR. STOBAUGH: Right.

3 MR. JACKSON: In addition to that, here's the  
4 deed, as I mentioned to you before, that when the  
5 railroad sold the land, that is now the private  
6 property in question that's being surrounded by this  
7 project, they sold that land -- right? -- to private  
8 individuals -- right? -- and along with that right, the  
9 fee simple, if you will, to that land came the right to  
10 access public roads.

11 Now, the history on Hector Road, even the  
12 Application for Certification states clearly that it's  
13 been there for 50 years or better. Right? The fact  
14 that the County stopped maintaining it about the same  
15 time -- or no -- 2000 or so -- right? -- is irrelevant.

16 Everybody knows that the County has  
17 thousands -- excuse me -- hundreds of miles of  
18 un-maintained roads that are not locked or blockaded  
19 that people are allowed to use.

20 MR. STOBAUGH: well, again, you have to look at  
21 that point in the crossing. Did the railroad abandon  
22 its rights of the grade and use of the railroad itself?

23 MR. JACKSON: I'll provide the documents that  
24 shows that they conveyed -- subject to rights of way of  
25 record, they're there.

1                   Now, the whole issue here is going to have  
2 to go to quiet title, as the gentleman said. Right? I  
3 would be very happy to talk CEC's attorney. She's very  
4 knowledgeable, and I'm sure that we can both come down  
5 with some sort of a guidance to kind of resolve this  
6 issue.

7           MR. MEYER: Okay.

8           MS. HOLMES: I would just reiterate my  
9 recommendation that you work with County and with the  
10 railroad, because the Energy commission doesn't have  
11 any jurisdiction over the railway -- the railroad.

12                   There's no way we can order the railroad to  
13 provide access to this -- to the crossing. There's no  
14 way we have that kind of authority or jurisdiction.

15           MR. STOBAUGH: I agree with that. For the  
16 purposes of legal public access, working through the  
17 County is your best avenue, and then working with the  
18 railroad itself, so...

19           MR. MEYER: Yeah. I think we have a good start  
20 here with this forum, also by identifying different  
21 property owners.

22                   But I think the Applicant has a good -- two  
23 good points that, get a list of as many of the property  
24 owners as you can, get as many of them sort of  
25 organized together and avail yourself of the

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1 opportunity to work with the Applicant and BNSF to  
2 resolve this.

3           And I think the County brought up a great  
4 idea, just to get all the parties involved. Get the  
5 Applicant, get BNSF, get the other property owners in  
6 that room, because sooner or later BNSF is going to  
7 want something from the County, and, you know --

8           MR. BLEWETT: They're going to want good  
9 relations.

10          MR. MEYER: Right. And basically the thing is,  
11 BNSF doesn't want anything from the Energy Commission,  
12 and it's very clear in our -- we have no jurisdiction  
13 over them, and they know that. So going to someone who  
14 actually it's in their best interest to have a good  
15 relationship with does help a lot.

16           Because if it was -- if this component of --  
17 whether it's the project or BNSF just deciding they're  
18 going to do it because they can, if it was any part of  
19 this proposed project, the Applicant could not do it,  
20 not even contemplate it, without the approval of the  
21 Energy Commission and BLM. Since it's outside of the  
22 proposed project, it's outside of our jurisdiction.  
23 Anything that's a part of this proposed project has to  
24 occur, you know, after they get their license, if they  
25 do get approved by, not just the Energy Commission, but

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1 the BLM, as well.

2 So I will get the public comments, and then  
3 we'll jump onto visual resources.

4 MR. SNIVELY: My name is Wayne Snively, Newberry  
5 Springs. Who permitted the construction of this fence  
6 and who built it? That's it.

7 MS. JAMES: You mean the fence or the gate?

8 MR. SNIVELY: The gate. Who put the gate up --  
9 who put the gate up and under whose authorization was  
10 that gate put up?

11 MS. BELLOWS: BNSF.

12 MS. JAMES: The answer -- the response is BNSF.

13 MR. AVANIAN: I just have one more comment, and  
14 I'll close it up at that.

15 My whole point to this is, is not to blame  
16 or point a finger at you, but when I'm listening to  
17 everybody else over here from the protection agencies,  
18 of all these resources that they have of protecting the  
19 rights of the lizards that live in the desert, and they  
20 have the voice, the money and power to do it, all I'm  
21 saying is, please take into consideration before you  
22 make any kind of a judgment to grant "yah" or "nay" to  
23 put in your 2,000-page whatever you call it -- the  
24 procedures that they have to follow, to look at the  
25 interest of the property owners also.

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1           That's all we're asking. You're being as  
2 part of our advocate -- our public advocate in our  
3 interests also, along with the lizards.

4           Thank you.

5           MR. MEYER: One final comment, just to sort of  
6 close this up.

7           Just because it's outside of our  
8 jurisdiction, it's one of -- as I said before, one of  
9 my jobs and Jim's jobs is to make sure that we fully  
10 disclose either the direct or indirect impacts of the  
11 project, but also because at least at this point we're  
12 not sure this is a pure BNSF issue, but it did impact  
13 access at that -- at that crossing.

14           We will disclose that in our document.  
15 we'll analyze that in our document, even if we come up  
16 with a conclusion that there's nothing we can do about  
17 it. We'll make sure that all of the agencies, all of  
18 our commissioners, all of BLM, you know, high  
19 muckety-muck, you know, the big people at our agencies,  
20 they see that this is an issue.

21           And then, you know, we'll just keep, you  
22 know, encouraging people to like keep the communication  
23 going and try to find a resolution to this and do what  
24 we can within your jurisdiction to help.

25           Visual resources. We're going to --

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1 MS. BILLIGEN: well, my name is Mary Billigen  
2 (phonetic), and I'm an owner too. An environmental  
3 impact report is part of your study too, and part of  
4 the environmental impact report is the impact adjacent  
5 to the properties. So that's what we're talking about.

6 So you're saying that it's not in your  
7 jurisdiction, if the environmental impact report is in  
8 your jurisdiction, then the impact to the adjacent  
9 company -- I mean the properties is part of that report  
10 too. Isn't it?

11 MS. VAHIDI: This is Negar. Yes. You are  
12 correct. We will be looking at access issues and --

13 MR. MEYER: Negar --

14 MS. VAHIDI: -- we normally do in --

15 MS. JAMES: Excuse me. Can you start over. Not  
16 everybody could hear you.

17 MS. VAHIDI: Oh, sorry. Yes. For -- as part of  
18 the Energy Commission staff assessment process, we  
19 usually do look at access issues. So the land-use  
20 section will have discussions of -- of, you know,  
21 access to properties and affected lands.

22 And we were aware of this issue, so we've  
23 been kind of following it and tracking it, and I think  
24 Traffic also looks a little bit at things like that,  
25 so...

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1 MR. MEYER: Okay. So we'll go on to land use  
2 now -- excuse me -- visual resources.

3 Sorry for keeping you waiting so long. It's  
4 all yours.

5 MS. JAMES: Bill, visual.

6 MR. CONDOMOTO: Okay. Yes. I think -- hopefully  
7 this will be very short and easy.

8 Basically, we don't have any further  
9 questions at this time. But I'm saying that with a  
10 caveat, and that is, we had some delays in getting our  
11 illumination engineer approved for the project, and so  
12 he has not had a chance to go through the response to  
13 the data request regarding glare and so on and so  
14 forth. But my understanding is that he'll be able to  
15 get on that this week, and I anticipate that there  
16 probably will be some additional questions, but I --  
17 you know, I can't -- I can't say that for sure.

18 But in terms of all the other data requests,  
19 we don't have any further questions right now.

20 MR. MEYER: Okay.

21 MR. CONDOMOTO: I guess -- and the next comment I  
22 would have is that, you know, our next -- I think our  
23 most urgent next order of business is coordinating with  
24 BLM about the interim GRM mapping, and I wasn't able to  
25 hear the name of the -- the VRM fellow there, but

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1 hopefully we will be able to get in touch shortly and  
2 proceed with that.

3 MR. MEYER: Bill, this is Christopher. I will  
4 give -- I will give the VRM specialist at BLM or Jim,  
5 so he can pass it on, your contact information.

6 MR. STOBAUGH: Brad Maston is the fellow that's at  
7 the Barstow field office, and also he can be backed up  
8 by John Dalton of the California desert region.

9 MR. CONDOMOTO: Great.

10 MS. JAMES: Any other comments?

11 MR. MEYER: Okay. At this point does CURE have  
12 any comments on visual resources?

13 MR. CASHEN: I don't know.

14 MR. MEYER: Okay. We'll come back to you.

15 Mr. Jackson, any visual?

16 MR. JACKSON: No.

17 MR. MEYER: We're not going to absolutely cut  
18 visual resources out at this point because I want to  
19 let Loulena get back in case she has any comments, but  
20 we're going to --

21 For the moment, does anyone from the public  
22 have any comments on visual resources?

23 Okay. So we're going to -- at this point,  
24 we'll go --

25 MS. MILES: we do not have comments on visual.

151

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1 MR. MEYER: Okay. At this point we'll go on to  
2 cultural resources.

3 MS. VAHIDI: You don't need land-use staff  
4 anymore; right?

5 MR. MEYER: If you could sit there and wait and do  
6 nothing for a while, that would be great.

7 No. Thank you very much, both Negar and  
8 Bill. We will catch up with you a little later.

9 MS. VAHIDI: Thanks. Bye-bye.

10 MR. MEYER: Thanks.

11 Our water and soil staff did not have any  
12 immediate issues. It was -- Casey, are you on the  
13 line?

14 MS. JAMES: Do I have a Casey from the CEC on the  
15 line?

16 MR. MEYER: Yeah. At this point the only issues  
17 on water were just -- we want to just track the ongoing  
18 conversations with the water district.

19 So, yes, Traffic and water they can go. I  
20 think -- as far as my staff, cultural resource is the  
21 final issue, and you can check with CURE and see if  
22 they have any additional.

23 MS. MILES: I have a question about a document  
24 that went into the docket, and it was a little bit

25 confusing to me. It was from Mojave Water Agency, and

152

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1 I was wondering if the Applicant could provide a  
2 response about really what is the status of the water  
3 that's going to be used for this project.

4 MS. BELLOWS: I can do that. We're in the --  
5 still in the process of studying the water. We're  
6 doing a -- a -- I would say our Plan A is to actually  
7 use waste water. BNSF actually is who we're speaking  
8 with now.

9 And, actually, we're hoping to railing it  
10 in. However, to do that, we're not part of the Mojave  
11 Water Agency. We'll actually have to export it. But  
12 BNSF has an existing right to export, so we would be  
13 using that.

14 We're working through that process with them  
15 to see if that will work. Hopefully it will. That's  
16 the most -- certainly the most environmental-friendly  
17 method of using the water. We don't use much water  
18 anyway, but we need some to wash our dishes; right?

19 And then Plan B is that we would also sort  
20 of -- BNSF has other water rights, as well, that we  
21 would -- that we would use if the waste water doesn't  
22 work out, which we're hoping it will. Then Plan B  
23 would be to use their other water to export. Again,

24 that would be going through the Mojave Water Agency.

25 we've also been talking to the Mojave water

153

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1 Agency about getting our own rights to export water  
2 from their area. So that would be a Plan C.

3 And then last, Plan D, is drilling wells on  
4 site, which we're also in the process of looking at  
5 today, is using the lands that we currently have  
6 optioned, and they're not BLM lands, so that's where we  
7 are today, and we hope to have some sort of resolution  
8 or be closer to where we are in the next month or so.

9 MS. MILES: So just to clarify, if you do drill on  
10 site, it would be within the Mojave Water Agency?

11 MS. BELLOWS: No, it's not. We're outside their  
12 district.

13 MS. MILES: And just a related question, has the  
14 Applicant considered recycling the water from mirror  
15 washing? I know it might -- you know, may not end up  
16 alleviating the need for water that much, but I was  
17 just wondering if that was considered, because I had  
18 spoken with someone who was a developer or engineer who  
19 looked at these types of technology, and he said that  
20 at times it does happen, that it's recycled.

21 MS. BELLOWS: The -- basically, the short answer  
22 is that it evaporates before it hits the ground, and it  
23 just comes -- again, there's very little used, and

24 we're unable to -- to get it, and what we could get, it  
25 would not be enough to justify it.

154

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1 MR. MEYER: Just a quick -- is that similar for  
2 the annual wash, or is that scrub washing with the  
3 soaps and --

4 MS. BELLOWS: Right. Exactly.

5 MR. MEYER: Okay. Thank you.

6 MR. JACKSON: You just mentioned the possibility  
7 of putting in water wells. Would they be on private  
8 land?

9 MS. BELLOWS: That's correct.

10 MR. JACKSON: Okay. Would one of those wells be  
11 on the ten-acre portion that you purchased from the  
12 Rosencranz in Section 36?

13 MS. BELLOWS: I don't think we've determined that  
14 yet. We're in the process of getting bids in on that  
15 today.

16 MR. JACKSON: Well, the issue is, it kind of ties  
17 in with access. Somebody put a fence construction yard  
18 or equipment yard on SES's property in Section 36.

19 MS. BELLOWS: Is that -- yeah. The met station.

20 MR. JACKSON: It's a what station?

21 MS. BELLOWS: It's a metrological station, so that  
22 it can measure the wind. It can measure the

23 insulation, that sort of thing. So that's what's going  
24 up there. It's a small metrological station.

25 MR. JACKSON: The problem is, is that whoever put

155

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1 that fence construction yard up there crossed my land,  
2 trespassed across my land to get to your land. They  
3 didn't ask for permission. I didn't put up a gate or a  
4 fence. I didn't even put up a sign.

5 My wife will not allow me to put signs on my  
6 property. She says it ruins the view. Okay?

7 So hopefully we can work together --  
8 right? -- so you can get access to your land and I can  
9 get access to my land, and you might want to tell the  
10 person who put the fence up that it's against the law  
11 to remove survey markers. The gentleman who put the  
12 survey marker on the southeast corner of your property  
13 removed the survey stake on the northeast corner of my  
14 property.

15 Now, if we're going to be neighbors, I think  
16 we should be neighborly. So let's you and I talk  
17 together about providing access to your property the  
18 same time you provide access to my property.

19 MS. BELLOWS: We were unaware of that. The  
20 information we had is that we went in a different way.  
21 We did not cross your property, but I'll certainly try  
22 and verify that. I apologize for it.

23 MR. JACKSON: Let's give it to Irene for getting  
24 her exercise today.

25 MS. JAMES: Thank you.

156

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1 MR. JACKSON: Yes. You came up 270 feet to the  
2 east of my -- excuse me -- to the west of my east  
3 boundary line. I have photographs, if you'd like to  
4 put them on the docket.

5 MS. BELLOWS: Okay.

6 MR. SNIVELY: wayne Snively, Newberry Springs,  
7 again.

8 I know the (microphone feedback) watering  
9 District has a (microphone feedback). Have you  
10 contacted the other underground district that is to the  
11 east of that to see what their requirements are for the  
12 use of any well that you may be drilling in that area?  
13 You are outside of the Mojave Water Agency, that I'm  
14 very aware of.

15 But I really understand, in this area, that  
16 water use is a very precious thing, and I think that I  
17 would like to have you get permitted, even if you  
18 have -- import water from the Mojave water District,  
19 get that -- go through the Water Master, which is the  
20 legal agency of the MWA, get your -- I know your water  
21 use is not that high, and it would be morally -- I

22 think it would be a very ethical way to approach this  
23 issue.

24 Thank you.

25 MS. BELLOWS: They have been dealing with Mojave

157

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1 water, and they met with the Water Master, and will be  
2 on the Water Master board.

3 MR. ORAWCZYK: Hi. Joe Orawczyk with Yermo again.

4 As I understand it -- this is new to me --  
5 that you're going to try to get the waste water from  
6 the railroad and then process that through reverse  
7 osmosis to clean the mirrors.

8 If you acquire enough water to do that, I  
9 would applaud that greatly. I think that is a  
10 wonderful idea. It's a wonderful resolution to the  
11 situation with water. That's fantastic. We're really  
12 happy to hear that.

13 If that doesn't work out, though, I'm still  
14 going to be on your hate mail list.

15 MS. BELLOWS: We look forward to it.

16 MR. MEYER: Okay. At this point we're going to go  
17 to Mike McGuirt with cultural resources, and I think --  
18 you know, then we need to get people out of here.

19 MS. LYTLE: So everyone from URS can hang up the  
20 phone. Thank you, guys, so much for calling in.

21 MS. JAMES: I don't know if you heard that, but  
Page 160

Solar1.TXT

22 URS can hang up.

23 MR. MC GUIRT: we filed a date request in the  
24 second set at the end of July, and the Applicant's  
25 still in the process of preparing responses to that, so

158

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1 we don't have specific issues today to deal with.

2 we thought we'd come because the cultural  
3 resources has a potential to be a significant issue  
4 later in the project, and we wanted to come and make  
5 ourselves available to answer any questions that  
6 anybody else may have.

7 we did have a couple of general questions  
8 that I'd like to go over. First, I'd like to, for the  
9 benefit of the public and the record, to give a quick  
10 overview of what we know about the cultural resources  
11 on the project area, and then ask our couple of  
12 questions and then open it up to anybody else who might  
13 have questions about culture resources.

14 As an overview, prior to planning for this  
15 project, less than 5 percent of the project area in the  
16 near vicinity has been subject to cultural resource  
17 investigation.

18 For those, who aren't aware, cultural  
19 resources are buildings, engineering structures,  
20 archeological sites, either individually or clustered

21 together in districts that are over 50 years old.

22 The total number of previously known  
23 cultural resources in the project area and the near  
24 vicinity known prior to the investigation for this  
25 project was 19. This included 14 prehistoric

159

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1 archeological sites, four historic sites, and one  
2 isolated artifact.

3 Major known linear historic sites include  
4 the National Trails Highway/Route 66 and the BNSF  
5 railway, which is the most recent integration in what  
6 has been the Atlantic and Pacific Railroad of 1883 and  
7 the Atchison, Topeka and Sante Fe of 1890.

8 A pedestrian walkover of 100 percent of the  
9 project area for this project found 401 additional  
10 cultural resources. This number includes 248 isolate  
11 prehistoric and historic artifacts, and 143  
12 archeological sites. 128 of which are prehistoric, 11  
13 are historic, and four have both prehistoric and  
14 historic components.

15 The draft result of this initial pedestrian  
16 survey were made a part of and filed with the AFC, our  
17 Application for Certification.

18 The BLM and Energy Commission staff filed  
19 some data requests in late June in this year seeking  
20 clarification on some of these draft results and

21 seeking additional information, as well.

22           The Applicant applied for an extension on  
23 the usual 30-day response period, and we anticipate  
24 getting them soon.

25           The rough summary of what we know about the

160

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1 archeology in the project area right now is that the  
2 northern roughly two-thirds of the project area is on  
3 an upward to mid slope with a sediment apron or bajada  
4 that lies at the base of the Cady Mountains.

5           The frequency of the archeological sites  
6 there is fairly sparse. Prehistoric archeological  
7 sites are infrequent and are sparse gathers of stone,  
8 flaking debris from the prospecting and gathering of  
9 tool, stone, and quality rock.

10           There is also an old mine, the Logan Mine,  
11 in the northeast portion of the project area.

12           The southern roughly one-third of the  
13 project area is a flatter area along roughly east to  
14 west draining intermittent stream channels.

15           This area would appear to have been a  
16 natural travel corridor into and out of the Troy Lake  
17 area roughly ten miles to the west of the project area.  
18 This portion of the project area is relatively thick  
19 with evidence of probably several thousand years of

20 tool and stone prospecting and gathering and  
21 early-stage tool manufacture. The area may qualify as  
22 an archeological landscape.

23 The BLM and the Energy Commission are in the  
24 process of assessing features on some of these sites,  
25 as indicating temporary and permanent residential use

161

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1 of the area, as well.

2 So the only two -- that's just a general  
3 overview of what we've got so far out there, and we're  
4 waiting for these data responses to come back so we can  
5 get more specific about the information we're going to  
6 need.

7 One of the questions we had is a general  
8 question we have asked in a while is, what is the  
9 tentative schedule for getting those responses to our  
10 data requests?

11 MR. FINK: In terms of the overall schedule,  
12 we're -- we are working on the data requests. Data  
13 Request 92 through 96 involving the archeological are  
14 actively being pursued right now.

15 Data Request 100 through 108 are also being  
16 conducted now.

17 There are a couple that are going to require  
18 some fieldwork, Data Request 97, and then some of the  
19 follow-up, based on the fieldwork, Data Request 99.

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20 Those will begin in -- some time in the month of  
21 October, so we are actively pursuing the -- the  
22 responses to the data request.

23 MR. MC GUIRT: So what's your guess on getting the  
24 whole package? Like mid to late November? December?

25 MR. FINK: We're looking at completing the report

162

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1 in December and January.

2 MR. MC GUIRT: Okay. And the other thing we were  
3 curious about was, is when we do get these responses  
4 back, we were somewhat concerned about the conflict  
5 with field personnel of Solar Two and Solar Three, and  
6 we were curious about what the availability would be of  
7 crews for doing any further fieldwork that may be the  
8 result -- that may be necessary of our view of the data  
9 responses?

10 Would you be able to get out in the field,  
11 you know, quickly and in a timely fashion? You know,  
12 it sounds like it's going to be early next year before  
13 that happens.

14 MR. FINK: Actually, the fieldwork for Solar Two  
15 will be done at the end of this month, and we're  
16 planning on sending our crew in Solar -- for Solar One,  
17 not the first week, but the second full week of  
18 October.

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19 MR. MC GUIRT: So are -- we would have an  
20 opportunity to look at the responses to the data  
21 requests? And if we have additional questions that may  
22 require any additional fieldwork, would you have crews  
23 available to -- to start doing that?

24 I imagine you would start seeing some of  
25 those results -- if you're going to come in January --

163

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1 late January or early February, would there be any lag  
2 there to get out in the field?

3 MR. FINK: No. There shouldn't be any lag.

4 MR. MC GUIRT: Okay. That's all I had.

5 I just -- Jim and I want to make ourselves  
6 available in case CURE, the public, or any of the other  
7 agencies had any questions about cultural resources so  
8 far.

9 I'll just open it up to that.

10 MS. MILES: Unfortunately, we haven't really been  
11 able to assess the cultural resources because so much  
12 of it is not available for public review, so I don't  
13 have any questions at this time.

14 MR. JACKSON: None.

15 MR. MEYER: Okay. Do we have any public questions  
16 on cultural resources?

17 UNIDENTIFIED MALE SPEAKER: Just an observation  
18 that there was at the website, the CEC website -- there  
Page 166

Solar1.TXT

19 was a listing of people who made applications for  
20 certain things, and I think was some dialogue back and  
21 forth, a copy of applications from the Applicant or the  
22 Applicant's representative to make this information  
23 secret, essentially, from the public to protect those  
24 resources.

25 while at the same time the Applicant is

164

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1 arguing that there really aren't that many things to  
2 worry about out there. So it's like on the one hand  
3 you're saying there's nothing out there to worry about.  
4 We can scrape the land and not really worry about it.  
5 And on the other hand you're saying, but we don't want  
6 to tell the people what's was out there, so...

7 Thank you.

8 MR. MC GUIRT: The information -- the particular  
9 information that's confidential is the location of  
10 those resources. What you will see in the -- the EIS  
11 and the staff assessment is very detailed descriptions  
12 of the resources that are out there and our  
13 consideration of what the effects on those resources  
14 are going to be.

15 So, although, you won't be able, in the  
16 public document, to locate them precisely on the  
17 landscape, it will give a very good idea of the

Solar1.TXT

18 resources that are out there individually and  
19 considered in groups as part of the potential  
20 landscapes and districts and how we intend to handle  
21 the impact to those resources.

22 So that information will be disclosed, I  
23 believe, in a manner that's useful to the public to be  
24 able to figure out what's going on.

25 UNIDENTIFIED MALE SPEAKER: I understand the --

165

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1 and would agree with the CEC or their representative  
2 concerning this. However, I do believe you have an  
3 individual over there with CURE who knows a thing or  
4 two about these sort of things, and I would hope that  
5 you would entrust in him, as an Intervenor, to give him  
6 the information necessary to where he could inspect  
7 those items and represent the public's interest.

8 Thank you.

9 MR. MC GUIRT: The data requests that will be put  
10 out there are a matter of public record. CURE does  
11 have access to those, and I believe what they're  
12 referring to is, they haven't seen the responses to the  
13 data requests yet so there's not a whole lot to talk  
14 about yet.

15 They will also get those responses, and that  
16 will be docketed and made part of the public record, as  
17 well, and that will give them something to comment on,

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18 and I believe it would be sufficient.

19 MR. FINK: Yes. I have a question in regard to  
20 the timing of the PSA and DEIS in consideration of the  
21 fact that the cultural resources data is lagging  
22 behind.

23 A question for the BLM and CEC as to how we  
24 can incorporate the culture resource data into the PSA  
25 and DEIS.

166

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1 MR. MEYER: Basically, we've learned from  
2 experience that bifurcating the process actually causes  
3 more trouble and more delays, and what we don't want to  
4 do is -- we sent out the document that is -- you know,  
5 we're still going to do a joint document, because if we  
6 don't, it's going to add months, if not longer, to the  
7 process of having the BLM having to do their own EIS.  
8 We'll do a PSA.

9 So the plan we have for expediting the  
10 process is to take all of the other sections, put them  
11 through Energy Commission internal review, BLM internal  
12 review, format, get everything ready so that at the,  
13 you know, 11th hour all we have to do is take one of  
14 the 22 sections and slip it in.

15 And so we're not going to wait on the entire  
16 joint document for cultural to come in to start

17 formatting, finalizing and reviewing it, so it will  
18 basically just --

19           You know, already we're looking at  
20 incremental sections are going to come in. Some are  
21 easier. Some, like biology, will be more complex and  
22 will be finished later in the process just due to  
23 the -- just the amount of information that's cultural.

24           So we're not looking at doing anything like  
25 putting out an incomplete document and then

167

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1 recirculating that document once we add additional  
2 cultural resource information. We would want to send  
3 out a complete one where we can actually make  
4 recommendations based on as complete a picture of the  
5 resource impact as we have.

6           MS. LYTLE: I guess one other question we have  
7 kind of to follow up on Gary is, is if there is any way  
8 to kind of prioritize data responses or any sort of  
9 information that you would need to complete the  
10 cultural PDA, DEIS section, and then we can send you  
11 kind of the prettier DPR forms and stuff like that  
12 after so that we're not holding up the entire PSA, DEIS  
13 based on a revised technical report.

14           If we could give you that data sooner or  
15 what data we could give you sooner.

16           MR. STOBAUGH: The BLM and the Energy Commission  
Page 170

Solar1.TXT

17 operate on -- with different information needs. The  
18 Energy Commission is going -- with the assistance  
19 obviously of the BLM is going to do the primary  
20 drafting in the environmental document.

21 what the Energy Commission specifically is  
22 interested in is the information and that the  
23 information is in -- you know, comes to us in a fashion  
24 that's useable.

25 You know, whether or not all of the site

168

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1 records are finished, you know, prior to drafting the  
2 environmental document or how finalized or how drafty  
3 the technical report is, is not going to be as  
4 important to the Energy Commission for the process of  
5 drafting the documents.

6 Those site records and that technical report  
7 are extremely important to the BLM, and so -- correct  
8 me if I'm wrong -- I can visualize a circumstance  
9 where, as you get the information prepared in such a  
10 way that the actual content, the text of the site  
11 descriptions and materials that we asked you for in the  
12 data request is in a sufficient form that we can use  
13 it, it can be shipped off to the Energy Commission so  
14 that we can move forward with drafting the actual  
15 document, while at the same time you're going to be

16 addressing the needs of the BLM to finalize all this  
17 stuff.

18           Because, you know, as we're all aware, the  
19 BLM is -- particularly in the field office is very  
20 concerned that when we all fold up our tents and go  
21 home, they're going to be left with incomplete  
22 documents. And they have to manage these things in  
23 perpetuity, and so the Energy Commission is very  
24 concerned that the BLM ultimately gets what it needs.

25           The timing of that, I think, is something

169

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1 that we can work with between the appropriation of the  
2 draft document and getting the final done. But that's  
3 going to have to be done in negotiation with the Energy  
4 Commission, together with the BLM so that everybody is  
5 happy in the process.

6           MS. LYTLE: That would certainly be our  
7 preference, and we have no intention of not finishing  
8 the tech report or -- we would even want to submit the  
9 tech report, you know, prior to FDA. We're just -- I  
10 mean, as everyone's aware, we have that December 2010  
11 deadline. We -- we want to do whatever we can to push  
12 up the PSA date.

13           So, Mike, if I understand you correctly, you  
14 want, you know, those important revised site  
15 descriptions and all data responses, or are there some

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16 data responses that can lag or any wiggle room there?

17 MR. MC GUIRT: I understand the scheduling  
18 pressure you're under, and I wish that I could tell you  
19 that these are disposable and these aren't, but the  
20 truth of the matter is, is that we very carefully  
21 considered the information that we needed to draft our  
22 document.

23 And, as it indicates, we discussed last week  
24 with Solar Two, in this case we would like to have the  
25 answers to all the data requests and the site

170

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1 information that we asked for so that we can draft a  
2 document.

3 And also like we discussed last week, we're  
4 going to move forward with beginning to draft the  
5 document. We're not going to wait to start until you  
6 guys show up with the information that we asked for.  
7 But there's going to be gapping holes in it until we  
8 get that information, and we -- we didn't ask for  
9 anything that we considered to be superfluous. We need  
10 that information in order to do our analysis. That's  
11 why we asked for it, and so we would really appreciate  
12 having it.

13 MR. SHEARER: And just to make everybody aware,  
14 we're going to need to have an accepted cultural report

Solar1.TXT

15 before the Record of Decision is done, which is going  
16 to hold up the project if it's not done.

17 And at that point if there's sites that  
18 can't be avoided once we reach a determination of one  
19 adverse effect, then it goes outside my agreement with  
20 SHIPO, and SHIPO consultation will be initiated, which  
21 is something that takes a considerable amount of time  
22 in most cases, so the quicker that cultural report is  
23 in, the closer we can get to that date.

24 MS. LYTLE: I understood. Thanks, Jim.

25 MR. MEYER: All right. At this point, I just

171

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1 thank everyone for their --

2 Okay. Okay. At this point, before I -- you  
3 know, if I sound like I'm itching to race to the door,  
4 the County would like to make some comments.

5 Thank you.

6 MR. BLEWETT: I'm Russ Blewett, County Planning  
7 Commissioner with this district, which is the largest  
8 planning district in the United States, I might add.

9 A couple of items. First of all, Chris, I'm  
10 always glad to have you here in our County because  
11 every time Chris comes the temperatures drops 10 to  
12 15 degrees, so you can come back at any time you want.  
13 we'd be grateful.

14 I don't want to enter too much of an item of  
Page 174

Solar1.TXT

15 discord in here, but I came primarily because at the  
16 last meeting the people from CURE were sitting up  
17 front, and I highly disagreed with some of their  
18 comments last time, and I assumed that they were part  
19 of the Energy Commission.

20                 So I was extra polite to them and didn't  
21 have anything to say, but I'm not under that illusion  
22 anymore so I have some hard-ass comments for them right  
23 now.

24                 And here they are. They represent --  
25 nothing against these two, because they're very nice

172

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1 people. I had a nice talk with Scott during the break.  
2 He's just a hired gun, and I appreciate that, as we all  
3 are, I guess, except for me. I am a dedicated  
4 volunteer.

5                 Anyway, here's -- they represent a -- they  
6 represent the unions in this area, and the unions  
7 have -- the unions have done this, and they've done  
8 this rather dramatically. They ruined the steel  
9 industry, the auto industry, schools, and government.  
10 They bankrupt it and cost hundreds of thousands of  
11 jobs, if not millions. They hurt -- they hurt the  
12 people of this country. They want to hurt the energy  
13 industry, and I'm not going to let them do it in this

14 County. They -- frankly, they're --- I don't know how  
15 else to say it. They're -- they call it "green mail,"  
16 but in reality it's blackmail and distortion.

17           what they're doing is totally wrong. It's  
18 amoral, and what they've done is -- and by the way, if  
19 you'd like to read some comments on it, go to the  
20 New York Times and get their site, and there's -- Neil  
21 Cavuto and Lou Dobbs have both done articles on what  
22 they've done to the -- what they're trying to do to  
23 this industry by using so-called green mail.

24           Don't be fooled. They would jump out of  
25 this project -- they would drop their comments in ten

173

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1 seconds if this project would go union, and -- and for  
2 them to say, oh, no. We're in it for the  
3 environmental. That is not true.

4           And the best example of that is a project  
5 that happened up in -- well, it's here in our County,  
6 actually, in our desert, called Bright Source Energy.

7           Their project has -- uses more water,  
8 killing more turtles, and they use mass grading, which  
9 this project is not going to use. And those are bad  
10 things, quite frankly, and they really disturbed the  
11 project.

12           This project does not use -- I don't believe  
13 it's going to be mass graded. They've made

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14 arrangements for the turtles and they're not using  
15 steam, so it's going to use a lot less water, which, in  
16 our desert is like gold. I mean, it is a gold mine.  
17 water is our most precious commodity.

18           So anyway, I don't want -- I don't want you  
19 to be fooled by what they're -- what they're doing  
20 here. I -- all you people probably know what I'm  
21 saying is true, but it needed to be said, and I said  
22 it.

23           Thank you.

24           UNIDENTIFIED MALE SPEAKER: I'd like to respond to  
25 that.

174

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1           I've been working at Fort Irwin for  
2 20-something years. I'm a union employee with the  
3 Teamsters. I have a high school education. I make  
4 like 20 bucks an hour, and with that I'm able to send  
5 my daughter to college -- both my daughters to college  
6 and pay for it. And they're going to become, I would  
7 imagine, some type of administrator instead of having a  
8 job with their name on their shirt, like dear old dad.

9           So there's a lot of benefits to unions, and  
10 one of those is that the supervisors out at Fort Irwin  
11 get paid 10 percent or more than I do, which means that  
12 they have a living wage too.

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13                   So if you want to start pointing fingers, I  
14 suppose they could look at Reaganomics and Margaret  
15 Thatcher and the privatization of everything and the  
16 deregulation of everything that caused the downfall of  
17 our economy and our government.

18                   Thank you.

19           MS. MILES: I just want to say CURE has been  
20 accepted by the Energy Commission as a legitimate  
21 Intervenor in this proceeding. And so CURE has a right  
22 to be here.

23                   And, in fact, there's been a public  
24 statement made from the Energy Commission that said  
25 that CURE is an appropriate intervenor in siting

175

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1 proceedings.

2                   And so your concern should be taken up with  
3 the Energy Commission, but in this case, you know, we  
4 have a right to be here. And CURE improves projects,  
5 and we have a known track record.

6           MR. BLEWETT: Yeah, blackmail.

7           MS. MILES: So I know that you don't, you know,  
8 appreciate what we do, but I'm telling you that, you  
9 know, we improved -- improved the environmental impact  
10 of the project. Once we get involved and we've made  
11 comments on the environmental impact, we do not pull  
12 out, as you say.

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13           we actually wait and work to improve the  
14 project, and I've -- since I've been at CURE, I've seen  
15 projects where a union deal was offered, and CURE  
16 continued to participate. I've seen projects where no  
17 union deal was offered and we did not continue to  
18 participate because there were no environmental impacts  
19 significant enough to warrant participation.

20           So that's all I have to say. Thank you.

21           MR. BLEWETT: One last comment.

22           MR. STOBAUGH: Well, before you get there, I'd  
23 like to thank the Bureau of Land Management folks that  
24 came and helped us here, as well, Mickey Quillman and  
25 Christopher Otahal. I see some in back there. And Jim

176

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1 Shearer -- and if I missed anybody else -- I know there  
2 was --

3           Anyway, thanks for the BLM help, and thank  
4 you for the public coming in, and CEC's inviting us to  
5 join in here with the Applicant during the energy  
6 system to participate in this public process. Thank  
7 you.

8           MR. BLEWETT: One last comment. This is a quote  
9 by her senior partner, Mr. Joseph, who's on the  
10 letterhead of her law firm, and it was in the New York  
11 Times. He said he, "sees absolutely no conflict of

12 interest in seeking labor agreements from solar  
13 developers while challenging the environmental effect  
14 on projects."

15 "It is in the interest of construction  
16 workers to have good, middle-class jobs." And nobody  
17 against middle class jobs.

18 "And to have conventional and renewable  
19 power plants that are sustainable, Mr. Joseph said."

20 So basically it's okay -- it's okay for  
21 unions to extort, but nobody else can do that.

22 Thank you.

23 MR. MEYER: Okay. And I just want to say thank  
24 you to everyone, Mr. Jackson, Loulena, Scott, and  
25 those -- the Applicant and BLM.

177

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1 It's been a long day. I thank everyone for  
2 their time, Supervisor wood, and all the people from  
3 the audience who were able to give us a little bit more  
4 light on very controversial issues.

5 And I just wish everyone a safe trip home,  
6 and we have a little while before our next meeting. It  
7 will be following the draft documents, so we'll get  
8 that out with as much advanced notice as possible, and  
9 since there will be a meeting on the draft document  
10 we'll probably hold it a little later so we can get a  
11 little bit more public involvement.

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12                   So thank you, everyone. Safe travels, and  
13 we'll talk to you soon.

14                   (The meeting was concluded at 4:00 p.m.)

15                                   --oOo--

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178

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1                                   REPORTER'S CERTIFICATE

2

3   STATE OF CALIFORNIA            )  
4   COUNTY OF SAN BERNARDINO    )   SS.

5

6                   I, AMY P. SMITH, a certified shorthand  
7 reporter for the State of California, do hereby  
8 certify:

9                   That the said proceeding was taken down by  
10 me in stenotype at the time and place therein stated

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11 and thereafter reduced to typewriting under my  
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13 record of the proceedings here held.

14 I further certify that I am not of counsel  
15 or attorney for any of the parties hereto or in any way  
16 interested in the event of this cause and that I am not  
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18 Dated this 26th day of October, 2009.

19

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AMY P. SMITH  
Certified Shorthand Reporter  
License No. 12154

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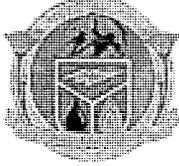
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND  
DEVELOPMENT COMMISSION OF THE STATE OF  
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**APPLICATION FOR CERTIFICATION  
For the SES SOLAR ONE PROJECT**

**Docket No. 08-AFC-13**

**PROOF OF SERVICE**

*(Revised 11/5/09)*

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**DECLARATION OF SERVICE**

I, Corinne Lytle, declare that on November 30, 2009, I served and filed copies of the attached, Transcript of Proceedings of the Data Response and Issues Resolution Workshop. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[[www.energy.ca.gov/sitingcases/solarone](http://www.energy.ca.gov/sitingcases/solarone)]**.

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I declare under penalty of perjury that the foregoing is true and correct.

Original Signed By

\_\_\_\_\_  
Corinne Lytle