

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Genesis Solar Energy) 09-AFC-8
Project)
_____)

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

TUESDAY, FEBRUARY 16, 2010

1:41 p.m.

Reported by:
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COMMITTEE MEMBERS PRESENT

Kenneth Celli, Commissioner and Presiding Member

SITING COMMITTEE MEMBERS AND ADVISORS PRESENT

James D. Boyd, Vice-Chair and Presiding Member

Sarah Michael, Advisor to Commissioner Boyd

Robert Weisenmiller, Commissioner and Asso. Member

STAFF AND CONSULTANTS PRESENT

Robin Mayer, Staff Counsel

Michael Monosmith, Project Manager

APPLICANT

Scott Galati, Galati & Beck, representing Nextera Energy

Scott Busa, Director with Project Development for Nextera Energy

Tricia Bernhardt, Consultant

INTERVENORS

Tanya Gulesserian, Adams, Broadwell, Joseph & Cardozo, representing CURE

Michael Boyd, CARE

Penny Josephson, California Dept. of the Interior, BLM

ALSO PRESENT

Meg Russell, Project Manager, Nextera

I N D E X

	Page
Proceedings	1
Introductions	1
Background	3
Comments from the Parties: Clarity of Scoping Order	
Applicant	5
CEC Staff	15
Intervenor	15
Comments from the Parties: Disagreements with Staff	
Applicant	15
CEC Staff	17
Intervenor	19
Comments from the Parties: Schedule	
Applicant	39
CEC Staff	41
Intervenor	49
Public Comment	66
Adjournment	67
Reporter's Certificate	68

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

2 1:41 p.m.

3 MR. WEISENMILLER: -- the Committee of
4 the California Energy Commission regarding the
5 Project Genesis Solar Energy Project.

6 Before we begin, I'd like to introduce
7 you to the various participants. The Commission
8 Committee is -- the Presiding Member is
9 Commissioner Boyd, who is not here today, and
10 myself. I'm Robert Weisenmiller and representing
11 Commissioner Boyd is Sarah Michael, and also we
12 have the hearing officer here.

13 HEARING OFFICER CELLI: Kenneth Celli,
14 C-E-L-L-I.

15 MR. WEISENMILLER: And I'd ask parties
16 to introduce themselves and the representatives at
17 this time starting with the Applicant.

18 MR. GALATI: Scott Galati, representing
19 Nextera.

20 MR. BUSA: And I'm Scott Busa with
21 Nextera Energy Resources.

22 MR. WEISENMILLER: Staff?

23 MS. MAYER: Robin Mayer, Staff Counsel.

24 MR. MONOSMITH: Mike Monosmith, Project
25 Manager.

1 MR. WEISENMILLER: Intervenors?

2 MS. GULESSERIAN: Tanya Gulesserian with
3 California Unions for Reliable Energy.

4 MR. WEISENMILLER: And CARE?

5 MR. BOYD: Mike Boyd, CARE.

6 MR. WEISENMILLER: And in terms of
7 agency representatives? Do we have any agencies
8 on the line?

9 MR. BOYD: I heard Department of
10 Interior.

11 MS. JOSEPHSON: This is Penny Josephson.
12 I'm the Deputy Regional (indiscernible) for
13 Department of the Interior, and I'm representing
14 BLM.

15 MR. WEISENMILLER: Thank you. Did you
16 notice which caller she was, Rosemary, just to
17 be --

18 MS. AVALOS: No, I didn't.

19 MR. WEISENMILLER: Penny Josephson,
20 could you speak up one more time?

21 MS. JOSEPHSON: Yes, this is Penny
22 Josephson.

23 MR. WEISENMILLER: She's calling on
24 number one. Thank you.

25 Okay. Any other federal agencies on the

1 line? Any elected officials or representatives
2 from the State of California, Mojave Desert Air
3 Quality Management District, Riverside County,
4 City of Blythe, or any other boards or agencies?

5 HEARING OFFICER CELLI: That would
6 include on the phone.

7 MR. WEISENMILLER: On the phone.

8 Hearing none --

9 HEARING OFFICER CELLI: Thank you,
10 Commissioner. Kenneth Celli appearing on behalf
11 of the Committee.

12 This Status Conference is sponsored by
13 the Energy Commission to inform the Committee, the
14 parties, and the community about the Project's
15 progress to date and to discuss legal issues
16 raised by the parties.

17 Notice of the Status Conference was
18 issued on February 1st, 2010, and served on all
19 parties and posted on the Energy Commission
20 website.

21 Following the Conference, the Committee
22 will hear public comment.

23 Before we begin the Status Conference
24 itself, the Committee received from Intervenor
25 CURE a Petition for the Disclosure of Nextera's

1 August 11th, 2009, Genesis Solar Energy Project's
2 Cooling Study, with a Nondisclosure Agreement
3 attached. On February 15th, 2010, the Hearing
4 Advisor sent an e-mail to all parties inquiring
5 into whether any party opposed CURE's Petition.
6 On February 13th, 2010, I received e-mails from
7 Staff and Intervenor, Mike Boyd, stating that they
8 do not opposed CURE's Petition. And on
9 February 15th, 2010, I received an e-mail from
10 Counsel for Nextera that they would not oppose the
11 Petition.

12 Is there any reason that the Committee
13 should not now grant CURE's Petition for
14 Disclosure of the Cooling Study upon execution of
15 the Nondisclosure Agreement, Applicant?

16 MR. GALATI: No.

17 HEARING OFFICER CELLI: Staff?

18 MS. MAYER: No.

19 HEARING OFFICER CELLI: Mr. Boyd, any
20 objection?

21 MR. BOYD: No.

22 HEARING OFFICER CELLI: Thank you.

23 At this time that Petition is granted
24 and so the Applicant will be ordered to, after
25 receipt of the satisfactory Nondisclosure

1 Agreement, disclose the requested documents.

2 With that we're going to turn back now
3 to the Status Conference.

4 And by the way, this would be the Order;
5 we're not going to be issuing a written Order.
6 The Order is in the record if you need it.

7 MS. GULESSERIAN: Thank you.

8 HEARING OFFICER CELLI: Let's go back to
9 the Status Conference now. Mr. Galati, we
10 received an Issue Statement this morning for the
11 Status Conference, and if that's acceptable to the
12 parties we intend to use that as sort of our
13 agenda for today.

14 So, with that, let's start with
15 Mr. Galati.

16 MR. GALATI: Thank you very much,
17 Members of the Committee.

18 Basically we've broken it into three
19 things. First, clarity on the Scoping Order; two,
20 things that we're seeing that we may have
21 disagreements with Staff and how that affects the
22 schedule; and then three, the overall schedule.

23 So we received your Scoping Order and,
24 as you can imagine, we paid very close attention
25 to it and I've read it every possible way with

1 every possible translation. And, unfortunately, I
2 am capable of coming up with more than one
3 interpretation of that Order. So I have asked a
4 couple of questions for some guidance in that
5 area.

6 The Order talks about water use for
7 power plant cooling. It comes up with what I
8 believe to be a new language that might be a new
9 policy that uses some language that haven't yet
10 been defined. The first is it uses the term
11 "least amount" and it also uses the term "worst
12 available water." So I have a couple of questions
13 regarding that and wondered if the Committee can
14 give some guidance.

15 The first question that I have is does
16 the language "least amount" for power plant
17 cooling mean the project must dry cool in order to
18 use the least amount of water, unless it is
19 economically infeasible considering technical,
20 legal, economic, or environmental impacts? So
21 what I'm trying to do is get some clarity on what
22 you meant by the "least amount." Let me give you
23 a couple of examples.

24 If the least amount is, of wet cooling
25 is that we have got every water conservation

1 measure implemented into the project, but we are
2 still wet cooling, does that qualify as a
3 possibility of being least amount, or in the minds
4 of the Committee did they mean least amount was
5 dry cooling unless we can prove technologically,
6 economically, legally, or from an environmental
7 perspective that that should not be done? So
8 that's the first question.

9 The second question is, again trying to
10 understand "worst available water." And let me
11 understand, let me tell you first why I got a
12 little bit of confusion. We had some confusion on
13 1,000 TDS versus 3,000 TDS, so one way to
14 interpret this Order since it does use the term
15 "brackish water," and that has been defined
16 elsewhere, is the Committee interest -- when you
17 say the worst available water, would that mean
18 water, let's say, between 1,000 and 3,000? You
19 have 1,000 TDS water but you also have 3,000 TDS
20 water; in that case you should be looking at the
21 3,000. That's one part of the question.

22 The second part of the question is what
23 if you have 3,000 water or a little bit above
24 3,000 and you have 5,000, 9,000, 12,000, 25,000
25 TDS water, does the Applicant need to demonstrate

1 to the Committee why it can't use the 25 and the
2 ten and the nine in order to be able to use the
3 three for wet cooling?

4 So the questions are interrelated
5 because obviously if the Committee meant that the
6 first question was "least amount" means dry
7 cooling unless you can prove these particular
8 factors of why you shouldn't, don't have to, then
9 the second question becomes moot. But if the
10 first question is you can still wet cool in
11 California if you are using the "worst amount" and
12 you're minimizing its use. And that's why I'm
13 confused.

14 HEARING OFFICER CELLI: May I address
15 that? I'm going to go ahead and respond for the
16 Committee.

17 I want to put this in context. When
18 this -- there was a Scoping Order requested by the
19 Applicant and the Scoping Order was for resolution
20 of legal issues only, not factual. And so all of
21 the language in the Order emanates from the
22 position that this is a legal call, not a factual
23 call.

24 Now, given that context, the answer to
25 your first question, does the language "least

1 amount" for power plant cooling mean the project
2 must dry cool or show that dry cooling is not
3 technically, legally, or economically feasible, or
4 would create a significant environmental impact,
5 the answer to that would be yes. So least amount
6 of water is exactly that, least amount of water.

7 Now, you also have the language, it says
8 "technical, environmentally, economically
9 feasible," that are all qualifiers. And, of
10 necessity, and as was stated in the State Water
11 Board's letter it's always going to be a site-
12 specific question, it's always going to be a case-
13 by-case question. It's very difficult to deal
14 with any sort of real estate issues globally as
15 some sort of uniform answer, because lightning
16 does not strike the same place twice. They're
17 always going to be a little different.

18 But I believe that it's clear that the
19 Committee said the least amount of water, and the
20 context was the least amount of water, the least
21 amount of the worst available water.

22 Now, the two are connected as you
23 stated. And when we're talking about worst,
24 because we weren't talking about this site
25 specifically, because I understand at this site

1 you have some water that's as good as 246 grams
2 per liter and 8,000, and it's all across the
3 board. The Committee was dealing on a global
4 level, so really when they're talking about the
5 worst level, they're talking about the worst
6 alternative. So if you have a power plant on the
7 beach next to the ocean with a river running by it
8 and some reclaimed water up the street and some
9 water underneath it, of those alternatives it's
10 going to have to use the worst quality water. So
11 it's the least amount of the worst quality, worst
12 available water.

13 MR. GALATI: And that would mean after
14 it answered the first question that using the
15 least amount wasn't technically, economically,
16 legally feasible or had environmental impact, then
17 you would go to the second piece, which is now
18 that dry cooling has been disproven, you have an
19 opportunity to identify the worst amount of water
20 available. Is that what the Committee means?

21 HEARING OFFICER CELLI: Well, the
22 requested articulation of the law had to do with
23 the power plant cooling water, and so we're only
24 speaking of cooling water and the sources for
25 cooling.

1 MR. GALATI: I see. So we wouldn't get
2 to the second question if the first one was
3 answered you're dry cooling, because we wouldn't
4 be using water for cooling.

5 HEARING OFFICER CELLI: Right.

6 MR. GALATI: Okay.

7 HEARING OFFICER CELLI: Now, before you
8 move on, I just want to see if the other parties
9 wanted to chime in on this. Staff?

10 MS. MAYER: No, sir.

11 HEARING OFFICER CELLI: Ms. Gulesserian?

12 MS. GULESSERIAN: No.

13 HEARING OFFICER CELLI: Mr. Boyd?

14 PRESIDING COMMISSIONER BOYD: I think
15 you guys did a fine job. It's an issue of fact
16 now. It may (indiscernible) on the Applicant.

17 HEARING OFFICER CELLI: Well said.

18 Thank you, sir.

19 So, Mr. Galati, go ahead.

20 MR. GALATI: Yeah, I have two sort of
21 follow-up questions about something you said. And
22 I recognize this is not an evidentiary hearing,
23 but I did want to at least correct the facts as
24 we've never proposed to use water less than 1,000
25 TDS, so we don't have that capability at the site.

1 So everything was over 1,000 TDS. The AFC was
2 proposing 5,000, we have done some research
3 telling Staff that we wanted to get below but we
4 wouldn't go above, we wouldn't go below 1,000.

5 The second question that I have is -- I
6 may have misheard, but I thought you said the
7 Water Board might make a specific determination.
8 In this case or generally or -- I'm confused.

9 HEARING OFFICER CELLI: I was referring
10 to the letter that we received from the -- in
11 fact, I have a copy of it here. As part of that
12 Scoping Order I believe it was CURE put in a
13 letter from the State Water Resources Control
14 Board dated January 20th to Melissa Jones from
15 Dorothy Rice, Executive Director, and I was
16 referring to that letter specifically.

17 I'm not injecting any new procedure or
18 any other --

19 MR. GALATI: That's why I asked. It
20 sounded, you know, nine times out of ten when I
21 don't understand something, it's because I didn't
22 hear it right.

23 HEARING OFFICER CELLI: Really, this was
24 a letter that they were shedding some light on
25 their statement of their policy, and in that

1 letter they make clear that, among other things,
2 that it is always a site-specific environmental
3 consideration. Essentially that whenever we're
4 looking at water, it's always going to be site-
5 specific.

6 MR. GALATI: Just to put it completely
7 to bed so that we don't, I don't go away with any
8 misconception, probably wishful thinking, but I
9 want to make sure. It would not matter, then, if
10 the Applicant were using water over 3,000 TDS, it
11 would be the same test, correct? Three thousand
12 TDS would not comply with the policy unless it met
13 those criteria, correct?

14 HEARING OFFICER CELLI: I'm not sure I
15 understand your question. Let me ask you this.

16 MR. GALATI: Okay.

17 HEARING OFFICER CELLI: My understand
18 was, from the reading of the State Water Board's
19 articulation of their policy, was that fresh water
20 for domestic and municipal use was up to 3,000 TDS
21 and that was the only statement they made as it
22 related to ground water. Because 1,000 TDS number
23 was a surface water metric, not ground water. And
24 so that was -- I mean, I'll throw it out to the
25 parties to hear what other people say, but I

1 thought that was what the import of that letter
2 was.

3 MR. GALATI: And this is what gives rise
4 to my next question, is if the Applicant were
5 committed to use over 3,000 TDS water, ground
6 water, and then comply with the Water Board's,
7 whether they said it or implied it, but let's say
8 the Water Board said 8863 applies. Would that
9 comply with the Energy Commission's policy in and
10 of itself or would the Energy Commission apply
11 this test to that water?

12 HEARING OFFICER CELLI: The test they
13 would apply is the least amount of the worst
14 available water. So if the least amount of the
15 worst available water, say we're dry cooling and
16 you had a grade of water available, then it's
17 quite possible that the use of the 3,000 plus TDS
18 water would still not be sufficient.

19 But, again, site-specific, facts-
20 specific, it's always going to be an evidentiary
21 call.

22 MR. GALATI: Right, okay. So I think I
23 understand. Okay.

24 HEARING OFFICER CELLI: And now Staff,
25 did you care to say anything on that?

1 MS. MAYER: We absolutely concur that
2 it's a site-specific factor in consideration and
3 with your interpretation of the letter.

4 HEARING OFFICER CELLI: Thank you.
5 Ms. Gulesserian?

6 MS. GULESSERIAN: I have no comments.
7 We concur with what's been said so far. Thank
8 you.

9 HEARING OFFICER CELLI: Any comment on
10 water, Mr. Boyd?

11 PRESIDING COMMISSIONER BOYD: You did
12 fine.

13 HEARING OFFICER CELLI: Thank you.
14 Mr. Galati, go ahead.

15 MR. GALATI: The next area has to do
16 with disagreements with Staff, and this was a
17 preemptive, bring it up so we could discuss about
18 it. We have had, obviously, disputes with Staff
19 over water and we've had disputes and
20 disagreements with Staff over other areas.
21 They're not unresolvable, but what I'd like to
22 throw out to you is that we would urge the Energy
23 Commission Staff to write its Staff Assessment
24 even if there are differences of opinion.

25 And so there's a couple of areas that

1 I'd like to point out to you. Is we have proposed
2 biology mitigation in one way, and Staff may be,
3 may want biology mitigation in another way. Our
4 view would be while we're going to do our best,
5 we're going to go meet and talk about biology on
6 Thursday and, hopefully, come to an understanding.

7 I just wanted to take this opportunity
8 to use that Staff has already had a delay in its
9 schedule because of what I believe to be
10 disagreements, not necessarily complexity, and
11 those disagreements, we don't want them to
12 continue to delay the Staff assessment. And I
13 just throw it out to you that we do have an
14 evidentiary hearing process and we don't undertake
15 the evidentiary hearing process lightly. We try
16 to resolve disputes. But sometimes, sometimes
17 there are disagreements that require your help.

18 And what we would ask is that Staff
19 stick to its new schedule, whether there are
20 disagreements or not, and that it take a position
21 if it doesn't agree with our biology mitigation or
22 the way we designed the drainage channel or the
23 way we've done the ground water modeling, that
24 Staff say why and say what it should be done. We
25 at least then can have, I think, some workshops

1 during the 90-day public comment period and we'll
2 work to resolve things. But we would prefer to
3 not have any more delay.

4 HEARING OFFICER CELLI: Staff, your
5 response, please.

6 MR. MONOSMITH: Yes. We've reissued our
7 updated schedule on Status Report Number One,
8 which was published on February 1st wherein we
9 indicated that Staff Assessment Draft and Final
10 Impact Statement for Genesis would be filed, the
11 Notice of Availability would be filed by the BLM
12 on March 25th.

13 That obviously means that certain things
14 have to happen within the next six weeks. We are
15 on schedule to meet that commitment to the
16 Committee and the other parties. This Thursday we
17 will have our tenth Data Response Workshop. I
18 think we've had a very healthy, robust discussion
19 with the Applicant on a number of issues including
20 the mitigation for biology, including surface
21 drainage and ground water investigation and
22 modeling that we've conducted -- that they've
23 conducted that we've reviewed, that we provide
24 sensitivity analysis for.

25 And I do believe that the Committee will

1 find when we do publish the essay, the EIS, that
2 Staff's opinions and analyses and testimony, in
3 collaboration with the wildlife managers from Fish
4 and Wildlife Service, Fish and Game, from BLM will
5 be consistent on mitigation. And we can talk
6 about the specifics that Mr. Galati raised in
7 relation to some of this, but we feel good that
8 we're going to stay on track, so --

9 MS. MAYER: I just want to add that the
10 Staff is doing a heroic job trying to get out
11 these sections. Some of them are done, some of
12 them are being written as we speak. Obviously
13 biology and water are huge issues. They're going
14 to be, sections are going to be hundreds of pages
15 long. But they are in progress and we fully
16 expect to meet the schedule.

17 HEARING OFFICER CELLI: And I appreciate
18 that.

19 I just want to say on sort of a selfish
20 note that when -- and I'm sure between you and
21 Ms. Holmes you're covering for this, but I'm going
22 to ask Staff Counsel particularly to pay attention
23 to those sections where Staff comes to some sort
24 of inconclusive position, or to watch for that, to
25 read for that. We're looking for those places

1 where, say, Staff can't make a determination about
2 this because we lack the evidence or something
3 like that. That kind of thing is where you should
4 be honing in and see what you can do to get
5 whatever resolution you can when, and if, you
6 encounter those kinds of statements, if you would.

7 MS. MAYER: Absolutely, sir.

8 HEARING OFFICER CELLI: Thank you. And
9 Ms. Gulesserian, please.

10 MS. GULESSERIAN: Thank you. I wanted
11 to just comment on the process. CURE is
12 expeditiously reviewing all the material that's
13 been filed and the data responses and requests,
14 and participating in the workshops.

15 We have found that over the past -- we
16 have found throughout the proceedings so far that
17 technical information supporting responses has not
18 been served on CURE, and we have, as we discover
19 those types of discrepancies, we have been asking
20 the Applicant, who has in turn been providing it
21 to us very promptly.

22 We are still working through the
23 material and doing our best to identify what we
24 have not received as quickly as possible. And I
25 just wanted to note that, you know, as of last

1 week we have just received some of the technical
2 information and our consultants are at it,
3 reviewing the information as quickly as possible.

4 We've also participated in a workshop
5 last week where we understood that Staff was
6 having discussions with the Applicant prior to the
7 workshop on some technical issues. It was
8 clarified by Staff Counsel that we shouldn't,
9 there should not be substantive discussions
10 without all parties present and a record of
11 conservation was filed and Staff Counsel made that
12 clear to all the parties that that would be
13 properly noticed. So we appreciate that.

14 And I would like to just state for, as
15 we continue on this process, a very fast moving
16 process, if we could make sure that we are
17 involved in the exchange of information so that we
18 can do our best to not be any impediment to at
19 least the speed at which this is going. That
20 would be much appreciated.

21 HEARING OFFICER CELLI: Let me ask about
22 that because CURE and Mr. Boyd, CARE, should be
23 included on everything that goes out on a POS so
24 why would that not be happening?

25 MR. GALATI: I only know of one instance

1 where it has been alleged to not happen. We
2 haven't even gone back to see if they, that they
3 were served. I know everything from my office is
4 being served. I know that with our consultant if
5 it has not been happening, we've corrected that
6 now. And so it's possible that large documents
7 may not have been given directly. It could have
8 been a CD, could have been electronic.

9 We didn't spend the time to go back and
10 say did you not get it, because no one else has
11 complained about not getting something served on
12 them. But what I can tell you is that we did take
13 a look back, we did provide to Ms. Gulesserian
14 exactly what she asked for. Anything else she
15 asks for we'll make sure she gets it. It's been a
16 mistake if it has happened, it has not been
17 intentional at all.

18 So I can tell you that there are many
19 filing, as Mike Monosmith of all people knows,
20 that he's been gracious enough to allow us to file
21 additional supplemental plans and things piecemeal
22 after the data requests were done. They were
23 going very quick. It's possible somebody forgot
24 to put one in the mail to CURE, but it's not
25 intentional, and we'll keep a better eye on that.

1 HEARING OFFICER CELLI: And Staff?

2 MS. MAYER: Staff knows if a
3 conversation does veer into substantive matters to
4 post a Record of Conversation and layout so they
5 would be just more proactive in general now that,
6 you know, some of the -- it's getting less
7 technical and more substantive, obviously, as the
8 case goes on. So we've had many workshops.

9 And just as a point of clarification,
10 BLM's rules are not like our rules at all. BLM
11 can, in fact, meet with Applicant as it chooses
12 without other parties, without even -- without the
13 Energy Commission and without other parties. So
14 potentially there is some information that was in
15 the air there that wasn't fully displayed. But
16 everything we get, the parties get.

17 MR. MONOSMITH: And I just wanted to, in
18 defense of Staff here as well, in doing the site
19 visit informational hearing we were instructed by
20 the Committee to review, to have Staff's staff
21 contact where appropriate to make sure that that
22 was reflected in Records of Conversation. We've
23 never had Staff's staff contact where a decision,
24 where anything substantive was arrived upon. It's
25 always been clarification for purposes of looking

1 at existing information that was filed in the
2 record and available for everyone to review.

3 The conversation which occurred last
4 Tuesday prior to the noticed workshop between our
5 surface drainage technical hydrologist engineer
6 and that of the Applicant's at Worley Parsons, was
7 encapsulated in the Record of Conversation. It
8 was written on the 9th and filed on the 11th. The
9 workshop occurred on the 10th, so there was that
10 one day lapse and we do apologize to CURE and the
11 other Intervenors. We try to be very strict and
12 adhere to all filings on the Record of
13 Conversations, and we've agreed, per Staff Counsel
14 actually, that we need to make sure that these
15 Records of Conversation actually occur during the
16 workshops. And we'll talk again about this stuff
17 on Thursday.

18 So we try to do this, try to get
19 expeditiously through the information and arrive
20 at the discovery analysis point we can write this
21 and get this to you guys, so --

22 MR. GALATI: And I would like to echo
23 that as well, as to give my assurance to the
24 Committee. There's been no substantive
25 conversation that would affect any decision. The

1 kinds of conversation that somebody would have is
2 we would submit a drainage design and the person
3 would say, the reviewing person would look at the
4 drainage design and say does that symbol mean that
5 you're going to do this, is that what that means,
6 trying to understand the drawing, which is then
7 followed up with a Record of Conversation.

8 What we've done on our side is we've
9 instructed our engineers and those technical
10 people that sometimes have that technical
11 conversation to send an e-mail to Ms. Gulesserian
12 or any expert she identifies, let them know when
13 those conversations are going to take place, that
14 they must take place, and they must take place
15 because the information is coming at a very high
16 speed.

17 There is no violation of the ex parte
18 rule to take a place. This was a Staff data
19 request. This is the Applicant providing that
20 answer. And Staff and Applicant making sure that
21 what Staff got was legible, understandable. I
22 think that should continue.

23 HEARING OFFICER CELLI: I think that the
24 Committee is appreciative of all the parties'
25 efforts. This is an ARRA funded case, this one is

1 a fast track, and especially Applicant would be
2 most interested in making sure that we don't have
3 delays because one party didn't get something or
4 other.

5 So I'm just going to ask the parties
6 from here on out to please be diligent in making
7 absolutely sure that everybody who is an
8 Intervenor -- we may get some more -- all
9 Intervenors are served with everything that goes
10 out so that they're always a part of every e-mail
11 and all service.

12 So, with that, I'm hopeful,
13 Ms. Gulesserian, that we won't hear any more about
14 this kind of thing in this case, because we need
15 to move forward.

16 Anything from you, Mr. Boyd, regarding
17 any of these issues that you personally --

18 PRESIDING COMMISSIONER BOYD: Well, I
19 heard someone mention that the preliminary Staff
20 Assessment and Draft EIS was going to be made
21 public in the end of March; is that true?

22 HEARING OFFICER CELLI: What I heard was
23 March 25th.

24 PRESIDING COMMISSIONER BOYD: March
25 25th, okay. And then there's going to be a what,

1 a 45-day period for comment; is that true, or is
2 it 90?

3 HEARING OFFICER CELLI: I'm not actually
4 sure about what -- Mr. Boyd, I just want to
5 refocus with the questions. What we've been
6 talking about right now is, first of all, have you
7 been receiving the discovery?

8 PRESIDING COMMISSIONER BOYD: Oh, yeah.
9 I haven't had any problems with not receiving
10 documents.

11 HEARING OFFICER CELLI: Okay. So
12 you're --

13 PRESIDING COMMISSIONER BOYD: --
14 electronic form and hard copy, including Records
15 of Conversation.

16 HEARING OFFICER CELLI: Okay, excellent.
17 So you're satisfied that you are on the POS list
18 and that you are getting everything.

19 PRESIDING COMMISSIONER BOYD: Oh, yeah.
20 I had a little bit of initial problem with Alfredo
21 Figueroa's e-mail addresses, but that was resolved
22 by new Proof of Service list being published with
23 the correct --

24 HEARING OFFICER CELLI: As far as your
25 questions, I'm actually -- even though you're a

1 party, we are still going to have the public
2 comment and question period. Then if you have
3 such questions as when things are going to happen,
4 then you might be able to ask that kind of
5 question.

6 PRESIDING COMMISSIONER BOYD: I'm just
7 curious. You're doing both the NEPA and the CEQA
8 process here, and my concerns are specifically I
9 did comment on NOI for the NOI that was done by
10 BLM on the project, and just am curious which, if
11 any, of the issues that we addressed in there are
12 going to be addressed in the Preliminary Staff
13 Assessment and the Draft EIS. That's my main
14 concern at this point.

15 HEARING OFFICER CELLI: I'm going to --
16 I'm going to allow -- my understanding is that the
17 Draft EIS and the SA are going to, is a joint
18 document. And I'm getting nods from Ms. Mayer,
19 who's attorney for Staff here.

20 MS. MAYER: Then there's a 90-day
21 comment period per NEPA.

22 PRESIDING COMMISSIONER BOYD: Oh, 90
23 day, okay good.

24 HEARING OFFICER CELLI: Okay. So am I
25 correct, parties, in the assumption that it's

1 going to be one and the same document?

2 MS. MAYER: Yes, sir.

3 HEARING OFFICER CELLI: Okay.

4 MR. GALATI: That's my understanding, as
5 well.

6 HEARING OFFICER CELLI: Okay. So there
7 you have it, Mr. Boyd. You're going to have one
8 document serving both functions.

9 PRESIDING COMMISSIONER BOYD: Good.

10 HEARING OFFICER CELLI: Okay.

11 MS. MAYER: Yeah, that's part --

12 PRESIDING COMMISSIONER BOYD: Okay,
13 yeah.

14 MS. MAYER: -- part of the internal
15 review includes BLM review and ultimately EPA
16 review of the document.

17 PRESIDING COMMISSIONER BOYD: Okay.

18 HEARING OFFICER CELLI: Thank you. Now,
19 we were traveling through the issues,
20 identification of the Applicant.

21 MR. GALATI: Right, I was on issue
22 number two, which is disagreements with Staff, and
23 I think that that's been cleared up.

24 I do have some questions regarding
25 cumulative impacts for ground water modeling. We

1 have worked with Staff to try to identify, as you
2 know because you heard a Scoping Order about it,
3 what projects should be in and what projects
4 should be out. And we have recently told that BLM
5 is unwilling to or believes it's confidential to
6 give the list of projects that would be done for
7 cumulative impact modeling that Staff is using.
8 And we think that we should all be using the same
9 list or at least understanding of what the list is
10 so we can prepare our cumulative modeling as well.

11 We have submitted communicative modeling
12 to Staff and we have chosen a list. We'd like to
13 understand if we have a dispute in that area or
14 not, and we haven't been in receipt of a list. So
15 BLM's solicitor is on the phone today. Maybe she
16 could tell us whether or not this is something
17 that they could share with us.

18 HEARING OFFICER CELLI: Sure. First let
19 me look to Staff to see whether they have any
20 light they can shed on this.

21 MS. MAYER: Yeah. Genesis submitted a
22 pretty minimal list. However, the -- and so the
23 lists are different. However, the impact -- well,
24 the likely conclusion is of cumulatively
25 considerable impact --

1 MR. GALATI: Yes.

2 MS. MAYER: -- because of the projects
3 that are planned. So the results are, the results
4 are not that different between the lists.

5 HEARING OFFICER CELLI: Let me ask you
6 this. And I wrote down the name, Penny Josephson.

7 MS. JOSEPHSON: Yes, I'm here.

8 HEARING OFFICER CELLI: Oh, great. I'm
9 going to ask from both of you. I don't, I'm not
10 aware of any -- or perhaps you can show me -- I'm
11 not aware that any such list would be
12 confidential, or what would make such a list
13 confidential?

14 MS. JOSEPHSON: Well, this is Penny
15 Josephson. I have to admit I'm not aware of this
16 issue, it hasn't been brought to my attention, so
17 I really can't comment on it. I can go back and I
18 certainly will check with BLM, but I have no idea
19 what the basis of this issue is.

20 HEARING OFFICER CELLI: That's fine.
21 I'm going to ask Staff next. Go ahead, Ms. Mayer.

22 MS. MAYER: Sure. I called BLM and I
23 talked to Allison Shaffer and I received the word
24 that they consider, they consider it to be an
25 internal document that will be part of the Draft

1 EIS, but they did not want to release it at this
2 point.

3 The odd result is with their regulations
4 that BLM could release it to the proponent;
5 however, I cannot do that because if I release it
6 to the proponent, under CEC regulations I need to
7 release it to everybody. And they did not want to
8 do that. So it's kind of a legal trap.

9 HEARING OFFICER CELLI: Couldn't they
10 just get it from the Freedom of Information Act
11 request? I mean, or the California Public Records
12 Act request. I mean, I'm hard pressed to think of
13 some kind of -- I can't even think of what the
14 privilege would be to prevent the disclosure of
15 that.

16 MS. MAYER: As I said, I mean, that's
17 what I was told by BLM and I --

18 PRESIDING COMMISSIONER BOYD: This is
19 Mr. Boyd. If they don't make that information
20 record, that information public by the time they
21 release their Draft EIS, they can't say that they
22 made their EIS available for the public. They
23 have to produce all their information at the time
24 that they release the Draft EIS.

25 HEARING OFFICER CELLI: Well, I think

1 that's true, Mr. Boyd. I think that the
2 understanding, though, is that the parties want to
3 see this information before the EIS and the SA are
4 published.

5 PRESIDING COMMISSIONER BOYD: I don't
6 think that's appropriate.

7 MR. GALATI: Yeah. I just, you know, as
8 the counsel for two projects right around the
9 corner, there are lists floating around for those
10 projects. I have made the argument that the
11 projects, Genesis, should be treated exactly like
12 those projects. It's not the quantity of water,
13 it's which project.

14 MS. MAYER: Were they (indiscernible)?

15 MR. GALATI: Yes, we had, when we met
16 with BLM to prepare the Palin Project --

17 MS. MAYER: Again, that's different.

18 MR. GALATI: -- they produced --

19 MS. MAYER: BLM can release --

20 HEARING OFFICER CELLI: One second,
21 please. One person -- I can only have one person
22 talking at a time.

23 MR. GALATI: Okay. Ms. Mayer, it would
24 have been great if you'd told me that on the phone
25 the other day when you said you couldn't release

1 it.

2 What I don't understanding is what is
3 Staff at the Energy Commission going to use for
4 its cumulative public list? It is doing a CEQA
5 analysis as well and I think it's only fair,
6 because I would like to take the opportunity at
7 the next Status Conference, should the Staff
8 Assessment not come out, to make another pitch
9 that the Palin Project, the Blythe Project, and
10 the Genesis Project should all be using the same
11 list of projects.

12 HEARING OFFICER CELLI: And you've
13 received -- you're saying that you have received
14 lists of the POD in Palin and Blythe?

15 MR. GALATI: What we received in Palin,
16 early on before we started, filed with the Energy
17 Commission, was BLM's suggested list of projects
18 to use. We know that there have been continued
19 discussions, we know that Staff and, again the
20 issues haven't raised in Blythe and Palin, but we
21 have no idea whether the lists are the same.

22 I don't know what the perfect list is
23 for Blythe and Palin. I know that BLM was able to
24 give us information. Here's what I also know, is
25 in the past the Energy Commission Staff has been

1 able to give us information under CEQA, so I don't
2 believe that there is any regulatory requirement
3 that we could not share the same information.
4 They actually asked us for a list and we had to
5 come up with a list. So what we've done is --

6 HEARING OFFICER CELLI: When you say
7 "they" --

8 MR. GALATI: -- worked in a vacuum.

9 HEARING OFFICER CELLI: -- are you
10 talking about Staff or BLM?

11 MR. GALATI: Staff and the data request,
12 what are your cumulative project list and do your
13 cumulative modeling, and we had workshops about
14 it, but we still don't know if we're on the same
15 page, using the same projects.

16 We asked for clarity from the
17 Commission. We did not get clarity from the
18 Commission on the law, so we want to see their
19 list to see if we are on the same page. I feel
20 like there's a little hide-the-ball here and I
21 don't think that's productive.

22 And so I don't make those allegations
23 lightly, but why aren't we using the same list of
24 projects to identify cumulative impacts? We do it
25 in air quality, we do it in land use, we all get

1 on the same page of what projects are foreseeable
2 and which one we're going to use. I'm not saying
3 that have to agree with me, but they should tell
4 me.

5 HEARING OFFICER CELLI: Ms. Mayer?

6 MS. MAYER: I believe I did tell you. I
7 was extremely forthright. If the Committee would
8 like us to release it, I don't have any personal
9 problem with releasing it. As I said, I called
10 BLM and they said we do not want to release that,
11 it's an internal document. And according to their
12 regulations, we could release it to the proponent.

13 Again, I can't release it just to the
14 proponent, I have to release it to all the parties
15 under our regulations.

16 HEARING OFFICER CELLI: What I think
17 would be productive would be if the parties could
18 outline, have a conversation including BLM and get
19 to the bottom of this because then it occurs to me
20 that if there's some -- maybe there is some
21 privilege and we're not aware of it. We're just
22 not thinking of it right now and, if that's the
23 case, well then fine. But, if not, then maybe --

24 I hate to lay this one on the Applicant
25 with your burdens as they already are, but you

1 might need to bring a motion for some sort of
2 ruling by the Committee on that as a discovery
3 type motion. I'm not sure, but I think that it
4 sounds to me like this is probably something that
5 the parties can just resolve in communicating with
6 each other.

7 MS. MAYER: This seems like we could
8 resolve this tomorrow and have it for the Thursday
9 workshop, possibly.

10 HEARING OFFICER CELLI: I would
11 appreciate that. And, you know what I think would
12 be useful? If you wouldn't mind, Mr. Galati, if
13 you can sort of be the ringleader on getting
14 resolution on this and then if I could get an
15 e-mail by the end of the week or maybe the
16 beginning of next week that just informs the
17 Committee on whether this question is resolved or
18 not. That would be great.

19 MR. GALATI: Okay. I would certainly do
20 that.

21 HEARING OFFICER CELLI: Okay. And
22 that's acceptable to you, Ms. Mayer?

23 MS. MAYER: Yes, sir.

24 HEARING OFFICER CELLI: Okay.

25 Ms. Gulesserian, please.

1 MS. GULESSERIAN: I would comment that
2 if there is a resolution of the issue and that a
3 list is produced by Staff, then it would be
4 docketed and all parties, including the
5 Commissioners, would know that it's been published
6 and resolved, which would also help inform the
7 Committee.

8 HEARING OFFICER CELLI: Absolutely.
9 That's right. So, of course, it would be
10 docketed.

11 Mr. Boyd, did you want to say something?

12 PRESIDING COMMISSIONER BOYD: Well, the
13 only thing is if there is some federal regulation
14 that prohibits that information being disclosed
15 before the Draft EIS is released, I mean, there's
16 not really much you can do because I would think
17 the federal law would trump the state law.

18 HEARING OFFICER CELLI: You're correct.
19 I think that if there's a law that prevents its
20 disclosure, then the parties will inform us that
21 they can't, because it would be illegal, so --

22 PRESIDING COMMISSIONER BOYD: Yeah. All
23 I know is I participate in a lot of EIS before and
24 found the same problem of getting cumulative
25 projects identified before the Draft comes out. I

1 think it's a typical process that they're using in
2 general. I mean, I guess it's though -- my
3 concern is you're barking up the wrong tree,
4 that's all.

5 MR. GALATI: My proposed solution,
6 Mr. Celli, would be that if there are lists that
7 the federal government wants to use and lists that
8 the state government wants to use -- I know there
9 are areas in this document that are going to be
10 different because the regulations are changed. I
11 would ask for Staff to publish its list, not
12 commit BLM to using that list, and I can, because
13 I learned today for the first time that I can
14 request it under the regulations directly from BLM
15 as the project pro forma and I'll get that list as
16 well, and I can compare them. It's a very simple
17 solution.

18 But Staff needs to do a CEQA analysis.
19 It would be great to understand what they are
20 considering to be their cumulative projects for
21 ground water.

22 MS. MAYER: They're the same ones.

23 HEARING OFFICER CELLI: Very good. So
24 this sounds to me like it shouldn't be a big deal,
25 that you should be able to work this out pretty

1 expeditiously.

2 MR. GALATI: Yes, thank you.

3 HEARING OFFICER CELLI: Where are we
4 next? Schedule.

5 MR. GALATI: Yes. With respect to the
6 schedule, I wanted to show you a couple of things
7 that I'm a bit concerned with. And, as you know,
8 as the Committee has -- the Committees in the ARRA
9 funded projects have developed schedules.

10 HEARING OFFICER CELLI: One second. Oh,
11 here it is. I now have it. I was looking for my
12 schedule. Go ahead, I'm sorry.

13 MR. GALATI: As the Committees in the
14 ARRA funded projects, over time I think they've
15 developed schedules. One of the things that's
16 sort of done is there's been sort of a break from
17 the REET (phonetic) schedule, which was originally
18 published and I actually think the break has been
19 a positive one. But I'd like to point out to you
20 that still is in our Genesis schedule, so I'll
21 address that issue first and then I'll address the
22 changed date to March 25th, because I think they
23 both, they have some bearing.

24 Staff is preparing, and according to the
25 Genesis schedule, Staff is having to prepare a

1 Staff Assessment Addendum on 4/30 and that would
2 be used, in my opinion, to go to Prehearing
3 Conference in Evidentiary Hearings before the
4 close of BLM comment period. I think that's
5 backwards because I would think that the BLM
6 comment period would be the public comment on the
7 Staff Assessment slash Draft EIS and that there
8 ought to be final Staff Assessment and Final EIS
9 prepared, and evidentiary hearings either done
10 shortly before that or shortly after.

11 And the reason I say that is the
12 Presiding Members Proposed Decision may be
13 slightly different than the Staff's Addendum. If
14 the clouds broke loose and the sun came through
15 and the Applicant were able to convince you that
16 one of our particular issues was the correct way
17 to approach mitigation, for example, that would be
18 different than the Staff Assessment Addendum and
19 would have to be, would come out in the PMPD.

20 And so I don't know the purpose of the
21 4/30 Staff Assessment Addendum and the Staff -- or
22 hearings going before Staff does its Addendum.
23 Does that entry just mean that it's being
24 prepared?

25 MS. MAYER: No, I think you're confusing

1 the dates. On the revised schedule the Final EIS
2 and the Supplemental SAI after the close of the
3 BLM comment period.

4 MR. GALATI: I think what I'm confused
5 is what does the entry, "Staff Assessment
6 Addendum, SAA, prepared," mean?

7 MR. MONOSMITH: And that is based on the
8 original Committee's Scheduling Order, which
9 indicated a 2/19 Staff Assessment, Draft
10 Environmental Impact Statement publication, and
11 the Committee's original Scheduling Order, they
12 all be released back at the end of December. And
13 in that you had a 4/30/10 Staff Assessment
14 Addendum.

15 We didn't change that in our revised
16 schedule, which we prepared as part of Status
17 Report number one where we did change our date for
18 the Staff Assessment Draft, Environmental Impact
19 Statement from 2/19 to 3/25. So that 4/30 date in
20 there we didn't mess with. That was really the
21 Committee's number, it was your date, and we
22 assumed that if you were to issue your own Revised
23 Scheduling Order that that date would also change
24 based on your intentions in regard to the
25 evidentiary hearings.

1 Really what Staff was most focused on in
2 our Revised Scheduling Order, part of our Status
3 Report number one, was the change in the date on
4 the Staff Assessment Draft, Environmental Impact
5 Statement, which we're all working very hard
6 towards completion, as you know.

7 Beyond that, the schedule obviously has
8 a number of line items. We didn't necessarily
9 mess with those too much.

10 MR. GALATI: Thank you, Mike. I think
11 that is helpful, because here's what I'm thinking,
12 is it doesn't allow us very much time to be
13 productive from 3/25 to 4/30 and have a workshop,
14 be productive, get comments from the public, and
15 ensure that the Staff's Assessment Draft, Final
16 EIS is prepared in a way that is productive.

17 So on the other projects that's not
18 being done until way towards the end of the BLM
19 comment period, which is allowing an Applicant to
20 review, make comments in writing before a workshop
21 so the workshop can be productive. And I was
22 seeing us being squeezed with that date. I
23 misinterpreted that those were Staff, that Staff
24 didn't propose to change that date and would try
25 to hit the 4/30/10 date.

1 So if the 3/25 date is hit by Staff on
2 the Staff Assessment, we think that the Committee
3 should move the 4/30 date forward to allow it to
4 be a productive date.

5 HEARING OFFICER CELLI: To allow it to
6 occur after the 90-day comment period?

7 MR. GALATI: I personally believe that
8 we, that it has to. How can the Staff Assessment
9 Addendum, which is a joint document with the
10 Response to Comment document, how can that be
11 prepared like in the other projects? It's after
12 that 90-day period. What happens during that 90-
13 day period is a lot of work between the Applicant
14 and Staff to get resolution and it's because of
15 that that I think we can accept the 3/25 date.

16 The evidentiary hearings that take place
17 should be, take place right after that document
18 comes out and then get done quickly so that the
19 Committee has time to write a PMPD, because
20 ultimately what we believe the Final EIS needs to
21 be is anything that may have changed between
22 Staff's recommendation, which is in a joint
23 document, and the Committee's decision.

24 MR. BUSA: And just to clarify it, it
25 looks like we almost have that line items in there

1 twice. Is that true, we have a --

2 MR. MONOSMITH: Which line item, Scott?

3 MR. BUSA: It's the "prepare Staff
4 Assessment Addendum" is listed for 7/1/2010, and
5 basically something similar to that is also listed
6 for 4/30/2010. So is it, are we just duplicating
7 our language and that's what's confusing us?

8 MR. MONOSMITH: Yeah. Again, we didn't
9 mess or alter that Staff Assessment Addendum 4/30,
10 which is the date that has appeared in the
11 original Committee Scheduling Order. Really we
12 left that to the purview of the Committee in terms
13 of when they wanted it, vis a vis the evidentiary
14 hearings. And I think that's making the arguments
15 that it needs to be altered somewhat.

16 Also, the Administrative Draft we, that
17 may have -- again, I don't know the original
18 intent. I think the date, the more operative date
19 really is the one we prepared a Staff Assessment
20 and we put it out, and we've revised it into
21 July 1st from June 1st. That incorporates 90-day
22 review, hearings, workshops, et cetera.

23 So the 4/30 date, I don't know if that's
24 just -- we didn't take it out. We didn't feel it
25 was our purview to take it out. It was in the

1 original Committee Scheduling Order so we kept it
2 in there and they get to do --

3 HEARING OFFICER CELLI: So, if we have a
4 Prehearing Conference somewhere between the Staff
5 Assessment Addendum prepared on 4/30 and before
6 the 6/24 close of the BLM comment period, which is
7 what we had in mind, that was the idea so we could
8 be actually doing something, then I see later that
9 there's like a -- as Mr. Busa points out, there's
10 another Staff Assessment Addendum on July, which
11 I'm trying to think what the utility of that is.

12 MR. MONOSMITH: It was my understanding
13 that it would then incorporate input from the
14 Committee, from the public and other, and the
15 comments periods as well. In my thinking that's
16 what it was. Again, I was working from the
17 original schedule that we had received as part of
18 the MOU and the original template, which had
19 certain dates and certain stipulated milestones.
20 That was one of them.

21 Part of this was an exercise in trying
22 to, given the fact that because of anticipated
23 complexities in the analysis and some internal
24 delays, that our original date of 2/19, we wanted
25 to get that Staff Assessment out, moving it back

1 to 3/25. We had to somehow find ourselves five
2 weeks in the spring and summer so that we ended up
3 in the same place come fall and we don't
4 jeopardize the project or its ARRA funding.

5 So it was a bit of an exercise in trying
6 to find a path through, at least a recommended one
7 for the Committee, so --

8 HEARING OFFICER CELLI: So your
9 understanding, Mr. Monosmith, would be that it's
10 the comments that would come through the, really
11 the BLM's publication and the Federal Register,
12 that you were intending to incorporate into our
13 Staff Assessment.

14 MR. MONOSMITH: The Addendum, correct,
15 as well as anything that may have come from the
16 Committee in any of their hearings, just to make
17 sure that it encapsulated direction from the
18 Committee input from, obviously, our partners at
19 BLM and other agencies.

20 HEARING OFFICER CELLI: Okay. I
21 appreciate that. That makes it very clear.

22 So right now, as it stands, this is an
23 acceptable -- the revised schedule as proposed by
24 Staff in their Status Report is acceptable to the
25 Applicant?

1 MR. GALATI: Yes, it is acceptable as
2 long as we don't have any additional slippage. I
3 think we can handle that, and that's why I brought
4 up the issue of we may not be successful in
5 workshops in agreeing on certain issues and that
6 hopefully that does not delay or leave significant
7 holes because there's a disagreement.

8 But again, I still want to push out, I
9 still want to point this out to you because I
10 think it's been resolved in other Committee
11 Orders. If Staff prepares an Addendum on 4/30,
12 what will be in that Addendum? Or let's say
13 that's moved to 5/30; what will be in that
14 Addendum if the BLM comment period has not closed
15 and all the comments are not in? Remember, Staff
16 is preparing a joint document.

17 I don't see any benefit of this line
18 item of 4/30. I would suggest that you take it
19 out and I would suggest that you have Prehearing
20 Conference right before Staff either comes out and
21 evidentiary hearings after the Staff prepares its
22 Addendum. That's its final testimony and then
23 Applicant knows how to respond to it. But I don't
24 know what the 4/30 document would be in order for
25 me to be, from an evidentiary perspective, to be

1 able to put all the evidence in necessary to agree
2 or disagree with either Staff or other comments
3 from the public.

4 So I understand the need for -- and
5 here's what's happened on other projects is if
6 there's agreement on things between the first
7 Staff Assessment and the final Staff Assessment,
8 you can do an evidentiary hearing to take all of
9 that in. And if there's disagreements, we had a
10 built-in Status Conference that could easily be
11 turned into an evidentiary hearing after the Final
12 EIS or after that final Staff Assessment Addendum
13 comes out, where the Committee could actually hear
14 or receive additional evidence. To me that would
15 be a productive way of going, if you wanted to
16 keep the Prehearing and Evidentiary Hearings
17 before the final Staff Assessment Addendum.

18 But I don't see any benefit of the 4/30
19 and I think it makes Staff prepare a document --
20 even if we moved it, it makes them prepare a
21 document very quickly and it also, I think,
22 handcuffs us in getting an agreement.

23 HEARING OFFICER CELLI: Staff, what's
24 your take on that?

25 MS. MAYER: It makes sense to us.

1 HEARING OFFICER CELLI: Yeah, it does,
2 and Ms. Gulesserian, do you have a position?

3 MS. GULESSERIAN: I do have a comment.
4 The reason that it has been in there in the cases
5 that we've been participating in is that the
6 schedule to get the Staff Assessments out so
7 quickly without a preliminary Staff Assessment
8 that the Staff would be able to take comments on
9 in order to improve the document, it's been so
10 rushed that the conclusion, we've often seen
11 inconclusive findings in the Staff Assessment.
12 And so the purpose, as it's been evolving, has
13 been to have a Supplemental or an Addendum to the
14 Staff Assessment.

15 So that's the background on why it has,
16 why it's in there.

17 HEARING OFFICER CELLI: Yes.

18 MS. GULESSERIAN: You noted earlier,
19 please do your best to not make findings that is
20 inconclusive, and in fact this tension between
21 getting out a document so swiftly and not having
22 all the information before getting out Staff's
23 Analysis -- so I think my comment is, is that, you
24 know, we have been advocates for ensuring that all
25 of the analysis is complete prior to testimony and

1 evidentiary hearings. And so that's what we'd
2 like the Committee to keep in mind in making the
3 schedule.

4 HEARING OFFICER CELLI: Yeah. Because
5 in the past when Staff submits some sort of
6 supplement, Supplemental FSA or whatever, it isn't
7 usually, they don't have a gun to their head.
8 There's not usually something in a schedule that
9 says get it out at this time. They just submit
10 them of necessity because something came up or
11 there was a change in the design or something
12 where a Supplemental FSA was necessitated.

13 So I'm just wondering whether we really
14 need to have this -- I'm just saying that it makes
15 sense to me that if there's a need for an addenda,
16 any kind of addendum, that we should, we'll
17 receive that whenever it comes up. I don't know
18 that we need to have it as scheduling, a line item
19 in our schedule. You know what I'm saying?

20 MS. MAYER: Yeah, we'd appreciate the
21 flexibility.

22 HEARING OFFICER CELLI: Yeah, I think
23 all the parties would. And also what that enables
24 us to do is, you know, with regard to our
25 Prehearing Conference, because today is our first

1 of two scheduled Status Conferences. We have this
2 one today and we have one next month on the 18th
3 of March, I believe. And then we don't have any
4 more because the assumption was that the SA at
5 that point was out and there was no further need
6 for us to confer.

7 But we may need to have a little more
8 flexibility and be able to do that kind of thing.
9 I'm just not sold on the need to have that
10 Addendum be a -- it's an option that's available.
11 I don't know that we need to have just one more
12 thing on a schedule to make them do something on
13 such and such a date. There may not be an
14 addendum on that date, I mean if everything goes
15 well.

16 MR. GALATI: There really are two
17 documents and so we're not calling it a PSA and an
18 FSA, but I believe that Staff will be preparing
19 very similar to a PSA. And maybe instead of a
20 full FSA, an errata that actually shows what an
21 FSA would look like. And that's going to come
22 out, according to Staff's current would be
23 July 1st.

24 So there are a few documents and there's
25 90 days of public comment on Staff's first

1 Addendum, so I don't believe there is a
2 requirement for Staff to prepare an additional
3 addendum. There it is right there, 7/1. It
4 allows this public process of 90 days, in my
5 opinion, to be productive.

6 And so with that I, you know, these are
7 large documents. We'd like, instead of sometimes
8 with a PSA workshop we have 30 days to comment and
9 the workshop's scheduled within that 30 days, we
10 have like two weeks to sometimes to go through a
11 real document. If we can have three weeks to go
12 through the document and then submit Staff,
13 comments to Staff, they could review them for a
14 week or so then have a Staff Assessment Workshop.
15 I mean, that would be a lot more productive and we
16 can be doing that, if we resolve everything and
17 Staff wants to do its addendum early, that would
18 be great.

19 But I still think they need to respond
20 to these comments. And since it's joint, it's the
21 Staff Assessment Addendum slash FEIS.

22 HEARING OFFICER CELLI: Yeah.

23 MR. GALATI: It's got to include all the
24 federal partners. So a Staff Assessment Addendum
25 only? I don't think Staff was envisioning having

1 to prepare a document that's Energy Commission's
2 recommendations without the federal partners.

3 HEARING OFFICER CELLI: Right. No, I
4 understand. What we're trying to do is avoid a
5 situation, hopefully, I mean, you know, we'll see
6 how we do, but where there's a requirement for
7 revision of the PMPD that would necessitate
8 another 30-day period.

9 So I think the original thinking was by
10 having that supplemental in there, we would, you
11 know, forewarned is forearmed, we'd know what was
12 coming down the pipe, we could make revisions
13 without having the review the PMPD long before it
14 was done. So I think that was the thinking behind
15 it.

16 And my experience has been, so far, that
17 whenever we have just an SA without a PSA and an
18 FSA, there's always the equivalent of a PSA and an
19 FSA anyway. There's always the PSA or the SA
20 comes out, comments come in, changes are made, and
21 then that supplemental document is a supplement to
22 the SA is really like the FSA. Well, that's what
23 I've seen so far.

24 So with that, and then, Mr. Boyd, did
25 you want to say anything about the schedule?

1 PRESIDING COMMISSIONER BOYD: Yes. So
2 based on -- now, I don't see that this, the
3 release of the Draft EIS on the schedule. You
4 said it was the 25th of March, correct?

5 HEARING OFFICER CELLI: March 25th is
6 the Staff Assessment published and the 24th is the
7 Notice of Availability of the Staff Assessment and
8 Draft EIS in the Federal Register.

9 PRESIDING COMMISSIONER BOYD: Okay.

10 HEARING OFFICER CELLI: The 90-day
11 period comment, to comment begins on the 24th of
12 March.

13 PRESIDING COMMISSIONER BOYD: Okay. So
14 now here is the problem with your schedule I'm
15 looking at right here. First, what happens if the
16 Biological Opinion doesn't come out on the 19th?
17 Will that delay the schedule?

18 MR. GALATI: First, that's not the
19 Biological Opinion. That's the Biological
20 Assessment determined adequate.

21 PRESIDING COMMISSIONER BOYD: Sorry,
22 okay. In other words -- still the same question,
23 though. If there not determining it's adequate by
24 that date, will that delay the date of the release
25 of the Draft EIS is my question.

1 HEARING OFFICER CELLI: Ms. Mayer, will
2 it?

3 MS. MAYER: I would have to research
4 that, but I don't think so.

5 HEARING OFFICER CELLI: Is Miss --
6 sorry. Ms. Josephson, are you still on the phone?

7 MS. JOSEPHSON: Yes, I am.

8 HEARING OFFICER CELLI: Can you comment
9 on that, please?

10 MS. JOSEPHSON: Could you please repeat
11 the question?

12 PRESIDING COMMISSIONER BOYD: The
13 question was that if the biological assessment is
14 not determined adequate by the Fish and Wildlife
15 Service by the 19th of March, would that delay the
16 release of the Draft EIS?

17 HEARING OFFICER CELLI: Did you get
18 that, Ms. Josephson?

19 MS. JOSEPHSON: I'm thinking about it.
20 As I understand it, the biological assessment will
21 be submitted to the Service and the Biological
22 Opinion will be issued by the Service in response.

23 It's my understanding, although I should
24 almost not comment because I don't want to provide
25 misleading information, but I believe that the

1 Biological Opinion is issued prior to -- not prior
2 to the Record of Decision being signed. So I'm
3 not sure if it's a requirement that the Biological
4 Opinion be issued before the joint document goes
5 out or it's released in final form.

6 MR. GALATI: Mr. Boyd, this is Scott
7 Galati and that's my experience as well, and I'd
8 also point out that the original schedule had the
9 Draft EIS coming out in 2/19 before the biological
10 assessment was even submitted. So the biological
11 assessment, it complies with Section 7, and as
12 long as that Section 7 consultation is completed
13 prior to the Record of Decision, then BLM can take
14 the Record of Decision.

15 So obviously the biological assessment
16 and the issues associated with it will be
17 incorporated into the document one way or another,
18 but there's nothing to say they have to be the
19 same. The U.S. Fish and Wildlife Service could
20 decide under the Endangered Species Act to require
21 mitigation different than the agencies described
22 either under NEPA or CEQA.

23 PRESIDING COMMISSIONER BOYD: Okay. So
24 (indiscernible) we have to leave that for a
25 minute. But then the next thing I see is on 4/9,

1 local, state, and federal agencies final
2 determinations of the Air Quality Management
3 District and District files the Final
4 Determination of Compliance.

5 My question is, and then there was talk
6 about an addendum to the Staff Assessment and then
7 a Prehearing Conference. Essentially what I see
8 is the Evidentiary Hearing, it appears, will occur
9 before the end of the public comment period. My
10 concern is that by rushing the release of the
11 Draft EIS and the Staff Assessment, that the
12 document you're making public for comment isn't
13 going to be the same as the projects that you're
14 going to have after the close of Evidentiary
15 Hearings. And that violates both CEQA and NEPA
16 because what the public's commenting on is going
17 to be different from what you ultimately approve.

18 And I think that what's happening is
19 you're not focusing on this as -- you're focusing
20 on it too much as a document, a Draft EIS
21 document, a preliminary Staff document, and not
22 focusing on the process for public participation,
23 which is we want to comment on what the process
24 ultimately is going to be that's going to be
25 built, not some preliminary project's design.

1 Okay?

2 And that's my issue with the schedule
3 that you have here, is if you're releasing the
4 environmental document before you've decided on
5 the actual project, what it's going to be, that
6 precludes a meaningful public participation in the
7 project and in the comment period.

8 MR. GALATI: Mr. Celli, what I --

9 PRESIDING COMMISSIONER BOYD: You see
10 what I'm saying?

11 HEARING OFFICER CELLI: We hear you.

12 MR. GALATI: Actually, Mr. Boyd, and
13 then I want -- I'm glad there's a transcript
14 because I actually agree with you, maybe for the
15 first time. So I don't know if that's you or me,
16 but here's what I believe. That I think we could
17 do a Prehearing Conference and an Evidentiary
18 Hearing prior to the close of public comment
19 period for those areas that the Staff and
20 Applicant and no comments have been -- people can
21 come to that hearing and say I don't like it. But
22 it's possible to get things completed.

23 I do believe we need an Evidentiary
24 Hearing after the Final Staff Assessment Addendum
25 and Final EIS comes out, so that the Committee can

1 take it into the record and if there are any
2 changes, they are reflected in the final PMPD and
3 that that becomes the final EIS. That would be
4 the way that I think it should be done.

5 PRESIDING COMMISSIONER BOYD:

6 Where does the public comment on the final EIS?
7 They didn't, there is no final EIS comment.
8 There's only the Draft EIS. That's my issue. The
9 final project is what I want the comment on.

10 MR. GALATI: Mike, during the Presiding
11 Member's Proposed Decision circulatory period --

12 PRESIDING COMMISSIONER BOYD: Right.

13 MR. GALATI: -- there's a 30-day public
14 comment period, and that would be on the Final
15 Decision. So I think there's --

16 PRESIDING COMMISSIONER BOYD: But that's
17 a state process, not a federal process. You're
18 missing the federal nexus here because, see, the
19 way I'm going to stop the projects is I'm going to
20 appeal your EIS like I did with Peabody's coal
21 mine in Arizona, and that took a year, just the
22 administrative appeal process.

23 So, I mean, if you don't do it right,
24 that's what's going to happen.

25 MR. GALATI: I'll leave it there, if

1 that's a correct way to do it.

2 PRESIDING COMMISSIONER BOYD:

3 (Indiscernible) for, available for the public
4 comment on. You can't change it after you make it
5 public or else you've got a different project.

6 MR. GALATI: That's why I do not want
7 the Staff Assessment Addendum to be called the
8 Final EIS with no opportunity for the Committee to
9 weigh in on what the decision is going to be after
10 they've received all of the comments and received
11 Staff's final opinion.

12 HEARING OFFICER CELLI: Or public
13 comment.

14 MR. GALATI: And public comment. So I
15 will, at the risk of saying these two projects
16 again because they didn't help me at all last
17 time, the Blythe One and Blythe Two project worked
18 very fine this way. Now, granted, it was it was
19 an Environmental Assessment, but it could have
20 been an EIS and was designed that it could have
21 been an EIS. And what happened was the joint
22 documents were prepared, we went to Evidentiary
23 Hearing after the final joint documents were
24 prepared, but they were circulated for public
25 comment again if the PMPD changed it.

1 But otherwise I, as an Applicant, have
2 no opportunity at Evidentiary Hearing to get a
3 result that is different than the final Staff
4 recommendation. And so that's all I'm asking, and
5 I think you can do it, you can be productive by
6 having a Prehearing Conference and an Evidentiary
7 Hearing for those areas that Staff and we don't
8 dispute. The public can make comment. And have
9 another Evidentiary Hearing after the Staff
10 Assessment Addendum and final EIS or revised EIS,
11 whatever you want to call it, and then that would
12 be ultimately decided by you as what your
13 recommendation is on the final EIS and circulate
14 it for 30-day public comment period, and then a
15 decision voted on.

16 HEARING OFFICER CELLI: Well, certainly
17 the Committee would reserve the right to have, you
18 know, subsequent Evidentiary Hearings as needed
19 because we do that from time to time, you know.
20 Every time we set Evidentiary Hearings, we have a
21 date in mind but they often go several days and
22 sometimes we can't get consecutive days for
23 calendaring problems or whatever. And so that's
24 kind of -- we'll cross that bridge when we get to
25 it.

1 I'm not saying, you know, we're not
2 precluding anything, we're not etching anything in
3 stone at this point. I think that it is an
4 appropriate -- I think that if, since the proposed
5 schedule that Staff has given everybody is really
6 a proposed schedule, and we're asking, the
7 Committee's asking the parties to adhere to this
8 schedule, but I would say that that Staff
9 Assessment Addendum prepared date by some sort of
10 go-for and not necessarily a drop dead date,
11 unlike some of these other dates that we have in
12 here, please.

13 PRESIDING COMMISSIONER BOYD: The TBD.

14 HEARING OFFICER CELLI: Well, that's why
15 we're going to leave that, Mr. Boyd. We leave
16 that TBD until the Committee is satisfied that we
17 are not going to spin our wheels and not have the
18 evidence and have unready parties. So we make
19 sure that we're going to have Evidentiary Hearings
20 when the evidence is ready.

21 So with that, Ms. Mayer, please go
22 ahead.

23 MS. MAYER: I just wanted to add, of
24 course, the final document has to incorporate
25 responses to comments. I don't think that

1 precludes a supplemental assessment for these
2 really tricky, you know, couple of really tricky
3 areas most likely from coming out as technical
4 information gets clearer, other different
5 purposes.

6 HEARING OFFICER CELLI: Right. I mean
7 really, everybody is, I think, to be commended for
8 sticking to this schedule as well as you have, and
9 I encourage you to continue to doing that. I
10 don't see any reason why this AFC should be that
11 different from any of the other ones we do in
12 terms of the flexibility that we have when it
13 comes to working with the schedule and adding
14 dates as needed and that sort of thing.

15 I mean, if we slip that much we may need
16 to insert another Status Conference or two in
17 there, too. I mean, we reserve the right to do
18 these sorts of things. But for now I'm going to
19 request that the parties just stick to the revised
20 status schedule that was in Staff's Status Report
21 and we will meet again on the 18th, I believe it
22 is, of March and if there's a problem then we can
23 revisit it. Maybe the Committee will have to
24 issue another schedule.

25 MR. GALATI: The only area that I

1 disagree with, and the reason I brought it up as
2 the 30th, is the Staff Assessment Workshop on the
3 8th gives Applicant very little time to be
4 prepared. And if Staff isn't trying to make a
5 Staff Assessment Addendum on the 30th, they can
6 move that out a couple more weeks and we can be
7 much more prepared and more productive. I think
8 all the parties could be if they had less than,
9 you know, here we have 12 days or so to review a
10 1,400-page document. That would be hard to do.

11 So that, if you adopt that schedule
12 which we support, and you put TBD in on 4/30, we'd
13 like to see towards the end of, you know, mid-week
14 or middle or end of April so that we can be
15 prepared.

16 HEARING OFFICER CELLI: That's
17 reasonable. Staff?

18 MS. MAYER: That's fine with us. Thank
19 you.

20 HEARING OFFICER CELLI: Okay. CURE, any
21 position on that?

22 MR. GALATI: Could we let the record
23 note that the Applicant asked for something to be
24 later, because I think that might be the first
25 time ever.

1 HEARING OFFICER CELLI: The record may
2 so reflect.

3 MS. MAYER: Let the record show we
4 empathize and understand Applicant's need.

5 HEARING OFFICER CELLI: Okay. With that
6 I think -- is there anything further from that?

7 MR. GALATI: No, I just would like to
8 thank the Committee for making itself available.
9 I know that you guys are just as busy as Staff and
10 others of us. So I appreciate it. I think this
11 is extremely helpful.

12 One thing that it does that you don't
13 see is it forces us to talk internally, it forces
14 Staff to talk internally, and I think it
15 ultimately forces us to have better conversations.
16 So thank you.

17 HEARING OFFICER CELLI: Thank you.
18 Ms. Mayer, anything further from Staff?

19 MS. MAYER: No, sir.

20 HEARING OFFICER CELLI: Ms. Gulesserian?

21 MS. GULESSERIAN: Thank you very much.

22 HEARING OFFICER CELLI: Mr. Boyd?

23 MR. BOYD: I just would close with I felt
24 a little concerned that by rushing the release of
25 the Draft EIS that the document may be incomplete

1 and that would preclude the lawful process for
2 public participation. I'd strongly encourage that
3 the Staff do the best they can with what they've
4 got, get those documents as complete as possible
5 based on information you have.

6 HEARING OFFICER CELLI: Thank you, sir.

7 And now, with that, since we've now
8 heard from all the parties, I'm going to have to
9 open the public comment period at this time.

10 As I'm looking around here in Hearing
11 Room A, there doesn't look like there's anybody
12 here to make a public comment, so we're going to
13 go to the phones. We caller user one, which I
14 believe was Ms. Josephson, and we have caller user
15 three, we don't know who that person is.

16 If you are a member of the public and
17 would like to make a comment, please speak up now.

18 Okay, hearing none we also have Meg
19 Russell who I know is associated with Nextera, the
20 Project Manager, if I'm not mistaken, and Tricia
21 Bernhardt.

22 MS. BERNHARDT: (Indiscernible), thank
23 you.

24 HEARING OFFICER CELLI: Okay. Is there
25 anyone on the phone at this time who would like to

1 make a public comment?

2 MS. BERNHARDT: No, thank you.

3 HEARING OFFICER CELLI: Hearing none,
4 then I'm going to hand it back to Commissioner
5 Weismiller.

6 MR. WEISENMILLER: I'd like to thank
7 everyone for their efforts today and certainly
8 encourage folks to stay on schedule and stay
9 focused on identifying and resolving the issues.
10 Thanks again.

11 HEARING OFFICER CELLI: We're adjourned.

12 (Whereupon, at 2:57 p.m., the Status
13 Conference was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of March, 2010.

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