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Kenneth Celli, Hearing Officer

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Mike Boyd(via teleconference)
Californians for Renewable Energy

Tom Budlong(via teleconference)
Larry Silver, Esq.(via teleconference)
representing Tom Budlong

Lisa Belenky, Esq.(via teleconference)
Center for Biological Diversity

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1 PROCEEDINGS

2 PRESIDING MEMBER BOYD: Well, good morning,
3 everybody, and welcome to the Genesis Solar Energy Project
4 prehearing conference.

5 I'm going to limit my words, because as you may
6 hear in my voice, I'm nursing a real nasty hopefully
7 summer cold. And you never can tell when laryngitis is
8 going to totally take over.

9 I'm Jim Boyd, Commissioner and the presiding
10 member of this siting committee.

11 The other siting committee commissioner is
12 Commissioner Robert Weisenmiller. He is not here today,
13 as you've noticed. He's the associate member of this
14 siting committee. He is ably represented by his principal
15 advisor, Eileen Allen, to the left of Mr. Celli.

16 And to my right is my principal advisor, Sarah
17 Michael.

18 And of course you all know Ken Celli, the Hearing
19 Officer, who will be doing -- who will be chairing the
20 meeting today and hopefully doing a lot of talking, maybe
21 even for me later on.

22 Public Advisor's Office - I don't see a
23 representative. Jennifer Jennings --

24 HEARING OFFICER CELLI: -- was just here a minute
25 ago.

1 PRESIDING MEMBER BOYD: -- was here a moment ago.
2 This happened to us yesterday. Just as we went to
3 introduce her, she went off to take care of some related
4 issue. But she'll be in and out.

5 And now I would like to turn to the staff
6 representatives, if you would please. And then we'll have
7 the applicant and we'll go through the intervenors.

8 So staff, if you would please, introduce
9 yourselves.

10 STAFF COUNSEL HOLMES: Caryn Holmes, Staff
11 Counsel, with Robin Mayer, Staff Counsel, and Mike
12 Monasmith, Project Manager. Other staff members are in
13 the audience and on the phone.

14 PRESIDING MEMBER BOYD: Okay Thank you.

15 And applicant.

16 Mr. Galati.

17 MR. BUSA: Good morning. My name is Scott Busa.
18 I'm Director of the Business Development Group
19 representing NextEra Energy Resources, the applicant.

20 MR. GALATI: Scott Galati representing NextEra on
21 the Genesis Solar Energy Project.

22 PRESIDING MEMBER BOYD: Okay. And am I to assume
23 you have a bevy of folks in the audience as well to
24 support you at the appropriate times?

25 MR. GALATI: Yes, we do. And we can introduce

1 them if they need to speak.

2 PRESIDING MEMBER BOYD: Thank you.

3 Now, let's run through the list of intervenors
4 and other officials.

5 CURE.

6 MS. KOSS: Good morning. Rachel Koss on behalf
7 of CURE. And, I apologize, I too am many nursing a cold
8 and a cough. And I will try my hardest not to muffle
9 my --

10 PRESIDING MEMBER BOYD: If you need a cough drop,
11 I've got a pocket full of them.

12 MS. KOSS: I've got a whole lot of them too.

13 And I don't have anybody in the audience.

14 PRESIDING MEMBER BOYD: Okay. Thank you very
15 much. And good luck to both of us.

16 CARE.

17 MR. BOYD: Mike Boyd, President of CARE.

18 PRESIDING MEMBER BOYD: Thank you, Mr. Boyd.

19 No relation, I want to point out.

20 (Laughter.)

21 PRESIDING MEMBER BOYD: Mr. Boyd and I have known
22 each other for the past eight-plus years.

23 MR. BOYD: We're kissing cousins.

24 (Laughter.)

25 PRESIDING MEMBER BOYD: Okay. Other intervenors?

1 Mr. Budlong, are you -- I believe you're out
2 there.

3 MR. BUDLONG: Yes, I'm on here.

4 PRESIDING MEMBER BOYD: Tom Budlong.

5 MR. BUDLONG: Feeling healthy at the moment.

6 PRESIDING MEMBER BOYD: Oh, good. Well, you're
7 keeping your distance. You'll be better off.

8 How About Center for Biodiversity?

9 MR. SILVER: Excuse me. This is Larry Silver.
10 I'm counsel for Mr. Budlong on the phone.

11 HEARING OFFICER CELLI: Okay. Thank you. Didn't
12 have you noted here.

13 Center for Biodiversity?

14 MS. BELENKY: Hi. Center for Biological
15 Diversity. Yes, this is Lisa Belenky. I just called in.
16 I didn't know if there was WebEx component today or if I
17 should do that as well.

18 HEARING OFFICER CELLI: There is a WebEx
19 component. And right now I have -- I can hear you fine,
20 Lisa. But you -- if you use WebEx, what happens is that
21 the WebEx system calls you instead of you calling in. And
22 then you're name will pop up and we'll see when you're
23 speaking or not.

24 MS. BELENKY: Okay. I'll redo it while I'm here.

25 HEARING OFFICER CELLI: Let's do that. But you

1 need to have that phone line that it's going to call in
2 on. It needs to be open for that.

3 MS. BELENKY: It will work.

4 Yeah, I have the sheet. I just was using the
5 regular call.

6 HEARING OFFICER CELLI: Thank you.

7 PRESIDING MEMBER BOYD: Okay. Thank you, Ms.
8 Belenky.

9 Do we have any elected officials from State,
10 county or local jurisdictions who happen to be in the
11 audience or on the phone?

12 Do we have any federal government agencies
13 represented either in the audience or, more likely, on the
14 phone?

15 Do we have the local air district folks on the
16 phone or in the audience? Mojave Desert Air Quality
17 Management District?

18 Any Riverside County departments or agencies?

19 MR. DALE: Riverside County Fire. This is Dale.

20 Thank you.

21 PRESIDING MEMBER BOYD: Any city departments such
22 as the City of Blythe?

23 Is that someone trying to --

24 HEARING OFFICER CELLI: No, actually --

25 PRESIDING MEMBER BOYD: -- introduce themselves,

1 or is that a conversation going on in the background?

2 HEARING OFFICER CELLI: That is I think Larry
3 Silver. Do you have other people in the room with you?

4 MR. SILVER: No. I'm -- somewhere I just
5 passed -- no. I think that it should be okay now.

6 HEARING OFFICER CELLI: Okay. Thank you.

7 PRESIDING MEMBER BOYD: All right. Is there
8 anyone else out there monitoring this who would like to
9 identify themselves that I do not have notice of on my
10 list?

11 Hearing nothing.

12 Okay. Mr. Celli, I think I'm going to turn this
13 over to you now.

14 HEARING OFFICER CELLI: Thank you, Commissioner.

15 Good morning, everyone. The Committee noticed
16 today's prehearing conference in the revised Notice of
17 Prehearing Conference and Evidentiary Hearings that was
18 issued on April 1st, 2010.

19 As explained in the notice, the basic purposes of
20 the prehearing conference are to assess the parties
21 readiness for hearings, to clarify areas of agreement or
22 dispute, to identify witnesses and exhibits, to determine
23 upon which areas parties desire to cross-examine other
24 parties' witnesses, and to discuss associated procedural
25 matters.

1 To achieve these purposes, we require that any
2 parties seeking to participate in this conference or
3 present evidence or cross-examine witnesses at future
4 evidentiary hearings would file a prehearing conference
5 statement by June 25th, 2010.

6 Timely prehearing conference statements were
7 filed by Genesis Solar, the applicant; the California
8 Energy Commission staff, who we refer to as staff; the
9 California Unions for Reliable Energy, which we refer to
10 by the acronym CURE C-U-R-E; the Center for Biological
11 Diversity, who we refer to as CBD.

12 Intervenor Tom Budlong timely submitted exhibits
13 and testimony but not a prehearing statement per se.
14 However, he indicated in a telephone conversation which I
15 had with him on June 28th that he would be willing -- he
16 would be calling no witnesses on direct examination; he
17 would just be cross-examining other witnesses.

18 Intervenor Californians for Renewable Energy,
19 CARE, filed a late prehearing conference statement and
20 exhibits. But since CARE's issues are confined to the
21 area of cultural resources, and since staff filed cultural
22 resources section a week late, the Committee will accept
23 CARE's late filed prehearing conference statement.

24 Staff filed its Revised Staff Assessment, which
25 is the equivalent I guess of a final Staff Assessment, on

1 June 11th, 2010. This serves as staff's testimony which
2 has been marked for identification as Exhibit 400.

3 Staff also filed additional exhibits marked for
4 identification as exhibits 401 through 424.

5 Timely testimony was also filed by the applicant
6 made up largely of the AFCD testimony and exhibits that
7 was filed on June 25th, 2010. And these exhibits have
8 been marked for identification as exhibits 1 through 65.

9 The intervenor CURE filed their testimony on June
10 18th and subsequent testimony on June 25th, 2010, which
11 has been marked for identification as exhibits 500 through
12 541.

13 Intervenor CARE's testimony was filed on June
14 28th, 2010, and will be marked for identification as
15 exhibits 600 through 613.

16 Intervenor Tom Budlong's testimony was filed on
17 June 18th, 2010, and marked for identification as exhibits
18 700 through 719.

19 And intervenor CBE's -- no, CBD's -- different
20 organization -- Center for Biological Diversity's
21 testimony was filed on June 18th and also June 25th, and
22 it's marked for identification as exhibits 800 through
23 831.

24 The applicant's staff filed rebuttal testimony,
25 which may not have been marked for identification. But we

1 asked the parties revise and resubmit the exhibit lists as
2 necessary.

3 Also, I'm going to ask the parties to burn a CD
4 or a DVD containing all of their exhibits to bring to the
5 evidentiary hearing for the Committee's use. So if you
6 wouldn't mind making a note of that. That would be of
7 great service to the Committee so that we can have all
8 that information handy.

9 Today, in terms of procedure, how we're going to
10 proceed today, the agenda is divided into five parts:

11 First, we will hear CBD's motion for a
12 continuance.

13 After that, we will discuss matters contained in
14 the prehearing conference statements and other issues
15 raised by the parties.

16 Next, we will discuss witness list.

17 After that, we will discuss the exhibits list.

18 And after that, we will discuss a briefing schedule.

19 And, finally, we will provide an opportunity for
20 public comment.

21 So that's the flow of this morning. We have to
22 move with some alacrity because there's a hearing coming
23 in immediately following ours.

24 So let's get right to CBD's motion. CBD filed a
25 motion seeking to postpone hearings on biology, cultural,

1 air quality, and transmission systems engineering, because
2 the available record is incomplete.

3 CURE also filed -- or adjoins in that motion and
4 added that socio -- so basically the same list - bio,
5 cultural, air, and TSE. But that socio is not part of the
6 list.

7 CARE also indicated they needed more time on
8 cultural.

9 Okay. Let me do that right away.

10 (Thereupon a discussion occurred off
11 the record.)

12 HEARING OFFICER CELLI: Sorry about that.

13 Excuse me, folks. A little electronics.

14 We were on CARE. CARE indicated they needed more
15 time on cultural.

16 And staff mentioned in their prehearing
17 conference statement that, except for cultural, those
18 topics were incomplete - bio, cultural, air, and
19 transmission systems engineering. And then staff added
20 waste management as another incomplete section.

21 Genesis, the applicant, filed an opposition to
22 the motion for lack of good cause.

23 At this time, we'd like to hear from the parties.

24 And Ms. Belenky for CBD, if -- are you on the line?

25 MS. BELENKY: Yes, I am. I'm sorry, I'm having

1 trouble with the WebEx. There seems to be some new
2 software I need that I don't have.

3 HEARING OFFICER CELLI: We can hear you fine.

4 MS. BELENKY: Okay. Then I'll just use the phone
5 for now.

6 HEARING OFFICER CELLI: Okay. What I'd like you
7 to do, if you would, is -- basically this is your motion,
8 if you could just tell the Committee what your position
9 is. And then I'm going to hear from the other parties.

10 MS. BELENKY: Well, I think it's pretty much
11 stated in the motion that this is a very expedited
12 schedule, which all of the parties have tried to meet, but
13 there are still incomplete sections. It just doesn't seem
14 like a good use of anyone's time, and certainly not the
15 Committee's time, to have evidentiary hearings on issues
16 that are incomplete and where new information may still be
17 coming in, factual information that would be relevant to
18 the evidentiary hearing.

19 HEARING OFFICER CELLI: Okay. And that pretty
20 much sums it up.

21 Now, let's hear from Genesis, please.

22 MR. GALATI: We appreciate CBD's interest. Just
23 point out to the Commission, CBD's been involved in the
24 project since shortly after data adequacy, filed a comment
25 letter and Notice of Intent in December. CBD did not

1 participate in any of the workshops; petitioned to
2 intervene June 1st; filed this motion. Many of the issues
3 could have been clearly, easily discussed in our
4 workshops.

5 At this stage we do not believe for the reasons
6 set forth in our prehearing conference statement that the
7 project and the case is not ready for evidentiary
8 hearings. So we believe that it is ready for evidentiary
9 hearings. And while we all would like, you know, more
10 time to do our work, I think that ample time has been
11 given. And I think that's shown by every other party
12 being able to meet their filing dates.

13 So we would ask that the Committee go forth,
14 continue with these evidentiary hearings, deny the motion
15 for continuance. And after evidentiary hearings if the
16 Committee feels like there's evidence that it needed that
17 was not available to it, I guess you could do what the
18 committees do at that time and say, "I don't have enough
19 for a decision."

20 I ask you to deny the motion for continuance at
21 this time and proceed to evidentiary hearing. And I'm
22 confident that we'll be able to complete in a couple of
23 weeks.

24 HEARING OFFICER CELLI: Thank you, Mr. Galati.
25 Staff, please.

1 STAFF COUNSEL HOLMES: As stated in our
2 prehearing conference statement, we believe that with the
3 filing of the supplement, which we hope we'll have today
4 or tomorrow, that staff's testimony will be complete and
5 that all areas will be ready to proceed to hearing.

6 HEARING OFFICER CELLI: So --

7 MS. BELENKY: I'm sorry. I couldn't hear you
8 very well. Did you say another supplement will be filed
9 tomorrow?

10 STAFF COUNSEL HOLMES: There is -- as referenced
11 in our prehearing conference statement, there is a
12 supplement that I believe we identified would be filed
13 yesterday. And I believe it's in fact going to be filed
14 today or tomorrow. And we believe that with the filing of
15 that supplement, all of the staff testimony is complete,
16 and then all of the ready -- areas are ready to proceed to
17 hearing.

18 HEARING OFFICER CELLI: Thank you.

19 So just to be clear. And, Ms. Belenky, could you
20 hear -- that was Caryn Holmes from staff.

21 MS. BELENKY: Yes, the second time I could hear
22 her.

23 HEARING OFFICER CELLI: Okay. Thanks.

24 So I'm just going to ask the parties, when you
25 talk into these mikes, you need to talk like you're trying

1 to get it down the neck of that thing -- that microphone.

2 This supplemental testimony, Ms. Holmes, is going
3 to include, cultural -- or rather air, TSE, socio -- and
4 what else?

5 STAFF COUNSEL HOLMES: Well, there's a
6 socioeconomics update in the socioeconomic section. And
7 then there is some additional information on air quality,
8 biological resources, and cultural resources, waste
9 management, and transmission system engineering. But for
10 all of those areas except for socioeconomics they're minor
11 supplements to what was already timely filed earlier in
12 June.

13 HEARING OFFICER CELLI: Okay. Thank you.

14 We're at CURE. Let's hear from you, Ms. Koss.

15 MS. KOSS: Thank you.

16 It's CURE's position that it's appropriate to go
17 to hearing on uncontested issues and even some of the
18 contested issues. But there's still several issues where
19 the analysis is inadequate on which to have a hearing.
20 And the Commission needs to know the whole picture before
21 making a decision, before coming to any conclusions.

22 It's clear from the Revised Staff Assessment that
23 the applicant has not yet met its burden in providing
24 evidence that supports its application; and therefore
25 staff has not yet incorporated all of the analyses

1 regarding the whole of the project. Until those analyses
2 are completed, it's frankly a waste of time to go to
3 hearing. We're going to end up in a situation like
4 Imperial Valley or Beacon where we have to have repetitive
5 hearings. And at this point it's a matter of efficiency
6 and we should only go when it's complete.

7 MR. BOYD: Bull shit.

8 HEARING OFFICER CELLI: Thank you.

9 Mr. Boyd, your mike is on. And we can hear you
10 very loud and clearly.

11 So at this time what is your position with regard
12 to the Center for Biological Diversity's motion for a
13 continuance, please?

14 MR. BOYD: We actually don't believe that we're
15 ready for hearing, just as we stated in our late accepted
16 prehearing conference statement, because there's a lot
17 of -- filing information that's not yet available,
18 appropriate to go to hearing. And we're concerned that
19 we're prejudicing the review process by --

20 HEARING OFFICER CELLI: Mr. Boyd, this is Ken
21 Celli. You seem to be breaking up. Are you on a cell
22 phone?

23 MR. BOYD: Yes, sir.

24 HEARING OFFICER CELLI: We need you to -- if you
25 can position yourself in a way so that we can really hear

1 you. And you need to speak right into your cell phone
2 please.

3 MR. BOYD: Oh, okay. Okay, I wasn't speaking
4 loud because I thought that I was too loud.

5 Can you hear now?

6 HEARING OFFICER CELLI: Much better. Thank you.

7 MR. BOYD: Okay. So we basically don't believe
8 there's a complete record. And that without a complete
9 record, you can't really do hearings on the record.
10 There's too much uncertain information. And I don't see
11 how the Commission staff could say that we're ready -- or
12 their analysis is complete on cultural resources when I
13 spoke to the staff archeologist at the BLM yesterday and
14 he didn't seem to indicate that to me, that it was
15 ready -- they were ready to do their final recommendation
16 or their final report on the cultural site. And so I'm
17 quite perplexed by the fact that staff would be offering
18 to do a supplemental analysis when they know that all the
19 information isn't there yet that's been approved by the
20 BLM, who I thought was the partner in environmental review
21 process.

22 So essentially I support the request, and would
23 take it a step farther and add that the effective try
24 we're very concerned about is the fact that the Commission
25 is choosing to hold hearings on this distant from where

1 the project site is. They would prefer to have the
2 district hearings in Blythe so that they can
3 participate -- the public can participate.

4 And so essentially that's our position, is you
5 should wait till the record is complete, then hold the
6 hearings, and hold them in a location near enough so that
7 folks that live near the projects -- the staff projects
8 can participate in the hearing process.

9 Thank you.

10 HEARING OFFICER CELLI: Thank you, sir.

11 And, finally, we have Tom Budlong. Please, your
12 position on CBD's motion for a continuance.

13 MR. BUDLONG: I have no comment. Larry, do you
14 have any comment?

15 MR. SILVER: Well, we support motions with -- and
16 believe that it would be appropriate to defer.

17 HEARING OFFICER CELLI: Thank you.

18 I just have a question for staff, if you wouldn't
19 mind. There's an Appendix A to the TSE that's mentioned.
20 When is that coming out?

21 STAFF COUNSEL HOLMES: It'll be part of the
22 supplement.

23 HEARING OFFICER CELLI: Okay. And could you tell
24 us about the interconnection study, Cal ISO Phase 2?

25 STAFF COUNSEL MAYER: The Phase 2 study's

1 expected on July 16th. Since the TSE Appendix A addresses
2 the substation and associated linears, it's not under our
3 jurisdiction as analysis of supply as an extension of this
4 project.

5 HEARING OFFICER CELLI: Did you get a sense of
6 whether that July 16th date was firm?

7 STAFF COUNSEL HOLMES: It sounds to me like we
8 have a -- it looks to me as though we have a TSE witness
9 here.

10 HEARING OFFICER CELLI: I don't -- haven't sworn
11 you.

12 STAFF COUNSEL HOLMES: I don't think so.

13 MR. HESTERS: I'm Mark Hesters with staff.

14 The original date we had for the Phase 2 studies
15 was July 2nd. It doesn't sound like July 2nd is going to
16 be met. I'm not certain what the new date is. It sounds
17 like it's more likely next week. From a conversation with
18 ISO staff this week, they're having -- they're reviewing
19 it. Once they finish their review, they have to meet with
20 the project owners. Then the studies become final.

21 So they're not there yet.

22 HEARING OFFICER CELLI: They didn't give you an
23 estimate, sort of a --

24 MR. HESTERS: No.

25 HEARING OFFICER CELLI: Okay. Well, thank you

1 for that information.

2 What about the FDOC for air quality? What's the
3 status of --

4 STAFF COUNSEL MAYER: I'm sorry. I misspoke.
5 That was due July 16th.

6 HEARING OFFICER CELLI: So July 16th is the FDOC?

7 STAFF COUNSEL MAYER: Yeah. I'm sorry.

8 HEARING OFFICER CELLI: And we --

9 STAFF COUNSEL MAYER: Okay. Obviously you just
10 got an update on the Phase 2 study from the person who
11 knows.

12 HEARING OFFICER CELLI: And, Mr. Hesters, if I
13 can just ask whether there's any sense of when that
14 interconnection study would come out, based on your
15 experience in the past how Cal ISO works?

16 MR. HESTERS: My best estimate was late next
17 week, Thursday, Friday next week. And that's assuming
18 that everything goes smoothly and that there aren't a lot
19 of issues between the project owners and the ISO's
20 findings, and then sort a turnaround.

21 Essentially the drafts are done. The ISO has to
22 review the drafts. And then they meet with the project
23 owners, and sometime they -- my understanding is that
24 there's negotiations. I have never been party to these.
25 And then they come out with a final study. I assume

1 that's sometime next week, that the meetings would happen
2 early next week, and they could come out with a final late
3 next week. It could take longer.

4 HEARING OFFICER CELLI: So July 9th is a
5 ballpark?

6 MR. HESTERS: Yes, exactly.

7 HEARING OFFICER CELLI: Thank you, Mr. Hesters.

8 And, lastly, staff, Ms. Holmes, the situation, if
9 you could give us a sort of summary big picture view of
10 what's happening with the request for cultural on the
11 confidential records that I know that your office was
12 handling.

13 STAFF COUNSEL HOLMES: I believe we're waiting
14 for an order from the Committee.

15 HEARING OFFICER CELLI: Okay. From the
16 Commission I think is next.

17 STAFF COUNSEL HOLMES: Well, I believe that it's
18 going to be the draft order from the Siting Committee,
19 which we are expecting any day, and then I -- I believe
20 that that will go to the full Commission.

21 HEARING OFFICER CELLI: Okay. Thank you.

22 Folks, what we're going to do -- well, we'll go
23 off the record, Mr. Peters, for about three minutes. We
24 just want to confer. And then we'll get back on record,
25 if you can just bear with us.

1 (Thereupon a discussion occurred off the record.)

2 HEARING OFFICER CELLI: Okay. We're back on the
3 record after a short conference.

4 And the applicant has requested to speak. So
5 please go ahead, Mr. Galati.

6 MR. GALATI: Thank you so much. I apologize for
7 not interrupting before.

8 PRESIDING MEMBER BOYD: Good point.

9 MR. GALATI: Anyway, the point on the
10 transmission system engineering, we filed testimony how we
11 believe that it is complete. We believe that the Phase 2
12 study is used by staff primarily to determine whether the
13 project will comply with the LORS. We believe that you
14 can rely on a Condition of Certification that says show us
15 the interconnection agreement. And while we know that
16 that's not staff's preference, we do believe that it's
17 legally acceptable for the Commission to go. And rather
18 than decide now, we would like to present our evidence on
19 transmission system engineering at the hearing, with or
20 without the Phase 2. And then the Committee can make a
21 decision whether or not you have enough information ahead
22 of you now to make your findings on the impacts on LORS.

23 And so rather than decide today on what you think
24 might change or what might happen in the future, we'd ask
25 that you preserve the right for to us to close out the

1 transmission system engineering, even if the system impact
2 study is not available in time.

3 And the same thing with the FDOC.

4 And so rather than think today we already have to
5 keep the record open, it might be that at the end of the
6 hearing we're in a position on air quality where we keep
7 the record open for the FDOC - that's been done in the
8 past - as opposed to scheduling another hearing at this
9 stage. So just like you to consider that in your
10 deliberations.

11 HEARING OFFICER CELLI: Thank you.

12 We're going to go off the record just for another
13 moment.

14 (Thereupon a recess was taken.)

15 HEARING OFFICER CELLI: We're back on the record,
16 ladies and gentlemen, the prehearing conference for
17 Genesis Solar Energy Project.

18 With regard to the motion of Communities for --
19 I'm sorry -- Center Biological Diversity, we find good
20 cause for the motion based upon the late filed cultural
21 and socio sections, which hampers the intervenors' ability
22 to prepare for the hearing.

23 CBD's motion is granted as to these two sections.

24 The Committee also finds that the parties may be
25 disadvantaged by the absence of an FDOC in the air quality

1 section.

2 We note that it's difficult for the intervenors
3 to be able to participate when sections are filed late or
4 added late. So we want to give them an adequate
5 opportunity to respond.

6 Therefore -- oh, and also as to biology, the
7 Committee did not find good cause as to biology. It
8 appears that the record is sufficient for us to proceed
9 forward with biology.

10 However, in light of the decision with regard to
11 cultural and socio, we will set a subsequent hearing on
12 cultural and socio only.

13 We will take evidence on air, TSE, and waste
14 management at the July 12th evidentiary hearing. And we
15 will allow the parties, and specifically I'm speaking to
16 the intervenors, an opportunity to make a good cause
17 showing for the necessity for an additional hearing on
18 air, TSE, and waste management in a subsequent hearing.

19 So that would be the order.

20 Motion granted.

21 What that obviously leads us into is our next
22 discussion, which is where are we going to have this
23 subsequent hearing. We are having a heck of a time here
24 at the Energy Commission scheduling hearings and getting
25 Commissioners and parties gathered in one room, in one

1 place at the same time.

2 Right now, what we have available would be July
3 21st, July 23rd, or July 29th for the hearing on cultural
4 and socio.

5 And I'm going to open it up first to the
6 applicant and ask if any of those dates -- which of those
7 dates work for you, July 21, 23 or 29?

8 MR. GALATI: I would have to check with our
9 experts, since we had them lined out for the 12th and
10 13th. So --

11 HEARING OFFICER CELLI: We may end up having to
12 just pick a date and everybody just get with it. And I
13 hate to be that way. But as long as I have everybody
14 here -- everyone here, I'm just trying to do the best we
15 can to accommodate everybody.

16 Staff, do you have a position on the 21st, the
17 23rd, or 29th?

18 STAFF COUNSEL HOLMES: We're checking with our
19 witnesses.

20 HEARING OFFICER CELLI: Meanwhile, all the
21 intervenors should be checking their calendars and
22 checking with your witnesses and who's ever sitting with
23 you and determining which of those dates works best, 21,
24 23, or 29th of July.

25 Staff, please.

1 There was a question.

2 The topics are going to be cultural and
3 sociology.

4 And on motion by the parties, if there's the
5 necessity for additional testimony on any of the other
6 topic areas that were raised, which were air, transmission
7 safety engineering, and waste management, we may need to
8 open the record on those too. We'll see.

9 PRESIDING MEMBER BOYD: But we are hopeful that
10 they'll be resolved at the end of these.

11 STAFF COUNSEL HOLMES: Hearing Officer Celli, I'd
12 like to suggest that perhaps at some point, if just a
13 three or a four minute break, we could contact the
14 witnesses that would need to potentially be available,
15 certainly for socio and for cultural, and ask about those
16 dates. In fact, I believe the cultural witness for the
17 Energy Commission's staff is on the line, Elizabeth
18 Bagwell. But I cannot -- without talking to people, it's
19 difficult to know whether any of those present a problem.

20 HEARING OFFICER CELLI: Fair enough.

21 STAFF COUNSEL HOLMES: With respect to the Legal
22 Office, we're available any of those three days.

23 HEARING OFFICER CELLI: You know what we'll do
24 then. Before I go on, Ms. Koss, any of those dates jump
25 out that's really good or really bad?

1 MS. KOSS: They all work for me. And, again, I
2 just have to check with my experts.

3 HEARING OFFICER CELLI: Okay. Mr. Boyd -- Mike
4 Boyd.

5 MR. BOYD: Yeah. My concern is that -- really
6 what is going to determine whether we're looking for
7 cultural is the deep land line, so --

8 HEARING OFFICER CELLI: Well, really at this
9 point we just want you to -- what we're going to end up
10 doing is we're going to revisit this question towards the
11 end of the prehearing conference after people have had a
12 chance to check in with their experts.

13 MR. BOYD: Okay.

14 HEARING OFFICER CELLI: But I'm just asking
15 whether the 21st, 23rd, or 29th is -- if any of those
16 dates are better than others or worse than others, we will
17 take that up.

18 And the same with you, Mr. Budlong.

19 MR. BOYD: Yeah. Well, based on what I said
20 earlier, I -- this is Mr. Boyd again -- I would assume
21 that the 29th is the best then.

22 HEARING OFFICER CELLI: Okay. Thank you.

23 MR. LUNDAHL: And this is Mr. Lundahl. And I'm
24 here with other intervenor witnesses. And we have the
25 request and the suggestion that the cultural social

1 hearing be held in Blythe, California, which is more
2 appropriate to the Committee's understanding of the issues
3 present here.

4 HEARING OFFICER CELLI: Okay. Well, we can
5 certainly take that up as well.

6 At this time we're hearing from the attorneys and
7 the parties themselves. So if you can just hold on there,
8 Mr. Lundahl.

9 And I was just waiting to hear from Tom Budlong
10 or his attorney, Mr. Silver.

11 MR. BUDLONG: How does this relate -- Tom
12 Budlong. How does this relate to the schedule that was
13 printed out yesterday that talks about evidentiary hearing
14 on cultural on August 16th?

15 HEARING OFFICER CELLI: I'm sorry. Can you speak
16 a little louder?

17 MR. BUDLONG: Yeah, I'll try to do that.

18 The revised Committee schedule currently talks
19 about an evidentiary hearing on cultural resources on
20 August 16th. How does this relate to that?

21 HEARING OFFICER CELLI: Ah, you are on a
22 different project. This is the Genesis Project.

23 MR. BUDLONG: Oh, I'm sorry. I'm looking at the
24 Imperial. Sorry.

25 HEARING OFFICER CELLI: I understand completely.

1 (Laughter.)

2 MR. BUDLONG: I do have a cold maybe.

3 (Laughter.)

4 MR. BUDLONG: Sorry about that.

5 HEARING OFFICER CELLI: So what we're talking
6 about now -- and I'm going to revisit this towards the end
7 of our prehearing conference -- is we just want you to
8 make sure that the 21st, the 23rd, or 29th of July are
9 good dates. And we will revisit that. We're going to
10 move on now.

11 PRESIDING MEMBER BOYD: Well, I want to make a
12 quick comment, that Mr. Boyd and others have raised the
13 idea of having hearings in Blythe. And historically this
14 agency has bent over backwards to accommodate the public
15 and to have hearings in the communities of concern.

16 I would point out to you that effective today,
17 July 1st, there is no California State budget. Some of us
18 think we're working voluntarily, others are working at
19 minimum wage. There is no budget for travel. And that's
20 going to be a problem with this agency and all State
21 agencies until such time as there is a State budget.

22 So as much as we might like to travel to Blythe
23 or other communities in the State, we may have a problem
24 of being unable to pay the cost of doing that, other than
25 employees paying it out of their own pocket, which after

1 14 percent pay cuts for the last year, I doubt if there
2 will be much volunteers left.

3 So that is something we'll all have to wrestle
4 with and --

5 MR. LUNDAHL: My comment, sir, is that in order
6 to make the appropriate decisions that are required by the
7 Committee's decision, that an on-site presence and tour is
8 essential.

9 PRESIDING MEMBER BOYD: Well, number 1, the
10 Committee has had an on-site tour at the beginning of this
11 whole process and is relative familiar with the site.
12 Number 2, if you had additional evidence relative to
13 things that are on the site and you have the position in
14 testimony to present appropriate diagrams, maps,
15 photographs or what have you - and I think the Committee
16 will be reasonably if not totally familiar with the
17 situation - we'll do the best we can.

18 MR. LUNDAHL: Well, thank you.

19 The nature of the Native American cultural --

20 HEARING OFFICER CELLI: Who is speaking, please?

21 MR. LUNDAHL: Oh, this is --

22 HEARING OFFICER CELLI: Oh, is this Mr. Lundahl?

23 MR. LUNDAHL: Yeah.

24 HEARING OFFICER CELLI: Mr. Lundahl, right now
25 we're having a prehearing conference. And I understand

1 that you're an expert who's going to be called by a party,
2 but you're really not a party. And so we really need to
3 take time to talk to the parties right now just to get our
4 scheduling together. And then we're going to have an
5 opportunity for the public comment. And then I'm going to
6 ask that you raise these issues at the public comment
7 period, if you wouldn't mind, please.

8 MR. LUNDAHL: Okay. Thank you for mentioning
9 it's due to protocol issues.

10 HEARING OFFICER CELLI: Thank you very much.

11 We're at the next section, which is --

12 STAFF COUNSEL HOLMES: Mr. Celli, I'm sorry to
13 delay this, but one more question.

14 HEARING OFFICER CELLI: Please.

15 STAFF COUNSEL HOLMES: Is there going to be
16 additional testimony filed by these parties on the
17 subject, or is the record what the record is at this
18 point.

19 HEARING OFFICER CELLI: Well, pretty much the
20 record is what the record is. But now we're going to get
21 more record from staff in the next day or two. And the
22 parties are going to have an opportunity to put in any
23 rebuttal testimony that they want.

24 STAFF COUNSEL HOLMES: That's my question.
25 What's the filing date for that?

1 HEARING OFFICER CELLI: Well, if it comes out
2 tomorrow, basically we're -- on this short timeframe,
3 we're going to have to give them one week. So the parties
4 have one week from the publication of what we're calling
5 your supplemental testimony tomorrow, which I'm hoping
6 it's the last of it, and then we can get the last of
7 everyone's rebuttal, and now we've got a complete record.

8 STAFF COUNSEL HOLMES: Thank you.

9 HEARING OFFICER CELLI: Thank you.

10 We will revisit that as well. But I thank you
11 for bringing that up. So --

12 MS. BELENKY: Well, I'm sorry. Are we going to
13 revisit that any later today?

14 HEARING OFFICER CELLI: Is that you, Ms. Belenky?

15 MS. BELENKY: Yes. I just wanted to make sure I
16 didn't miss that piece.

17 HEARING OFFICER CELLI: Right. What I'm
18 saying - and this is to the parties - we're going to have
19 to give you seven days from the date of the publication of
20 staff's supplemental testimony, which they say is coming
21 out today. If it comes out today, then next Thursday
22 would be rebuttal testimony. If it comes out tomorrow, it
23 will be next Friday. I know that's short, but we're doing
24 the best we can with what we've got.

25 So with that, let's discuss the prehearing

1 conference statements. I want to talk about the topics
2 that are not in dispute and get everybody's concurrence
3 about that.

4 The topics that are not in dispute are facility
5 design, geology and paleontology, noise, public health,
6 powerplant efficiency and reliability, traffic and
7 transportation, transmission line safety and nuisance.

8 Do the parties agree -- I'm going to ask whether
9 the parties agree that these areas really are not in
10 dispute; there would be no need for live testimony, live
11 witnesses; we would be able to submit the matters by
12 declaration and the parties would not need to
13 cross-examine on these, what I count as, seven or eight
14 topics.

15 So let's hear from applicant please.

16 MR. GALATI: Applicant agrees that those are not
17 in dispute.

18 HEARING OFFICER CELLI: Staff.

19 STAFF COUNSEL HOLMES: Staff agrees.

20 HEARING OFFICER CELLI: Ms. Koss.

21 MS. KOSS: CURE agrees.

22 HEARING OFFICER CELLI: CBD?

23 This is Lisa Belenky?

24 MS. BELENKY: I mean the one issue that we've
25 raised is as to this potential second road -- access road.

1 And so to the extent that that may go to both public
2 health, safety, and traffic and transportation, I would
3 say that's the only issue I know of within those that
4 hasn't been resolved.

5 HEARING OFFICER CELLI: Ms. Belenky, do you
6 suppose though that the record is adequate that if you
7 have opposing testimony to submit, it could be done
8 without the need for cross-examining witnesses; it could
9 be done by way of declaration?

10 MS. BELENKY: That may be possible, except my
11 understanding is that the record is not complete on that
12 second access road. And maybe I missed something in the
13 many thousands of pages that were provided.

14 And if someone could point me to the final
15 alignment being approved -- or that is now being
16 considered for the second access road on a map and the
17 discussion of it, then that would help.

18 HEARING OFFICER CELLI: Okay. My sense was in
19 reading your briefs, Ms. Belenky, is that your concern
20 with the -- what are we calling that road? It's a spur
21 road?

22 STAFF COUNSEL HOLMES: The spur road.

23 HEARING OFFICER CELLI: The spur road was mostly
24 biological. Did I get that correct?

25 In other words, as I was reading your papers, I

1 thought it looked like your concern with the spur road had
2 to do with biological resources; is that correct?

3 MS. BELENKY: I think that's accurate. But it's
4 not knowing exactly where it is is -- it makes it hard to
5 know what the biological impacts of it would be.

6 HEARING OFFICER CELLI: Okay. That's understood.

7 I really don't know that it would -- having
8 really an auxiliary road would really effect traffic and
9 transportation, which mostly has to do with levels of
10 service.

11 Public health, certainly -- I mean I presume it's
12 going to be a road that isn't made out of depleted
13 plutonium or something like that. It's going to be your
14 average asphalt road.

15 So I just really don't see that public health and
16 traffic and transportation would be much at issue with
17 regard to this spur road.

18 STAFF COUNSEL HOLMES: I'd just like to point out
19 that there was an identification filed and a description
20 filed on the 15th and 18th of June. So to the extent that
21 this discussion is based on an assumption that the
22 location isn't known, I want to correct the record.

23 HEARING OFFICER CELLI: Okay. Ms. Belenky did
24 you hear that?

25 MS. BELENKY: No. I started to say something in

1 the background.

2 HEARING OFFICER CELLI: That was Ms. Holmes
3 explaining that there was -- there were additional filings
4 with regard to the placement of the spur road.

5 Please go ahead, Ms. Holmes.

6 STAFF COUNSEL HOLMES: Both the specific location
7 and the description on June 15th and June 18th.

8 MR. GALATI: Correct. Those are identified as
9 Exhibit 62 in applicant's, and it's also referred to in
10 our opening testimony. So the location has been clear
11 since that time. And there's a description it's a rock
12 road. And so we believe that identification of the road,
13 whether Ms. Belenky knew it or not, should not stop us
14 from saying that those areas are -- we should be able to
15 submit our declaration without bringing live witnesses to
16 talk about, for example, facility design when it comes to
17 the road.

18 So want to take those up in biology,
19 appropriateness --

20 HEARING OFFICER CELLI: Yes.

21 So Ms. Belenky, it appears that there seems to be
22 enough record. I don't know. But if not, I don't -- I
23 think that you might be able to raise those issues. But
24 I'm just -- the question is really whether we need to haul
25 in witnesses on placement of the road when I believe

1 that's going to be handled in biology. In fact, it will
2 be handled in biology.

3 So with that, I just want to make sure that the
4 facility design, geo, paleo, noise, public health,
5 powerplant efficiency and reliability, traffic and
6 transportation, and transmission line safety and nuisance
7 are pretty much handled sections that we can handle by way
8 of declaration.

9 Ms. Belenky.

10 MS. BELENKY: Well, I'm very sorry if I missed
11 one of the exhibits in the filing on June 15th and/or
12 18th. But my understanding is that the secondary road,
13 which is now being called the spur road, was a concern as
14 to safety. And where placement is is a concern as to
15 safety, as well as traffic and transportation, because of
16 potential hazardous materials.

17 HEARING OFFICER CELLI: Did you intend to call a
18 witness?

19 MS. BELENKY: No, I'm not trying to make you go
20 into those in the evidentiary hearing if you are not
21 interested in doing so. But I do think that they are --
22 it is relevant to that. As long as I am reserving the
23 right to discuss any biological issues with the spur road,
24 I suppose that that would suffice for now.

25 HEARING OFFICER CELLI: Thank you. And that's

1 really all we're trying to get to this morning, is really
2 where do we have to bring witnesses in and who needs to
3 cross, that kind of thing.

4 So with that, I'm going to ask CARE, Mr. Boyd, do
5 you agree that facility design, geology and
6 paleontology -- actually, CARE, your only issue is
7 cultural.

8 MR. BOYD: Well, no. There's -- potentially
9 related to culture.

10 HEARING OFFICER CELLI: Pardon me?

11 MR. BOYD: Well, it is related to cultural -- it
12 may be related to cultural if the road is, let's say, in a
13 place that affects cultural resources. So like we're
14 preserving your right to basically bring in witnesses on
15 cultural. So --

16 MR. BOYD: Restate the seven issues again for me.

17 HEARING OFFICER CELLI: Well, the fact is, Mr.
18 Boyd, you're limited to cultural only, so that's really
19 irrelevant in your special case.

20 MR. BOYD: That's fine. I'm just curious what's
21 the seven issues.

22 HEARING OFFICER CELLI: Facility design, geology
23 and paleontology, noise, public health, powerplant
24 efficiency and reliability, traffic and transportation,
25 and transmission line safety and nuisance.

1 MR. BOYD: Yeah, none of those issues happen --
2 that require an evidentiary hearing for now.

3 HEARING OFFICER CELLI: Okay. Good.

4 Mr. Tom Budlong, are you on the line, or Mr.
5 Silver?

6 I'm having a hard time hearing you, Mr. Budlong.
7 Can you speak up please.

8 MR. BUDLONG: Yeah. Is that any better?

9 HEARING OFFICER CELLI: That's a little better.

10 On the issues -- we want to know whether you need
11 to -- if there's a need to call witnesses or cross-examine
12 on facility design, geology and paleontology, noise --

13 MR. BUDLONG: I know the topics, that's good.

14 No, I had no need.

15 HEARING OFFICER CELLI: Okay. Thank you very
16 much.

17 So I think I have everybody covered on that.

18 So with that, then we have agreement on the areas
19 that are not in dispute.

20 That means that the topics that are in dispute
21 are air quality, alternatives, biology -- or biological
22 resources, cultural resources, hazardous materials, land
23 use, project description.

24 I included socioeconomics in this list. It may
25 not be in dispute. But since the parties haven't seen it,

1 we will tackle that.

2 Soil and water. Transmission systems
3 engineering, is CURE that raised that issue. Visual
4 resources is an issue which applicant, staff, and Mr.
5 Budlong.

6 Waste management. Applicant and staff raised
7 that. CURE also.

8 And worker safety, CURE raised and applicant
9 raised.

10 As to the topics, any party claims that's
11 incomplete or in dispute, we expect the parties to work
12 together to determine whether or not any of these topics
13 can be moved into the undisputed column between now and
14 the evidentiary hearing. And we're going to urge and
15 encourage you to do so.

16 And I would like to reiterate that there will be
17 a workshop immediately following this prehearing
18 conference today. The workshop will be held here at the
19 Energy Commission at the second floor conference room.

20 And I had -- here it is. I'm going to give you a
21 phone number, because they're going to be on a different
22 phone system, not WebEx. So Mr. Boyd and Mr. Budlong and
23 Mr. Silver and Ms. Belenky, if you would please write this
24 down. I'm going to give you a phone number and a pass
25 code so that you can participate in the workshop

1 immediately following our prehearing conference.

2 That number is Area Code 888-790-1918. Again,
3 it's 888-790-1918

4 The pass code to get into the workshop is 52510.

5 Let me give you that again. The pass code is
6 52510.

7 Okay. Did you get that, Ms. Belenky?

8 MS. BELENKY: Yes, I did. I'm not sure that
9 we're going to be able to participate. We have other
10 deadlines today as well.

11 HEARING OFFICER CELLI: Okay. It's really pretty
12 important to the Committee that you do, because the
13 Committee wants the parties to work together to make for a
14 more efficient hearing. And so if you can, we fully
15 expect that to happen.

16 Did you get that number and pass code, Mr. Boyd?

17 MR. BOYD: I got -- it's in your eMail, right?
18 It nation my eMail

19 HEARING OFFICER CELLI: Did you all receive this
20 eMail from Mr. Monasmith?

21 Okay. Good.

22 And, Mr. Budlong, you can make that workshop?

23 MR. BUDLONG: Yes.

24 HEARING OFFICER CELLI: Very good. Thank you.

25 Then let's --

1 MR. BUDLONG: What time does it start?

2 HEARING OFFICER CELLI: Okay. We're on to --

3 MS. BELENKY: I'm sorry. Could we just go back
4 to the workshop for a second?

5 HEARING OFFICER CELLI: Yes.

6 MS. BELENKY: I don't want there to be any
7 impression that we are unwilling to attend a workshop. We
8 were given notice yesterday afternoon. We already have
9 many other things that are planned for this afternoon,
10 including several deadlines.

11 HEARING OFFICER CELLI: Actually, Ms. Belenky, I
12 mentioned it at the last status conference that we had.

13 MR. GALATI: Plus there was a notice.

14 HEARING OFFICER CELLI: And I'm informed that a
15 notice went out. But in any event, if you can't, we
16 understand. But the whole point of having this workshop
17 is that the parties can get together and start eliminating
18 witnesses, eliminating topic areas, eliminating any ground
19 that we don't need to cover at the evidentiary hearing.
20 That's the whole purpose of it.

21 So I appreciate your cooperation with regard to
22 that.

23 MS. BELENKY: Well, and I really appreciate that,
24 and I'm quite sorry that I didn't understand that that had
25 already been scheduled. It didn't appear on any of the

1 documents that I have before me. It was not in the
2 prehearing conference statement and it was not in the
3 revised prehearing conference statement. Now, perhaps
4 there was another notice that went out, and I am very
5 sorry if I missed that notice.

6 However, we would like to participate in the
7 conference. It is just going to be quite difficult.
8 We're not sure we can. So I'm not -- I feel that there
9 is -- in all of this there's this underlying sense that
10 you have to rush through this process, that you are not
11 willing to accommodate anyone else's schedule no matter
12 what it may be.

13 HEARING OFFICER CELLI: Actually we just granted
14 your motion for a continuance, Ms. Belenky. And I raise
15 that point, because we are sensitive to the needs of all
16 of the parties and we're trying to make sure that we give
17 everyone the maximum opportunity to a fair hearing, which
18 is why we asked for this workshop.

19 Now, if you have perhaps a secretary or someone
20 who can take notes, maybe you could take your phone and
21 can record the workshop. Anything you can do, we would
22 appreciate that.

23 What I'm trying to do is have an efficient
24 prehearing conference today, because since the workshop
25 immediately follows, the sooner I get through this

1 prehearing conference, the sooner the workshop starts.

2 So with that, we appreciate anything you can do
3 to participate in making a more efficient evidentiary
4 hearing. And we are sympathetic to your -- the
5 inconvenience that it might present.

6 We're going to move on now to the discussion --

7 MR. SILVER: Can I ask a question?

8 HEARING OFFICER CELLI: Sure.

9 MR. SILVER: This is Larry Silver for intervenor
10 Budlong.

11 HEARING OFFICER CELLI: Yes, sir.

12 MR. SILVER: I just want to be clear with regard
13 to the workshop. The eMail yesterday said it would be
14 confined to the topic of biological resources. Is that a
15 correct understanding?

16 HEARING OFFICER CELLI: Is that correct? I would
17 say that anything goes at this workshop, and I think that
18 that's important. Because if there's something that you
19 can settle, then, by all means, settle it.

20 So if the main focus is biology, well, then,
21 fine. You'll take care of whatever you need to take care
22 of. But please take advantage of the workshop. The
23 Committee specifically is looking to eliminate the need to
24 have hearing time for witnesses that we don't need to call
25 or we don't need to hear from. If you can stipulate to

1 some submissions on paper, then that's what we're looking
2 for.

3 Is that clear, Mr. Silver?

4 MR. SILVER: Yes, it's clear, with a note that
5 the -- yes.

6 HEARING OFFICER CELLI: Okay. Thank you.

7 MR. BOYD: And, Ken, I have a question.

8 HEARING OFFICER CELLI: Who's speaking?

9 MR. BOYD: This is Mike Boyd. I have a question.

10 HEARING OFFICER CELLI: Yes, sir.

11 MR. BOYD: In my prehearing conference statement,
12 I posed questions on the subject matters that I was
13 disputing. And I'm willing to accept stipulations to the
14 questions if need be in order to, you know, reduce the
15 need for having a hearing witness sort of thing.

16 HEARING OFFICER CELLI: That's great.

17 MR. BOYD: I just wanted to offer that up to you.

18 HEARING OFFICER CELLI: Thank you. Well, that's
19 the kind of thing you're going to talk about in your
20 workshop. And I appreciate your participation and your
21 willingness to work with the others. So thank you, Mr.
22 Boyd.

23 Well, there you go. Thank you.

24 (Laughter.)

25 HEARING OFFICER CELLI: Electronics. You just

1 got to love it.

2 We were at the discussion of witness list. I
3 actually worked out -- first of all, before I get into
4 this, I want to say that we are going to spend the first
5 evidentiary hearing room date, which is July 12th, in
6 here, in Hearing Room A, even though we noticed it for
7 Hearing Room B. So we're just across the hall. It's not
8 that big of a deal, folks. But we're doing that because
9 we expect a lot of people and we need the room. So we
10 will be having that first hearing in Hearing Room A. The
11 second day, the 13th, will be in Hearing Room B.

12 They start at 10 o'clock. We will go until about
13 10 p.m. or later, if the Commissioners so desire. But
14 it's important that we have a big and efficient day on day
15 1 so that when we go into Hearing Room B, we don't have to
16 pack people in and run into a fire problem with the number
17 of people in the room.

18 So what I've done is I calculated -- after taking
19 in the undisputed evidence and then accounting for breaks
20 and interruptions, we will probably have about seven hours
21 of productive hearing time per day. Fourteen hours is
22 about 35 percent of the time that the parties estimated
23 was needed to examine witnesses. The total estimated time
24 for examination from the parties that they gave me on
25 their witnesses was 39.25 hours. We don't have 39.25

1 hours to do a hearing in. We just can't do that. And so
2 just the 14 hours that we're talking about is about 35
3 percent of the people's estimated time to examine
4 witnesses.

5 But I did note that bio and -- biology and soil
6 and water represents about 60 percent of the amount of
7 time that we're going to spend. Hazardous materials would
8 be about 10 percent. And sort of hazardous materials I'm
9 treating as sort of overlapping with waste and perhaps
10 worker safety.

11 So the remaining topics - air quality
12 alternatives, land use, visual, waste, worker safety,
13 project description - represent plus or minus five percent
14 each of the total time that we have to work.

15 Okay. At this time it's estimated excludes
16 cultural, socio, and transmission systems engineering,
17 which we will be taking.

18 So we have a couple of options to proceed the
19 evidentiary hearing. Since bio and soil and water take up
20 the majority of the allotted time for hearing, we can
21 either take those sections up immediately after receiving
22 the undisputed topics, or save them until we close the
23 record on the other eight or so controversial topics.

24 When I calculated this out, basically this is
25 sort of what the options are: If we go with -- we receive

1 the evidence, let's say, at 10 o'clock, at 11 o'clock we
2 might hear an air quality and project description, at noon
3 we would take a break for lunch. After that, worker
4 safety, waste, haz mat, visual. Now we're into like 2
5 o'clock in the afternoon. This is very ambitious. 3
6 p.m., land use; 4 p.m., alternatives; 5 p.m., bio; 6 p.m.,
7 public comment. We would break and take an hour so for
8 public comment. 7 p.m., we would continue bio; 8 p.m., we
9 would continue and finish bio; and from, say, 8 to 8:30,
10 we would take soil and water and be done by 10.

11 That is one possibility.

12 The opposite possibility would be that we --
13 after we take the undisputed topics in the morning at 10
14 o'clock, we launch immediately into bio. We again break
15 for lunch at noon. We take bio up until about 2 in the
16 afternoon or including the 2 o'clock hour.

17 Then we get into bio -- rather soils and water at
18 3 p.m., and we finish that by 5 p.m. I'm hoping this is
19 realistic and reasonable. We will take witnesses as
20 panels in order to expedite this.

21 Public comment would happen at 6 p.m. And then
22 we'd have alternatives - land use, worker safety, waste,
23 hazardous materials, visual, air quality and project
24 description - between 7 p.m. and 10 p.m.

25 I really just want to note from the parties, do

1 you think it's more efficient that we take -- we start
2 with the big ones and launch into biology and soils first
3 and then get to wherever we can get to by the end of the
4 night? Or do you want to -- do you think it makes more
5 sense to take care of the little stuff up front and then
6 handle soil and bio after we've got rid of all of the
7 other witnesses on the other disciplines?

8 So, applicant.

9 MR. GALATI: Our preference is to take the
10 undisputed stuff by declaration into the record and then
11 launch immediately into bio and soil and water. And I can
12 tell you that we estimated the amount of time needed,
13 presuming that we didn't make very much progress in
14 workshops. We fully intend to make progress in today's
15 workshop bio, and significantly reduce that time.

16 And in addition is I think that the workshop will
17 help to clarify and narrow the real issues that we need to
18 present testimony on.

19 So some of the other areas I think that -- and,
20 again, we could get to after bio and after soil water -- I
21 think that they are going to require a lot less testimony.
22 So we'd like to do bio and soil, spend the Committee's
23 time on really hearing those issues that are of major
24 dispute.

25 As you notice from our prehearing conference

1 statement, there are many areas that are disputed that
2 we're willing and continue to be willing to submit our
3 testimony on declaration. Write down what you think the
4 Committee should do, put aside the need for direct and
5 cross-examination. We still think the Committee could
6 invoke that, even at the evidentiary hearing provided we
7 make some more progress in our workshops.

8 HEARING OFFICER CELLI: And let's hope we do.
9 Than you for that.

10 I'm going to skip to Center for Biological
11 Diversity, because, Mr. Belenky, I recall reading in your
12 papers that you had a specific question or possibly a
13 problem with an expert.

14 Can you hear me, Ms. Belenky?

15 MS. BELENKY: Yes.

16 HEARING OFFICER CELLI: Okay. So basically the
17 two agendas that I just read off are just the inverse of
18 each other. One of them takes biology and sociology,
19 which is really the lion's share of what we have -- I mean
20 soil and water and biology, which is the bulk of what we
21 need to tackle. And we take those right up front early in
22 the morning, or we can either take all the other subject
23 matter -- subjects and take bio and soils later in the
24 night. Which is your preference?

25 MS. BELENKY: Well, the Center for Biological

1 Diversity, we'd prefer to have the biology at the
2 beginning.

3 HEARING OFFICER CELLI: Okay.

4 MS. BELENKY: And the expert issue, I think on
5 Monday and Tuesday our water expert is available the whole
6 day, both of those days. But, you know, I'm not sure till
7 10 o'clock at night. But part of that might be on the
8 phone. That's the one problem there.

9 And then the biology expert, Ileene Anderson,
10 will be able to attend the hearing.

11 HEARING OFFICER CELLI: In the morning?

12 MS. BELENKY: Both days -- the first two days,
13 assuming it doesn't go any longer, at any time, yes.

14 HEARING OFFICER CELLI: Okay. Staff -- let's
15 hear from staff on that.

16 STAFF COUNSEL HOLMES: First of all, I'd have to
17 confess that I'm quite puzzled. I thought what I heard
18 was two versions of a one-day schedule.

19 HEARING OFFICER CELLI: That's right, because
20 we're -- the second day is strictly for spillover. We
21 really are trying to take care of what we can up front.
22 We've got a lot of work to do, people are jammed, and
23 we're not going to risk not finishing. So that's --

24 STAFF COUNSEL HOLMES: So you're trying to design
25 this as a one-day hearing?

1 HEARING OFFICER CELLI: We're doing everything we
2 can to make it a one-day hearing.

3 STAFF COUNSEL HOLMES: I think staff, first of
4 all, has a concern about being able to hear -- given the
5 number of contested topics, we have a concern about giving
6 everybody a chance to be able to participate meaningfully,
7 trying to get all of this done between 10 o'clock in the
8 morning and 10 o'clock at night, given the number of
9 parties and the number of issues.

10 HEARING OFFICER CELLI: So the options are really
11 this: What we need to do is determine whether we're going
12 to call a -- hear your biological evidence first, or do
13 you need to defer that until later in the day?

14 Mr. Galati --

15 STAFF COUNSEL HOLMES: Well, I'm just -- I'm
16 going to just speak frankly with you. My experience with
17 hearings is that when you put to the other topics first,
18 the non-bio and soil and water topics first, they tend to
19 expand, they tend to take longer. And so I could easily
20 envision a situation where we end up with it being time
21 for public comment and we haven't started bio and water.
22 And at that point I would be extremely concerned about the
23 risk that we would not be able to fully develop the record
24 for soil and water and biological resources that evening.

25 So I guess at some level my answer depends in

1 part on whether you're serious about this being a one-day
2 hearing or not.

3 HEARING OFFICER CELLI: Well, we're serious about
4 having an efficient hearing. That's absolutely dead-bang
5 serious.

6 So what I see is that you have three witnesses
7 for biology, which is the largest number of witnesses you
8 have for any topic.

9 STAFF COUNSEL HOLMES: We also have a number of
10 agency representatives who would like to participate on
11 biological resources as well.

12 HEARING OFFICER CELLI: So it seems to me that it
13 might make sense to make sure -- because what happened in
14 Beacon, for instance, is you start on some topic and
15 somebody's plane doesn't come in, and now we have to take,
16 you know, other topics and then get back to bio later in
17 the day. And this is what I'm trying to prevent. I want
18 a continuous coherent record.

19 And so it's starting to sound to me like
20 morning -- we'll start with the big ones first. Bio, we
21 take care of that. We can -- and in so doing, we would
22 probably be able to eliminate a lot of the population in
23 the room, so that the next day whatever spillover we may
24 have in Hearing Room B, we'll have fewer people standing
25 around.

1 Ms. Koss, do you have a position?

2 MS. KOSS: Yeah. I don't know if you're open to
3 the possibility of having a date certain bio on the 12th,
4 starting in the morning, then continuing to non-soil and
5 water topics, and then having a date certain of soil and
6 water on the 13th in the morning.

7 HEARING OFFICER CELLI: Do you have any problem
8 with an expert for soil and water?

9 MS. KOSS: No, I don't. I just think it would
10 perhaps address Ms. Holmes' concern and it would give us
11 enough time to complete those big issues. But I just
12 would put that out there.

13 HEARING OFFICER CELLI: What I would say is I see
14 that in order for us to get through bio, bio's going to
15 take at least 3 hours. It's going to take some time. We
16 start at 10 o'clock, we receive evidence and so forth from
17 10 so to 11. And, let's say, we launch the bio at 11.
18 It's pretty clear that we wouldn't need your other
19 witnesses until about 3 in the afternoon in soil and
20 water.

21 I believe that it would be in our best interests
22 to tackle the big ones together day 1. And I'm thinking
23 that what I'd like to do is have soil and water
24 immediately follow biology. But I want to be sensitive to
25 the fact that you've got, you know, high paid experts

1 standing around from 10 in the morning. And I don't think
2 that would be necessary.

3 MS. KOSS: Well, yeah, and that's another
4 concern. It would be better for us if we could have date
5 certain because -- I mean you're saying Tuesday or -- I
6 don't know --

7 HEARING OFFICER CELLI: No, I was saying --

8 MS. KOSS: -- the Tues -- the 13th would be used
9 for spillover. So I might have experts standing around
10 all day on the 12th and not actually testifying until the
11 13th.

12 HEARING OFFICER CELLI: That's right. So
13 basically what I can assure you is that we will tackle bio
14 and soil and water on day 1.

15 MS. KOSS: And everything else on day 2?

16 HEARING OFFICER CELLI: Not -- and whatever else
17 we can get done on day 1 after soil and water. And we
18 can -- if you want, when you have your workshop, you might
19 be able to come to agreement on -- see, the next one down
20 in terms of the amount of time estimated by the parties
21 was hazardous materials. So if hazardous material starts
22 at 7, 8 o'clock at night, well, maybe we can knock out
23 hazardous materials and worker safety and waste, let's
24 say. Then those few that are left over we can handle on
25 the next day.

1 But that's what we're trying to do. I'm trying
2 to pack in as much as I can on day 1, and that's what
3 we're trying to do.

4 So I just want to make sure that this
5 isn't -- that this works for everybody and that your
6 experts -- yes, it seems to me that your experts should be
7 checking in with you around 2 and 3 in the afternoon on
8 soil and water, saying, "How are you doing? Have you
9 finished biology yet?"

10 MS. KOSS: Yes, fair enough.

11 May I ask to just make one more point about
12 preparation for hearings?

13 CURE requests that the applicant identify which
14 witness is sponsoring which testimony. It is impossible
15 to prepare for cross-examination without knowing who is
16 sponsoring what. In almost every resource area is a list
17 of at least four individuals. And, frankly, I don't know
18 who I'm going to be cross-examining.

19 HEARING OFFICER CELLI: That's a fair question.

20 Mr. Galati.

21 MR. GALATI: All of our witnesses will be
22 testifying as a panel. Because as you can imagine, on an
23 AFC such as this, there was close coordination. So all
24 three witnesses would be available. They are all jointly
25 sponsoring those exhibits, because they've all prepared

1 pieces of them.

2 So, Ms. Koss can ask her question. She can
3 certainly talk about the qualifications of the entire
4 panel to begin with. And then she can ask her question,
5 and that witness can -- the witness most appropriate will
6 choose to answer. That's how we've done it in the past.
7 That is for efficiency purposes, so that we don't have to
8 bring in somebody else, swear them in to answer two
9 questions and then move them off the panel, and then bring
10 them back in and swear them in because that person had
11 more knowledge.

12 HEARING OFFICER CELLI: Right.

13 Okay. And, Mr. Budlong and Mr. Boyd, I'm not
14 ignoring you. But since you're not calling witnesses per
15 se, then that's really -- I'm mostly interested in people
16 calling their witnesses in terms of this part of the
17 discussion.

18 MR. BOYD: I had a question. I'm concerned, if
19 you're going to do the water and soil, that -- I think I
20 heard you say earlier that you were deferring on the
21 socioeconomic impacts.

22 Let me get to the point. My concern is that if
23 the applicant has to buy entitlements for Colorado River
24 water, that some farms are going to be fallowed or some
25 orchards are going to be fallowed and that farm workers

1 lose their jobs.

2 HEARING OFFICER CELLI: I appreciate that
3 concern. You know what. I just want to cut straight to
4 it.

5 MR. BOYD: Or --

6 HEARING OFFICER CELLI: Mr. Boyd, and the fact is
7 is that you're limited to cultural issues in this hearing
8 based upon what you've provided. And so we're not going
9 to -- we don't need to spend time on that. In fact, we're
10 going to get into a discussion of when we're going to hear
11 cultural and socio. But those aren't going to be heard on
12 day 1. So you don't have to worry about that.

13 MR. BOYD: So I don't even need to participate in
14 day 1, is that what you're saying?

15 HEARING OFFICER CELLI: Yes, I'm saying that you
16 could -- for your purposes, which is really all about
17 cultural, that will be a subsequent.

18 Now, what we're going -- yes, that's a good point
19 and we'll get to that. Let me get to some other things
20 first.

21 I want to make some points - and this is for
22 everybody, based on my experiences in the past so far with
23 hearings - regarding direct examination, we're going to
24 ask that you limit your witnesses to a high level summary
25 of their written testimony. We don't need to have all

1 your witnesses go through everything they've already said.

2 We can read that and we will get that.

3 There's no need to discuss a resume if we have it
4 in writing and we received the resume into the record. I
5 don't want to hear about the articles and the background
6 or anybody's resume. And that's assuming there's no
7 objection to the witness. And this is the kind of thing
8 you're going to talk about today in your workshop.

9 If you have an objection, we need you to state
10 the objection first, like as in objection, irrelevant;
11 objection, states facts not in evidence; not "I think
12 that's a bad idea because" blah blah blah. I don't want
13 to hear speaking objections. I want the legal objection
14 up front, please.

15 Regarding cross-examination -- and this isn't
16 just me personally. I'm just trying to keep the record
17 clean so we know what's going on. Regarding
18 cross-examination, there will be no time for thinking on
19 the fly. If you can't come up with good cross-examination
20 in the quiet of your work space, you're not going to do
21 any better in the heat of the hearing.

22 So you can ask leading questions on cross. So
23 you should take advantage of that. It's more efficient.
24 Have your cross-examination written out and be prepared to
25 tell the Committee how many questions you have before you

1 begin your cross. Because as the clock starts to tick,
2 we're going to say things like, "How many more do you
3 have?" How many questions on cross? And that affects
4 things like when we take breaks and so forth.

5 So you need to be prepared to tell us how much
6 time you're going to take on cross. If we notice that
7 you're floundering or fishing or you're figuring things
8 out, the Committee will say, "One more" or "curtail your
9 cross-examination."

10 The legal definition of a moment is ten seconds.
11 I just don't -- we don't have the luxury of time for
12 people to fumble through papers going, "One moment."
13 Okay?

14 So have everything ready. When you're doing your
15 cross-examination, be ready to state the page number and
16 the line of any testimony you seek to cross-examine the
17 witness about. This happens in other hearings where you
18 are say, "Well you said earlier..." And then the
19 objection's going to come from the party representing that
20 expert witness, who's going to say, "Where did he say
21 that?"

22 I don't want to hear "one moment" and then have
23 some party fumble through papers for ten minutes looking
24 for where he said whatever it is you were saying he said.

25 I hope that's clear.

1 And also I just want to make sure that the
2 parties allow the witnesses to finish their answer. We
3 need a clean record. Don't talk over the other parties.

4 I know everybody already knows this, but I'm
5 saying this because people have a tendency to forget all
6 of this stuff.

7 So with that, we're going to talk now quickly
8 about the exhibit list.

9 PRESIDING MEMBER BOYD: Let me jump in a second
10 here on this, because I don't feel very -- I don't see
11 closure here just yet. Let me relate what I think I heard
12 so far this morning.

13 One, the applicant would prefer to do bio than
14 move right into the soils and water on day 1.

15 Secondly, the -- well, let's just say CURE has
16 suggested maybe it might be better to schedule something
17 as big as soils and water on -- at the beginning of day 2
18 and just run the first day until such time -- you know,
19 through bio and then hopefully finish all the other stuff.

20 I noticed no break for dinner in this schedule.
21 And I, for one, and you probably more so, somewhere after
22 that 6 p.m. period of time are going to need to take a few
23 minutes to eat a sandwich or something.

24 Therefore, I'll just -- and then staff is just
25 saying, "Based on our experience, there's no way you're

1 going to finish this in a day." So what are we going to
2 do on day 2? So I'm still a little uncertain of where we
3 are in terms of committing that there will probably be a
4 day 2, providing adequate breaks for human needs here even
5 if it's eat a sandwich for dinner or something, et cetera,
6 et cetera. So I'm not quite sure we've finished this,
7 subject to what's going to be when.

8 I'm totally supportive of the idea we need to
9 push it hard so we don't end up at the end of day 2 not
10 done. But I want to make sure we leave this subject with
11 an understanding of what it is we are going to do. Does
12 everybody have a feeling we're going to do bio and then
13 soils and water on day 1 for sure? And if through some
14 incredible break there's even time left to start one of
15 the other subjects, and otherwise we move all the other
16 subjects over into day 2 and we just push hard into them.
17 But, you know, undoubtedly there will be a day 2. We've
18 planned on it. We might as well acknowledge it. We're
19 just not going to hopefully be around till 10 o'clock at
20 night the second day.

21 HEARING OFFICER CELLI: Ms. Holmes, you wanted
22 to --

23 STAFF COUNSEL HOLMES: Staff understands that
24 that's what the Committee would like to do. However,
25 staff does support the suggestion made by CARE that we

1 schedule soil and water for the beginning of the second
2 day. We think that's a good way and an efficient way to
3 ensure that there's reasonable opportunity for people to
4 participate on both of the big topics that seem to be the
5 focus of interest as well as get done by the second day.

6 HEARING OFFICER CELLI: Applicant --

7 PRESIDING MEMBER BOYD: Mr. Galati, you were
8 talking about having a panel address everything. So does
9 it matter to you?

10 MR. GALATI: I don't want to lose sight of the
11 fact that while there are all kinds of opportunities for
12 hearings to go longer, there are lots of opportunities
13 that could take place this afternoon to make hearings go
14 shorter. There's one other thing the Committee could do.

15 So, yes, to answer your question first,
16 Commission Boyd, if you wanted to schedule soil and water
17 for Tuesday, that would be okay. It's not our preference.

18 Our preference would be to do the bio and soil
19 and water, so that we try to get finished, as opposed to
20 we could just keep going and fill up the time with bio for
21 as long as we'd like because we have all day.

22 What I'd like to see and one of the things that
23 has been helpful - and I apologize to throw it back in the
24 Committee's court - but oftentimes in other committees in
25 very, very efficient hearings they have told us, "We've

1 read this, we've read that. I'm more interested in that
2 subject." As opposed to the parties guessing as to what
3 the Committee is really interested in hearing. And, after
4 all, the evidentiary hearings are for you. There is a lot
5 of written documentation. And when the commissioners have
6 read and come prepared with the advisors and know what the
7 issues are, that helps me put on my case very, very -- I
8 won't go into areas that the Committee does not have any
9 questions on. And I will spend cross-examination on those
10 issues that the Committee does.

11 So that would be helpful at the beginnings of the
12 hearings, what the Committee's interested in.

13 So, again, our preference would be to not
14 preclude the ability to go to soil and water on Monday, if
15 we are efficient on bio.

16 HEARING OFFICER CELLI: We're going to go off the
17 record for one moment.

18 (Thereupon a discussion occurred off the record.)

19 HEARING OFFICER CELLI: We're back on the record.

20 We had a discussion with the Committee.

21 We're persuaded that it does make sense to have
22 soil and water on day 2 -- starting with day 2, because
23 then we won't have so many witnesses lurking, waiting for
24 their chance and not knowing when they're going to start.

25 That said, that means we're going to be in

1 Hearing Room B with a mob of people, which is not very
2 comfortable.

3 But we'll do what we can to get the most done we
4 can on day 1, so that after we finish bio hopefully in the
5 afternoon, we can knock out whatever there is left short
6 of soil and water.

7 PRESIDING MEMBER BOYD: And my proposal is we do
8 bio -- and we move soils and water to day 2. We do bio
9 and everything else on day 1. We list soils and water for
10 day 2. Hearing Room B, as we all know, is a tiny little
11 room. So the logistics are crummy unless we limit the
12 subject matter.

13 So I would propose that we burn the midnight oil
14 if need be, so to speak, on day 1, but that we hard
15 schedule soils and water for day 2.

16 And in response to Mr. Galati's concern about
17 what the Committee is concerned with, that's an
18 interesting and difficult question. The public needs to
19 believe we're concerned about everything. That's an issue
20 of concern to intervenors and others.

21 Obviously bio is a big, big topic. Based on the
22 estimates of many of you, and as Hearing Officer Celli
23 pointed out, in the hazardous materials area there's some
24 concern so that it might chew up some time. It's hard to
25 say on the other issue.

1 Soils and water could be complicated. Water's a
2 big deal. Water is going to be very -- and will remain to
3 be until resolved, either outside or inside this hearing
4 process. Water is going to be undoubtedly contentious.
5 And so I do think we need to provide that day 2 is
6 dedicated as I indicated, and that we give ourselves
7 plenty of time to deal with soils and water.

8 I would like to think we'll finish everything
9 else on day 1. We do have a little bit of luxury on
10 having maybe one of other topic move over to day 2. And
11 to the extent that you work things out in today's
12 workshop, we'd be elated if the schedule -- the smoke
13 clears a little bit and the schedule begins to make a
14 little more sense.

15 I do think we need to build in at least an hour
16 break late on day 1. And so that has to be taken into
17 consideration.

18 But hopefully that works for everybody as best as
19 possible.

20 It doesn't work as much as Mr. Galati would like.
21 But maybe that will spur him to work real hard with you
22 this afternoon to make our collective lives a little
23 easier.

24 HEARING OFFICER CELLI: With that, I think that
25 would pretty much accommodate everybody. And so I feel

1 like we just saved everybody a lot of time and maybe your
2 witnesses.

3 STAFF COUNSEL HOLMES: Thank you, Commissioner.

4 HEARING OFFICER CELLI: The next topic we're
5 going to talk about is briefing schedule.

6 The applicant proposes allowing the parties to
7 make a brief closing argument at the end of the testimony
8 for each section so that the Committee can decide whether
9 or not briefs are necessary. So they're essentially
10 recommending against briefs.

11 The staff proposes an opening briefing deadline
12 of July 30th, a reply brief deadline by August 6th.

13 STAFF COUNSEL MAYER: If necessary.

14 HEARING OFFICER CELLI: If necessary.

15 CURE proposes filing post-hearing opening briefs
16 four weeks after the evidentiary hearing on the SSA, TSE
17 Appendix A, and reply briefs six weeks after evidentiary
18 hearings.

19 And CBD requests that briefings be consolidated
20 and that opening briefings follow the final evidentiary
21 hearing and should be due no earlier than three weeks
22 after the transcripts are provided to all parties from all
23 evidentiary hearings following the close of all
24 evidentiary hearings. Reply briefs should be due no
25 earlier than two weeks after the opening briefs are filed.

1 That's CBD's position.

2 Mr. Budlong or CARE offered an opinion about the
3 briefing scheduling in their prehearing statements.

4 It takes three days now -- do I have that right,
5 Mr. Peters? He's nodding. It takes three days -- he's
6 nodding in the affirmative, to make the record correct.

7 It takes three days to get a transcript of the
8 proceedings. So if the hearings go through 7/13 and a
9 transcript is ready on 7/16, which is three days later,
10 then we would require briefs to be filed on 7/23.

11 But before I make that hard and fast date. I
12 kind of agree with Mr. Galati's point. And I'll tell you
13 where I'm coming from on this briefing.

14 What I find are that briefs often turn into
15 comment by mostly the intervenors, because if we don't
16 make clear that we need this or that legal issue briefed,
17 then it's really up to the parties to frame their own
18 issues. And then we get essentially encyclopedic opening
19 briefs that don't really shed a lot of light necessarily
20 on what's going on.

21 I'll throw this out to the parties in a moment to
22 see. But I'm of the mind that briefing -- opening briefs
23 should be sort of optional unless there is something that
24 the Committee hears - and this happens - that something
25 comes up and we think, well, that's a unique and novel and

1 a problematic issue and we need the input from the parties
2 and we need the parties to brief it.

3 In the absence of that, the evidence pretty much
4 speaks for itself. But I don't want to deprive the
5 parties of their opportunity to make argument.

6 I don't agree that making an argument orally
7 after each topic is closed is useful. In fact, I think
8 that that's a little inefficient since I'm trying to cram
9 so much in such a short amount of time that I don't want
10 to take time for argument.

11 So if we have briefings, it seems to me that we
12 would have briefings seven days after the close of the
13 evidence -- no, seven days after the receipt of the
14 transcript. I'm sorry. So that the parties have a week
15 after you receive the transcript to go through the
16 transcript, brief whatever is necessary.

17 Rebuttal briefs would be due seven days after
18 opening briefs.

19 Now, this opens up the new can of worms, which is
20 I want to get back to what we started with, which is when
21 are we going to have that subsequent hearing on cultural
22 and socio? Because I think we would stick with the same
23 format, which is we would have an opening brief seven days
24 after the transcript comes off on cultural and socio at
25 the subsequent hearing. Reply briefs -- rebuttal briefs

1 due seven days after that.

2 And we're doing this because we're trying to get
3 this -- this is an accelerated case, and we're trying to
4 stick to our original schedule the best we can to get
5 things out quickly.

6 So in the absence of any opposition, let me just
7 hear anything -- do you have any opposition to what I just
8 proposed?

9 Mr. Galati, for the applicant.

10 MR. GALATI: No, we don't have any opposition on
11 that. What -- the idea of oral argument was not to waste
12 time. It was actually to consolidate time. For those of
13 us who have been in a courtroom, when you prepare a
14 closing argument, you prepare that closing argument long
15 before you show up to court, which then guides your
16 evidence.

17 So it has been our position, and you've seen in
18 our written filings, that not all parties are here about
19 environmental issues, that there are delay tactics being
20 used. And in order to prevent that from happening, we
21 believe that having very focused hearings as opposed to
22 trying to extend the hearings by straying from issues that
23 the Committee needs is important. That's why we thought a
24 closing argument about facts, just facts, not the law, and
25 that briefs could be focused, just like a courtroom, about

1 law. And what happens in my experience is that the
2 opening briefs become a combination of the two.

3 And so that was the purpose of it. And we're
4 fine not doing the closing argument. But we hope that the
5 Committee directs these parties to have a closing argument
6 in mind of what you would tell the Committee if you had
7 ten minutes at the end of your close of evidence of what
8 was important and what was not, because that will focus
9 your putting on that evidence that matters and
10 cross-examining on that evidence that matters to you as
11 opposed to having it open to the entire topic of
12 biological resources, even areas that may not be as
13 disputed.

14 So if there's another way to accomplish that,
15 we'd certainly love the Committee to help us with that.
16 That was the goal of the closing argument. It was not to
17 prejudice the parties. It was to efficient -- make the
18 hearings efficient to those relevant topics that the
19 Committee needs.

20 HEARING OFFICER CELLI: And that's certainly good
21 advice to -- as all of you parties should be aware, that
22 you should be having essentially a closing argument first
23 and be working backwards from that so that you know what
24 you're doing while you're doing it in the hearing. That
25 should inform what you're going to examine.

1 But I have five parties. And I can see this
2 argument just coming out of control. I just don't think
3 it's a good use of our time.

4 I know that staff is usually pretty loathe to do
5 briefing if -- they're not interested in doing that. But
6 what's staff's position?

7 STAFF COUNSEL HOLMES: Well, I think staff agrees
8 with the Committee, that having closing argument at the
9 end of each section is not likely to be an efficient use
10 of the Committee's time.

11 We don't have strong preferences about the
12 briefing schedule as long as the transcript has been made
13 available in advance. I have worked in other forums where
14 the Committee has provided specific indication of topics
15 that they're interested in, and I think that that's a
16 useful exercise. So we're fine with the schedule that the
17 Committee has proposed, and we would encourage you to
18 identify specific topics that you're particularly
19 interested in so that we can address them.

20 HEARING OFFICER CELLI: And in a perfect hearing,
21 there may not be any. And I don't know yet. We'll have
22 to see.

23 Ms. Koss, let's hear from you please.

24 MS. KOSS: Thank you.

25 CURE also agrees that oral argument -- or,

1 sorry -- a closing statement is not useful during cramped
2 hearing times.

3 We're concerned about having only seven days
4 after the transcript is released. There are numerous
5 legal issues to brief. Seven days is an extremely short
6 amount of time. We would request a minimum, absolute
7 minimum of two weeks and one week for reply.

8 HEARING OFFICER CELLI: You know, let me just say
9 that I'm sure -- we are covering a lot of territory,
10 that's for sure, a lot of information, a lot of potential
11 legal issues. But we don't necessarily know what the
12 legal issues are, at least the Committee doesn't yet. But
13 you do, because as a party that is someone who's involved,
14 you pretty much know where you're going already with what
15 your legal issues are. You could actually start writing
16 yours - I say "you," meaning CURE -- CURE, you could
17 probably start writing your brief today right now, knowing
18 exactly where you disagree with the parties and so forth.
19 I understand there's more to come.

20 But you already have a general idea what the
21 disputes are, where you're going, what the legal issues
22 are going to be. And we don't. We, the Committee, don't.

23 But that's why those seven days are really -- and
24 since you're going to be here throughout the hearing,
25 you'll hear all of the things as they come in -- as it

1 happens. So three days later you're just going to get the
2 physical manifestation of that in the form of a
3 transcript. But you will know what was said, what the
4 points were that you made on cross, for instance, that you
5 need to bolster or whatever.

6 So I'm not -- it isn't quite like, you know,
7 you're getting it tied to La Raza the minute you get your
8 transcript. You already know. These are the legal
9 issues, and everybody's aware of that.

10 I'm sorry to cramp everybody into this seven-day
11 thing. But what we're trying to accomplish is to -- this
12 was one of the -- you know, the ARRA accelerated cases
13 that we -- that -- and I believe you were there at the
14 informational hearing. No, you were not, because you were
15 out on maternity leave, I think.

16 But we made clear early on that we really have to
17 move with alacrity on this case. And so if it's any
18 solace to you, everybody is prejudiced equally with the
19 seven-day time frame.

20 Go ahead.

21 MS. KOSS: I appreciate that.

22 Would the Committee be open to -- since it seems
23 like we're going to be having two briefs, is that because
24 of --

25 HEARING OFFICER CELLI: Opening and rebuttal.

1 But you know what, let's just say that one of the parties
2 doesn't file an opening brief. There's nothing
3 necessarily to rebut.

4 MS. KOSS: Sorry, I'm not being clear.

5 Because we're having a second hearing --

6 HEARING OFFICER CELLI: Oh.

7 MS. KOSS: -- we will have two sets of briefs?

8 HEARING OFFICER CELLI: Correct.

9 MS. KOSS: Would the Committee just be open to
10 having one set of briefings?

11 HEARING OFFICER CELLI: No, and I'll tell you
12 why. Because after the first hearing would close -- when
13 we close the record on bio, we close the record on
14 whatever we can close the record on, soil and water, et
15 cetera. Then we're writing that decision. And I can't be
16 waiting around for briefs to come trickling in a month
17 later. So that's kind of -- I need that time. So I
18 really -- I need to separate them out, keep them
19 separated, the two hearings.

20 So, yeah, I mean in a perfect world it would --
21 under normal circumstance, we could do that. But this
22 being an accelerated case, I kind of have to use the time
23 the best I can.

24 So that is -- that's the way we intend to
25 proceed.

1 That means for you, Mr. Boyd -- Mike Boyd, that
2 your brief, if you intend to file any briefs, would be due
3 seven days after the transcript on the second or
4 subsequent hearing after the ones that we have on the 13th
5 and the 12th.

6 Mr. --

7 MR. BOYD: Can I ask a question?

8 HEARING OFFICER CELLI: Yes.

9 MR. BOYD: Are you saying that I can't brief on
10 the -- do a brief on the 12th and 13th hearings?

11 HEARING OFFICER CELLI: Say again. You broke up
12 a little bit.

13 MR. BOYD: I can't do a brief on the first set of
14 hearings?

15 HEARING OFFICER CELLI: Well, if you choose to do
16 a brief, I suppose you can. It would -- it could be
17 tantamount to public comment essentially. But you could.
18 You're welcome to.

19 MR. BOYD: Well, I'm just saying I did raise my
20 issues in my prehearing conference, saying that would be
21 what I would focus on.

22 HEARING OFFICER CELLI: Okay, good. And that's
23 why I was saying that really for your purposes, the main
24 brief that you're interested in, which is cultural, would
25 be at that subsequent hearing, which we still haven't

1 figured out when that's going to be yet.

2 MR. BOYD: Okay. And that subsequent hearing I
3 thought was cultural and socioeconomics. That's true?

4 HEARING OFFICER CELLI: Yes.

5 MR. BOYD: Okay. Thank you.

6 HEARING OFFICER CELLI: Mr. Budlong, did you
7 understand our discussion, and do you have -- you or Mr.
8 Silver have any questions with regard to the briefing
9 schedule?

10 MR. BUDLONG: No, we do not, other than to note
11 that -- no, we do not.

12 HEARING OFFICER CELLI: Okay. Thank you very
13 much.

14 I note, by the way, that I skipped over a
15 discussion of exhibit list. Everyone has an exhibit list.
16 If you have any changes to the exhibit list, please make
17 your changes and send them to me by way of eMail. And I
18 will update the exhibit list for the evidentiary hearing
19 and pass them out at that time.

20 Let's get back to this discussion of when we're
21 going to have this subsequent hearing on cultural and
22 socio. The dates again were the 21st 23rd, 29th.

23 Would it make sense -- it's a quarter to noon
24 right now. And this is our last topic before we get to
25 the public comment. Do the parties need to take a break

1 and make phone calls to their witnesses, or can we just
2 proceed right now?

3 MR. GALATI: The applicant doesn't need to take a
4 break. We communicated electronically, and our witnesses
5 are available on the 21st and would prefer the 21st.

6 HEARING OFFICER CELLI: Okay. Let me get this
7 down. So 21, 23 or 29. Applicant prefers the 21st.

8 Staff.

9 STAFF COUNSEL HOLMES: Staff has also
10 communicated electronically with its witnesses. And the
11 best time for the staff witnesses are the afternoon of the
12 29th.

13 HEARING OFFICER CELLI: Staff -- okay.

14 CURE.

15 MS. KOSS: I do need a break to call my
16 witnesses.

17 HEARING OFFICER CELLI: All right. Well, if you
18 could just -- do you have your BlackBerry or whatever?

19 MS. KOSS: I don't have a BlackBerry. I have an
20 old-fashioned cell phone.

21 (Laughter.)

22 HEARING OFFICER CELLI: Go ahead, and please
23 let's just do that now.

24 I'm going to ask Mr. Budlong and Mr. Silver if
25 that subsequent date -- the 21st, 23rd, or 29th, which is

1 your preference?

2 MR. BUDLONG: This is Tom Budlong. Since I'm
3 going to be out of town, I don't know if I can --

4 HEARING OFFICER CELLI: I'm sorry. You need to
5 speak louder into your phone please.

6 MR. BUDLONG: I have no preference. I'll be out
7 of the country for most of those dates.

8 HEARING OFFICER CELLI: What about Mr. Silver.

9 Larry Silver, are you on the phone still?

10 Okay. Well, until he comes back.

11 Mr. Boyd.

12 MR. BOYD: This is Mr. Boyd.

13 As I indicated earlier, I would prefer the 29th.

14 But I also wanted to ask about an opportunity to
15 file supplemental testimony on culture.

16 HEARING OFFICER CELLI: I think it's fair that
17 supplemental testimony be filed seven days after staff's
18 supplemental testimony is filed today. I believe it's
19 going to be filed today. That gives you one week, Mr.
20 Boyd.

21 You would also -- you and I have had our
22 conversation on the phone about you having a video or a
23 photograph.

24 MR. BUDLONG: Yes, sir. And I have the expert on
25 the phone.

1 HEARING OFFICER CELLI: Okay. You're going to
2 need to serve everybody with that. And when you put it
3 into evidence, you'll have to of course lay the foundation
4 and authenticate it. And I'm going to remind you that we
5 have a public advisor. She's sitting here today, Jennifer
6 Jennings, who's there to help you through that.

7 So --

8 MR. BUDLONG: I'd be happy to work with her. And
9 we appreciate that.

10 And I thank you for the opportunity to provide
11 this information.

12 HEARING OFFICER CELLI: That's fine. But we're
13 going to give you a week to get that information in.

14 DR. BAGWELL: This is Dr. Bagwell. If I could
15 have a --

16 HEARING OFFICER CELLI: Who got through --

17 STAFF COUNSEL HOLMES: This is our witness. So
18 if I have misspoken about her availability on the 29th,
19 then I think perhaps we should hear from her. My
20 understanding --

21 HEARING OFFICER CELLI: Ms. Bagwell, go ahead.

22 DR. BAGWELL: Hi. Actually I am not available on
23 the 29th. I am available on the 21st and 23rd.

24 HEARING OFFICER CELLI: Given that, staff, of
25 those two days -- thank you for speaking up, Dr. Bagwell.

1 MR. GALATI: While staff confers, can I address
2 the issue of this rebuttal testimony or this testimony
3 that's coming out with rebuttal? I just want to point out
4 to the Commission that staff did release its cultural
5 resources testimony in time for all the other parties to
6 have filed cultural testimony.

7 So are you just extending cultural testimony or
8 all testimony together, whatever is in this supplement
9 or --

10 HEARING OFFICER CELLI: Actually what we're going
11 to do is we're going to extend to Mr. Boyd, who's not a
12 lawyer, an opportunity to get his evidence in or get --
13 we're going to give him one week. He now has maybe
14 acquaintance of our public advisor, who will be able to
15 guide him through and help him get this information in.

16 His only issue is cultural. That's all that is
17 going -- that CARE is going to put any evidence in on.

18 The other parties though, which would be, you
19 know, CBD, Budlong, CURE, may have seven days from the
20 date of the publication of this new testimony that's
21 coming out hopefully today or tomorrow to put in any
22 rebuttal evidence that they need to. And this way
23 everybody's accommodated before the hearing.

24 MR. GALATI: And that would include the
25 applicant?

1 HEARING OFFICER CELLI: Yes, of course, all
2 parties.

3 Ms. Koss, anything you can -- any light you shed
4 on the 21st, 23rd, or 29th?

5 MS. KOSS: Our expert is available any of those
6 days.

7 HEARING OFFICER CELLI: Excellent.

8 So then we're down to staff, who's got the
9 problem with Dr. Bagwell.

10 STAFF COUNSEL HOLMES: The second best day
11 appears to be the 21st.

12 HEARING OFFICER CELLI: The 21st.

13 So it looks like across the board the 21st is the
14 date. And I'm really, really grateful to all of you for
15 being so accommodating at this sort of last minute thing.
16 I will issue a notice and get a proper notice out today.

17 STAFF COUNSEL HOLMES: Mr. Hearing Officer, will
18 the notice include -- I guess staff is recommending that
19 the notice include air and TSE and on the off chance that
20 we do need to continue those items as well after the
21 hearings that are currently scheduled.

22 HEARING OFFICER CELLI: The notice that we put
23 out today?

24 STAFF COUNSEL HOLMES: You're planning to put out
25 a notice for a hearing on the 21st having to do with --

1 HEARING OFFICER CELLI: You know, these are
2 called rifle microphones. It means you have to talk right
3 down the rifle, right into it. And then we will get the
4 maximum sound from you.

5 Thank you.

6 STAFF COUNSEL HOLMES: You're planning to issue a
7 notice for a hearing on the 21st for cultural resources
8 and socio. I'm suggesting that they also include air
9 quality and TSE in the event that at the next -- at the
10 hearings that are scheduled for the 12th and 13th it turns
11 out that subsequent hearings are needed, so that there's
12 no noticing issue.

13 HEARING OFFICER CELLI: Right. What I -- I will
14 do that. But I want to be clear that the way that we
15 voiced the order was upon motion of the parties, showing
16 good cause for the need. Because my expectation is that
17 we're going to have it done the 12th and 13th.

18 STAFF COUNSEL HOLMES: That's staff's hope as
19 well. But I don't want it to turn into a noticing issue
20 should additional hearings be necessary.

21 HEARING OFFICER CELLI: Certainly. That's a good
22 point. Thanks for bringing that up.

23 So it will be the 21st. And thank you all for
24 that.

25 MS. BELENKY: I just had one question.

1 HEARING OFFICER CELLI: Go ahead.

2 Lisa Belenky.

3 MS. BELENKY: Yes, I tried doing a little
4 handwringing on the -- so I don't go too far.

5 HEARING OFFICER CELLI: Well, let me find it. I
6 see that Dr. Bagwell raised her hand.

7 MS. BELENKY: Very good.

8 HEARING OFFICER CELLI: Well, you know, it isn't
9 perfect. But go ahead.

10 MS. BELENKY: I know. I'm so sorry. I just
11 wanted to check. Now I understand there's the second
12 hearing will be on the 21st.

13 HEARING OFFICER CELLI: Correct.

14 MS. BELENKY: So at least for that whole day most
15 parties will be engaged in that hearing.

16 So I am wondering on the briefing on the first
17 part, if it wouldn't make more sense to at least give a
18 one extra day to account for that loss of one whole day
19 out of the seven days for the opening briefs.

20 HEARING OFFICER CELLI: I'm not clear how we lose
21 a day. See, here's how I calculated it, Ms. Belenky. I'm
22 basically saying --

23 MS. BELENKY: It's because they're in a hearing
24 all day.

25 STAFF COUNSEL HOLMES: We can't be writing while

1 we're at hearing.

2 HEARING OFFICER CELLI: Oh, I got you.

3 Well, that's true. But you can't be writing
4 without a transcript. And so I was calculating seven days
5 from the date the transcript is published.

6 MS. BELENKY: But you said it would come out
7 three days after our hearing, which is 7 -- you thought
8 7/16, and then that would make the opening briefs due
9 7/23. And in the intervening time there is a whole day,
10 7/21, that will be --

11 HEARING OFFICER CELLI: Oh, I see what you're
12 saying. Well, that's fair. I think that is fair.

13 And the other point I should make is that there's
14 no guaranty we're going to get a transcript off in three
15 days. I think that's plus or minus three days.

16 So -- you know, our court reporter is indicating
17 that it will be three days. And if it will get done in
18 three days, that's fabulous. That's a real improvement
19 over the old system.

20 So, I think, okay, eight days is not an
21 unreasonable request, eight days after the issuance of the
22 transcript.

23 So we will make the order reflect that.

24 Now, thank you all for your cooperation in that.
25 Looking forward to having efficient hearings.

1 I'm really looking forward to all of you taking
2 advantage of this workshop that's going to -- that occurs
3 subsequently.

4 We are now in the public comment section.

5 STAFF COUNSEL HOLMES: Hearing Officer Celli?

6 HEARING OFFICER CELLI: Yes.

7 STAFF COUNSEL HOLMES: I have something to
8 address before we move to public comment.

9 HEARING OFFICER CELLI: Okay. Staff.

10 STAFF COUNSEL HOLMES: In the applicant's
11 prehearing conference statement, the applicant made a
12 comment that they plan to use a Government Code provision
13 to subpoena a CURE witness. And --

14 HEARING OFFICER CELLI: Thanks for raising that
15 issue.

16 STAFF COUNSEL HOLMES: And they said that the
17 purpose of this was so -- it wasn't information that was
18 relevant to the proceedings in order to provide Genesis
19 and staff evidence necessary to prove laches, unclean
20 hands, bias, and credibility.

21 Staff was somewhat dismayed to see our name used
22 in support of this motion. We want the Committee and the
23 parties to understand that nobody contacted us, nobody
24 asked us for our permission to use that. And in fact
25 staff does not support the applicant's apparent claim that

1 some mishmash of equitable doctrines has relevance to this
2 particular proceeding.

3 We note that although we don't agree with CURE on
4 many items and we also don't agree with the way they have
5 characterized some issues in this proceeding, we have
6 nonetheless seen any dilatory or otherwise unprofessional
7 conduct on their part.

8 There is a wealth of timely filed information
9 sponsored by credible experts, as we've been hearing about
10 today, that is going to take us a considerable period of
11 time to work our way through at the hearings that are
12 already scheduled. We don't recommend that anything else
13 be added to that.

14 Finally, I would urge the Committee to explicitly
15 state that these Government Code provisions are not
16 applicable in this case. The applicant has failed to note
17 that these provisions are discretionary, and it's the
18 agency that decides, not the counsel that decides. There
19 is a commission process that has worked very well that
20 involves issuance of a subpoena from a presiding officer.
21 We do not recommend that that be expanded to the
22 discretionary Government Code provisions. We think
23 there's considerable mischief that could result if in, for
24 example, large proceedings with many parties represented
25 by counsel, counsel were issuing subpoenas.

1 We recommend that the Committee affirmatively
2 rule that the process that's identified in the
3 Commission's regulations will be followed in this case as
4 well.

5 HEARING OFFICER CELLI: Applicant, we'll give you
6 one minute please.

7 MR. GALATI: I'll start with "wow," and then I'll
8 go to: If I wrote that in a way that made it sound like I
9 believe staff supported that, I apologize. That wasn't my
10 intent. My intent was that we think staff is important to
11 hear this evidence as well. Because often what happens in
12 an evidentiary hearing when you hear contrary evidence,
13 the Committee often asks, "Hey, staff, do you agree with
14 that?" So that was the purpose of that. It was not to in
15 any way, shape, or form, and I believe that it shouldn't
16 be read that way, as to say that staff joins in this
17 motion.

18 Second of all, I think that those are relevant
19 issues. And until the Committee hears the evidence that
20 we have to participate in, then they can make a decision
21 whether or not any of those doctrines apply.

22 Second of all, we also, and we provided support
23 there, where we do not believe that it is discretionary.
24 And that way we believe that the Commission has in fact
25 invoked the power -- subpoena power and has done so in its

1 regulations. But that is not the only -- and in fact the
2 APAs to be read to supplant this Commission. So if
3 they -- if the commissioner's don't agree with that, we're
4 going to continue to issue our notice to CURE. And if
5 CURE does not produce a witness, then we'll move for a
6 remedy at that time. And the Committee can decide that.

7 HEARING OFFICER CELLI: Well, the Committee did
8 discuss this already. And maybe we can save you some time
9 and trouble. The Committee finds it's irrelevant and
10 suggests that you not bother, because it -- unless some
11 principal from CURE can come in and testify about biology,
12 sociology, cultural, or something that we care about,
13 which I don't think has anything to do with the things
14 that were to form the basis of the motion, it would be
15 irrelevant.

16 And so that's the position of the Committee.
17 That would be the ruling. And so the motion would be
18 denied.

19 MS. KOSS: Mr. Celli, may I make just a couple of
20 comments? I know --

21 HEARING OFFICER CELLI: Go ahead.

22 MS. KOSS: -- the Committee has ruled and I --

23 HEARING OFFICER CELLI: I really don't want to
24 spend a lot of time on this. But go ahead.

25 MS. KOSS: And I thank you, Ms. Holmes, for

1 bringing this issue up and supporting CURE.

2 I just want -- for the record I want it to be
3 clear that the Energy Commission has a long history of
4 allowing intervenors participation in its proceedings.
5 Certainly Mr. Galati is aware of that. CURE has been an
6 active participant in CEC proceedings for decades, and has
7 actually been publicly praised by the Commission for its
8 outstanding contributions to these proceedings.

9 Mr. Galati's attempt is -- or Mr. Galati's notice
10 is a gross attempt at intimidation and harassment.
11 Obviously the Committee is not entertaining it. We thank
12 you.

13 Also, we'd just like to support the Committee's
14 ruling that it's irrelevant. Evidentiary hearings are
15 used to identify impacts, to assess the feasibility of
16 mitigation, for adverse impacts, and to determine
17 consistency with LORS.

18 CURE's principals are not sponsoring any
19 testimony in the proceeding. They're not experts in any
20 resource area that's being adjudicated. And pursuant to
21 the Committee order for the hearing, witnesses must have
22 professional expertise in the discipline to which they
23 testify. And no CURE principal does.

24 Thank you.

25 HEARING OFFICER CELLI: Thank you for all your

1 comments.

2 At this time if there's nothing further from the
3 parties, I wanted to get to public comment.

4 The applicant has one more point.

5 MR. GALATI: A housekeeping matter.

6 HEARING OFFICER CELLI: Yes.

7 MR. GALATI: On our prehearing conference
8 statement, we have -- I failed to list a visual witness
9 that was a rebuttal witness individual. So we have an
10 additional name that the parties are aware of, Dr.
11 Paulson, who will testify in visual as the panel. But I
12 failed to put that on our official list.

13 HEARING OFFICER CELLI: That's fine.

14 And I would like -- if the parties would please
15 take a look at the exhibit list, add anything, like
16 rebuttal testimony has come in, in sequence. And please
17 get it to me before the evidentiary hearing so I can have
18 an updated evidentiary -- have the exhibit list at the
19 evidentiary hearing.

20 Anything else, Mr. Galati?

21 MR. GALATI: Yes, I have one other housekeeping
22 matter. It's traditionally done that we bring our
23 witness -- excuse me -- copies of all of our exhibits to
24 the parties at the prehearing conference statement.

25 Since CARE and Mr. Budlong and CBD did not attend

1 in person, I have the diskettes and I will pop them in the
2 mail to them. I would appreciate them to send me the same
3 thing. Staff was kind enough to give me a copy of all
4 their exhibits today. And I would like -- I think CURE
5 has copies of exhibits for me. And so I would like the
6 parties to be instructed by the Committee to get
7 exhibits -- a CD with copies of all their exhibits to us
8 by this Friday.

9 HEARING OFFICER CELLI: First of all, did you
10 hear that?

11 Lisa Belenky.

12 MS. BELENKY: Yes, I did. In fact, we had
13 already sent all of the parties copies of all of our
14 exhibits. But apparently at least at the Energy
15 Commission many of them were lost. I'm not sure why. I
16 guess people said that different -- you know, the docket
17 takes one thing and then things may get shuffled around
18 and lost. But --

19 HEARING OFFICER CELLI: But we're talking about a
20 CD or a DVD.

21 MS. BELENKY: Yes, we posted multiple copies to
22 the Commission and we also already sent copies to all of
23 the other parties.

24 HEARING OFFICER CELLI: Thank you. Mr. --

25 STAFF COUNSEL HOLMES: Excuse me. I think what's

1 happened is that some of the parties are filing 12 copies
2 with dockets and then not serving the individuals that are
3 on the service list with hard copies or CDs, whichever
4 they've requested. I've run into this problem a number of
5 times in the last week.

6 So I would reiterate the request that in addition
7 to filing copies with dockets, for those members of staff,
8 including myself, who are on the proof of service list, I
9 would like an electronic copy and a hard copy. And I
10 presume other people have indicated likewise. There just
11 seems to be a problem with people on the proof of service
12 list getting copies.

13 HEARING OFFICER CELLI: Thank you.

14 I'm going to ask Mr. Boyd.

15 MR. BOYD: Can I send that out when I send out
16 that DVD with the video too?

17 HEARING OFFICER CELLI: Yes. And I'm going to
18 ask -- that's something that Ms. Jennings would be able to
19 help you with. So speak with her about that.

20 And then any question about that, Mr. Budlong or
21 Mr. Silver?

22 MR. BUDLONG: Yeah, I think I sent out paper
23 copies. I'm not so sure I included the CD with it. So I
24 think what you're requesting is I send a CD of the
25 exhibits to everybody on the list.

1 HEARING OFFICER CELLI: That is correct.

2 MR. GALATI: And just to be clear. Mr. Budlong,
3 if my office received the hard copy, I don't need a CD. I
4 was unaware that -- and it's possible that in the last
5 week or so, I haven't seen all the documents that have
6 come in. I just wanted to make sure that everyone -- you
7 know, I would give that to them. If you haven't given me
8 your exhibits either in a hard copy or a CD sent to my
9 office, I'd appreciate you do so by Friday. If you have,
10 you can ignore the request.

11 MR. BUDLONG: All right.

12 HEARING OFFICER CELLI: So thank you all very
13 much. It's --

14 MS. BELENKY: I'm sorry. I just need a
15 clarification on that.

16 On the list, the Proof of Service list, there is
17 no address for any of the staff. So is there a particular
18 address you would like to be sent to --

19 STAFF COUNSEL MAYER: Can I update you again?

20 We have received the CD and appreciate it. And
21 CBD's exhibits are also now on line. The reason -- the
22 dockets were simply overwhelmed with all the hearings that
23 are happening. So we do have it.

24 MS. BELENKY: We're trying to do everything we
25 can.

1 HEARING OFFICER CELLI: And we appreciate that.

2 So it sounds like that, at least as to CBD, is taken care
3 of. So --

4 STAFF COUNSEL MAYER: Also, staff will be sending
5 their CDs to the parties that are not present in the mail
6 tomorrow.

7 HEARING OFFICER CELLI: And of course don't
8 forget the hearing advisor on all of your mailings of CDs.
9 I have several already. But I want to make sure that I
10 get a CD copy from everyone.

11 MS. KOSS: Mr. Celli, may I just --

12 HEARING OFFICER CELLI: Please.

13 Ms. Koss.

14 MS. KOSS: CURE overnighted hard copies and CDs
15 to the Committee, to Hearing Officer Celli, to staff, to
16 the applicant on the 24th.

17 HEARING OFFICER CELLI: I received them.

18 MS. KOSS: You know, if any party has not
19 received it, please let me know. We also sent CDs to
20 everybody on the service list. So if you have not
21 received it, please do let me know.

22 HEARING OFFICER CELLI: Thank you.

23 With that, then I think we've covered all of the
24 things we need to cover for our prehearing conference,
25 except public comment.

1 Ms. Jennings, did you wish to inform us as to who
2 wants to comment here today.

3 PUBLIC ADVISER JENNINGS: I don't have anyone
4 present here in the room commenting. But I do want to
5 make a comment on the workshop schedule for this
6 afternoon.

7 HEARING OFFICER CELLI: Thank you.

8 PUBLIC ADVISER JENNINGS: The workshop was a
9 surprise to me. And I try to keep up on what's going on.
10 I think it was a surprise to Ms. Belenky also. And since
11 bio is being discussed this afternoon, and she's unable to
12 attend, I request that the Commission provide some kind of
13 recording device or even a court reporter to transcribe
14 the discussion this afternoon.

15 HEARING OFFICER CELLI: Well, this isn't a
16 workshop. I mean it's not a hearing. It's a workshop.
17 And we don't usually provide transcripts at workshops.

18 PUBLIC ADVISER JENNINGS: Well, I understand
19 that. But usually there is some notice of the workshop.
20 And this is one in which Mr. Galati has said on several
21 occasions that he hopes staff and the applicant can get
22 things resolved.

23 HEARING OFFICER CELLI: You know, I appreciate
24 that. And it probably would have made sense.

25 What we have -- Mr. Monasmith was able to provide

1 was a telephone call-in, so people can call in. And if
2 Ms. Belenky can call in or perhaps someone on her staff --

3 PUBLIC ADVISER JENNINGS: But she's indicated
4 that --

5 MS. BELENKY: Well, let me just -- while we've
6 been talking I have rearranged my afternoon and I should
7 be able to be there for part of the time.

8 HEARING OFFICER CELLI: Great. So that takes
9 care of that. That moots the problem.

10 So thank you, Ms. Belenky, I do appreciate your
11 flexibility. It really -- I'm pretty much committed to
12 the fact that any time the parties can get together and
13 confer, the subsequent hearings will be more efficient
14 because of it.

15 So thanks for your participation in that. Thanks
16 for your -- you've really done a good job of bending over
17 backwards to accommodate the parties. So thank you.

18 PUBLIC ADVISER JENNINGS: One last --

19 HEARING OFFICER CELLI: What time, Mr. Monasmith,
20 is that going to start, assuming we get public comment in
21 within the next hour?

22 PROJECT MANAGER MONASMITH: One o'clock, Hearing
23 Officer Celli, is when it's scheduled to begin. And if
24 there's any questions on access, again you gave the phone
25 number. Folks can call me directly or eMail me. I have

1 an evidentiary hearing for another proceeding, so I will
2 not be there personally. But obviously lots of staff will
3 be.

4 I also want to say that we've done a -- we've
5 worked very hard to make sure that all intervenor
6 prehearing conference statements, exhibit lists, and
7 motions are all posted on line. And we've been working
8 closely with the web works team. Everything that has come
9 into our office that's been served on staff is on line.
10 And if any of the intervenors don't see anything that
11 they've filed on line so that anyone in the public, anyone
12 in the world would like to review it, they can contact me
13 and we'll make sure we work with them in that regard.

14 HEARING OFFICER CELLI: Thank you, Mr. Monasmith.

15 And I'm going to read that number again just to
16 be clear. The telephone number for today's workshop at 1
17 o'clock is 888-790-1918. 888-790-1918. And the pass code
18 is 52510. Again, the pass code is 52510.

19 With that, so Ms. Jennings.

20 PUBLIC ADVISER JENNINGS: I just have one other
21 comment on the July 21st hearing. I would hope that you'd
22 also set in your notice a public comment time for that day
23 also when you're talking about the cultural resources.

24 HEARING OFFICER CELLI: Yeah. We'll see if we
25 can. Sometimes that's difficult. For instance today, you

1 know, I'm having public comment at noon. I thought we'd
2 probably be done much sooner than this. And it's hard to
3 estimate.

4 I do expect to have public comment for the 12th
5 and the 13th at -- well, at least for the 12th at 6
6 o'clock at night or something like that when people get
7 home, they can call in.

8 PUBLIC ADVISER JENNINGS: Right. But as you
9 heard on the phone already, there are people that will be
10 participating remotely probably who are interested in may
11 need a specific time rather than sitting through the
12 entire day.

13 HEARING OFFICER CELLI: Yeah. And
14 throughout -- we try to say, okay, it looks like public
15 hearing will be -- you know, public comment will be at
16 such and such a time.

17 So we'll see what we can do. And we will do our
18 best to keep the public informed on when they can make
19 their public comments.

20 So thank you for your question.

21 PUBLIC ADVISER JENNINGS: Thank you.

22 We're off the record for a moment.

23 (Thereupon a discussion occurred off the record.)

24 HEARING OFFICER CELLI: Just to be clear, on the
25 21st, I'm not sure, but that is a Wednesday, might be a

1 business meeting. We're not sure. So we may have to
2 start later than 10 in the morning. We'll be in a
3 different room. So we'll get -- I'll handle all of the
4 logistics of that.

5 At this time, having now heard from all of the
6 parties, I'm going to open it up for public comment.
7 There's nobody here in the audience at present who is a
8 member of the public who wanted to make a public comment.

9 So I'm now going to the phones. I had Mr. Robert
10 Lundahl. Are you still there, Mr. Lundahl?

11 MR. LUNDAHL: I am here. Thank you very much.

12 HEARING OFFICER CELLI: Please, you have the
13 floor. Go ahead.

14 MR. LUNDAHL: Thank you.

15 For the purpose of introduction, I am a
16 professional filmmaker. My work focuses on indigenous
17 issues, primarily in the United States and Canada. I have
18 worked at the Smithsonian Institute, and also in major
19 universities, including Yale, Harvard, Dartmouth, the
20 University of Washington, others.

21 And I am currently in Blythe, California, working
22 on a film entitled "Solar Gold" on the development of
23 large solar concentrators. And I'm pleased to provide
24 comment here today to the CEC regarding the facts on the
25 ground that I've observed regarding site protection on air

1 and encompassing the NextEra Genesis Solar Project
2 proposed for siting at Ford Dry Lake in the Lower Colorado
3 Basin.

4 The area encompassing the Ford Dry Lake site is
5 bounded by several distinct area features native to the
6 indigenous people to the Colorado River.

7 In filming the documentary, I toured the proposed
8 Genesis site with engineers from NextEra and Tetra Tech
9 and representatives of the Sierra Club La Cuna de Aztlan
10 Sacred Sites Protection Circle in January of this year.

11 Yesterday I flew over the desert outside of
12 Blythe, California, in a small plane, and then returned
13 today to take ground readings, GPS readings, outside the
14 features. And the experience has provided me with an
15 overview of the area and of the issues as far as
16 difference.

17 The Desert Intaglios, which are large figures are
18 present in the area in great concentration. I've seen
19 figures including steps, what we call windrows, which are
20 geometric forms along raised forms on the desert floor;
21 circles, anthropographic forms and others; often
22 correlating to petroglyph images that are present in the
23 general area as well.

24 These glyphs uniquely align with features and
25 images seen in the mountains, around the valleys, with

1 mountain passes that are critical to trails transversing
2 from one valley to the next, trails and springs over the
3 entire region. The scale is enormous. The geoglyph
4 figure known as the Compass, which is at 33 degrees, 37
5 minutes, 43 north, 114 degrees, 45 minutes, and west
6 points to magnetic north. And to what oral history has
7 described as Nipwan or otherwise known as the Topock Maze
8 near Topock, Arizona, where according again to oral
9 history the spirits do pose.

10 Extending south this line projects to a feature
11 known as The Chair or the Throne of Quetzalcoatl at the --
12 which is at a GPS location --

13 HEARING OFFICER CELLI: Mr. Lundahl, you may not
14 want to give us all that information. That's generally
15 confidential, what the location for the protection of
16 cultural resources. So if you could just give us a
17 description without telling us where it is.

18 MR. LUNDAHL: The pipeline from The Chair --

19 HEARING OFFICER CELLI: Also, yeah, if you could
20 just focus on the Genesis site, we'd appreciate it.

21 MR. LUNDAHL: Yeah, I understand. Well, I think
22 this might be relevant, and I'll show you in a moment.

23 The site line from The Chair extends Corn Springs
24 to the west and aligned with the sun's position as to
25 equinox. The sunrise chair in McCoy Springs and roughly

1 transverse to the Ford Dry Lake site.

2 Oral history of the geoglyph in the area is the
3 footprints created on the land. Image of the large
4 footprint essentially is in the same location as the
5 Compass.

6 There are other alignments of features on the
7 ground that correspond with mountains and so forth. And
8 all of these are described in the Florentine Codex that
9 were recorded by the Spanish in Mexico between 1540 and
10 1585 and related to the Aztec culture. And it was used by
11 the Aztec people primarily. Although other tribes and
12 tribal groups have adopted the traditions.

13 Trails linking McCoy springs and thousands of
14 petroglyphs at that location with Corn springs, which are
15 referred -- which are referred to in various documents and
16 the site's used and inhabited by indigenous people, also
17 transversed before it violate the site.

18 Major trails from Blythe Intaglios to the east
19 linked on the site with trails to the north and to McCoy
20 springs, and to McCoy springs petroglyph site.

21 Figures visible in the mountains featured at
22 various times of the day would surround Ford Dry Lake
23 correspond to the Aztec calendar.

24 The Aztec calendar records 104,000 years of
25 recording during history through pictures and glyphs,

1 which are available describing the creation.

2 The people of the Colorado River in Arizona and
3 Utah refer to the events, images, and timekeeping of the
4 Aztec calendar.

5 Researchers indicate the Aztec people migrated in
6 Mexico City from the northwest, destroyed the site that's
7 in the top -- World history features with petroglyph
8 indicator relationships between the McCoy-Palen Cultural
9 Complex as a whole, including the Ford Dry Lake area and
10 the Aztec center in Mexico.

11 In conclusion, for the -- the comment is the
12 indications are the Palen-McCoy area is a major cultural
13 complex that can be traced to the origins of the Aztec
14 people; images related to the creation of human beings,
15 their orientations and outcome. Thousands of years before
16 Galileo came, the Aztec people applied principles of
17 movement and evidence that are finally in support of the
18 information typical to findings of geoglyphs and
19 petroglyphs. It's a system archaeoastronomy predating
20 Galileo and corresponding with his principles through and
21 Aztec understanding.

22 The Ford Dry Lake site lies smack in the middle
23 of this cultural complex. For that reason the potential
24 for industrial construction and large solar concentrators
25 should not be located there or anywhere along the I-10

1 corridor in Riverside County, California.

2 The region would better clarify the designation
3 as a cultural heritage site or by other means providing
4 suitable recognition and protection for all people around
5 the world to learn and enjoy the creation for a physically
6 cultural area.

7 HEARING OFFICER CELLI: Thank you, Mr. Lundahl.
8 I appreciate your comments.

9 I just want to say that whoever else wants to
10 make a comment, that we are taking everything you're
11 saying down in a transcript. It's being transcribed by a
12 court reporter who's here today. So I'm just going to
13 make sure and ask that everybody speak very clearly into
14 your phones so that he can hear you.

15 So thank you, Mr. Lundahl.

16 Anyone else?

17 Let's see, I have Tom Budlong. I have Lisa
18 Belenky, Robert Lundahl.

19 Kate Kelly, did you wish to make a comment?

20 No comment. Okay.

21 Mr. Hoffman left.

22 Duane McCloud is an expert for the applicant,
23 isn't that correct?

24 So he doesn't want to make a comment.

25 Dr. Elizabeth Bagwell is staff's expert.

1 Dale, did you wish to make a comment?

2 MR. DALE: No, thank you.

3 HEARING OFFICER CELLO: Thank you.

4 John Thornton, did you wish to make a comment?

5 Are you still there?

6 MR. THORNTON: Yes. Not at this time, thank you.

7 HEARING OFFICER CELLO: Thank you.

8 Other than that -- and I have Mike Boyd on -- I
9 have -- it appears that I have 1, 2, 3, 4, 5 -- five
10 people listening in that aren't identified. If you wish
11 to make a public comment, please say so.

12 Is there anyone on the telephone who would like
13 to make a public comment at this time?

14 No one speaking up?

15 Somebody calling you to number 10 just made some
16 noise.

17 MR. KLEIN: This is George Klein with BLM. I
18 just wanted to let you know I'm in here.

19 HEARING OFFICER CELLO: Oh, thank you. You
20 happen to be calling user number 10.

21 So did you wish to make a comment?

22 MR. KLEIN: No. I just wanted to let you know
23 I'm here.

24 HEARING OFFICER CELLI: Thank you so much.

25 Well, I think we pretty much have everybody.

1 And before I give it back to Commissioner Boyd to
2 adjourn -- we've preserved his voice to the extent that we
3 could today -- the applicant indicated by --

4 MR. GALATI: Took me off to do my math.

5 So I wanted to make sure that the Committee rules
6 today that staff's testimony which will come in, some of
7 which may be used at the hearing on the 12th and 13th, the
8 timeframe is less than 14 days. For a Staff Assessment to
9 be published prior to evidentiary hearing, obviously the
10 presiding member can waive that time. And so I would just
11 like the Committee to actually waive that time so we don't
12 have a procedural problem, that we can go to evidentiary
13 hearing on some of the topics on the 12th and 13th. It's
14 not just cultural that we've already agreed to move out.
15 There might be some other things in the document. And so
16 I just wanted the Committee to rule on that.

17 PRESIDING MEMBER BOYD: Off the record.

18 (Thereupon a discussion occurred off the record.)

19 HEARING OFFICER CELLI: Time is waived.

20 Thank you.

21 That's the ruling of the Committee.

22 MS. KOSS: Hearing Officer Celli?

23 HEARING OFFICER CELLI: Yes, please.

24 MS. KOSS: Is the transcript to be released for
25 this prehearing conference?

1 HEARING OFFICER CELLI: Certainly.

2 MS. KOSS: I know in the past they haven't always
3 been. So I just want to make sure.

4 HEARING OFFICER CELLI: If you don't get one -
5 and this goes for all the parties, Mr. Boyd and Mr.
6 Budlong and Ms. Belenky - if you do not get a transcript
7 in the next three days, which means really -- today's
8 Thursday, Friday, Monday -- I guess by Monday -- if you
9 don't get one by Monday, contact me. Because normally
10 what happens is the transcripts come to the hearing
11 advisor's office, and we would be able to forward it by
12 eMail to you. So if you don't get it by Monday, contact
13 me.

14 MS. KOSS: As long as it's posted on the
15 Genesis --

16 HEARING OFFICER CELLI: Right. It's usually
17 posted on the website.

18 STAFF COUNSEL MAYER: Monday is a holiday. So it
19 will be posted Tuesday.

20 HEARING OFFICER CELLI: Oh, happy 4th of July,
21 everyone. That's correct. I'm sorry. I forgot about
22 that.

23 We're talking Tuesday, July 6th.

24 Okay. Any further public comment out there?

25 Hearing none.

1 Commissioner.

2 MR. BOYD: I have a question. What time does --

3 HEARING OFFICER CELLI: This is Mike, who has a
4 question.

5 Mike, go ahead.

6 MR. BOYD: What time does the workshop start now?
7 In half an hour?

8 HEARING OFFICER CELLI: That's correct. 1
9 o'clock.

10 MR. BOYD: You got it.

11 HEARING OFFICER CELLI: Thank you.

12 Commissioner, go ahead.

13 PRESIDING MEMBER BOYD: I just want to thank
14 everybody for their participation. I look forward to the
15 workshop this afternoon, not personally since I'll be back
16 in this room doing another siting case hearing. But I
17 hope that the applicant, staff, and intervenors can
18 resolve some issues.

19 And other than that, thanks for your time and
20 thanks for preserving some of my voice.

21 And we'll see you in the future.

22 HEARING OFFICER CELLI: Thank you.

23 PRESIDING MEMBER BOYD: Meeting adjourned.

24 (Thereupon the hearing adjourned at 12:26 p.m.)

25

1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Energy Commission hearing was
7 reported in shorthand by me, James F. Peters, a Certified
8 Shorthand Reporter of the State of California;

9 That the said proceedings was taken before me, in
10 shorthand writing, and was thereafter transcribed, under
11 my direction, by computer-assisted transcription.

12 I further certify that I am not of counsel or
13 attorney for any of the parties to said hearing nor in any
14 way interested in the outcome of said hearing.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 24th day of June, 2010.

17

18

19

20

21

22 JAMES F. PETERS, CSR, RPR

23 Certified Shorthand Reporter

24 License Number 10063

25