

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

WEDNESDAY, JULY 21, 2010

10:20 A.M.

JAMES F. PETERS CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

Contract No. 170-09-002

APPEARANCES

COMMITTEE MEMBERS

Jim Boyd, Presiding Member

Robert Weisenmiller, Associate Member

HEARING OFFICERS, ADVISERS

Kenneth Celli, Hearing Officer

Eileen Allen, adviser to Commissioner Robert Weisenmiller

Sarah Michael, adviser to Commissioner Jim Boyd

STAFF

Jared Babula, Staff Counsel

Caryn Holmes, Staff Counsel

Robin Mayer, Staff Counsel

Mike Monasmith, Project Manager

PUBLIC ADVISER

Jennifer Jennings

APPLICANT

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Robert Gladden, Esq.
Galati & Blek

Scott Busa, Project Director
NextEra

INTERVENORS

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Adams, Broadwell, Joseph & Cardozo
representing California Unions for Reliable Energy

APPEARANCES CONTINUED

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

Lisa Belenky, Esq.
Ileene Anderson
Center for Biological Diversity

ALSO PRESENT

Alfredo Figueroa

Juan Gonzalez

Robert Lundahl

Patricia Pinon

Rachael Steller

Robert Vasquez

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1 STAFF COUNSEL HOLMES: Caryn Holmes, Staff
2 Counsel. With me is Robin Mayer, Staff Counsel, Jared
3 Babula, Staff Counsel, and Mike Monasmith the Project
4 Manager.

5 PRESIDING MEMBER BOYD: Are you afraid to travel,
6 you need the large numbers?

7 (Laughter.)

8 STAFF COUNSEL HOLMES: We're trying the divide
9 and concur theory in getting through siting cases.

10 PRESIDING MEMBER BOYD: The applicant, please.

11 MR. GALATI: Scott Galati and Bob Gladden
12 representing NextEra.

13 MR. BUSA: And this is Scott Busa with NextEra.

14 MR. STEIN: Kenny Stein with NextEra.

15 PRESIDING MEMBER BOYD: Welcome everybody. The
16 young lady to my left is my advisor Sarah Michael.
17 Welcome Sarah.

18 MS. MICHAEL: Thank you.

19 PRESIDING MEMBER BOYD: Now, we need to go to our
20 intervenors.

21 For CURE.

22 MS. KOSS: Good morning, Rachael Koss on behalf
23 of California Unions for Reliable Energy.

24 PRESIDING MEMBER BOYD: Good morning, again.

25 For the Center for Biodiversity or Biological

1 Diversity.

2 MS. BELENKY: Lisa Belenky for the Center for
3 Biological Diversity.

4 Good morning.

5 PRESIDING MEMBER BOYD: Well, I know Mr. Boyd is
6 here. Californians for Renewable Energy, CARE.

7 MR. BOYD: Mike Boyd, President, Californians for
8 Renewable Energy, CARE.

9 PRESIDING MEMBER BOYD: And is our Intervenor Tom
10 Budlong.

11 MR. BUDLONG: Yeah, Tom Budlong, Intervenor.

12 PRESIDING MEMBER BOYD: Ah, Mr. Budlong, with the
13 phone that's always so difficult to hear. As always,
14 you're going to have to speak up, as am I.

15 Good morning, Mr. Budlong.

16 Okay, are there any other folks? Are there any
17 State, county or local jurisdiction officials here or on
18 the phone who would like to introduce themselves so the
19 record shows that they are here?

20 MR. EVENSON: Dale Evenson, Deputy Fire Marshal,
21 Riverside County Fire.

22 PRESIDING MEMBER BOYD: Welcome.

23 MR. EVENSON: Thank you.

24 MR. NEUMAN: Jason Neuman, Riverside County Fire.

25 PRESIDING MEMBER BOYD: Welcome. Any other local

1 folks?

2 MR. De SALVIO: Alan De SALVIO and Richard Wales
3 from the Mojave Desert Air Quality Management District.

4 PRESIDING MEMBER BOYD: Good morning.

5 Others, federal agencies as well?

6 MR. WALTERS: William Walters representing the
7 Energy Commission staff for air quality.

8 PRESIDING MEMBER BOYD: Good. I didn't know
9 staff was out there.

10 Okay, any other agencies?

11 Hearing nothing, I'm going to assume we've
12 introduced everybody who's got a speaking role, a
13 participant role, or wants the record to show that their
14 agency was represented here.

15 So I'll turn it over to Mr. Celli now to go on
16 with the procedures protocols for the day and Chair the
17 rest of the meeting.

18 HEARING OFFICER CELLI: Thank you, Commissioner
19 Boyd.

20 First, I just want to say that right now the room
21 is not overly crowded, and I didn't know how many people
22 to expect. But if we start getting overflow, and it gets
23 to be crowded in here, we have the room next door set up
24 on WebEx, so people can go next door and listen in,
25 hopefully we won't find ourselves in that situation.

1 PRESIDING MEMBER BOYD: That doesn't apply to us
2 up here, does it?

3 (Laughter.)

4 HEARING OFFICER CELLI: That's right. There
5 could be a little cot in the room next door.

6 The evidentiary hearing is a formal adjudicatory
7 proceeding to receive evidence into the formal evidentiary
8 record from the parties. Only the parties, the applicant,
9 intervenors, and the Energy Commission staff may present
10 evidence for introduction into the formal evidentiary
11 record, which is the only evidence upon which the
12 Commission may base its decision under the law.

13 Technical rules of evidence are generally
14 followed. However, any relevant non-cumulative evidence
15 may be admitted if it is the sort of evidence upon which
16 responsible persons are accustomed to rely in the conduct
17 of serious affairs.

18 Testimony offered by the parties shall be under
19 oath. Each party has the right to represent -- or rather
20 present and cross-examine witnesses, introduce evidence,
21 exhibits, and rebut evidence of another party.

22 Questions of relevance will be decided by the
23 Committee. Hearsay evidence may be used to supplement or
24 explain other evidence, but shall not be sufficient in
25 itself to support a finding.

1 The Committee will rule on motions and
2 objections. The Committee may take official notice of
3 matters within the Energy Commission's field of competence
4 and of any fact that may be judicially noticed by the
5 California courts. The official record of this proceeding
6 includes sworn testimony of the parties' witnesses, the
7 reporter's transcript of the evidentiary hearing, the
8 exhibits received into evidence, briefs, pleadings,
9 orders, notices, and comments submitted by members of the
10 public.

11 The Committee's decision will be based solely on
12 the record of competent evidence, in order to determine
13 whether the project complies with applicable law.

14 Members of the public who are not parties are
15 welcome and invited to observe the proceedings. There
16 will also be an opportunity for the public to provide
17 comment today at noon, and before we close this hearing.
18 Depending upon the number of persons who wish to speak,
19 the Committee may limit time allowed for each speaker as
20 needed.

21 The public comment period is intended to provide
22 an opportunity for persons who attend the hearing in
23 person or on the phone to address the Committee. It is
24 not an opportunity to present written, recorded, or
25 documentary materials, however. Such materials may be

1 docketed and submitted to the Energy Commission for
2 inclusion in the administrative record. Members of the
3 public who wish to speak should fill out a blue card
4 provided by the Public Adviser. If you would prefer not
5 to speak publicly, but would like to submit a written
6 comment, the blue card has a space to do so. And I see
7 that there's blue cards out there on that podium by the
8 door.

9 The witness list and exhibit lists have been
10 distributed to the parties electronically, and the parties
11 were asked to bring copies for their use today. We'll use
12 the list to organize the receipt of evidence into the
13 record. To date, we've already received Exhibits 1
14 through 70 from the applicant, Exhibits 400 through 432
15 from staff, Exhibits 500 through 547 from CURE, Exhibits
16 800 through 831 from CBD, and Exhibits 700 through 710
17 from Tom Budlong.

18 Today, any remaining evidence may be moved into
19 the record by the parties as we cover the relevant topic
20 areas.

21 Ms. Jennings, would it be possible to bring him
22 back in, because -- just for the record, I see that Mr.
23 Boyd stepped out. We need him to be present.

24 Today's evidentiary hearing is limited to the
25 following topics, air quality; cultural resources;

1 biological resources, but only as to Conditions of
2 Certification Bio 8 and Bio 19; and the ARRA construction
3 issues; soil and water, but only as to Conditions of
4 Certification Soil and Water 4, 15, and 19; and finally,
5 transmission systems engineering. All other topic areas
6 are closed at this time.

7 Procedurally, we will start with the applicant.

8 Mr. Boyd come on in.

9 MR. BOYD: Sorry, someone can't find the phone
10 number.

11 HEARING OFFICER CELLI: Okay. So just to -- we
12 have not received any of CARE's Exhibits. And when I say
13 received, I mean, we haven't officially taken them into
14 the record at all.

15 MR. BOYD: I understood that, so I would have to
16 make a motion to move it into the record, wouldn't I?

17 HEARING OFFICER CELLI: Right. And we'll do that
18 when we get to cultural.

19 MR. BOYD: Okay.

20 HEARING OFFICER CELLI: But I'm basically kind of
21 laying out the ground rules as we go here, so I just
22 wanted you to know that.

23 MR. BOYD: That's fine. Thank you.

24 HEARING OFFICER CELLI: Today's evidentiary
25 hearing is limited to air quality, cultural, certain

1 biological resources areas -- conditions, soil and water,
2 and transmission systems engineering.

3 Procedurally, we will start with the applicant,
4 who has the burden of proof. So the applicant will offer
5 evidence, will call its witnesses on direct, followed by
6 cross-examination by the other parties. After the
7 applicant has moved in all of its exhibits and witnesses
8 on the topic areas, staff will call its witnesses on
9 direct, followed by cross-examination by the other parties
10 and so on, until all of the parties moved all of their
11 evidence in on that topic. Then we will move to the next
12 topic starting with the applicant again, then staff, then
13 intervenors.

14 We will take evidence on topic areas -- well,
15 initially, we planned to take them in the order of air
16 quality, cultural resources, biological resources, soil
17 and water, and transmission systems engineering. We
18 aren't married to that order. We can change it around.
19 And it appears we're going to at least take air quality at
20 the front.

21 So with that --

22 STAFF COUNSEL HOLMES: Hearing Officer Celli, can
23 we go back to the exhibit list for a moment, please.

24 HEARING OFFICER CELLI: Yes.

25 STAFF COUNSEL HOLMES: The exhibit list that was

1 distributed by you and what you orally repeated to me a
2 few moments ago are inconsistent with each other and
3 inconsistent with our records. So let's get that
4 straight.

5 HEARING OFFICER CELLI: All right. So this was
6 after much back and forth with staff.

7 STAFF COUNSEL HOLMES: And we're perfectly
8 capable of making mistakes. This is not an accusation by
9 any stretch of the imagination.

10 HEARING OFFICER CELLI: What I did was I looked
11 at the transcript to make sure that we had received all of
12 yours, and we stopped taking in evidence, I thought, at
13 432.

14 STAFF COUNSEL HOLMES: So you don't think that
15 433 through 437 came in? My records indicated that they
16 did, but I'm happy to move them again, just to be clear, I
17 would --

18 HEARING OFFICER CELLI: I recall that there was
19 no opposition. But I think to be safe, let's move those
20 back in.

21 STAFF COUNSEL HOLMES: I would like to move 432
22 through 437.

23 HEARING OFFICER CELLI: Okay, any objection to
24 432 through 437, applicant?

25 MR. GALATI: No objection.

1 STAFF COUNSEL HOLMES: Thank you.

2 HEARING OFFICER CELLI: CURE?

3 MS. KOSS: No objection.

4 HEARING OFFICER CELLI: CARE?

5 MR. BOYD: No.

6 HEARING OFFICER CELLI: CBD?

7 MS. BELENKY: No objection.

8 HEARING OFFICER CELLI: Mr. Budlong?

9 MR. BUDLONG: No objection.

10 HEARING OFFICER CELLI: Thank you. So then
11 Exhibits 432 through 437 are received into evidence as of
12 today.

13 (Thereupon the above referenced documents
14 marked Exhibits 432 through 437 and received
15 into evidence.)

16 STAFF COUNSEL HOLMES: Thank you, Hearing Officer
17 Celli.

18 HEARING OFFICER CELLI: Anything further?

19 STAFF COUNSEL HOLMES: I think that takes care of
20 it.

21 HEARING OFFICER CELLI: Okay. Well, the burden
22 is with the applicant, so the applicant will begin --

23 MR. BOYD: I had a question.

24 HEARING OFFICER CELLI: Yes.

25 MR. BOYD: I'm looking at this. Is this your

1 exhibit list, the one that was outside the door here?

2 HEARING OFFICER CELLI: Yes.

3 MR. BOYD: Okay. My exhibits looks like you're
4 ending at 615. And then when I look on the website, you
5 have more. 617 is my last one.

6 HEARING OFFICER CELLI: Okay. Now, on yours, Mr.
7 Boyd, you had numbered them and didn't include awe zero,
8 so they may be down one.

9 MR. BOYD: Okay, let's see here.

10 HEARING OFFICER CELLI: So I started at 600, not
11 601.

12 MR. BOYD: Yeah, no, I'm using -- what I'm going
13 by is what they posted on the web on the Genesis page.

14 HEARING OFFICER CELLI: Yeah, we go up to 615
15 here, Exhibit 615 on the list that I have.

16 MR. BOYD: That's what I'm saying is different --
17 I'm trying to find it now.

18 HEARING OFFICER CELLI: My request is this, that
19 we keep the numbering that is on the exhibit list, because
20 all of the parties are in possession of that, and then if
21 you would conform.

22 MR. BOYD: Yeah, I don't think there's anything
23 wrong with the numbers, except that there's some missing.
24 The last two aren't there.

25 HEARING OFFICER CELLI: And that's probably

1 because they came after I did the list. So my request is
2 that when we get to cultural, to make sure that you make a
3 motion --

4 MR. BOYD: That we get it in the right order.

5 HEARING OFFICER CELLI: -- that at the end of
6 that, we'll make sure that we've got whatever exhibits
7 there are numbered and identified.

8 MR. BOYD: Okay, thank you.

9 HEARING OFFICER CELLI: So with that, air
10 quality, applicant?

11 MR. GALATI: Mr. McCloud, are you on the phone?

12 MR. McCLOUD: Yes, I am.

13 MR. GALATI: Okay, Duane, you're going to have to
14 get right close to the phone so we can hear you. And he
15 was previously sworn. I don't know if you would like to
16 have him sworn again for today.

17 HEARING OFFICER CELLI: You know, I'd like to
18 have him sworn again.

19 Mr. Peters, if you wouldn't mind grabbing Ms.
20 Mayer's mike there and swearing in Duane McCloud.

21 (Thereupon MR. DUANE McCLOUD was sworn, by the
22 court reporter, to tell the truth, the whole
23 truth and nothing but the truth.)

24 Whereupon,

25 DUANE McCLOUD

1 was called as witness herein, and after first
2 having been duly sworn, was examined and
3 testified as follows:

4 HEARING OFFICER CELLI: The record will reflect
5 he said, "I do".

6 Mr. McCloud, please state your name and spell it
7 for the record.

8 MR. McCLOUD: Duane McCloud, D-u-a-n-e,
9 M-c-c-l-o-u-d.

10 HEARING OFFICER CELLI: Okay, Mr. McCloud, we can
11 barely hear you. I don't know if you're on a speaker
12 phone or what, but we need you to increases your volume.

13 MR. McCLOUD: Let me try something else.
14 Just a second.

15 MR. GALATI: Duane, you can speak like you're
16 speaking to me, you know, yell.

17 MR. McCLOUD: Okay, is this better?

18 HEARING OFFICER CELLI: Not at all. That's even
19 a little raspier.

20 MR. McCLOUD: Okay. Well, unfortunately, this is
21 the best I have at the moment.

22 HEARING OFFICER CELLI: Okay. Well, we're all
23 going to have to stay really quiet in the room, please.
24 And, Mr. McCloud, if you can kind of yell into your phone,
25 that would be great.

1 Go ahead, Mr. Galati

2 DIRECT EXAMINATION

3 BY MR. GALATI:

4 Mr. McCloud, did you previously file air quality
5 testimony, Exhibit 60 in this proceeding?

6 MR. McCLOUD: Yes, I did.

7 MR. GALATI: Mr. McCloud, did you review the
8 Supplemental Staff Assessment for air quality, which has
9 been marked as Exhibit 439?

10 MR. McCLOUD: Yes, I did.

11 MR. GALATI: And do you agree with the conditions
12 and the conclusions in the Supplemental Staff Assessment,
13 Exhibit 439?

14 MR. McCLOUD: Yes, I do.

15 MR. GALATI: No further questions.

16 HEARING OFFICER CELLI: Thank you.

17 Staff?

18 STAFF COUNSEL HOLMES: We don't have
19 cross-examination, but I would note that the revised on
20 both our exhibit list and on the Committee's exhibit list,
21 the revised air quality testimony is Exhibit 440. Just so
22 that there's no clarification -- no confusion about the
23 exhibit list.

24 MR. GALATI: Yeah, I apologize. I'm going from
25 the PDF, which is marked 439. So just --

1 HEARING OFFICER CELLI: You better clear that up
2 please.

3 MR. GALATI: So, Mr. McCloud, the Supplemental
4 Staff Assessment air quality testimony of William Walters,
5 when. I ask you if you reviewed that -- I identified it
6 as Exhibit 439, but just for clarity, that's Exhibit 440,
7 did you review the Supplemental Staff Assessment air
8 quality testimony of William Walters?

9 MR. McCLOUD: Yes, I did.

10 HEARING OFFICER CELLI: And do you agree with the
11 conditions and the analysis contained in that document?

12 MR. McCLOUD: Yes, I do.

13 MR. GALATI: No further questions.

14 HEARING OFFICER CELLI: Cross? No cross from
15 staff?

16 STAFF COUNSEL HOLMES: Not now.

17 HEARING OFFICER CELLI: Cross from CURE?

18 MS. KOSS: No.

19 HEARING OFFICER CELLI: Cross from CBD?

20 MS. BELENKY: I just had a quick question on the
21 greenhouse gas analysis, which I believe is maybe not in
22 your testimony, because it's in staff testimony.

23 MR. GALATI: Yeah, I don't have a witness for
24 greenhouse gas.

25 MS. BELENKY: Okay, thank you.

1 HEARING OFFICER CELLI: Nothing further from CBD?

2 MS. BELENKY: No.

3 HEARING OFFICER CELLI: Mr. Budlong, any cross?

4 MR. BUDLONG: No cross.

5 HEARING OFFICER CELLI: Mr. Boyd has left the
6 room. This is his opportunity to cross on air quality.

7 PUBLIC ADVISER JENNINGS: He doesn't intend to
8 cross.

9 HEARING OFFICER CELLI: Okay, I have
10 representation from Jennifer Jennings, the Public Adviser,
11 that Mr. Boyd does not intend to cross on air quality.
12 And, in fact, I should just make the record that according
13 to the prehearing conference and previous agreement, Mr.
14 Boyd's participation was limited to cultural.

15 So that, call your next witness.

16 MR. GALATI: No more witnesses.

17 HEARING OFFICER CELLI: Any further exhibits to
18 put in the record?

19 MR. GALATI: No, mine are all in.

20 HEARING OFFICER CELLI: Thank you.

21 With that, staff.

22 STAFF COUNSEL HOLMES: Thank you. I think if the
23 parties don't object, I'd like to have the air district go
24 first and sponsor the determination of compliance, is that
25 acceptable?

1 HEARING OFFICER CELLI: Thank you.

2 Whereupon,

3 ALAN De SALVIO

4 was called as a witness herein, and after first
5 having been duly sworn, was examined and
6 testified as follows:

7 STAFF COUNSEL HOLMES: Thank you.

8 Mr. De SALVIO, are you on the phone? Are the
9 phone?

10 MR. De SALVIO: I am.

11 STAFF COUNSEL HOLMES: And did you prepare or --
12 did you prepare the Determination of Compliance, which has
13 been identified as Exhibit 404 in this proceeding?

14 MR. De SALVIO: I have prepared it.

15 STAFF COUNSEL HOLMES: Could you please summarize
16 very quickly what your responsibilities are with the
17 District?

18 MR. De SALVIO: I'm the supervising air quality
19 engineer.

20 STAFF COUNSEL HOLMES: Thank you.

21 Do you have any changes or corrections to the
22 Determination of Compliance?

23 MR. De SALVIO: Are you referring to the final
24 Determination of Compliance being released yesterday, no,
25 I do not.

1 STAFF COUNSEL HOLMES: Thank you. And are the
2 facts contained in the Determination of Compliance, true
3 and correct?

4 MR. De SALVIO: They are.

5 STAFF COUNSEL HOLMES: And do the opinions
6 represent your best professional judgment?

7 MR. De SALVIO: They do.

8 STAFF COUNSEL HOLMES: Thank you. Could you
9 please give us a very brief summary of the conclusions
10 that you reached in the Determination of Compliance?

11 MR. De SALVIO: That the project as proposed and
12 as restricted by the proposed conditions in our document
13 will comply with all applicable rules and regulations.

14 STAFF COUNSEL HOLMES: Thank you. That was very
15 succinct. The witness is available for cross-examination.

16 HEARING OFFICER CELLI: Cross by applicant?

17 MR. GALATI: No.

18 HEARING OFFICER CELLI: Cross by CURE?

19 MS. KOSS: No.

20 HEARING OFFICER CELLI: Cross by CBD?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: Cross by Mr. Budlong?

23 MR. BUDLONG: None.

24 HEARING OFFICER CELLI: Redirect?

25 STAFF COUNSEL HOLMES: No.

1 HEARING OFFICER CELLI: Okay. Your next witness,
2 please.

3 STAFF COUNSEL HOLMES: Thank you, Mr. De SALVIO.
4 Staff's next witness is William Walters.
5 Whereupon,

6 WILLIAM WALTERS
7 was called as a witness herein, and after first
8 having been duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY STAFF COUNSEL HOLMES:

12 Will, are you on the phone?

13 MR. WALTERS: Yes, I am.

14 HEARING OFFICER CELLI: And, Will, did you
15 prepare the air quality section of Exhibit 400, which is
16 the Revised Staff Assessment, as well as the Supplemental
17 Staff Assessment air quality, which has been identified as
18 Exhibit 440?

19 MR. WALTERS: Yes, but I have one question first.
20 I haven't actually been sworn in.

21 STAFF COUNSEL HOLMES: Good point

22 HEARING OFFICER CELLI: Thank you very much. And
23 you know what, neither was Mr. DeSilva.

24 Mr. DeSilva?

25 STAFF COUNSEL HOLMES: De SALVIO.

1 MR. De SALVIO: De SALVIO. I'm here.

2 HEARING OFFICER CELLI: De SALVIO. I'm sorry.

3 My fault. I didn't have you sworn in. So I'm
4 going to ask that you stand and raise your right hand.

5 (Thereupon MR. ALAN De SALVIO was sworn, by the
6 Hearing Officer, to tell the truth, the whole
7 truth, and nothing but the truth.)

8 HEARING OFFICER CELLI: And that the testimony
9 you've already given was also under oath?

10 MR. De SALVIO: I so swear.

11 HEARING OFFICER CELLI: Thank you.

12 Mr. Walters.

13 (Thereupon MR. WILLIAM WALTERS was sworn, by the
14 Hearing Officer to tell the truth, the whole
15 truth, and nothing but the truth.)

16 HEARING OFFICER CELLI: Thank you.

17 I have a quick question.

18 STAFF COUNSEL HOLMES: Certainly.

19 HEARING OFFICER CELLI: You had mentioned -- Mr.
20 De SALVIO was talking about the FDOC that came up last
21 night.

22 STAFF COUNSEL HOLMES: Correct.

23 HEARING OFFICER CELLI: Has that been moved into
24 evidence?

25 STAFF COUNSEL HOLMES: Well, I was going to wait

1 until we were done with air quality and move all the
2 documents together, but we could certainly move it in if
3 you would like.

4 HEARING OFFICER CELLI: I just want to know what
5 exhibit is that?

6 STAFF COUNSEL HOLMES: Exhibit 404. It had a
7 number reserved from the very beginning.

8 HEARING OFFICER CELLI: Okay. So 404 is the
9 final, FDOC.

10 Thank you. I'm sorry. Go ahead with Mr.
11 Walters.

12 STAFF COUNSEL HOLMES: Mr. Walters, was a
13 statement of your qualifications included in the Revised
14 Staff Assessment, which has been identified as Exhibit
15 400?

16 MR. WALTERS: Yes, it was.

17 STAFF COUNSEL HOLMES: And did you -- and I think
18 I already asked you whether or not you prepared the
19 testimony, so I'll skip asking that a second time.

20 MS. KOSS: Was Mr. Walters worn in? Sorry

21 HEARING OFFICER CELLI: Yes, he just was.

22 MS. KOSS: I though you just swore in Alan De
23 SALVIO.

24 PRESIDING MEMBER BOYD: No, he did them both.

25 MS. KOSS: Both? Sorry.

1 HEARING OFFICER CELLI: Mr. Walters, have you
2 been sworn?

3 MR. WALTERS: Yes, I was sworn.

4 MS. KOSS: I apologize.

5 HEARING OFFICER CELLI: I just swore him. You
6 know, you can get away with that kind of thing with me.

7 MS. KOSS: I'm asleep.

8 (Laughter.)

9 HEARING OFFICER CELLI: Sorry go ahead.

10 STAFF COUNSEL HOLMES: Mr. Walters, are the facts
11 contained in your testimony true and correct to the best
12 of your knowledge?

13 MR. WALTERS: They are.

14 STAFF COUNSEL HOLMES: And do the opinions
15 contained in your testimony represent your best
16 professional judgment?

17 MR. WALTERS: Yes, they do.

18 STAFF COUNSEL HOLMES: Thank you. Would you care
19 to give a very brief summary of the testimony that you
20 have provided in Exhibit 400 and Exhibit 440?

21 MR. WALTERS: Yes. And I believe there will be
22 an additional exhibit for a second part of the
23 Supplemental Staff Analysis that deals with the FDOC.

24 HEARING OFFICER CELLI: Mr. Walters, please
25 directly into your phone.

1 MR. WALTERS: Okay. The summary is that staff
2 reviewed the construction and operating requirements of
3 the facility, identified appropriate mitigation to reduce
4 emissions during construction and operation; reviewed the
5 Determination of Compliance; provided comments to the
6 district that the district responded to, to the point
7 where staff is satisfied with the district's conditions in
8 the FDOC. And with the staff recommended conditions and
9 the district conditions, staff believes that the project's
10 air quality impacts are significant.

11 Staff also believes that the greenhouse gas
12 impacts for this renewable energy renewable are less than
13 significant.

14 HEARING OFFICER CELLI: Call-in user number 10, I
15 don't know who you are, but I'm going to have to put you
16 on mute, because you're making a lot of noise there.

17 Go ahead, Mr. Walters. We're having a hard time
18 hearing you. You were just about to talk about greenhouse
19 gases.

20 MR. WALTERS: Yes. I was noting that the
21 greenhouse gas impacts for this renewable energy project
22 are less than significant.

23 HEARING OFFICER CELLI: Go ahead. Are less than
24 significant, he said.

25 STAFF COUNSEL HOLMES: Okay.

1 HEARING OFFICER CELLI: Were you able to get
2 that, Mr. Peters?

3 THE REPORTER: Um-hmm.

4 STAFF COUNSEL HOLMES: Does that conclude the
5 summary of your testimony.

6 MR. WALTERS: Yes, it does.

7 STAFF COUNSEL HOLMES: Could we go off the record
8 for a moment, Hearing Officer Celli?

9 HEARING OFFICER CELLI: Off the record
10 (There upon a discussion occurred
11 off the record.)

12 HEARING OFFICER CELLI: We're back on the record.
13 Go ahead.

14 STAFF COUNSEL HOLMES: Please continue.

15 MR. WALTERS: The first of which was provided
16 earlier in July, in fact, docketed on the 9th. And that
17 provides the additional testimony regarding the modeling
18 assessments for compliance with the one-hour federal NO₂
19 standards, and also provides revisions to the staff
20 condition. At that time, I do not provide provisions in
21 the FDOC as it was not completed yet.

22 I provided a second part to my Supplemental Staff
23 Assessment that has integrated the revisions to the
24 district conditions, and I believe that was docketed
25 yesterday or the day before.

1 STAFF COUNSEL MAYER: That we have.

2 STAFF COUNSEL HOLMES: That is correct. And we
3 did not identify, as an exhibit, the assessment that Mr.
4 Walters is talking about that was docketed in early July.
5 I believe it was docketed and served at the same time as
6 the supplemental -- as the revision to the Supplemental
7 Staff Assessment, but we did not -- we neglected to
8 identify that as an exhibit. And although we don't have
9 copies right now, we could have copies in a matter of
10 minutes.

11 HEARING OFFICER CELLI: So where are we
12 numerically? Is this going to be 443?

13 STAFF COUNSEL HOLMES: This would be the next --

14 STAFF COUNSEL MAYER: 444.

15 STAFF COUNSEL HOLMES: This would be 444. My
16 suggestion is that I believe the project manager is going
17 to go get copies of that. My suggestion is that we allow
18 Mr. Walters to continue and be cross-examined since I
19 understand that the subject of cross-examination is
20 greenhouse gas, emissions. And that evidence has been
21 provided to everybody. And before we close out the air
22 quality section, we have him sponsor that additional piece
23 of testimony.

24 HEARING OFFICER CELLI: Okay. And what is
25 Exhibit 443?

1 STAFF COUNSEL HOLMES: Soil --

2 STAFF COUNSEL MAYER: Soil --

3 STAFF COUNSEL HOLMES: Soil and Water Resources,
4 CEC staff, Revised Conditions of Certification.

5 (Thereupon the above-referenced document was
6 marked Exhibit 443 for identification.)

7 HEARING OFFICER CELLI: Okay. Just because my
8 list stops at 442, I just wanted to know what we had.

9 STAFF COUNSEL HOLMES: So if that's acceptable to
10 the parties, we will make the witness available for
11 cross-examination and remember to introduce the remaining
12 exhibit at the end.

13 HEARING OFFICER CELLI: So nothing further from
14 staff on Mr. Walters on Direct?

15 STAFF COUNSEL HOLMES: No, thank you.

16 HEARING OFFICER CELLI: Cross, applicant?

17 MR. GALATI: No cross-examination.

18 And just for the record, we have reviewed that
19 document. And if the parties would be okay without
20 bringing my witness back and re-swearing them, as an offer
21 of proof, we agree with the changes to the staff
22 conditions as well. So we agree with the Staff
23 Assessment, Exhibit 400, in air quality as modified by the
24 two Supplemental Staff Assessments.

25 HEARING OFFICER CELLI: So that's in the record

1 already.

2 Thank you.

3 MR. GALATI: Thank you.

4 HEARING OFFICER CELLI: Cross by CURE?

5 MS. KOSS: No.

6 HEARING OFFICER CELLI: Cross by Center for
7 Biological Diversity?

8 MS. BELENKY: Yes.

9 CROSS-EXAMINATION

10 BY MS. BELENKY:

11 I just had one question on the greenhouse gas,
12 and I think there may have been some confusion based on
13 the terms that are used. There's no greenhouse gas
14 emissions provided for the HTF heaters. There is a
15 greenhouse gas emission amount provided for the steam
16 boilers. So that those terms may be being used
17 interchangeably or they may be two separate things. And I
18 think it's somewhat confusing in the record.

19 Could you explain that, please.

20 MR. WALTERS: Boy, let me go back and --

21 HEARING OFFICER CELLI: Mr. Walters, we're having
22 a hard time hearing you, so you really need to shout into
23 your phone, please.

24 MR. WALTERS: Okay. For this project, I believe
25 there is just one set of heaters, but let me go back and

1 review that. I wasn't aware of this question ahead of
2 time, so I'm trying to make sure that I'm not misspoken.

3 HEARING OFFICER CELLI: Appreciate that. That's
4 cross.

5 (Laughter.)

6 MR. WALTERS: Yeah, going back to reviewing the
7 assessment, it's my understanding that there essentially
8 is one heater/boiler unit per lock. And the total GHG
9 emissions from those units were provided in the table and
10 summarized for both in the one line -- the first line that
11 I believe --

12 STAFF COUNSEL HOLMES: Mr. Walters, could you
13 please clarify which page of Exhibit 400 you're
14 identifying?

15 MR. WALTERS: Yeah, I'm actually trying to get
16 there now.

17 STAFF COUNSEL HOLMES: Thank you.

18 MR. WALTERS: It would be page C.1-75, and it
19 would be greenhouse gas table three, and it is the
20 auxiliary boiler line. And that is correct in the
21 assumption that the nomenclature is a little mixed between
22 heaters and boiler. The heaters, you know, function for
23 all roles. There isn't a separate heater as there are in
24 the other concurrent projects. They're using HTF.

25 MS. BELENKY: Thank you. I think that clears it

1 up, because I have looked at some of the other projects
2 and they have two different numbers there. And so it is
3 just the one.

4 Thank you very much.

5 HEARING OFFICER CELLI: Cross, Mr. Budlong.

6 MR. BUDLONG: No cross.

7 HEARING OFFICER CELLI: Mr. Boyd, any cross?

8 MR. BOYD: No, sir.

9 HEARING OFFICER CELLI: Thank you. Re-direct?

10 STAFF COUNSEL HOLMES: I don't have any
11 Re-direct. I would ask that Walters stay on the line, so
12 that you can sponsor the copies of Exhibit 400 and 444
13 when we get them in the room. And would suggest that
14 perhaps next we could move to transmission system
15 engineering while we're waiting for that to happen.

16 HEARING OFFICER CELLI: Well, let's -- let me
17 just -- I'm not interested in breaking up topic areas. I
18 want to finish one before I get to the next one. So if
19 we -- there's nothing further from staff, other than the
20 introduction of that exhibit?

21 STAFF COUNSEL HOLMES: There is -- well, we need
22 to move the Exhibit 404 -- I guess all of Exhibit 400 has
23 already been moved. But if not, the air quality portion
24 of that Exhibit 440 into the record at this point, and
25 then we would obviously, once we have brought copies

1 available, we would like to move Exhibit 444 into the
2 record. Although, I suppose I could ask now if parties
3 have any objections to Exhibit 444?

4 HEARING OFFICER CELLI: That's what I understand
5 too. But I want to say for the record that 400 is in the
6 record in its entirety.

7 STAFF COUNSEL HOLMES: Thank you.

8 HEARING OFFICER CELLI: So we are at -- what I
9 have not received in evidence is 438 on numerically in
10 order.

11 STAFF COUNSEL HOLMES: Right, but we would
12 like -- 404 is not in the record yet. We would like 404
13 to be in the record.

14 HEARING OFFICER CELLI: Okay, so 404 is the FDOC?

15 STAFF COUNSEL HOLMES: Yes.

16 HEARING OFFICER CELLI: Is there any objection to
17 Exhibit 404 for identification?

18 MR. GALATI: No objection.

19 HEARING OFFICER CELLI: Any objection from CBD --

20 MS. BELENKY: No.

21 HEARING OFFICER CELLI: -- to Exhibit 404?

22 CURE?

23 MS. KOSS: No.

24 HEARING OFFICER CELLI: CARE?

25 MR. BOYD: No.

1 HEARING OFFICER CELLI: Mr. Budlong?

2 MR. BUDLONG: No objection.

3 HEARING OFFICER CELLI: Thank you.

4 Exhibit 404 is received.

5 (Thereupon the above-referenced document was
6 marked as Exhibit 404 for identification and
7 received into evidence.)

8 STAFF COUNSEL HOLMES: And I would like to skip
9 over 438 and 439, which will be the subject of testimony
10 later today on biological resources and have Exhibit 440,
11 which is the CEC staff Revised Conditions of Certification
12 just sponsored by Mr. Walters. I'd like to move that into
13 the record at this time.

14 HEARING OFFICER CELLI: Any objection from
15 applicant?

16 MR. GALATI: No objection.

17 HEARING OFFICER CELLI: CURE?

18 MS. KOSS: No.

19 HEARING OFFICER CELLI: CARE?

20 MR. BOYD: No.

21 HEARING OFFICER CELLI: CBD?

22 MS. BELENKY: No.

23 HEARING OFFICER CELLI: Mr. Budlong?

24 MR. BUDLONG: No.

25 HEARING OFFICER CELLI: Okay, 440 is received

1 into the record.

2 (Thereupon the above-referenced document was
3 marked as Exhibit 440 for identification and
4 received into evidence.)

5 STAFF COUNSEL HOLMES: And then I guess I could
6 ask if the parties have objection to the receipt of
7 Exhibit 444, which we had not previously identified, and
8 do not have copies of in this room, but which everyone has
9 received a copy of. And, Will, you can correct my
10 characterization if it's incorrect, it's a response of the
11 staff regarding the revised NO₂ standard.

12 Will?

13 MR. WALTERS: Oh, I'm sorry. I wasn't sure that
14 question was to me.

15 STAFF COUNSEL HOLMES: The question to you is I'm
16 asking you to identify the title and the date of the
17 document that we've just identified as Exhibit 444 related
18 to the NO₂ standard.

19 MR. WALTERS: Well, the title is supplemental
20 Staff Assessment air quality that was docketed on -- on my
21 records that I'm looking at with the stamp on July 9th, in
22 which there's additional testimony on this dispersion
23 modeling assessment and also revisions to the staff
24 conditions, which were done primarily for consistency with
25 the other projects that are currently being licensed. The

1 other large solar projects.

2 (Thereupon the above-referenced document
3 was marked as Exhibit 444 for identification.)

4 STAFF COUNSEL HOLMES: And I guess that I would
5 ask, at this point, to move that into the record.

6 HEARING OFFICER CELLI: Well, let's find out if
7 everybody has received it. Have you received that
8 already, Mr. Galati?

9 MR. GALATI: Yes, we received that. We have
10 testified to it. We have no objection to it coming into
11 the record.

12 HEARING OFFICER CELLI: Okay, and have you
13 received it, Ms. Belenky, by Email?

14 MS. BELENKY: I'm having a hard time locating it
15 in my Emails, but I assume I have.

16 HEARING OFFICER CELLI: Because Mr. Monasmith is
17 out getting copies of this --

18 STAFF COUNSEL HOLMES: Right. I'm sure that the
19 copy he will bring in will have a proof of service
20 attached to it.

21 HEARING OFFICER CELLI: I just -- what I'm trying
22 to do is verify that everybody received it, because if we
23 receive it into evidence now and the record shows -- oh,
24 here comes Mr. Monasmith, so that makes that moot, I hope.

25 Ah, Mr. Monasmith, you're like the calvary. Come

1 on in.

2 (Laughter.)

3 HEARING OFFICER CELLI: If you wouldn't mind
4 passing that exhibit to all of the parties.

5 SITING PROJECT MANAGER MONASMITH: You want both
6 the first and second or just --

7 HEARING OFFICER CELLI: Exhibit 444.

8 MR. GALATI: July 9th.

9 MS. BELENKY: I found it.

10 HEARING OFFICER CELLI: Ms. Belenky is on to
11 something here.

12 MS. BELENKY: Yes, I found it. There's so many.

13 STAFF COUNSEL HOLMES: Well, staff apologizes for
14 having inadvertently omitted it from the Exhibit list.

15 HEARING OFFICER CELLI: Well, the record should
16 reflect that Mr. Monasmith is passing around Supplemental
17 Staff Assessment on air quality, and to all of the parties
18 and. So now all of the parties are in receipt of Exhibit
19 444.

20 Thank you. Entitled Supplemental Staff
21 Assessment Air Quality Testimony of William Walters, PE.

22 Any objection to the receipt of Exhibit 444, CBD?

23 MS. BELENKY: No.

24 HEARING OFFICER CELLI: Any objection from CURE?

25 MS. KOSS: No.

1 HEARING OFFICER CELLI: Any objection from CARE?

2 MR. BOYD: No.

3 HEARING OFFICER CELLI: Any objection from Mr.
4 Budlong?

5 MR. BUDLONG: No.

6 HEARING OFFICER CELLI: Thank you. Exhibit 444
7 will be received into evidence.

8 (Thereupon Exhibit 444 was received into
9 evidence.)

10 STAFF COUNSEL HOLMES: And just to make matters
11 more complicated, Hearing Officer Celli --

12 (Laughter.)

13 STAFF COUNSEL HOLMES: -- it turns out that there
14 were -- Will, we may need your assistance on this.
15 According to the project manager, there were actually two
16 Supplemental Staff Assessment on air quality related to
17 this topic.

18 STAFF COUNSEL MAYER: They have the same title.

19 STAFF COUNSEL HOLMES: They have the same title.

20 PRESIDING MEMBER BOYD: Do they have the same
21 content?

22 MR. WALTERS: No, they have different content

23 STAFF COUNSEL HOLMES: What Mr. Monasmith is
24 referring to is that I believe these documents were filed
25 on the same day, but they may have been filed as separate?

1 STAFF COUNSEL MAYER: This was filed yesterday.
2 I'll try to --

3 STAFF COUNSEL HOLMES: No.

4 HEARING OFFICER CELLI: I just want to state for
5 the record that Exhibit 444 was properly identified by Mr.
6 Walters as the dispersion modeling assessment.

7 STAFF COUNSEL HOLMES: You're correct. We had
8 confusion for just a moment. I'd like to erase the
9 confusion. And what's been passed out is Exhibit 444 that
10 was docketed on July 9th and was served to all the
11 parties.

12 The project manager indicated that there was a
13 second supplement, but that is the one that's already been
14 identified as 440 and already been received.

15 So mystery solved.

16 HEARING OFFICER CELLI: Excellent.

17 So where we were was we were on staff's case in
18 chief. Are you finished with Mr. Walters? Can he be
19 cross-examined?

20 STAFF COUNSEL HOLMES: He can.

21 HEARING OFFICER CELLI: Okay, cross-examination
22 by applicant?

23 MR. GALATI: None.

24 HEARING OFFICER CELLI: Cross-examination of the
25 subsequent testimony of Mr. Walters, CURE?

1 MS. KOSS: No.

2 HEARING OFFICER CELLI: CARE?

3 MR. BOYD: No.

4 HEARING OFFICER CELLI: CBD?

5 MS. BELENKY: No.

6 HEARING OFFICER CELLI: Mr. Budlong?

7 MR. BUDLONG: None.

8 HEARING OFFICER CELLI: Okay. Then that takes
9 care of Mr. Walters.

10 STAFF COUNSEL HOLMES: I believe it does. And
11 Exhibit 444 was moved?

12 HEARING OFFICER CELLI: And received.

13 STAFF COUNSEL HOLMES: Thank you.

14 HEARING OFFICER CELLI: Your next witness,
15 please.

16 STAFF COUNSEL HOLMES: Those are all of staff's
17 witnesses on air quality.

18 HEARING OFFICER CELLI: Any further exhibits from
19 staff?

20 STAFF COUNSEL HOLMES: Not on air quality.

21 HEARING OFFICER CELLI: Okay. Let's go to CURE
22 next on air quality.

23 MS. KOSS: No witnesses. No exhibits.

24 HEARING OFFICER CELLI: Thank you.

25 CBD, any exhibits or testimony you'd like to

1 introduce on air quality.

2 MS. BELENKY: No, thank you.

3 HEARING OFFICER CELLI: No on air quality, okay.
4 Thank you.

5 CARE?

6 MR. BOYD: No.

7 HEARING OFFICER CELLI: Mr. Budlong?

8 MR. BUDLONG: No.

9 HEARING OFFICER CELLI: Okay, with that then, the
10 record is closed on air quality. I should make a note of
11 that.

12 Now, staff had brought up --

13 Say again on the phone?

14 Mr. Wales and Mr. De SALVIO signed off.

15 Thank you for your testimony.

16 With that, there was a motion by staff to take
17 transmission systems engineering next in order to get Mr.
18 Hesters on his way.

19 Any objection by any of the parties?

20 Applicant?

21 MR. GALATI: No objection.

22 HEARING OFFICER CELLI: CURE?

23 MS. KOSS: No.

24 HEARING OFFICER CELLI: CARE?

25 MR. BOYD: No.

1 HEARING OFFICER CELLI: CBD?

2 MS. BELENKY: No.

3 HEARING OFFICER CELLI: Mr. Budlong?

4 MR. BUDLONG: No.

5 HEARING OFFICER CELLI: Commissioners?

6 Okay.

7 PRESIDING MEMBER BOYD: None.

8 HEARING OFFICER CELLI: Okay. So staff then
9 lets -- is this something the applicant is going to be
10 calling?

11 STAFF COUNSEL HOLMES: No, this is -- staff would
12 like to call Mr. Hesters to update the status of the study
13 that was discussed at last week's hearings.

14 HEARING OFFICER CELLI: Okay, Mr. Hesters, before
15 you sit down, please raise your right hand.

16 And, Mr. Peters, if you would swear in Mr.
17 Hesters.

18 (Thereupon MR. MARK HESTERS was sworn, by the
19 court reporter to tell the truth, the whole
20 truth and nothing but the truth.)

21 Whereupon,

22 MARK HESTERS

23 was called as a witness herein, and after first
24 having been duly sworn, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY STAFF COUNSEL HOLMES:

3 Thank you. Mr. Hesters, you testified last week
4 about the status of the missing transmission system
5 engineering studies. Would you please bring the parties
6 and the Committee up to date on that?

7 MR. HESTERS: Yes. As of yesterday afternoon, we
8 received a confidential version of the Phase 2. You read
9 the full title of the document, it's Transition Cluster
10 Phase 2 Interconnection Study Report. It's the group
11 report and SCE's Eastern Bulk System. We received this
12 from the ISO under -- and I don't remember the name of the
13 statute. It's a confidentiality agreement that let's us
14 receive confidential data from other agencies under the
15 requirement that we keep it confidential.

16 The other thing that -- the next step in that is
17 that Edison is -- Southern California Edison is working on
18 taking out the information that they consider critical
19 energy infrastructure information, which is a FERC
20 designation of information that needs to be kept out of
21 the public record to protect the United States from sort
22 of terrorist threat of identifying critical places for
23 attacks.

24 They are essential, what I call, cleansing the
25 document of that information and should be providing a

1 public version, either today or it sounded like this
2 afternoon or tomorrow.

3 STAFF COUNSEL HOLMES: Thank you.

4 Can you, without violating any of the
5 Commission's responsibilities with respect to protecting
6 confidentiality, can you provide any information about
7 what's in the study?

8 MR. HESTERS: I can. In our original testimony,
9 we included very little summary of the Phase 1 study,
10 because the Phase 1 study looked at 9800 megawatts in a
11 cluster. This is a standard study that's done by the
12 interconnecting utility and the California Independent
13 System Operator to analyze the interconnection of proposed
14 powerplants and essentially forecast and determine the
15 need for transmission facilities downstream of the first
16 point of interconnection that are required to maintain the
17 reliability -- reliable operation of the electric system
18 and to provide deliverability of the powerplant -- the
19 deliverability of the energy provided by the powerplant.

20 The Phase 2 study -- after the Phase 1 study, the
21 size of the cluster, the group of plants that was studied
22 together decreased significantly. It went from 9,800
23 megawatts to 2,200 megawatts. The Phase 2 study is
24 looking at a cluster of five plants, which total 2,200
25 megawatts. I would like to note that four of those plants

1 in that cluster are before the Energy Commission.

2 They include the Genesis Plant before us today,
3 the Palen project, and also the Solar Millennium Palen
4 project and Solar Millennium Blythe project. The one
5 other is -- and I don't know the name of the applicant,
6 but the project we're calling Rice.

7 I'm trying to figure out how to balance between
8 the two studies. The Phase 1 study identified significant
9 downstream facilities required for the interconnection of
10 9,800 megawatts. Those facilities are not necessary for
11 the interconnection of 2,200 megawatts.

12 Essentially, what the Phase 2 study identifies is
13 there are 16 circuit breakers that require replacing or
14 upgrade. This is basically mitigation for maintaining
15 system reliability after these plants are interconnected.
16 It also requires that the Colorado River substation to the
17 Devers substation number two 500 kV transmission line be
18 looped into the Red Bluff substation.

19 The Red Bluff substation is actually an
20 interconnection point for the Palen project. It requires
21 essentially shifting the proposed line that is not yet
22 built, about a mile to loop it into this proposed
23 substation. None of this has been built yet.

24 That's one piece of the mitigation. Another one
25 is that it requires the expansion of the Colorado River

1 substation. Again, this is a proposed facility. The
2 expansion is required to connect generators to that
3 substation.

4 Our staff supplemental testimony, and I don't
5 know whether it's the Revised Staff Assessment, or which
6 portion of the supplemental or which portion of the
7 supplemental did an environmental analysis of the
8 expansion of the Colorado River substation.

9 The loop in of the Colorado River to Devers
10 number 2 line into the Red Bluff substation is being
11 analyzed as part our analysis of the Palen substation.
12 And we're relying on the Environmental Impact Statement
13 from the Desert Sunlight Project, which I think is a
14 Photovoltaic project in that area.

15 We don't have that yet. We expect to have that
16 any day now, but that analysis is being done. It is not a
17 facility that we license, but we do the environmental
18 analysis as part of our need to look at the whole of the
19 project and include a general level of environmental
20 analysis of the facilities we don't license.

21 One other major upgrade shows up in this study.
22 This is the west of Devers lines. There's four 230 kV
23 lines that come out of the Devers substation. Two of them
24 go to the Vista substation and two of them go to the San
25 Bernardino substation. They're about 35 miles long each.

1 The study identifies them as necessary for the
2 delivery of these projects. I don't believe that's a
3 reasonable characterization of these lines. They've shown
4 up in Southern California Edison and CalISO, California
5 Independent System Operator, transmission plans as needed
6 to essentially reliably serve loads. And they've shown up
7 in those plans for four consecutive years, to then -- if
8 they're needed for that, then they're not necessarily
9 needed for the delivery of these renewable generators or
10 these powerplants. They're needed for something else. So
11 I don't believe it's reasonable to assign that to
12 generators in this cluster or this project, the Genesis
13 Project.

14 And I think that's pretty much the summary of the
15 study. I do have one proposal to remove -- to change
16 Condition of Certification TSE 5. Part of that requires
17 the submittal of the Phase 2 study. If I already have the
18 Phase 2 study, I don't really need it in a condition.

19 (Laughter.)

20 MR. HESTERS: I think that's it.

21 STAFF COUNSEL HOLMES: Thank you.

22 Witness is available for cross-examination.

23 HEARING OFFICER CELLI: Applicant?

24 MR. GALATI: No cross-examination.

25 HEARING OFFICER CELLI: CURE?

1 MS. KOSS: No.

2 HEARING OFFICER CELLI: CBD?

3 MS. BELENKY: I have just a couple of questions.

4 CROSS-EXAMINATION

5 BY MS. BELENKY:

6 Last week when you testified, you talked a little
7 bit -- I thought we talked with you -- you talked a little
8 bit about the need, the way this is now conceived as a
9 cluster rather than which specific project needs what, is
10 that correct, you testified on that question?

11 MR. HESTERS: They are now studied in a cluster,
12 yes.

13 MS. BELENKY: And so when you're talking about
14 what's needed here, in the Phase 2 study that it
15 discusses, you're also talking about the cluster as a
16 whole?

17 MR. HESTERS: Exactly.

18 MS. BELENKY: And then if you -- have you,
19 yourself, or has the staff considered what this particular
20 project needs in order to go forward?

21 MR. HESTERS: Because of the way the ISO large
22 generator interconnection process has changed,
23 they're -- the only way to essentially assign, do I want
24 to call it, blame for certain upgrades to specific
25 projects, is based on how the ISO assigns the cost or who

1 pays for what portion of the upgrades. As a whole, the
2 cluster needs these upgrades. It isn't therefore assigned
3 to any particular project.

4 MS. BELENKY: But each project needs them as much
5 as any project needs them, would that be fair to say?

6 MR. HESTERS: I don't have any information to
7 state otherwise at this point. All I have is a study of
8 the cluster. I don't have a study or any indication of
9 what a particular -- the downstream or transmission
10 impacts of a single generator are. So that's all I have.

11 MS. BELENKY: Okay. So let me just -- I just
12 want to make sure I understand. If we were talking just
13 about this project, the Genesis Project, there is not
14 currently the capacity, a line or enough substations and
15 so forth for it to connect to. There's nothing there now
16 for it to connect to, if these substations and these other
17 lines don't go in, is that correct?

18 MR. HESTERS: The project proposes to connect to
19 the Colorado River substation. This is a substation that
20 has approval from the California Public Utilities
21 Commission to be built as a 500 kV substation. This
22 project connects -- proposes to connect as a 230 kV
23 substation, which requires an expansion. It's hard to
24 talk about the expansion of something that's not built,
25 but an expansion of the permitted substation. We have

1 included an analysis of that expansion in the staff
2 supplement.

3 Is that --

4 MS. BELENKY: I think that helps. I think it
5 does. It's a little bit of a chicken egg problem here.

6 Okay, thank you very much.

7 ASSOCIATE MEMBER WEISENMILLER: I was just going
8 to say, I'm not sure if the witness made that comment last
9 time or if it was the applicant who made the comment about
10 sort of the entire cluster going forward and the cluster
11 moving forward regardless of whether this facility or
12 anything else went forward. But again, that's certainly
13 in the transcript from last week.

14 HEARING OFFICER CELLI: Anything further from
15 you, Ms. Belenky?

16 MS. BELENKY: No, thank you.

17 HEARING OFFICER CELLI: CARE?

18 CROSS-EXAMINATION

19 BY MR. BOYD:

20 So my question is, what I heard was that this new
21 ISO analysis is essentially concluding that it's going to
22 require additional transmission infrastructure upgrades to
23 tie this project in particular into this substation that
24 we're talking about?

25 MR. HESTERS: I think that's pretty much what I

1 just said. There's the proposed Colorado substation. It
2 is licensed, but not constructed. And in order to connect
3 this project and other projects at the 230 or 220 kV -- it
4 depends on who labels it -- level, you have to essentially
5 expand the substation beyond its licensed size.

6 MR. BOYD: Okay, so what they've already approved
7 essentially doesn't have sufficient transmission capacity
8 to take additional capacity that this project would
9 produce?

10 MR. HESTERS: No, it's not that. It doesn't have
11 a 230 kV bus. It only --

12 MR. BOYD: So it's going to have to go from 230
13 kV to 500 kV essentially to be able to be connected, is
14 that what you're saying?

15 MR. HESTERS: Yes, they're going to have to build
16 a 230 kV bus at the Colorado River substation, and then
17 transformers to bring that up to 500 kV, so that it can
18 then get to the network.

19 MR. BOYD: And that would be owned by Southern
20 California Edison or by the applicant? Who would own it?

21 MR. HESTERS: I can't imagine anybody but Edison
22 owning that?

23 MR. BOYD: And who's going to pay for that, is it
24 going to be the applicant or is it going to be the rate
25 papers?

1 STAFF COUNSEL HOLMES: Objection on the grounds
2 of relevance.

3 MR. BOYD: Well, I just want to know who's paying
4 for it.

5 STAFF COUNSEL HOLMES: Well, you may want to
6 know, but the question is whether or not it's relevant to
7 the determinations that the Committee needs to make. And
8 I don't see that the cost is relevant. We've talked about
9 why it's needed. We've talked about when it's going to be
10 built and we've done an environmental assessment on it.

11 MR. BOYD: Now, has the Commission approved it?

12 HEARING OFFICER CELLI: I'm going to allow the
13 question, but --

14 MR. BOYD: I understand.

15 HEARING OFFICER CELLI: -- we're getting on the
16 edges of relevance there.

17 Go ahead.

18 MR. BOYD: No, I understand.

19 MR. HESTERS: I think the generator is
20 responsible for their direct interconnection costs. I
21 don't know -- there is some question about how these are
22 being paid for and who's paying for them up front at this
23 point. There are negotiations going on and I don't
24 know -- I'm not a party to those.

25 MR. BOYD: Okay, and then my last question has to

1 do with you mentioned that this is -- this report is
2 confidential under critical energy information
3 infrastructure information that FERC has. And I have an
4 order from FERC giving me permission to access to critical
5 energy information. And I would like to know what I would
6 have to do to get -- to see a copy of it or have my
7 attorney see a copy of that report, if I can prove to you
8 that I do have an order proving that from the FERC.

9 STAFF COUNSEL HOLMES: I'm going to object to
10 that question. It doesn't even sound like it's a
11 question. I'm going to object to that.

12 HEARING OFFICER CELLI: I'm going to sustain the
13 objection. Only because I'm not sure this witness has the
14 expertise to address that. He's not a lawyer. He's a
15 transmission --

16 MR. BOYD: I just want to know how I can see the
17 report. And if I -- that's my question and he obviously
18 can't answer that.

19 HEARING OFFICER CELLI: I don't know.

20 MR. HESTERS: I can't answer that.

21 HEARING OFFICER CELLI: Then the objection is
22 sustained.

23 Anything further of this witness.

24 MR. BOYD: No. No, thank you.

25 HEARING OFFICER CELLI: Anything from Mr.

1 Budlong?

2 MR. BUDLONG: No.

3 HEARING OFFICER CELLI: Thank you.

4 Redirect?

5 STAFF COUNSEL HOLMES: None.

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

7 Have a nice party.

8 STAFF COUNSEL HOLMES: I would like to note for
9 the record that the Appendix A that he referred to in his
10 testimony is part of Exhibit 403. And the legal basis for
11 the Commission holding the information confidential is
12 subdivision B of the Energy Commission's regulations
13 Section 2505 in Title 20.

14 HEARING OFFICER CELLI: Right. It's a Homeland
15 Security thing, but if you have some special permission,
16 then I think you're going to have to chase that down on
17 your -- through your own channels to get that information.

18 MR. BOYD: I can get that, but I would go to ISO,
19 right? That's who's reported this, correct?

20 Okay, thanks.

21 HEARING OFFICER CELLI: (Nods head.)

22 Now, do you have any other witnesses with regard
23 to transmission systems engineering?

24 STAFF COUNSEL HOLMES: We do not.

25 HEARING OFFICER CELLI: Any further testimony or

1 any exhibits of any sort?

2 STAFF COUNSEL HOLMES: No. We did not prepare --
3 since the study came in late yesterday, we didn't prepare
4 written testimony. We believe that the oral discussion
5 that was provided today would be sufficient.

6 HEARING OFFICER CELLI: Do you intend to put in
7 the study?

8 STAFF COUNSEL HOLMES: We intend to put in -- we
9 would -- I think it would probably be helpful to have the
10 redacted version once it's available. I don't know if you
11 want to identify it as an exhibit or have it be something
12 that you take official notice of at the time that it is --

13 HEARING OFFICER CELLI: I'm about to close the
14 record. That's why I'm asking these questions on
15 transmission systems engineering. So if there's anything
16 else we need, it sounds like we probably need that.

17 STAFF COUNSEL HOLMES: That's fine. I don't --
18 as I said, I don't have a strong opinion as to whether it
19 should be an exhibit or something that the Commission
20 takes -- that the Committee takes official notice of.

21 HEARING OFFICER CELLI: Maybe I let Mr. Hesters
22 go too early, but he did indicate that there's going to be
23 sort of a public --

24 STAFF COUNSEL HOLMES: Correct.

25 HEARING OFFICER CELLI: -- version. And I'm of

1 the mind that we would allow the public version. And that
2 means that all of the parties would be privy to the same
3 information in as exhibit next in order, whatever we would
4 have numbered it as. We identified the Phase 2 system
5 impacts study public version, we're calling it.

6 STAFF COUNSEL MAYER: That would be.

7 MS. BELENKY: I'm sorry. I'm not exactly clear.
8 You're going to give it an exhibit number, although we
9 don't actually have a copy of it, is that correct?

10 HEARING OFFICER CELLI: Right, that's correct.
11 And it's going to be the public version.

12 STAFF COUNSEL HOLMES: It's already been
13 identified as Exhibit 405.

14 HEARING OFFICER CELLI: 405?

15 STAFF COUNSEL HOLMES: Right.

16 HEARING OFFICER CELLI: So heretofore, we have
17 not received anything physically representing that which
18 is marked as Exhibit 405. Okay, I see that. 405 is the
19 transmission systems and engineering CalISO Phase 2
20 interconnection study expected July 12th. Not bad, when
21 did it come out? July --

22 STAFF COUNSEL HOLMES: 20th.

23 HEARING OFFICER CELLI: -- 20th. Not bad for
24 government work.

25 (Laughter.)

1 PRESIDING MEMBER BOYD: Not bad.

2 HEARING OFFICER CELLI: Okay, and that was
3 received into evidence already. And just to be clear,
4 that's this --

5 MS. KOSS: But it doesn't exist.

6 HEARING OFFICER CELLI: We identified it.

7 MR. GALATI: Just to clarify, what I want to make
8 sure that does not happen, first of all, I think you've
9 heard me before, is I don't believe that you need this as
10 an exhibit in your record to make a decision. You can
11 rely on the testimony of your transmission expert, and you
12 don't need this as an exhibit. If you identify it as an
13 exhibit now, and for some reason it doesn't come or it's
14 22 days late, like the last exhibit, we don't want an
15 exhibit out there that prevents the closing of the record
16 and getting the Presiding Member's Proposed Decision.

17 So I'd like to be heard once more about why you
18 do not need it for purposes of your decision here.

19 HEARING OFFICER CELLI: Let me speak to that
20 though, because I think that the intervenors have the
21 right to look at it and include that evidence in their
22 briefs if they want to. And what I think we can do is we
23 can admit it now. It is going to be a public document.
24 It will be subject to the Public Records Act. And this --
25 if something shows up in that document that the parties

1 did not have in order to timely file their briefs, and
2 they want to include that in a subsequent brief. I think
3 they'd have the right to be able to make that motion.

4 MR. GALATI: The staff assessment included as a
5 Condition of Certification that the Phase 2 be provided.
6 And so it was always contemplated that the Phase 2 could
7 be provided after you made a decision. And so I don't
8 want to open up a dispute or a debate about something that
9 could be used to delay the project, if it is not
10 necessary.

11 And again, what you just heard and what you heard
12 just testified to was that nothing in the Phase 2 study,
13 other than the Colorado River substation which is being
14 evaluated in a Appendix, the project -- the Red Bluff
15 substation, which is being evaluated in the desert
16 sunlight and Palen projects, and the third upgrade, which
17 is already planned by Edison and doesn't need to be
18 evaluated here. And that's the only things that have
19 changed.

20 And so from that perspective, I think that we
21 would unfortunately create a decision today that a month
22 from now or two months if we don't have a public record,
23 we'd be delaying our proceedings.

24 HEARING OFFICER CELLI: Actually, since it's
25 already been received into evidence -- it's already been

1 received, I don't think we're delaying anything, but I am
2 allowing the possibility, in the event of its late receipt
3 from the parties, to make a motion to reopen based upon
4 subsequently found information in that document. I think
5 that's fair.

6 I'm just going to go off the record for a moment.

7 (Thereupon a discussion occurred off the record.)

8 HEARING OFFICER CELLI: We're back on the record
9 then. Okay, thank you, Applicant.

10 Let's hear from CURE.

11 MS. KOSS: Yes. A couple of things. Simply
12 because the staff proposed as a condition that the -- I
13 don't actually remember the exact wording of the
14 condition. Maybe Mr. Galati can help me, but that the
15 Phase 2 study -- what was the condition, do you recall?

16 MR. GALATI: It was TSE 5, and the Phase 2 study
17 had to be provided.

18 MS. KOSS: Okay, that doesn't mean there aren't
19 issues that can be raised as a result of the Phase 2
20 study. And I think that's what Hearing Officer Celli is
21 speaking about. So we, as an intervenor, would certainly
22 like the opportunity to review that, and brief it. I
23 don't know if we'll have anymore evidence to put in. We
24 may or may not. I am concerned about the timeframe of the
25 redacted version coming out. It may be after briefing is

1 over. I don't know.

2 HEARING OFFICER CELLI: Well, Mr. Hester said it
3 was coming out within a day.

4 MS. KOSS: Oh, he did, okay.

5 HEARING OFFICER CELLI: So I don't think we're
6 looking at that much time. I just wanted to preserve the
7 right for the intervenors.

8 MS. KOSS: Would it be possible, perhaps if it
9 doesn't come out in a day or so, to allow us to raise
10 those issues in reply briefs only?

11 HEARING OFFICER CELLI: Yes, that would be fine.
12 That's reasonable and I appreciate your -- that's a
13 creative solution. So that's great.

14 Ms. Belenky.

15 MS. BELENKY: I mean, I think that generally I
16 didn't realize that staff -- and perhaps it's my own fault
17 for not reading the list of exhibits more carefully. I
18 didn't realize that staff had moved in exhibit numbers
19 that didn't have documents associated with them as an
20 initial matter.

21 And if that is the case, I would have objected.
22 And I'm sorry I didn't at the time. Nonetheless, I can't
23 really agree to move an exhibit that doesn't exist and
24 that we have not seen. So I just don't feel that that's
25 appropriate.

1 As far as the questions of how this document
2 relates, I think it does relate to several other main
3 issues in this project. And the fact that this document,
4 at least what was stated by staff, relies on a Draft
5 Environmental Impact Statement for Desert Sunlight, which
6 has not been made public yet either, is quite worrisome,
7 as is the reliance on any analysis in the Palen matter for
8 the Red Bluff, because those -- the adequacy of those
9 analyses is not in this matter here before us.

10 So I think we would object on all those bases.

11 HEARING OFFICER CELLI: But you understand that
12 you're objection is moot because we've already received it
13 into evidence?

14 MS. BELENKY: I do understand that. And in the
15 future, I will be extremely careful to make sure that
16 every single exhibit has an actual document attached to
17 it. I think that, you know, generally we've made it clear
18 that we thought that this was a very chaotic process in
19 general with exhibits coming in through Email at the very
20 last minute and so forth. So I would renew that
21 objection.

22 HEARING OFFICER CELLI: Okay, thank you. Noted.

23 Mr. Budlong?

24 Mr. Budlong, are you still with us?

25 It looks like he hung up.

1 HEARING OFFICER CELLI: Okay, well, that's his
2 prerogative.

3 Mr. Boyd.

4 MR. BOYD: Well, I like the proposed compromise,
5 but I do think that it would be prudent for me to see what
6 you're moving into evidence first.

7 HEARING OFFICER CELLI: Yes, that's true.

8 So with that, one moment.

9 Did we hear from staff on this yet?

10 I don't know if we did or not.

11 STAFF COUNSEL HOLMES: Did we hear from staff on
12 what, Hearing Officer Celli?

13 HEARING OFFICER CELLI: On this was raised by --
14 the issue raised by the applicant with regard to the Phase
15 2 study being -- because there's a -- we have Transmission
16 Systems Engineering 5 that requires -- it would require as
17 a condition that the Phase 2 study be received into
18 evidence essentially.

19 It's already been received into evidence.

20 STAFF COUNSEL HOLMES: No, that it be provided to
21 staff.

22 HEARING OFFICER CELLI: Provided. Is that all
23 that it says, that it just be provided to staff.

24 STAFF COUNSEL HOLMES: Yes. And it was written
25 in the event that the Phase 2 study wasn't available until

1 after licensing.

2 HEARING OFFICER CELLI: Ah.

3 STAFF COUNSEL HOLMES: As is the case in many
4 similar circumstances, sometimes other agencies don't move
5 forward on a schedule that accommodates our licensing
6 schedule and staff makes its best efforts to find out what
7 it can and prepare an analysis based on that. And that's
8 exactly what we did in this case.

9 HEARING OFFICER CELLI: Okay. And so really I
10 don't know why we're confusing the matters anymore than
11 they have to be. It's already been received into
12 evidence. And so that will be the order essentially is
13 that it's received into evidence, and we'll just leave it
14 at that.

15 And we will count on staff to POS this as soon as
16 it is available, hopefully today or tomorrow.

17 So with that, does staff have any other -- we are
18 on staff, I believe, with regard to transmission systems
19 engineering. Anything further?

20 STAFF COUNSEL HOLMES: No.

21 HEARING OFFICER CELLI: We were just asking --
22 I'm sorry, that's how we got to applicant. Anything on
23 transmission systems engineering?

24 MR. GALATI: No, we just hope that document gets
25 prepared.

1 HEARING OFFICER CELLI: Yes.

2 CURE, Transmission systems engineering?

3 MS. KOSS: No.

4 HEARING OFFICER CELLI: CBD?

5 MS. BELENKY: No.

6 HEARING OFFICER CELLI: Mr. Boyd?

7 MR. BOYD: No.

8 HEARING OFFICER CELLI: Mr. Budlong, are you
9 back?

10 He got tired of us I guess. He's gone.

11 So with that, transmission systems engineering is
12 closed.

13 STAFF COUNSEL HOLMES: (Nods head.)

14 HEARING OFFICER CELLI: Now, the parties wanted
15 to discuss biology. We have yet to -- we need to get into
16 cultural. And then there's some limited issues with
17 regard to biology, and soil and water and then that's the
18 sum total of the areas that we're going to be covering.

19 STAFF COUNSEL HOLMES: No, I think actually, if I
20 may be so bold. I believe that --

21 HEARING OFFICER CELLI: Yes, Ms. Holmes.

22 STAFF COUNSEL HOLMES: Thank you. I believe we
23 have resolved soil and water and would love to have the
24 opportunity to get a stipulated agreement into the record.
25 And we wanted to discuss bio and cultural in some sort of

1 a workshop type event.

2 HEARING OFFICER CELLI: Well, that's perfect.
3 Let's take soil and water next. Soil in the order for
4 today -- let me open that up -- was that we were -- today
5 we're handling air quality, which is now handled.
6 Transmission systems is handled. Soil and water but only
7 as to conditions Soil and Water 4, 15, and 19. So we will
8 open the record again as to soil and water now.

9 STAFF COUNSEL HOLMES: All right. We need to
10 make sure that our witnesses are on the phone.

11 Michael Donovan.

12 MR. DONOVAN: Yes, I'm here.

13 STAFF COUNSEL HOLMES: Thank you.

14 HEARING OFFICER CELLI: Great say your name --oh,
15 there's Michael Donovan.

16 Anyone else?

17 Are you calling anyone else besides Michael
18 Donovan?

19 STAFF COUNSEL HOLMES: I think that's sufficient.
20 I don't think we need anybody else to sponsor this.

21 HEARING OFFICER CELLI: Okay.

22 STAFF COUNSEL HOLMES: Last night staff
23 distributed to all of the parties a number of documents,
24 one of which is a revision to Soil and Water 4, and Soil
25 and Water 15, and 19.

1 HEARING OFFICER CELLI: Mr. Donovan, we need you
2 to speak really clearly and loudly right into your phone,
3 please.

4 STAFF COUNSEL HOLMES: And have you reviewed the
5 revisions in Soil and Water 4, Soil and Water 15, and Soil
6 and Water 19 that have been identified in Exhibit 443?

7 MR. DONOVAN: Yes, I have.

8 STAFF COUNSEL HOLMES: And to the best of your
9 knowledge, do those revisions address the specific
10 additional concerns that were raised by the Center for
11 Biological Diversity with respect to impacts that continue
12 after project operation?

13 MR. DONOVAN: Yes, they do.

14 STAFF COUNSEL HOLMES: Thank you. I think what
15 I'd -- in the interests of moving things along, what I'd
16 like to do at this point is just make Mr. Donovan
17 available for cross-examination.

18 HEARING OFFICER CELLI: Nothing further from
19 staff then.

20 Applicant?

21 MR. GALATI: No cross-examination.

22 HEARING OFFICER CELLI: CBD, please?

23 CROSS-EXAMINATION

24 BY MS. BELENKY:

25 I'm a little confused. So you're deferring the

1 actual analysis of the amount of water that would be
2 required for mitigation, is that correct?

3 MR. DONOVAN: It is to be done at the -- through
4 modeling that is incorporated into the Conditions of
5 Certification.

6 MS. BELENKY: So you're saying the kind of
7 modeling that would be used is part of the condition, is
8 that correct?

9 MR. DONOVAN: Yes.

10 MS. BELENKY: But the actual analysis has not yet
11 been performed, is that correct?

12 MR. DONOVAN: The preliminary analysis has been
13 performed.

14 MS. BELENKY: And do you have a timetable for the
15 final analysis on that?

16 MR. DONOVAN: It has to be submitted prior to
17 construction -- prior to water production at the site.

18 MS. BELENKY: Thank you. I think we would have
19 just a general objection to deferring that information,
20 but otherwise I have no further questions for this
21 witness.

22 Thank you.

23 HEARING OFFICER CELLI: I just want to be clear.
24 From the testimony it sounds, Mr. Donovan, like you are
25 putting in a condition that's going to require modeling.

1 Revising modeling with regard to the shut down of the
2 powerplant -- no, I've got a head shake here.

3 STAFF COUNSEL HOLMES: Mr. Donovan, could you
4 please -- for the Committees's sake, could you please
5 explain how Soil and Water 15 and 19 work and what
6 assurances they provide the Committee that impacts, in the
7 staff's opinion to the Colorado River, and the applicant's
8 opinion to the Palo Version Mesa groundwater basin, are
9 avoided or mitigated?

10 MR. DONOVAN: As part of the analysis in the
11 Staff Assessment, a preliminary analysis was done using
12 modeling to determine what amount of water is being
13 decreased from subsurface flow in the Chuckwalla Valley
14 ground water basin and the Palo Verde basin groundwater
15 basin.

16 It was determined that a specified amount of
17 approximately 50 acre feet per year was deep-freezed in
18 flow at the end of operations. Now, that was a
19 conservative analysis that was done. And what we have
20 asked for the applicant is that they do both a
21 continuation of this in looking into a latency period past
22 the time that was determined, but a the total amount of
23 water that would be decreased from the Chuckwalla Valley
24 basin to the Palo Verde basin.

25 And so we have an approximate number of what that

1 is, what we want, a refinement, and that's what this soil
2 and water condition is.

3 HEARING OFFICER CELLI: Okay.

4 MR. DONOVAN: I'm sorry. Basically, it is
5 determined that there's a certain amount that is being
6 decreased. We feel that that amount can be mitigated, and
7 we have divided this thing for refinement of that amount
8 to be developed as part of this Soil and Water Condition
9 15, and Soil and Water Condition 19.

10 HEARING OFFICER CELLI: Okay. So Ms. Belenky,
11 I'm just trying to get to what your objection was.

12 MS. BELENKY: Well, we haven't seen the numbers
13 or the modeling. And unless -- because this was not the
14 same numbers that were modeled in the Staff Assessment.
15 That was looking at flow and impacts to the Colorado
16 River. And now they're using a different point of impact
17 and different modeling. I just don't -- you know, that
18 sort of information should be provided at this stage, and
19 not --

20 HEARING OFFICER CELLI: I wonder are we talking
21 about that 50 acre feet of water in that schematic that we
22 saw at the last hearing. There was a screen on the wall
23 showed a picture showing where the Chuckwalla basin was,
24 went into the Palo Verde Mesa down to the Colorado River.
25 And the idea was the mitigation was going to be calculated

1 at the Chuckwalla Palo Verde border.

2 MR. GALATI: That's correct. There's plenty of
3 documents in the record that show that the applicant
4 calculated what the change was at that particular
5 location. Most of the case has been talking about what
6 happens after that, from that location to the Colorado
7 River. So there's never been really too much of a dispute
8 as to how you get a number at that location.

9 This condition requires that to be refined for
10 purposes of mitigation, but there is a number. It's
11 probably conservative in collected recharge. There is a
12 number. That's in the record. Ms. Belenky had asked
13 questions about the number at that location, which was
14 to -- if you remember, I had inadvertently left off a
15 Table 4 that Mike Tietze then went and recreated on
16 cross-examination with Ms. Belenky.

17 So there are numbers out there. I think what's
18 happening here is, this isn't a factual discussion. This
19 is a legal discussion that should be handled in briefs.
20 And that is whether or not the Commission can go forward
21 without a refined number today or can they rely on a
22 condition to refine the number for mitigation. I think
23 this is one of those legal issues about deferral and
24 mitigation. And I think it probably should be handled in
25 briefs as opposed to with these witnesses.

1 HEARING OFFICER CELLI: Ms. Belenky, you want to
2 respond, because we're with you on cross on Mr. Donovan.
3 You just completed your cross, but you stated that you had
4 an objection. And I'm trying to make sure I'm responding
5 to that objection. And my sense is, is that what Mr.
6 Galati is saying is your objection is something that will
7 probably be briefed later. Do I have that correct, that
8 you're basically going to be addressing this issue in
9 briefs later, to say that CBD doesn't agree with the
10 modeling or whatever?

11 MS. BELENKY: Well, we may or may not agree with
12 the modeling. I just -- from this information, it's hard
13 to tell. And so this is partly a factor of getting this
14 last night and not having time, and now we're having a
15 hearing already less than 12 hours later. And it's very
16 hard to stay whether we will have questions that are
17 factual in nature, because we haven't had a chance to
18 fairly examine this information.

19 HEARING OFFICER CELLI: I just want to make
20 sure --

21 MS. BELENKY: So I'm not -- that's my objection.
22 And as far as the legal part of the objection, yes, we
23 will deal with it in briefs.

24 HEARING OFFICER CELLI: But this is your
25 opportunity to cross Mr. Donovan. So --

1 MS. BELENKY: And I did so.

2 HEARING OFFICER CELLI: Okay. And you're
3 complete with that, you're satisfied?

4 MS. BELENKY: Yes.

5 HEARING OFFICER CELLI: Okay, thank you.
6 Then CURE.

7 MS. KOSS: No questions.

8 HEARING OFFICER CELLI: CARE?

9 MR. BOYD: I'm just a little confused now. What
10 I'm hearing is, is that --

11 HEARING OFFICER CELLI: Actually, let me step
12 back for a minute. Because I don't even want to go down
13 this one. And let me tell you why I'm saying this.

14 MR. BOYD: Yeah, just explain that part.

15 HEARING OFFICER CELLI: There was extensive
16 testimony at our last hearing with visuals, a map showing
17 where the water --

18 MR. BOYD: I saw that figure. I read that.

19 HEARING OFFICER CELLI: Right. It was like a map
20 that showed essentially where the water basins were. And
21 up until now, there has been great discussion about how
22 much impact was going to be had down at the Colorado
23 River --

24 MR. BOYD: And we're down to 50 acre foot is what
25 I heard.

1 HEARING OFFICER CELLI: Essentially, rather than
2 waiting to figure out what the impact is down there, they
3 decided that the easiest thing to do would be to just take
4 it to the border of the basin that the project would be in
5 the next basin. So that's what the testimony was all
6 about.

7 MR. BOYD: And what I'm hearing from CBD is that
8 they want to see the analysis.

9 MR. GALATI: Mr. Celli, if I could just jump in
10 here, I do apologize. I thought that Mr. Boyd's
11 participation in this matter was limited to cultural. He
12 filed a late prehearing conference. He did not ask to
13 cross-examine. And now we're trying to recreate what we
14 did in the last two days of hearings, because Mr. Boyd was
15 not participating.

16 It's very difficult. We have biology too. And I
17 don't want to go through this with biology.

18 MR. BOYD: I don't want to spend a lot of time.
19 I'm just trying to understand --

20 HEARING OFFICER CELLI: No, I understand. What
21 I'm trying to do is walk a balance between you are a
22 party. You are limited to Cultural, but I don't want to
23 preclude your participation. I'm trying to keep you
24 involved in the loop. So if there was a short question, I
25 was going to -- I thought, okay, maybe there's a short

1 answer, but this is not a short question.

2 MR. BOYD: But you did answer it. It's 50 acre
3 feet of Colorado River water that's being discussed
4 essentially.

5 HEARING OFFICER CELLI: That was what was being
6 discussed. The truth is I haven't seen the latest, but
7 that's ballpark what we're talking about.

8 MR. BOYD: And I haven't seen the analysis
9 either. An that's all I'm saying is, if there's
10 analysis -- I mean, it seems like it's simple enough that
11 the staff could show them the analysis I would think.

12 STAFF COUNSEL HOLMES: The analysis for the 50
13 acre feet was contained in the applicant's testimony on
14 biological resources. We discussed this at the hearing
15 last week.

16 MR. BOYD: Okay, I'll leave it alone.

17 HEARING OFFICER CELLI: Thank you.

18 Mr. Budlong, did you come back on the phone?

19 No, he did not, okay.

20 Then any redirect of Mr. Donovan?

21 STAFF COUNSEL HOLMES: I have one question.

22 REDIRECT EXAMINATION

23 BY STAFF COUNSEL HOLMES:

24 Mr. Donovan?

25 MR. DONOVAN: Yes.

1 STAFF COUNSEL HOLMES: Do the changes that have
2 been made to the Soil and Water Conditions 15 and 19 that
3 are found in Exhibit 443 reflect the discussions that all
4 parties had the opportunity to participate in before last
5 week's hearing on Tuesday morning?

6 MR. DONOVAN: Yes.

7 STAFF COUNSEL HOLMES: Thank you.

8 HEARING OFFICER CELLI: Recross?

9 MR. GALATI: No.

10 HEARING OFFICER CELLI: Recross, CBD?

11 MS. BELENKY: No.

12 HEARING OFFICER CELLI: Recross, CURE?

13 MS. KOSS: No.

14 HEARING OFFICER CELLI: Recross, Mr. Boyd?

15 MR. BOYD: (Shakes head.)

16 HEARING OFFICER CELLI: Mr. Budlong isn't here
17 with us anymore.

18 Okay, anything further from staff --

19 STAFF COUNSEL HOLMES: No.

20 HEARING OFFICER CELLI: -- on soil and water?

21 Applicant, I sort of took you out of order here,
22 but anything -- this is your case in chief in soil and
23 water?

24 MR. GALATI: Just double check. My case in chief
25 is closed. I just wanted to make sure that that document

1 got moved into the record.

2 STAFF COUNSEL HOLMES: Staff would move Exhibit
3 443 into the record.

4 HEARING OFFICER CELLI: Any objection, applicant?

5 MR. GALATI: No objection. And by way of offer
6 of proof, we agree to those changes.

7 HEARING OFFICER CELLI: Any objection to Exhibit
8 443 from CURE?

9 MS. KOSS: No.

10 HEARING OFFICER CELLI: From CBD?

11 MS. BELENKY: No.

12 HEARING OFFICER CELLI: CARE?

13 MR. BOYD: No.

14 HEARING OFFICER CELLI: Mr. Budlong?

15 I'm just going to keep checking with him every so
16 often.

17 Okay, then Exhibit 443 marked for identification
18 will be received into evidence at Exhibit 443.

19 (Thereupon Exhibit 443 was received into
20 evidence.)

21 HEARING OFFICER CELLI: And with that, that takes
22 care of staff and applicant.

23 Anything more on Soil and Water on CBD on the
24 limited issues of Soil and Water 4, Soil and Water 15, and
25 Soil and Water 19?

1 MS. BELENKY: No, not at this time.

2 HEARING OFFICER CELLI: Nothing from CBD.

3 From CURE?

4 MS. KOSS: No, thank you.

5 HEARING OFFICER CELLI: And Mr. Boyd is shaking
6 his head no.

7 MR. BOYD: No, sir.

8 HEARING OFFICER CELLI: Thank you. And Mr.
9 Budlong is gone.

10 So with that, we will close the record on Soil
11 and Water. So thank you, folks. I appreciate your
12 getting together and working things out by way of
13 stipulations.

14 Now, what's left is Cultural and limited Bio.
15 There was an indication earlier that the parties wanted to
16 meet and confer, in the absence of the Committee, to see
17 if you can pound out some stipulations. The Committee is
18 happy to accommodate you, but in 15 minutes we have public
19 comment.

20 So any suggestions on how you'd like to proceed.

21 STAFF COUNSEL MAYER: Yes. Officer Celli, we
22 wanted to also have Roger Johnson sponsored an exhibit.
23 It's a calculation of land acquisition as a table of costs
24 that have been calculated by the REAT agencies. And we
25 wanted to have him sponsor that table basically to get it

1 into evidence.

2 HEARING OFFICER CELLI: Under what topic.

3 STAFF COUNSEL MAYER: Biological Resources. It's
4 land acquisition for mitigation for Desert Tortoise and
5 Mojave Fringe-toed Lizard.

6 HEARING OFFICER CELLI: Okay. Now, also remember
7 we needed to talk about the ARRA in the context of, I
8 believe it was Biology maybe cultural. I'm not sure. But
9 the starting early. That was actually --

10 MR. GALATI: Yeah, this was ours. We were just
11 going to propose some conditions in our briefs. And they
12 were conditions that just made it clear that the CPM
13 could, on occasion, accept a plan that might not be
14 complete because of the size of the project.

15 So for example, I gave the soil and water
16 stormwater pollution protection plan may focus on the
17 types of activities that are going to happen the first
18 year during construction, because we don't have detailed
19 drawings for the second year. So we just wanted to
20 propose a condition in the general conditions that would
21 allow the CPM approval to accept something that might not
22 be -- you know, might address those needs. Like my
23 understanding is some of those plans require a huge amount
24 of engineering drawings. So there might be some
25 engineering drawings missing. And I just wanted to make

1 it clear with these larger projects that sometimes we want
2 the CPM to have that authority.

3 I raise that issue. And that would also help us
4 with getting the construction earlier, if we submitted a
5 plan and got it approved, but it didn't affect something
6 we weren't going to get to for another 13 months or
7 something.

8 HEARING OFFICER CELLI: So you didn't want to
9 treat it as an evidentiary matter.

10 MR. GALATI: No.

11 HEARING OFFICER CELLI: You wanted to treat it as
12 a legal matter in your brief.

13 MR. GALATI: Yeah. We'll put it in our opening
14 brief and the parties can comment on it.

15 HEARING OFFICER CELLI: That's fine. That was
16 really applicant's issue, so we can take that off the
17 table now, the ARRA early construction issue.

18 So, with that --

19 MS. BELENKY: I'm sorry. I don't believe that
20 that has been -- I mean, I thought we were going to
21 discuss it, because I think it does affect biological
22 resources, the order in which you construct, if it's not
23 the way it was laid out and explained in the staff
24 assessment, and in the DEIS. If it's different than that,
25 I do think that it's worth discussing, especially given

1 that the road itself, the main road, is a very large
2 impact here, and presumable that would have to go in
3 before anything else, so -- or not.

4 And whether or not it would is a question. So I
5 do object to the idea that this could just be deferred
6 into some condition that none of us had looked at. And
7 the staff has not analyzed it in any way.

8 HEARING OFFICER CELLI: Well, we did put it on --
9 we did say at the last hearing that we would give the
10 parties a chance to address this today.

11 MS. BELENKY: Yes, and I thought we would address
12 it.

13 HEARING OFFICER CELLI: I thought it was just
14 applicant's issue, so I won't remove it from the table.
15 You can discuss it during your workshop.

16 MR. GALATI: If you remember correctly, the
17 conversation went I'd like the staff -- I'd like the staff
18 of the Committee to consider a condition that would allow
19 a plan that is already required under the Conditions of
20 Certification to maybe be submitted with a first version
21 and a second version to match how construction would
22 occur.

23 We did not ask for. I think the Committee asked,
24 and said what we did in Beacon was we identified the
25 particular phasing. We are not asking for that. We have

1 not identified exactly where we're going to start first.
2 So that whole discussion we're not asking for that. We're
3 not asking for a phasing plan that we've laid out. We're
4 going to do this first, that first. I'm not asking for
5 that.

6 What I'm asking for is when we start to go to
7 construction, we want the CPM to have the ability, rather
8 than take a stormwater pollution prevention plan that is
9 that thick, since we're not going to get to the latter
10 half of that until 2012 or 13, that maybe he can accept
11 the plan that is missing some drawings or it's tailored
12 for the kind of -- the schedule of construction, because
13 all construction has a schedule. This has nothing to do
14 with whether staff evaluated the full impacts of the
15 project. They've evaluated the full impacts of the
16 project over a construction schedule, air quality, went
17 over certain number of months, traffic, assumed a certain
18 number of months.

19 All I'm asking for is that the CPM be given
20 specific authority to accept an otherwise plan that would
21 be provided with missing some elements, so we can get to
22 construction. This is not an evidentiary issue. It is
23 not an evidentiary issue. And I think there's confusion
24 that we're talking about, we want the authority for you to
25 tell us to go ahead and build the road first. We're not

1 asking for that. That's not what we're doing.

2 HEARING OFFICER CELLI: Okay.

3 MR. GALATI: But just so everybody knows, we'll
4 build the road first. That's how the project works.
5 We're not asking for conditions to be split out, and say
6 when you build the road this is what you do. And then
7 when you put the transmission line this is what you do.
8 That's not what we're asking for.

9 HEARING OFFICER CELLI: Okay. Well, is this
10 something that I think the parties need to discuss?

11 STAFF COUNSEL HOLMES: What I can say is that
12 staff doesn't have a problem with the concept of providing
13 approval for certain types of activities if all of the
14 conditions related to those activities have been met.
15 We're not sure -- we're not sure -- there are two concerns
16 about it that I don't think are fatal.

17 One is we're not quite sure how to word it, so
18 that we know that we always get the review completed
19 before the activity in that particular area is done. And
20 number two, we're very concerned about the workload on the
21 CPMs, and we don't want to make this a situation where it
22 ends up being twice as much work for them as it would be
23 in they looked at a plan once and provided approval once.

24 So we're supportive of the concept and we're
25 still trying to figure out how to make it work. But I do

1 want to make it absolutely clear that staff is not
2 considering -- I don't think the applicant is
3 considering -- anything in which we would say, oh, you
4 didn't do -- you didn't address the road in your
5 stormwater pollution prevention plan, but you can go ahead
6 and build the roadway anyway. That's not what we're
7 talking about. We're talking about a situation where all
8 of the plans that relate to construction on the project
9 would be approved before the -- either the specific type
10 or the specific location of construction begin.

11 So there's no environmental protection that's
12 lost. It's really just an issue of how to do the
13 paperwork in a way that insures that no environmental
14 protection is lost and doesn't end up creating more burden
15 for the applicant, but also provides the -- excuse me, for
16 the compliance staff, but also provides the applicant with
17 the ability to move quickly, so that they can meet their
18 ARRA deadlines, which if they have the approval of the
19 Commission, staff would like to see that happen.

20 HEARING OFFICER CELLI: Okay. I've got -- it
21 looks like knitted eyebrows from all of the intervenors.
22 And what I want to do first, let me ask, I see Roger
23 Johnson came in. Did you want to call him as a witness?

24 STAFF COUNSEL MAYER: Yes.

25 HEARING OFFICER CELLI: Okay, and then under --

1 STAFF COUNSEL HOLMES: It's not on this topic
2 however.

3 HEARING OFFICER CELLI: Okay, under what topic
4 was it? Was it biology you said?

5 STAFF COUNSEL MAYER: Yeah, the REAT agencies
6 have created a new land acquisition cost table and we just
7 wanted Roger to sponsor that for staff.

8 HEARING OFFICER CELLI: Have all the parties
9 received this new table?

10 STAFF COUNSEL MAYER: They've been served with
11 it, and I have hard copies -- some hard copies here.
12 That's exhibit --

13 HEARING OFFICER CELLI: Why don't you pass these
14 out and we'll let the record reflect that Mr. Monasmith is
15 passing around, what will probably be staff's exhibit next
16 in order.

17 STAFF COUNSEL MAYER: It was set up as 439.

18 STAFF COUNSEL HOLMES: The table is 439. And
19 they're -- Robin, are you in -- did you want to have
20 marked as an additional --

21 STAFF COUNSEL MAYER: I don't think that's
22 necessary.

23 STAFF COUNSEL HOLMES: Since he's here. We had
24 something akin to a declaration, but since here's here in
25 person, we don't need to do that. So the purpose of his

1 testimony would be to provide the foundation for Exhibit
2 439, which is the acquisition cost estimates from the REAT
3 agencies.

4 (Thereupon the above-referenced document was
5 marked as Exhibit 439 for identification.)

6 HEARING OFFICER CELLI: One moment as I go off
7 the record.

8 (Thereupon a discussion occurred off the record.)

9 HEARING OFFICER CELLI: Okay parties, we're back
10 on the record again. From time to time we do this, we
11 have conferences and so we go off the record and back on
12 the record.

13 So just before we call Roger Johnson, I just want
14 to state that the Committee thinks it would be beneficial
15 if the parties discussed the proposal of Mr. Galati in
16 terms of language that everybody could accept. And then
17 when we reconvene after you have your workshop, we can
18 hear back from the parties and have a little more clarity,
19 because right now it seems rather vague.

20 MR. GALATI: Okay. Well, we put it in our
21 opening testimony. In the project description, we had a
22 revised opening testimony, proposed Condition of
23 Certification. It was objected to, so I'm trying a
24 different route, which is maybe the general conditions we
25 can tone down the language that was in the revised opening

1 testimony.

2 So the issue has always been out there. We wrote
3 it in our opening testimony. Just looking for another way
4 to get there.

5 HEARING OFFICER CELLI: Right. The committee is
6 aware of that. It's not like we're asking -- we're
7 pointing out any deficiencies or anything, but I think
8 that the intervenors at least are entitled to some good
9 clarity on it. And I think that will come from
10 workshopping the issue together today.

11 So when you talk about the within the context of
12 biology and cultural, when we come back on the record on
13 those issues, we can hear what the parties have to say on
14 it.

15 So with that, let's quickly -- it's 11:54. If we
16 take Mr. Johnson's testimony now, then we can at least
17 wrap that part up, and then we'll take public comment.
18 So, with that, Ms. Mayer.

19 STAFF COUNSEL MAYER: Thank you for joining us
20 today, Mr. Johnson.

21 HEARING OFFICER CELLI: He needs to be sworn in.
22 Would you please swear him Mr. Peters.

23 (Thereupon MR. ROGER JOHNSON was sworn, by the
24 court reporter, to tell the truth, the whole
25 truth and nothing but the truth.)

1 Whereupon,

2 ROGER JOHNSON

3 was called as witness herein, and after first
4 having been duly sworn, was examined and
5 testified as follows:

6 HEARING OFFICER CELLI: Thank you. Please have a
7 seat, Mr. Johnson. Say and spell your name, please.

8 MR. JOHNSON: Roger Johnson, R-o-g-e-r,
9 J-o-h-n-s-o-n.

10 HEARING OFFICER CELLI: Go ahead.

11 DIRECT EXAMINATION

12 BY STAFF COUNSEL MAYER:

13 Mr. Johnson, can you describe your role on the
14 REAT agency?

15 MR. JOHNSON: The Energy Commission is a member
16 of the Renewable Energy Action Team that was created when
17 the Governor signed Executive Order S1408.

18 The Energy Commission is represented on that by
19 the Chairman and Terry O'Brien, the Deputy Director, and
20 myself, presiding office manager, are participants on that
21 team.

22 STAFF COUNSEL MAYER: Thank you.

23 And this table, can you describe how this table
24 of the new land acquisition class was created?

25 MR. JOHNSON: This table was a collaborative

1 MR. GALATI: No further questions.

2 HEARING OFFICER CELLI: Cross by CURE?

3 CROSS-EXAMINATION

4 BY MS. KOSS:

5 Just one question. You stated this was
6 collaborative effort between Resource agencies and Land
7 Management agencies?

8 MR. JOHNSON: And permitting agencies.

9 MS. KOSS: And permitting agencies. Were there
10 any other parties involved?

11 MR. JOHNSON: Not that I'm aware of?

12 MS. KOSS: No developers were involved?

13 MR. JOHNSON: Okay. I've been reminded that the
14 National Fish and Wildlife Foundation also participated in
15 the development of this table.

16 MS. KOSS: Did any developers participate?

17 MR. JOHNSON: No.

18 MS. KOSS: Thank you.

19 HEARING OFFICER CELLI: Anything further?

20 MS. KOSS: No, thank you.

21 HEARING OFFICER CELLI: Ms. Belenky,
22 cross-examination.

23 MS. BELENKY: Yes, thank you.

24 CROSS-EXAMINATION

25 BY MS. BELENKY:

1 I just have a few questions. You participated in
2 preparing this table, is that correct?

3 MR. JOHNSON: I did not. The staff of the Energy
4 Commission, the Biology staff, participated.

5 MS. BELENKY: Thank you.

6 And are you familiar with the Draft Interim
7 Mitigation Strategy that was prepared by the California
8 Department of Fish and Game and provided publicly last
9 week?

10 MR. JOHNSON: I'm aware of it.

11 MS. BELENKY: Yes. And have you looked at the
12 numbers and therefore acquisition of lands in both the
13 Coachella Valley, MSHCP area, and the western Riverside
14 MSHCP area?

15 MR. JOHNSON: I did not. However, at that
16 meeting last week when this -- when the interim mitigation
17 strategy was presented by Kevin Hunting, Department of
18 Fish and Game. He indicated that this table would be
19 replacing those costs that were in the interim mitigation
20 strategy.

21 HEARING OFFICER CELLI: For the record, when we
22 were holding it at the table, that was Exhibit 439?

23 MR. JOHNSON: Right.

24 HEARING OFFICER CELLI: Okay, thank you.

25 MS. BELENKY: Okay, so you're not familiar with

1 the document that -- or you are familiar with the
2 document?

3 MR. JOHNSON: I'm aware of the document. I'm not
4 familiar with it. It was prepared by Fish and Game.

5 MS. BELENKY: Okay, and now you have testified to
6 hearsay that someone else stated that part of that
7 document will be changed, is that correct?

8 MR. JOHNSON: That's correct.

9 MS. BELENKY: So I would object to that on the
10 basis of hearsay.

11 MR. JOHNSON: There was a recording made of the
12 workshop. If you want to go back and --

13 HEARING OFFICER CELLI: Before you do, let me
14 just rule on the hearsay. Hearsay is admissible in an
15 administrative hearing. So overruled.

16 I'm sorry to interrupt. You can continue, Mr.
17 Johnson.

18 MR. JOHNSON: That workshop was recorded. And so
19 Mr. Hunting's statements about this table being intended
20 to replace those costs in the interim mitigation strategy
21 are available.

22 PRESIDING MEMBER BOYD: Roger, would you identify
23 who Mr. Hunting is within the Department of Fish and Game?

24 MR. JOHNSON: Excuse me, Jim, I didn't hear that.

25 PRESIDING MEMBER BOYD: Would you identify Mr.

1 Hunting's role or title within the Department of Fish and
2 Game?

3 MR. JOHNSON: Yes. Mr. Hunting is a Deputy -- is
4 the Chief Deputy Director of the Department of Fish and
5 Game, who had oversight responsibility for the interim
6 mitigation strategy that was published.

7 PRESIDING MEMBER BOYD: Thank you.

8 MS. BELENKY: But to your knowledge, that
9 document has not yet been revised, is that correct?

10 MR. JOHNSON: It has not been resubmitted with
11 that table in it, you're right.

12 MS. BELENKY: Thank you.

13 HEARING OFFICER CELLI: Anything further from
14 CBD?

15 MS. BELENKY: CBD would like the chance to
16 sponsor rebuttal testimony on this point.

17 HEARING OFFICER CELLI: Certainly. Today.

18 MS. BELENKY: Well --

19 HEARING OFFICER CELLI: And, you know, I want to
20 say that this is under the heading of biology. And so we
21 will be taking a lot more evidence on biology today.

22 So anything further on cross of Mr. Johnson?

23 MS. BELENKY: Not at this time. Thank you.

24 HEARING OFFICER CELLI: Okay, you already said no
25 any cross.

1 Mr. Budlong, are you out there?

2 Okay, redirect by staff.

3 REDIRECT EXAMINATION

4 BY STAFF COUNSEL MAYER:

5 Mr. Johnson, just one question. I just wanted to
6 reemphasize that as far as you know, the table represents
7 REAT's best estimates as of this date?

8 MR. JOHNSON: That is correct.

9 STAFF COUNSEL MAYER: Thank you, sir.

10 HEARING OFFICER CELLI: Recross, applicant?

11 MR. GALATI: No recross.

12 HEARING OFFICER CELLI: Recross, CBD?

13 MS. BELENKY: No, thank you.

14 HEARING OFFICER CELLI: Recross, CURE

15 MS. KOSS: No.

16 HEARING OFFICER CELLI: Recross, CARE?

17 MR. BOYD: No.

18 HEARING OFFICER CELLI: I've giving up on Mr.

19 Budlong.

20 Redirect?

21 STAFF COUNSEL MAYER: No.

22 HEARING OFFICER CELLI: You are excused. Thank
23 you, Mr. Johnson.

24 Okay. Now then, we're going to interrupt the
25 evidence. It's now 12:01. It's time for public comment.

1 I see Ms. Jennings here. I'm looking around. I don't see
2 any members of the public here in the room.

3 Have you heard from anyone, Ms. Jennings?

4 PUBLIC ADVISER JENNINGS: Not from in the room,
5 but telephonically people want to.

6 HEARING OFFICER CELLI: Okay, excellent. For the
7 record, Ms. Jennings said there's no one here in the room
8 who would want to make a public comment, but there are
9 people on the phone. People who I have on the phone
10 are -- I have Marie Mills who is associated with the
11 applicant. Jason Neuman, who is with an agency, I
12 believe. I've got George Kline, Duane McCloud, and Dale
13 Evenson, and Carolyn Chainey-Davis.

14 Any of you want to make a public comment?

15 MR. EVENSON: Dale Evenson, no comment.

16 HEARING OFFICER CELLI: Thank you, Mr. Evenson.

17 MR. NEUMAN: Jason Neuman, Riverside County Fire,
18 no comment.

19 HEARING OFFICER CELLI: Thank you.

20 MR. KLINE: George Kline, no comments.

21 HEARING OFFICER CELLI: Thank you.

22 MS. MILLS: Marie Mills, no comments.

23 HEARING OFFICER CELLI: Thank you.

24 MS. DAVIS: Carolyn Chainey-Davis, no comments.

25 HEARING OFFICER CELLI: Thank you.

1 Well, that covers everybody who I have identified
2 on the phone. I have call-in user 1, 11, 12, 13, 15 and
3 18, which I'm sure means nothing to you, because you just
4 made a phone call, but if you're out there on the air
5 waves, and you can hear me speaking, and you wish to make
6 a public comment, please speak up now.

7 MS. STELLER: Rachael Stellar, Green Action.

8 HEARING OFFICER CELLI: Thank you, Rachael.
9 Please go ahead. You have the floor.

10 MS. STELLER: Okay. My comments relate to the
11 Cultural Resources portion. Is this the correct time for
12 that?

13 HEARING OFFICER CELLI: Yes.

14 MS. STELLER: Okay, great. Thank you.

15 Our group is concerned about the discriminatory
16 impacts that this project would have on the American
17 tribes and their cultural resources.

18 I do not have all of the exhibits that you just
19 entered in today, but I did receive -- let's see, I have
20 docket 09-AFC-8, the cultural resources discussion on
21 testimony of Elizabeth Bagwell and Beverly Bastian. I
22 don't know if you have that in front of you right now, but
23 on here there are identified several significant impacts
24 that cannot be mitigated.

25 Our concern is that these impacts that can't be

1 mitigated will have a significant impact on the American
2 tribes in the area. Now, we believe that this violates
3 California Government Code Section 11135(a). I'm sure
4 you're all familiar with this provision. It's available
5 on line.

6 But the relevant portions of that we feel are
7 that, "No person in the State of California shall on the
8 basis of race, ethnic group identification, religion, or
9 color..." all of which we think are implicated here,
10 "...be unlawfully subjected to discrimination under any
11 program or activity that is conducted, operated, or
12 administered by the State", which this would be.

13 So the gist of our comments is that we feel that
14 because of these discriminatory impacts, the testimony of
15 more native American tribal members that are impacted
16 should be just considered. We were disappointed to be
17 commenting here that the testimony of Alfredo Acosta
18 Figueroa is the only single response that is sufficient
19 information for a complete analysis.

20 Green Action did submit some comments as well
21 that paralleled what he said, but feel that he is an
22 individual -- was the only individual that seems to be
23 concerned about this is not really accurate.

24 Overall, we're concerned -- while we strongly
25 support the increased construction tolerances, we're

1 concerned that this project would destroy more of the
2 little cultural history of Native Americans that has been
3 left untouched in this country.

4 With so much of this being destroyed, why are we
5 considering destroying more, especially without working
6 more with groups that would be affected.

7 Thank you.

8 HEARING OFFICER CELLI: Thank you. Ms.
9 Rachael -- was it Rachael Carson?

10 No, Rachael Steller.

11 HEARING OFFICER CELLI: Cellars. Could you spell
12 that, please.

13 MS. STELLER: Sure. The first name is
14 R-a-c-h-a-e-l. Last name is S-t-e-l-l-e-r. Thank you.

15 HEARING OFFICER CELLI: Thank you, Ms. Steller.
16 Thank you for your comments.

17 Anyone else who would like to make a comment on
18 the telephone, please speak up.

19 MS. PINON: My name is Patricia Pinon. And I'm
20 the champion of the Blythe Giant Intaglios and part of the
21 La Cuna de Aztlan Sacred Sites Protection Circle.

22 HEARING OFFICER CELLI: Could you say your name
23 again, please.

24 MS. PINON: Patricia, P-a-t-r-i-c-i-a, Pinon,
25 P-i-n-o-n.

1 HEARING OFFICER CELLI: Thank you. Go ahead, Ms.
2 Pinon.

3 MS. PINON: Yes. And I have participated with La
4 Cuna de Aztlan Sacred Sites Protection Circle and the
5 Chemehuevi Indian Tribe, the Bureau of Land Management,
6 the National Resource Conservation Service, the Southern
7 Low Desert Resource Conservation and Development Council,
8 the Blythe Area Chamber of Commerce, and the National
9 Parks Service, the RTCA program, Department of Interior.

10 And together these organizations have been
11 working to protect the sacred sites, particular in line
12 along the I-10 corridor that will be directly affected by
13 the solar power plants.

14 I am a native of Blythe, and know that many of
15 the natives of Blythe have known of the existence of these
16 sacred sites, but we have not, as organizations, chosen to
17 disclose them to the public. After seeing what has
18 happened to the other sacred sites throughout California
19 that were destroyed by vandals and off-road vehicles.

20 Apparently, our choice to keep this from the
21 public has come back to haunt us, especially now with the
22 Solar Millennium Project, the Genesis Solar Energy Project
23 and the Solar Millennium Palen Project.

24 Throughout the areas, these sacred trails exist
25 and especially the giant geoglyphs. And now that they're

1 being threatened, we're fighting to protect them. So my
2 invitation is for everyone listening right now to come out
3 and see the sacred sites for yourself before building any
4 kind of judgment to continue with the destruction of these
5 sacred sites.

6 The Chemehuevi Tribe and the other California
7 indian tribes are following along with us and they have
8 also gone to the site to visit the site. Unfortunately,
9 many of these tribes feel like they are being -- that
10 their pleas are falling on deaf ears, and that's why we
11 have continued to participate in these hearings.

12 We believe the first step will be to protect the
13 sites, because without their existence there will be no
14 future study, no possibility of eventually understanding
15 what they represent.

16 These geoglyph trails and nearby ecological sites
17 could actually benefit Blythe in the future and actually
18 tie in with the Palo Verde College where archaeology is a
19 big program. The college would support research on these
20 sites and others in the region. It just takes time to
21 move the bureaucratic wheel.

22 And because of the inception of these new energy
23 projects, then we are working as hard as we can with other
24 public agencies. Unfortunately, the stimulus money has
25 triggered a fast track on these energy projects, which we

1 feel are detrimental to our work, and just fighting each
2 either.

3 So my plea is before we impose anymore
4 destruction on the desert, send out the people that are
5 making the decisions to the site, so they can see for
6 themselves.

7 And I don't oppose more energy. I think we're
8 all on the same page regarding, you know, green energy.
9 We really do need more energy, so that we can do away with
10 the destruction of Mother Earth. But in this case, and in
11 this place, we do need to slow it down and chose our
12 locations wisely. Relocating the solar project would not
13 be such a big deal, in my opinion.

14 And that's all I have to say.

15 HEARING OFFICER CELLI: Thank you very much for
16 your comments Ms. Pinon.

17 Let's see, is there anyone else on the telephone
18 who would like to make public comment, please speak up?

19 MR. GONZALEZ: Yes. My name is Juan Gonzalez.
20 I'm a Palo Verde College student, and I'm here to hope our
21 Alfredo Figueroa.

22 HEARING OFFICER CELLI: Mr. Gonzalez, what is
23 your first name again?

24 MR. GONZALEZ: Juan, J-u-a-n.

25 HEARING OFFICER CELLI: Thank you. Go ahead.

1 MR. GONZALEZ: Yes, I'm a full time Palo Verde
2 College student, nursing student. And I've recently --
3 I've known Mr. Alfredo Figueroa for many years now and his
4 family. And I've been taken under his wing to learn about
5 these sacred sites and learn more about our heritage and
6 culture here in the Blythe Area and the Palo Verde Valley.

7 Recently I had the chance in the -- to go out
8 there to these sacred sites and see them for myself. At
9 first, I didn't believe it, and I got to go see them. And
10 I mean they are such beautiful pieces of archaeological
11 history that are out there. And for us to just -- already
12 there's people out there that have been destroying them
13 with the quads, the motorcycles, et cetera.

14 And I just feel that we need to take it upon
15 ourselves to take care of this part of history that's been
16 there for thousands of years. As Ms. Pinon said earlier,
17 I'm not opposed to solar energy. We need more solar --
18 clean energy, so we can stop the destruction of our
19 planet. And therefore, if we put these solar panels
20 around or on these sites, we are destroying our planet.
21 We are not going to help it in any other way.

22 And I just feel there should be an alternative or
23 perhaps another site where it can be still built, but not
24 right on top of these sites.

25 Thank you, and that's it.

1 HEARING OFFICER CELLI: Thank you, Mr. Gonzalez.

2 Next please someone on the telephone who wishes
3 to make a public comment, please speak up?

4 MR. LUNDAHL: This is Robert Lundahl with CARE.

5 HEARING OFFICER CELLI: Mr. Lundahl, can you --
6 oh, there you are.

7 Would you please spell your name, please.

8 MR. LUNDAHL: L-u-n-d-a-h-l.

9 HEARING OFFICER CELLI: Go ahead, Mr. Lundahl.

10 MR. LUNDAHL: Ken, I just had a question. I have
11 video submission material that I've been asked to be
12 available to comment on. I'm wondering what is the best
13 time this afternoon for me to be available according to
14 your schedule?

15 HEARING OFFICER CELLI: Well, what's going to
16 happen -- and also, Mr. Lundahl, I'm going to ask when you
17 speak to speak really clearly in your phone. It's a
18 little hard to hear you right now.

19 MR. LUNDAHL: Sure.

20 HEARING OFFICER CELLI: We are going to break
21 after the public comment period for a short lunch break.
22 I'm not sure, I'll ask the Committee how long that will
23 be, but usually a half an hour or hour, something like
24 that.

25 After that -- well, during that time -- I'm going

1 to go off the record for on moment. Please hold on, Mr.
2 Lundahl. Hang with me for one moment.

3 (Thereupon a discussion occurred off the record.)

4 HEARING OFFICER CELLI: Mr. Gonzalez, I'm going
5 to put you on mute, because there's a lot of noise coming
6 from your phone.

7 MR. GONZALEZ: Okay, thank you.

8 HEARING OFFICER CELLI: Thank you.

9 (Thereupon a discussion occurred off the record.)

10 MR. VASQUEZ: Hello. My name is Robert Vasquez.
11 I was asked to --

12 HEARING OFFICER CELLI: Mr. Vasquez, can you just
13 hold on a moment. We're off the record for the moment.

14 MR. VASQUEZ: Absolutely.

15 HEARING OFFICER CELLI: And I will call on you.
16 Hang on with us.

17 (Thereupon a discussion occurred off the record.)

18 HEARING OFFICER CELLI: Okay, ladies and
19 gentlemen. We're going to go back on the record. And Mr.
20 Vasquez, I'm going to ask you to hold off for a moment,
21 because we're in the middle of hearing public comment from
22 Robert Lundahl. And your question, Mr. Lundahl, was when
23 your testimony would be needed?

24 We figure that after lunch and everything
25 probably by 1:30 or 2 o'clock we would be back on the

1 record. And during -- so basically, it will be a working
2 lunch between the parties, so they can take care of
3 whatever conferencing they need to do.

4 I want to say though, Mr. Lundahl, that we -- the
5 Committee, all of the members of the Committee, the
6 advisors, hearing advisor, and the two Committee members
7 that -- the Commissioners themselves, have seen your La
8 Cuna de Aztlan video, which was submitted by Mr. Boyd.
9 And all of us were duly impressed with your videography
10 and wanted to make that clear. You did a nice job on
11 that.

12 MR. LUNDAHL: Thank you very much.

13 HEARING OFFICER CELLI: Thank you. But do you
14 have a public comment you'd like to make now?

15 MR. LUNDAHL: I just need to be available I think
16 for any questions, and I've been asked to have Internet
17 connection available. So because of the logistics here on
18 this end, I'm just wondering if you can clue me in. So it
19 sounds like after two we'll be addressing Cultural
20 Resources and I would be called upon at that time, right?

21 HEARING OFFICER CELLI: Right. And I imagine Mr.
22 Boyd is just calling you to lay a foundation for the
23 video, so it can be received into evidence. We've already
24 seen the video. We're not going to play it today, but
25 we're just taking in evidence. So again, the best I can

1 say is sometime after 1:30.

2 MR. LUNDAHL: Okay, sounds good. Now, since I'm
3 on the line, may I make a public comment.

4 HEARING OFFICER CELLI: Please.

5 MR. LUNDAHL: Are we on the record?

6 HEARING OFFICER CELLI: Yes, you have the floor.

7 MR. LUNDAHL: Thank you so much.

8 I want to raise the issue of cultural to give
9 this is a category of anthropological behaviors, if you
10 will. That is that the trail is by Ford Dry Lake. The
11 acknowledgement and understanding of the spiritual and
12 sacred nature of the features that are present, including
13 the amazing Throne of Quetzalcoatl that is located near
14 Ford Dry Lake is made entirely of quartz, and is thousands
15 of years old, as a previous caller mentioned. Cultural
16 use is provided to the presence of native culture and
17 viewed --

18 HEARING OFFICER CELLI: Mr. Lundahl, excuse me.
19 I'm sorry to interrupt. Mr. Lundahl, I'm sorry to
20 interrupt, but I'm looking over, and I see the court
21 reporter shaking his head like he can't hear you, because
22 you're not coming through on the phone very well. So I
23 need you to speak very loudly and clearly through the
24 phone. If you're on a speaker phone, you should use the
25 handset instead of a speak phone.

1 Go ahead.

2 MR. LUNDAHL: Yes. Let me -- am I coming in any
3 clearer for you now?

4 HEARING OFFICER CELLI: Much better. Thank you.

5 MR. LUNDAHL: Okay, fantastic. Yes, the features
6 are really extraordinary in the general area. And the
7 trails intersect at Ford Dry Lake. And so the patterns of
8 cultural use that happen along the trail at McCoy Springs,
9 at the petroglyphs' site in the McCoy Mountains at Corn
10 Springs, as the video indicates. And that the Throne of
11 Quetzalcoatl, which is up on a mountain nearby, made
12 entirely of quartz -- it's a chair feature made entirely
13 of quartz. And if you sit in that chair, you will look
14 across at the Mule Mountains where Mr. Figueroa will tell
15 you that Quetzalcoatl began his journey into one of the
16 beginnings of the Aztec times -- the time period.

17 And because of the significance in the Aztec
18 culture and the presence of these over the entire area, we
19 really need to take into account, not only our impacts on
20 the ground, and if we were to be looking four an arrow
21 head in the middle of Ford Dry Lake, but we need to really
22 understand the entire region from an indigenous
23 perspective, and the meaning of the various features and
24 locations and how they intersect and how the people have
25 always have -- how they've always transited from one

1 location to another through Ford Dry Lake.

2 So that's my commentary, and I thank you so much
3 for the opportunity. I'll be available after 1:30 to
4 testify.

5 HEARING OFFICER CELLI: Thank you very much, Mr.
6 Lundahl.

7 Robert Vasquez?

8 MR. VASQUEZ: Yes.

9 HEARING OFFICER CELLI: Go ahead. You have the
10 floor sir.

11 MR. VASQUEZ: Yes. My name is Robert Gonzalez
12 Vasquez.

13 Since 2002, I've been working with Alfredo
14 Figueroa and the La Cuna de Aztlan Sacred Sites Protection
15 Circle as a videographer for the group. We released a
16 video a couple years ago called *Ancient Footprints of the*
17 *Colorado River*. And I have done myself extensive research
18 in the region in the Mexican cultural heritage and the
19 Native American cultural heritage. I myself -- I'm the
20 director of an organization called Inland Mexican
21 Heritage. And we have been working with Señor Figueroa
22 and people in Blythe now for several years as a priority
23 project of our outreach program myself quite recently, on
24 top of the extensive sewing I've done with Mr. Figueroa
25 and other elders in the Chemehuevi Tribe, along the

1 Colorado River.

2 I have, myself, recently done a fly-over for a
3 new film that we're putting together called the *Kokopilli*
4 *And The Last Giants*. And when we flew over the Kokopilli,
5 which is the site in question, the Solar Millennium site
6 in question, we saw the Kokopilli, we saw the Cicimitl
7 character, which is next to it. But we also saw an entire
8 different field of geoglyphs that, although we understood
9 that they were there in the past, that we -- they were
10 known, they hadn't been seen on a fly-over.

11 We flew over these and we filmed them. My
12 organization's concern, and I think it reflects the
13 concern of many people is that these are cultural
14 resources that have not only been neglected, they've been
15 already grossly abused for decades.

16 And to commit to a project of the size and scope
17 of the Solar Millennium Project would really be doing a
18 violent justice to the area. This area has not been
19 properly documented. And in my research we found very
20 little about the geoglyphs and petroglyphs of the region.

21 We have a cultural resource in this part of
22 California that rivals any national park that deals with
23 Native American artifacts, and yet we do not have
24 protection over this region.

25 I question many times the shortsighted wisdom of

1 not even fencing off the roads and the access to this
2 area. And we are -- our position to our media work that
3 we want to do outreach to the public. We know the public
4 is eager to hear about these things. But out of respect
5 for the process of what is going on here, and the hearing
6 process and all the various legal processes, we want to
7 wait for this to play out.

8 This is something that is a public and
9 international treasure. This region can't -- you know,
10 what is being lost here right now can never be replaced.
11 And so it is of my 20 years background as a cultural
12 historian, my 20 years background as a Californian
13 historian, all of these things tell me that we need to
14 work to preserve and develop these sites as the
15 archeological treasure they are, as opposed to continuing
16 to look at doing commercial development on these sites.

17 If you have any additional questions, I'd be more
18 than happy to answer them. Thank you very much for your
19 time.

20 HEARING OFFICER CELLI: Any questions,
21 Commissioners?

22 No questions. Thank you, Mr. Vasquez, for your
23 comments.

24 MR. VASQUEZ: Thank you very much.

25 HEARING OFFICER CELLI: I have it looks like two

1 more people on the line who are not identified. I suppose
2 I better unmute this guy here.

3 MR. FIGUEROA: Hello.

4 HEARING OFFICER CELLI: Who's speaking?

5 MR. FIGUEROA: Alfredo Figueroa.

6 HEARING OFFICER CELLI: Alfredo Figueroa.

7 MR. FIGUEROA: Yes, sir.

8 HEARING OFFICER CELLI: Let me -- are you on the
9 same phone as Robert Vasquez?

10 MR. FIGUEROA: No, I'm not. I'm in Blythe.

11 HEARING OFFICER CELLI: Okay. I'm just trying to
12 see where you are in our computer. Keep speaking, Mr.
13 Alfredo -- or Mr. Figueroa.

14 MR. FIGUEROA: I'm Alfredo Acosta Figueroa. And
15 I'm the person he was in the video that was shown to you
16 people. And I'm also the Chemehuevi Tribal Monitor of the
17 sacred sites. And I presented that tribe's concerns when
18 we had the meeting here in Blythe December the 9th.

19 HEARING OFFICER CELLI: The informational
20 hearing?

21 MR. FIGUEROA: Can you hear me?

22 HEARING OFFICER CELLI: Yes, I was just saying it
23 was at the informational hearing that we met.

24 MR. FIGUEROA: Yes. And I also submitted my
25 declaration as far as what my qualifications are. And for

1 the past 55 years, I've been cross-referencing mountain
2 images, the geoglyphs, the petroglyphs, the open areas of
3 the surrounding Palo Verde valley with the Quetzalcoatl.
4 And we can continue to prove that without a shadow of a
5 doubt our valley is painted with these Aztec migration
6 petroglyphs. The last one took place in 1160 in which the
7 Aztec sandstone Calendar is overlaid.

8 And I'm willing to participate with any of you
9 people that you know -- you know, the archaeologists that
10 are willing to debate and we can -- but with facts. Faith
11 is a lot of -- it's real nice, and a lot of hope, but we
12 are presenting facts. That's why we have won in the
13 States Supreme Court before and we present facts.

14 So for the record, we are not having all -- you
15 know, this hearing is in Sacramento. We had a lot of
16 people that wanted to participate, but, you know, here in
17 Blythe. But you had the 10 hours away in Sacramento is a
18 long way to go. We have gone for, but it's too far.

19 So anyway, this fast track by the State and the
20 stimulus money by the federal government is just a facade,
21 so -- and I know that the Public Adviser's office was
22 included with the CEC to encourage and get maximum input,
23 but Sacramento is too far, so we couldn't participate, but
24 just by the phone by some of us.

25 So just on this project, it just doesn't seem to

1 be right. We didn't even know about this proposed project
2 until we saw the article on December 9th, which stated
3 that these -- you were going to have a public hearing in
4 Blythe the following day.

5 So I had one day to contact Blythe, and they let
6 me know about the hearing. And when I called her, Clara
7 McCoy -- she's in the letter -- I told her I had concern
8 about the hearing. Later, we found out that the solar
9 power company has planned this project for over two years,
10 as one of their witnesses, Robbin Marsh, that lives within
11 the proposed solar power area. And this has all been
12 hush-hush until then. We haven't seen the of plans for
13 this powerplant never.

14 So we have been always -- just on the site they
15 never contacted us. And your report of the cultural
16 resources it said that they called the tribe, but it
17 doesn't say who they called. So, you know, we need -- so
18 when we went to the -- they said that -- the Palo Verde
19 sign said they were going to have and on-site visit.

20 And by golly, when we went on the on-site visit
21 in the bus, I noticed that some of the ladies were wearing
22 high-heel shoes, and that made me very concerned. I said
23 something is up. And sure enough, when we got out to the
24 Ford Dry Lake offramp on I-10, we didn't get off the bus.

25 Instead, we were told by the guides to look north

1 to the base of the Palen mountains at the proposed site.
2 And then they had some binoculars to see -- to look for
3 some red balloons that were above the site.

4 So my brother and I, you know, Gilbert, we were
5 very perturbed, because what the hell is going on here.
6 You know, we're not going to the site. And then again
7 January 25th, 2010 when the CEC had a the hearing on the
8 Blythe and Palen projects, once again our group went on
9 the so-called bus tour, but yet again the bus stopped
10 along the highway near the Blythe Airport. And they told
11 us -- they told the group now look towards the northwest
12 of the airport and west to the base of the McCoy
13 Mountains. And there is where the proposed solar power
14 project site is.

15 So, you know, again -- and then we continued on
16 west to the Corn Springs offramp, and then the company
17 guide -- tour guide said here along the I-5, the
18 Interstate, is where the proposed Palen project is
19 located.

20 So these two tour sites just -- you know, we were
21 expecting to see the actual location, not just a view from
22 the highway.

23 So when I got that -- on June 22nd, when I got
24 the docket of the cultural resources summary, where it
25 mentions by the doctor there and the other lady, on the

1 staff response of 187, which stated there was not a single
2 response, that there wasn't sufficient information to
3 complete an analysis. I said my, oh, man, here we are
4 presenting these facts and telling the stories, and they
5 still come up with these kind of attitudes.

6 But it does not surprises me to those kind of
7 remarks against our native traditions, despite the fact
8 that hundreds of thousands of people read the Los Angeles
9 Times article In the Desert a Stern Glare for Solar
10 Plants. It came out April 25th by reporter Dave Kelly.

11 And also 50,000 people read the Sun Magazine
12 article. The Sun Shines on the Land by Steve Brown. And
13 this is just saying we're out trying to spread this word
14 out about our sacred sites are -- they're on the verge of
15 being destroyed. We have to stop it at all costs, like we
16 did prior when we stopped work at the other powerplant,
17 because these are all within our sacred sites. And we're
18 going to do everything we can to stop all this.

19 We know that this invasion of Columbus in 1492,
20 we the natives of this land have never been considered
21 normal humans. Instead, we are categorized as savages and
22 devilish worshippers, continuing with the -- after 103
23 years our Chemehuevi nation finally received title to our
24 reservation. Can you imagine 103 years.

25 Yes, on all surrounding -- part of our valley has

1 been true to us. This is what the Aztecs left. Another
2 came and yet we are still here. This is why we are very
3 knowledgeable of our sacred sites.

4 All this, you know, reminds me of when United
5 States invaded Afghanistan. Before the invasion, the
6 Taliban is like militia destroying all the sacred sites of
7 the Buddhists, and they destroyed the two sacred ancient
8 statues Buddhists had. The destruction of those two
9 Buddhist statues caused great outcry and appeals for the
10 preservation came from all over the world, especially the
11 United States, and the United Nations.

12 You know, they destroyed cities, but they can
13 reveal -- but what the once the Buddhist statues are gone,
14 they could never be released and they haven't yet.

15 This is the familiar struggle that we have in
16 Palo Verde valley. I'm 76 years old, and what's happening
17 right now with the current solar power companies and their
18 associates have the same mentality as being compensated
19 and destroying Kokopilli and Cicimitl.

20 But if both images are destroyed, they can never
21 be replaced.

22 Thank you very much, and I'm available for
23 anybody that wants to have any kind of further information
24 and facts that we can submit to the world, that these
25 sites are the sacred sites of our creators travel on

1 earth. That's what geoglyph means. And I can prove it to
2 you. Anybody that has any questions, I'm available here.

3 Than you very much.

4 HEARING OFFICER CELLI: Thank you, Mr. Figueroa.
5 We have -- we all saw the video, La Cuna de Aztlan video.
6 I just have a question for you.

7 MR. FIGUEROA: Go ahead.

8 HEARING OFFICER CELLI: I was looking, when you
9 said that nobody was contacted. I looked in the Revised
10 Staff Assessment, Table 4, dates of BLM inquires made to
11 Native American groups. And it shows that there's --
12 there was a contact person Charles Wood of the Chemehuevi
13 Reservation. Do you know Charles Wood?

14 MR. FIGUEROA: Most definitely. He's our
15 Chairman.

16 HEARING OFFICER CELLI: Okay. I just --

17 MR. FIGUEROA: I'm talking about when he
18 contacted them. That's just the latest one. They just
19 didn't -- they didn't have a name of who they talked to in
20 the tribe. If I hadn't called them when you had the
21 meeting down here in Blythe, they would never have known.

22 HEARING OFFICER CELLI: Okay, so you're talking
23 back when we had the informational hearing then?

24 MR. FIGUEROA: Yes.

25 HEARING OFFICER CELLI: Okay, very clear.

1 Anything further from the Chairman, Commissioner?

2 No further questions. Thank you so much for your
3 comments Mr. Figueroa.

4 MR. FIGUEROA: Thank you. And I hope you all --
5 you know, understand the graveness of the situation we are
6 having. I advise anybody to see the movie Avatar, because
7 we're right now in contact with the James Cameron. Things
8 are going to move fast. We have to move fast, and we have
9 to participate everybody together. Thank you very much.

10 HEARING OFFICER CELLI: Thank you. Is there -- I
11 show that there's one more person out there who wanted to
12 make a public comment. If that person is out there, would
13 you please speak up.

14 Is there anyone else on the telephone who would
15 like to make a public comment at this time?

16 No one?

17 Okay. Well, I want to thank you all for -- who's
18 that? Oh, it's just background noise.

19 I want to thank all of the people who called in,
20 and I want to say -- reiterate that there will be another
21 opportunity for public comment at the close of today's
22 hearing.

23 We're going to go off the record for just a
24 moment

25 (Thereupon a discussion occurred off the record.)

1 HEARING OFFICER CELLI: How much workshop time do
2 the parties think they need in order to resolve the
3 issues?

4 STAFF COUNSEL BABULA: I'd suggest an hour,
5 because we just added a couple of things.

6 MR. GALATI: Yeah, I think an hour would be good.

7 PRESIDING MEMBER BOYD: Including your lunch?

8 HEARING OFFICER CELLI: Working lunch

9 PRESIDING MEMBER BOYD: Or more than an hour?

10 MR. GALATI: Ten minutes to get a sandwich.

11 MS. KOSS: Regroup at 2?

12 PRESIDING MEMBER BOYD: Ninety minutes?

13 HEARING OFFICER CELLI: Ninety minutes is okay.

14 So we will resume and go back on the record, and I want
15 everybody to -- on the telephone to understand that even
16 though you're not going to hear anything, we're going to
17 remain open -- the record will remain open and we will
18 resume the hearing at 2 o'clock. In the meanwhile, I'm
19 going to ask the parties to come back, after they've had a
20 chance to grab lunch, at the Rendezvous or wherever, to
21 come back here to Hearing Room B, so that you can take
22 advantage of having your meeting with the microphones on,
23 so that the public can hear the conversation like any
24 workshop.

25 So with that, we will --

1 PUBLIC ADVISER JENNINGS: So, Ken, you're going
2 to tell them that they can listen in on the workshop?

3 HEARING OFFICER CELLI: That's right. The
4 listeners -- all of the people on the phone right now can
5 call in and hear what's going on. That's why we're going
6 to have them meet.

7 PUBLIC ADVISER JENNINGS: Prior to two?

8 HEARING OFFICER CELLI: That's correct.

9 MR. BOYD: Could you tell the topics that will be
10 covered in the workshop.

11 HEARING OFFICER CELLI: Cultural and Bio.

12 STAFF COUNSEL MAYER: Bio 19.

13 HEARING OFFICER CELLI: Bio 19. It's just a
14 Condition Bio 19 and all of Cultural.

15 STAFF COUNSEL HOLMES: And the ARRA general
16 conditions.

17 HEARING OFFICER CELLI: That's correct, and the
18 conditions having to do with the ARRA funding.

19 MR. BOYD: Okay, thank you.

20 HEARING OFFICER CELLI: With that, we will see
21 you at 2 o'clock.

22 (Thereupon a lunch break was taken.)
23
24
25

1 HEARING OFFICER CELLI: Please.

2 STAFF COUNSEL MAYER: Staff Counsel Mayer.

3 So during the Cultural workshop, having multiple
4 attorneys, I was able to go meet with staff and at least
5 get to the point where we're working off the same
6 document, so that the intervenors have one document
7 instead of two. And we've done is we took Applicant's
8 Exhibit 72, accepted all their edits, and we had added two
9 edits. And I have a few copies, so I can at least serve
10 one to the Committee or two to the Committee.

11 My understanding is the applicant stipulated to
12 our edits, is that correct?

13 MR. GALATI: Yes, that's -- you're talking about
14 Bio 19?

15 STAFF COUNSEL MAYER: Yes.

16 MR. GALATI: Yes, we agree to Bio 19.

17 STAFF COUNSEL MAYER: So the applicant and staff
18 are in agreement. And that's as far as we could get.

19 HEARING OFFICER CELLI: Let me take a look at
20 that. Are we going to mark this as a new exhibit or --

21 STAFF COUNSEL MAYER: Yeah, I would mark it as
22 Exhibit -- and I had the number in front of me. I believe
23 this would be exhibit -- Staff Exhibit 445.

24 (Thereupon the above-referenced document was
25 marked as Exhibit 445 for identification.)

1 HEARING OFFICER CELLI: Okay.

2 STAFF COUNSEL MAYER: Okay, staff's edits to Bio
3 19 of the latest version. Bio 19 is CEQA.

4 MR. GALATI: Yeah, just for a little background
5 for the Committee. Bio 19 is an area that the Commission
6 really hasn't dealt with before, which is late season
7 plants. And so I believe that the condition you have in
8 your hand is probably the condition that has received the
9 most number of work hours from your staff and from
10 applicant's staff on multiple projects. And that's why
11 it's 15 or 16 pages, because it has multiple authors.

12 But it's a complex condition. And the fact that
13 we're not taking you through every page from the
14 applicant's perspective we think is probably helpful. But
15 it is -- it's a culmination of a lot of work by a lot of
16 people.

17 HEARING OFFICER CELLI: Okay, so staff's Exhibit
18 445 starts Special Status Plant Impact Avoidance
19 Minimization and Compensation Bio 19. And this is all Bio
20 19?

21 STAFF COUNSEL MAYER: It's a complete Bio 19, and
22 it also contains two large edits from the staff.

23 HEARING OFFICER CELLI: Okay. And this is 21 --

24 STAFF COUNSEL MAYER: Struck out and add. It's a
25 long condition, yeah. And I believe that if the Committee

1 does have questions, that we have at least Carolyn
2 Chainey-Davis on the phone.

3 HEARING OFFICER CELLI: Well, I just want to make
4 sure that when it comes to writing this then, that we've
5 got the right condition with the right language. And on
6 page 17, it says page 17, Three, language, replaced in its
7 entirety.

8 STAFF COUNSEL MAYER: Yeah, Section 3, staff
9 edited and basically replaced an entire section Roman
10 Numeral III. You'll see the strikeout and the
11 replacement.

12 HEARING OFFICER CELLI: Oh, okay. So you weren't
13 -- you didn't add anything new here today. You're just
14 pointing out to me that that's --

15 STAFF COUNSEL MAYER: No, the edits are there. I
16 was just trying to label it at the top, so at least the
17 applicant wasn't looking through language they already
18 knew about. So if you look on page 17.

19 HEARING OFFICER CELLI: Yes.

20 STAFF COUNSEL MAYER: You'll see the strikeout
21 above and then our added language below. Basically, it
22 replaces what's above there that's struck out. And then
23 there's an additional -- on page 20, there's an added
24 paragraph. It's not replacing anything. It's an added
25 paragraph that's part of a verification for that same

1 condition.

2 HEARING OFFICER CELLI: Okay, very clear. I just
3 wanted to make sure that you didn't change or add anything
4 by interlineation today by pen that I needed to add in.

5 STAFF COUNSEL MAYER: Correct.

6 HEARING OFFICER CELLI: So I'm accepting this as
7 is, right?

8 STAFF COUNSEL MAYER: Yes, sir.

9 HEARING OFFICER CELLI: So staff's motion -- and
10 are we on 445. This is the last -- okay, right, Exhibit
11 445.

12 STAFF COUNSEL MAYER: 444 was an early air
13 quality.

14 HEARING OFFICER CELLI: Correct. So staff's 445
15 is offered into evidence by staff.

16 Any objection by applicant?

17 MR. GALATI: No. By way of offer of proof, we'd
18 modify our testimony regarding late season plants to
19 accept 445. There are several filings about Bio 19. Our
20 opening testimony had some. Our revised testimony had
21 some. Our rebuttal testimony had some. We're withdrawing
22 all of that discussion on Bio 19, and replacing it by
23 offer of proof that we agree to this version of Bio 19,
24 which is Exhibit 445.

25 HEARING OFFICER CELLI: Gotcha. Thank you.

1 CBD, any objection to the receipt into evidence
2 of Staff's Exhibit 445?

3 MS. BELENKY: No objection.

4 HEARING OFFICER CELLI: CURE, any objection to
5 Exhibit 445?

6 MS. KOSS: No objection. I would just request
7 that this exhibit and any other exhibit that was
8 distributed today, via paper, also be Emailed.

9 STAFF COUNSEL MAYER: Yes.

10 MS. KOSS: So that I can send it to our expert.

11 STAFF COUNSEL MAYER: If I don't do it by close
12 of business today, depending on the length of the hearing,
13 I'll did it first thing tomorrow.

14 HEARING OFFICER CELLI: That's great. In your
15 running to do list, that might be one of the things is
16 Email all of the exhibits to the parties.

17 STAFF COUNSEL MAYER: Yes.

18 HEARING OFFICER CELLI: I'm going to have to deal
19 with some audio issues here. One moment.

20 Does someone have a young child or a kitten
21 nearby?

22 (Laughter.)

23 HEARING OFFICER CELLI: That's coming through on
24 the phone.

25 MR. LUNDAHL: It's mom's day.

1 HEARING OFFICER CELLI: Ah, okay. I'm going to
2 mute you then. If you need to, raise your hand, okay.

3 MR. LUNDAHL: Actually I'm going to go to a quiet
4 place, so if you want me to try it. Sorry for the
5 trouble.

6 HEARING OFFICER CELLI: Thank you, Mr. Lundahl.
7 I'm going to mute you here.

8 MR. LUNDAHL: Okay.

9 HEARING OFFICER CELLI: And now we shouldn't hear
10 any of that. That's good.

11 So staff agrees, Ms. Koss, that they will Email
12 to you and all of the parties, the new exhibits today, so
13 far 445.

14 Any objection from CARE?

15 MR. BOYD: No.

16 HEARING OFFICER CELLI: Mr. Budlong, are you back
17 with us?

18 MR. BUDLONG: Indeed I am.

19 HEARING OFFICER CELLI: Any objection to the
20 receipt of Exhibit 445?

21 MR. BUDLONG: I have no objection.

22 HEARING OFFICER CELLI: Thank you, sir.

23 MS. KOSS: He has not seen Exhibit 445, just for
24 the record. It was distributed today an hour ago.

25 HEARING OFFICER CELLI: Mr. Budlong, did you get

1 to listen in on the discussions of the parties during the
2 workshop.

3 MR. BUDLONG: Not much. It was a very small
4 amount towards the end. That's all.

5 HEARING OFFICER CELLI: Okay. These are changes
6 to Bio 19. They're substantial changes, I take it?

7 STAFF COUNSEL MAYER: A few. I would call them
8 minor actually. They're more wordy than they are
9 substantial.

10 HEARING OFFICER CELLI: Okay.

11 (Laughter.)

12 STAFF COUNSEL MAYER: Sorry, apologies to all.

13 MR. GALATI: Trust me on a 21 page condition,
14 when the changes are only a page, that's not substantial.

15 (Laughter.)

16 HEARING OFFICER CELLI: Okay, there being no
17 objection, the Committee will receive Exhibit 445.

18 (Thereupon Exhibit 445 was received into
19 evidence.)

20 HEARING OFFICER CELLI: Okay. Now, that was
21 Exhibit -- that was rather Bio 19 and we also had Bio 8 to
22 deal with today.

23 STAFF COUNSEL MAYER: Yes, sir. We served last
24 night, and it is Exhibit -- I'm sorry, it is Exhibit 438.
25 It was

1 HEARING OFFICER CELLI: Yes.

2 STAFF COUNSEL MAYER: It was re-sent last night,
3 because the applicant -- I'm sorry, staff stipulated to
4 applicant's request to change the noise limit to 65 dB,
5 which we did.

6 HEARING OFFICER CELLI: Okay, so --

7 MS. BELENKY: You didn't distribute that.

8 HEARING OFFICER CELLI: There are several --

9 STAFF COUNSEL MAYER: It was Emailed.

10 MR. BELENKY: This morning.

11 STAFF COUNSEL MAYER: Do you want a hard copy?

12 MS. BELENKY: No, I just was looking and just
13 checking. You didn't distribute it.

14 MR. BOYD: You went from what --

15 STAFF COUNSEL MAYER: I know --

16 HEARING OFFICER CELLI: Ms. Mayer, you need to
17 put on your mike, please.

18 MS. BELENKY: Sorry.

19 STAFF COUNSEL MAYER: It was served last night,
20 yesterday actually, along with 439, 440, 441. There was
21 some misnumbering, which was my fault, which Officer Celli
22 corrected. And so actually, I served it twice.

23 MR. BOYD: Could you repeat that -- Mike Boyd.
24 Could you repeat -- you said something about 65 dB. What
25 was the level before?

1 STAFF COUNSEL MAYER: It was a condition. It's a
2 stipulated condition by Biological Resources 8, and part
3 of that contains noise limits. And there was a change
4 from the first service from 60 dB to 65 dB.

5 MR. BOYD: So you allowed 5 dB more. Okay.

6 HEARING OFFICER CELLI: So this morning already,
7 we've received for staff Exhibits 432 through 437. 438,
8 439, I don't believe have been received. 440 was
9 received, 441 has not been received, 442 just -- wait a
10 minute, 444 and 445 have been received. I don't know
11 about 442.

12 STAFF COUNSEL MAYER: Well, 442 is the old Bio
13 19.

14 HEARING OFFICER CELLI: Right, is that going to
15 be withdrawn?

16 STAFF COUNSEL MAYER: We had to move it in for
17 the record, but it's kind of meaningless, because it's
18 supplanted by the one I just gave out.

19 HEARING OFFICER CELLI: Do you want to withdraw
20 it?

21 STAFF COUNSEL MAYER: To simplify life, yes, I
22 would love to withdraw it.

23 (Laughter.)

24 HEARING OFFICER CELLI: 442 is withdrawn. Okay,
25 good. That simplifies indeed.

1 So there is floating round right now a Bio 8
2 condition, which was Exhibit 438 that was Emailed to
3 everyone last night. And there's no objection by the
4 applicant to the language of 438?

5 MR. GALATI: No. And we have opening testimony,
6 revised opening testimony, rebuttal testimony concerning
7 Bio 8 that we here by offer of proof withdraw and agree to
8 this version of Bio 8.

9 HEARING OFFICER CELLI: Okay, that's great. Any
10 objection to the new Bio 8 coming in as an exhibit from
11 CBD, that's Exhibit 438?

12 MS. BELENKY: No objection.

13 HEARING OFFICER CELLI: CURE, any objection to
14 438, Exhibit 438?

15 MS. KOSS: No objection. But I would like to
16 express a concern that I have not had an opportunity to
17 discuss either Bio 8 or Bio 19 with Mr. Cashen. I
18 forwarded him the exhibits that were sent last night, but
19 I have not been able to reach him. And my concern is if I
20 need to enter additional evidence into the record, I don't
21 know when that opportunity will arise. I thought that I
22 would have more than, you know, 15 hours to deal with it.

23 HEARING OFFICER CELLI: I appreciate that. The
24 good news was that at our last hearing we limited the
25 biological issues to Bio 19 and Bio 8, and the ARRA. So

1 he should be at least aware of those conditions now. And
2 whatever the agreed upon changes should be something that
3 he could quickly respond to.

4 So let's hope you hear from him. You have a call
5 into him?

6 MS. KOSS: I do. Well, an Email.

7 HEARING OFFICER CELLI: Okay, but no objection
8 to -- we're on 438. Any objection from CARE?

9 MR. BOYD: No objection.

10 HEARING OFFICER CELLI: Mr. Budlong, any
11 objection to Exhibit 438?

12 Mr. Budlong, is there any objection to Exhibit
13 438?

14 He hung up.

15 All right.

16 (Thereupon the above-referenced document was
17 marked for identification and received into
18 evidence as Exhibit 438.)

19 MS. KOSS: Actually, Hearing Officer Celli, I
20 have not forwarded Mr. Cashen the latest Bio 19, because I
21 just received an hour ago a paper copy, and I have no way
22 of getting it to him.

23 HEARING OFFICER CELLI: You don't have an Email,
24 because I know I received it last night.

25 STAFF COUNSEL MAYER: I will be happy to go

1 upstairs and Email if that will help.

2 MS. KOSS: You can Email him sure, or you can
3 Email it to me and I will forward it to him.

4 STAFF COUNSEL MAYER: I Email it to Mr. Budlong,
5 while I'm at it.

6 Email to you?

7 MS. KOSS: Sure.

8 STAFF COUNSEL MAYER: Okay. Anyone want me to
9 email it to them?

10 MS. BELENKY: I'd like an Email copy as well,
11 because that was --

12 STAFF COUNSEL MAYER: I'm not going to proof of
13 service to it everyone, because that takes 20 minutes just
14 to figure that out. I will Email CBD, CURE, and Mr.
15 Budlong.

16 HEARING OFFICER CELLI: Great. Thank you. So
17 that means that I've received into evidence now. 438,

18 HEARING OFFICER CELLI: So that means I've
19 received into evidence now 432 through 438. 439, wasn't
20 that -- 439, was that what Roger Johnson was testifying
21 about. It says renewable, the REAT?

22 STAFF COUNSEL MAYER: Yes, sir.

23 HEARING OFFICER CELLI: Okay, So that was in.

24 (Thereupon Exhibit 439 was received into
25 evidence.)

1 HEARING OFFICER CELLI: 440 is received. 441
2 goes to cultural. 442 is withdrawn. 444 is received.

3 Mr. Budlong, are you on the air again?

4 No, somebody is taping us. The tell-tale beep of
5 a tape machine.

6 So with that, now that we've handled Bio 8 and
7 Bio 19. The only remaining issue with Bio, as I
8 understand it, correct me if I'm wrong, is the ARRA --
9 commencement of construction for ARRA.

10 STAFF COUNSEL MAYER: It's a general condition.

11 MR. GALATI: It's a general condition not related
12 to Bio.

13 HEARING OFFICER CELLI: Right. And were you able
14 to make any headway on that during the break?

15 MR. GALATI: No. We wouldn't have been. And
16 just again to ease everybody's concerns, the general
17 condition empowers the CPM to do things like change of
18 verification without an amendment. All I want to say is,
19 the CPM is empowered to accept, if he approves, a plan
20 under a condition that might be less than complete for the
21 full project as verification that the project is complying
22 with the condition. It's that simple. I didn't have a
23 chance to really talk about it yet. It that's simple. No
24 new condition. One line in the general condition section,
25 just to make sure that -- and it's up to the CPM's

1 approval.

2 HEARING OFFICER CELLI: Okay, I just want the
3 record to reflect that, for the moment anyway, neither Ms.
4 Homes or nor Ms. Mayer. Jared Babula is here. He's the
5 staff counsel for Cultural. I saw Mr. Monasmith dutifully
6 pop right up to the mike, because I'm sure he's ready to
7 deal with biology, but I'm loathe to proceed on this
8 without the attorneys.

9 SITING PROJECT MANAGER MONASMITH: Hearing
10 Officer Celli, if I may. Mike Monasmith, project manager.
11 I did get an opportunity to talk about this with the
12 compliance project manager for the Ivanpah proceeding,
13 where they, as developed, some of the work plans in
14 meeting with the BLM and dealing with the same requests
15 from that particular project proponent.

16 And again, I think from them the flexibility was
17 something that would be -- and I also talked with Chris
18 Marxen, who's the officer manager for the compliance unit.
19 So they're aware of this request from other project
20 proponents. There's no unwillingness on their part.
21 Again, it's all a factor of staff availability that would
22 ultimately be the hinge point. It wouldn't be the CPM,
23 but they would be willing to review that.

24 We didn't see anything specific however, and
25 that's why there was a little bit of unwillingness that

1 Staff Counsel Holmes mentioned earlier. We didn't see
2 anything in writing. But there was, in general, no
3 hesitancy from our compliance staff to institute this
4 flexibility.

5 MR. GALATI: I truly believe that I can include
6 language in a brief. It's about one or two sentences to
7 be added to the general conditions. And all parties can
8 reply to it and propose something different or whatever.
9 I really don't think that it's an evidentiary matter.

10 HEARING OFFICER CELLI: Well, we are speaking in
11 such gross generalities here, folks, that it's not like
12 we're talking about any particular condition. So I think
13 we will have to have that issue be briefed, and there can
14 be a reply to it, and we'll deal with it that way.

15 But I'm going to have to leave biology open,
16 unless -- what happened to Ms. Homes and Ms. Mayer?

17 STAFF COUNSEL BABULA: I thought we were -- I
18 don't think there's anything on Biology.

19 SITING PROJECT MANAGER MONASMITH: Yes, Mr. Mayer
20 when to send -- distribute to the intervenors that
21 exhibits

22 HEARING OFFICER CELLI: Okay. Can we close
23 Biology?

24 SITING PROJECT MANAGER MONASMITH: Our Senior
25 Biologist, Susan Sanders nodded, so that's good by me.

1 MR. GALATI: Yeah, I did want to -- I believe the
2 intervenors may have wanted to put on some testimony on
3 the subject of Bio 19 and the subject of Bio 8, since
4 those were noted for notice for this hearing about the
5 subject of what Bio 8 deals with and what Bio 19 is. I
6 think we should --

7 HEARING OFFICER CELLI: Yeah. Well, thank you.
8 An procedurally that means that there's a shift in the
9 burden. If there's an objection to a particular
10 condition, then the proponent who objects then has the
11 burden of going forward.

12 So with that, is there any evidence that you
13 wanted to put on, Ms. Belenky, with regard Biology?

14 MS. BELENKY: As was stated a few minutes ago, we
15 haven't had any time to review these new conditions. So
16 it is -- I can't say that we have anything to respond to,
17 because we haven't had the chance to review them. I had
18 wanted to respond to the new 439, Exhibit 439, that was
19 put in by staff today -- well, I guess it was sent
20 yesterday. However, I cannot -- I could not -- was not
21 able to find a witness who could testify this afternoon on
22 such short notice. So that's where the Center for
23 Biological Diversity is on those questions.

24 HEARING OFFICER CELLI: What I'm trying to figure
25 out is whether I need to keep the record open on biology.

1 MS. BELENKY: That would be the Center's
2 position, that the record should remain open until we have
3 a fair amount of time to review this new material that
4 came into the record yesterday at the end of the day.

5 HEARING OFFICER CELLI: But when I say leave the
6 record open, I'm talking about today until the attorneys
7 come back, and from staff and that we get through all of
8 this evidentiary hearing. I'm not inclined to leave the
9 record open beyond today. I really wanted to finish
10 today, and that's the intent.

11 MS. BELENKY: I do understand that that is what
12 the Commission and the Committee would prefer. I just, on
13 the record, want to state that we don't feel that we've
14 had a fair opportunity to look at the changes. There's a
15 lot of things going on at the same time. I don't have
16 multiple staff people who can look at something while I'm
17 also listening to the proceedings, and to the workshops.

18 Thank you.

19 HEARING OFFICER CELLI: Well, let's hear from
20 CURE on the issue of Biology. Really, we were limited to
21 Bio 8 and Bio 19 and the ARRA considerations.

22 MS. KOSS: I concur with Ms. Belenky.

23 HEARING OFFICER CELLI: Okay. Yes, everybody
24 received -- this is the difficulty when we receive
25 evidence the day before, people to have scramble. They

1 have to get witnesses to look at it.

2 MR. GALATI: But I want to put this in
3 perspective.

4 HEARING OFFICER CELLI: Before you do --

5 MR. GALATI: Neither staff nor I had to put
6 anything in writing about what we agreed. I could have
7 brought a witness, Mr. Stein, and said, what changes would
8 you like to Bio 19. And he would have said, I want that
9 change, this change, that change.

10 So that was in our opening testimony, our revised
11 opening testimony, and our rebuttal testimony. We're
12 prepared to go to hearing on Bio 19 subject matter of late
13 plants, late blooming plants, and Bio 8, specifically the
14 section on noise.

15 We were prepared to go to those hearings. We had
16 workshops on those hearings. The parties have had ample
17 amount of time to prepare on the subject areas. The fact
18 that the condition has changed, because the testimony has
19 changed slightly is not a reason to reopen the record and
20 hold it open.

21 Everybody should have brought their botanist
22 today, and their noise expert today, because that's what
23 it was noticed for. And so the fact that the condition
24 changed slightly so that I don't have to bore you with the
25 testimony on those issues shouldn't mean that we leave the

1 record open. This is not new information. This is a
2 settlement on issues that were properly before the
3 Committee last week, and are properly before the Committee
4 now.

5 HEARING OFFICER CELLI: And I agree with that. I
6 mean, really we noticed today for Bio 19 and Bio 8, and
7 that was what we were here to do.

8 MS. KOSS: Hearing Officer Celli --

9 HEARING OFFICER CELLI: Yes

10 MS. KOSS: -- may I just. Based on data this is
11 new information. And at last week's hearing Ms. Galati
12 actually requested that the record remain open for Bio and
13 Soil and Water so that these revised conditions, however
14 they were going to be revised, would be circulated to all
15 parties, so that they would have an opportunity to review
16 and comment. We received them last night, I believe, at
17 the close of business.

18 MR. GALATI: Correction. I did not ask to open,
19 because I had no idea that staff would agree that we would
20 have an agreement on the condition language. I asked for
21 the subject matter to stay open, so that I could get such
22 agreement. And if we didn't have agreement, my witnesses
23 would be here today to testify on the subject matter of
24 Soil and Water 4, 5, 19, Bio 19, Bio 8. We just limited
25 the types of questions to those subject matters.

1 This was not because someone was going to be
2 producing a brand new document. That's not what we did.
3 We produced a brand new document, so everybody would know
4 what we were asking for, but I could have done that
5 orally.

6 HEARING OFFICER CELLI: True.

7 Again, we're having this discussion in the
8 absence of staff counsel on Biology. What I'm inclined to
9 do is just put this on the shelf until they come back.
10 Can we launch into cultural then?

11 Was there anything else that you were able to
12 take care of that we need to handle in your workshop?

13 MR. GALATI: No. I think from Cultural, and what
14 I would prefer is, because we had a workshop and a
15 productive workshop on the conditions, I'd ask if you
16 would go out of order, so that staff could go first on
17 Cultural, because when they present that exhibit, which I
18 don't think has yet been marked, our witness is going to
19 agree to those changes.

20 STAFF COUNSEL BABULA: Well, actually since we've
21 been in agreement with the applicant, it technically would
22 be the intervenors' burden if they have something
23 additional. I think they may have agreed to some of
24 the -- I'm not exactly sure what intervenors have agreed
25 to. I know we did make some changes.

1 HEARING OFFICER CELLI: Okay. What I'm going to
2 ask you to do, Mr. Babula, is take your mike and put it
3 over at the witness table, and you'll sit over next -- or
4 just pull that other mike next to you, but we need a mike
5 for your witness.

6 We're going to go off the record for a moment

7 (Thereupon a discussion occurred of the record.)

8 HEARING OFFICER CELLI: Okay, we're back on the
9 record. Thank you all for your indulgence and patience.

10 Ms. Mayer, thanks for coming back. I know you're
11 running back and forth and sending Emails also. Can you
12 just state on the record, and you're going to need a
13 microphone on, what you just did, so that we know what's
14 going on with service and mailings and so forth.

15 STAFF COUNSEL MAYER: Sure. I'll just recap it
16 from the beginning. The latest Bio 19 that applicant
17 submitted last night is Applicant's 72. We took that,
18 accepted the edits, and made two edits of our own. That's
19 now Exhibit 445. And since it just came off of my
20 computer, I also Emailed it to Tom Budlong, Rachael Koss,
21 Ileene Anderson, Lisa Belenky, CBD, and also to Alice Karl
22 of the applicant, and also Mike Monasmith, the project
23 manager. So they have electronic copies. And I will
24 serve the entire POS list when I have a chance.

25 HEARING OFFICER CELLI: Okay, that's great. Now,

1 Ms. Koss, as you're looking at your computer, are you able
2 to get your Email on that computer?

3 MS. KOSS: I have forwarded it to Scott Cashen.

4 HEARING OFFICER CELLI: Thank you. That's really
5 what I was asking. And over there and Ms. Belenky --

6 MS. BELENKY: Yes, I communicated with I Ileene
7 Anderson, and she's going to hopefully try and look at it
8 in the next few hours.

9 HEARING OFFICER CELLI: Thank you. You know,
10 this is our process.

11 MS. BELENKY: Yeah.

12 HEARING OFFICER CELLI: It's ongoing. Things are
13 coming in at all times. It's very difficult to take a
14 photograph of this whole process and say that's the way it
15 is, because it just changes.

16 MS. BELENKY: I actually would like a
17 clarification, because now I think I'm slightly confused.
18 This Bio 19 does not track changes against the last
19 version that the staff had.

20 STAFF COUNSEL MAYER: Correct.

21 MS. BELENKY: Okay. And there's no -- that
22 doesn't exist right now, but --

23 STAFF COUNSEL MAYER: Yeah, we withdraw that
24 exhibit.

25 MS. BELENKY: Thank you.

1 STAFF COUNSEL MAYER: They're very similar, but
2 they're not duplicates.

3 HEARING OFFICER CELLI: 442 was withdrawn.

4 MS. BELENKY: Yes.

5 HEARING OFFICER CELLI: It's not in the record.

6 Okay, so we were hesitant to shut -- to close the
7 record on Biology, because both you and Ms. Homes were
8 gone, and so we wanted to --

9 STAFF COUNSEL MAYER: I thank you for that. I
10 apologize I had to leave.

11 HEARING OFFICER CELLI: So what we'll do is we're
12 going to switch now to Cultural. We're going to take the
13 evidence on Cultural. In the meanwhile, hopefully some of
14 the intervenors' experts can take a look at what just went
15 out in terms of the new Bio 19, and they can hear back
16 from them and hear what they can say, because our
17 intention is to finish up today with Cultural and finish
18 up with Bio and close the record on Genesis. And that's
19 the end game here.

20 So with that, applicant has stated that it's okay
21 with them that we start with staff. Staff, are you
22 prepared with your first witness on Cultural?

23 STAFF COUNSEL BABULA: Sure. Just a sort of a
24 procedural thing. So 441 would be the agreed upon
25 Conditions of Certification, but over there being -- the

1 changes are being created right now as we speak. So I
2 don't have it. We went over and made changes on a laptop,
3 and currently a member of applicant's staff is making
4 those changes, so the document is being created real-time
5 right now.

6 HEARING OFFICER CELLI: Now, I take it these were
7 changes made within the last discussions from the workshop
8 over the lunch.

9 STAFF COUNSEL BABULA: Right. Correct. It was
10 based on a document we sent out that then the applicant
11 made comments on that we made last night. We received it
12 from them, then we made comments this morning, which then
13 was the subject of our discussion, which we handed out to
14 all the parties, and we went down the line and looked at
15 our comments, and we had discussion. And then -- so
16 that's -- what's being changed now is getting you a copy
17 of the Conditions of Certification that reflect all the
18 agreed upon changes, and it will be the conditions that
19 you can use when you make your PMPD.

20 HEARING OFFICER CELLI: So where is it? There
21 were like 20 some odd cultural conditions.

22 STAFF COUNSEL BABULA: Well, there's 18 now.

23 HEARING OFFICER CELLI: Oh, that's good news.
24 And are we talking substantial changes?

25 STAFF COUNSEL BABULA: Yeah, there's substantial

1 changes. Although, I think that -- I think my plan would
2 be to proceed forward with my direct testimony, have the
3 staff present the stuff I want them to present, and then
4 cross -- do the whole stuff. And then by then, I'm hoping
5 it will be ready, then we can enter it into the record.

6 HEARING OFFICER CELLI: And the intervenors were
7 all here and present for the workshop, so you all got to
8 participate in these discussions, and I see nodding heads
9 in the affirmative.

10 STAFF COUNSEL BABULA: They were here.

11 MR. BOYD: We were here. It wasn't really a
12 conversation that we were part of. It was more between
13 staff and the applicant.

14 STAFF COUNSEL BABULA: I think you talked quite a
15 bit.

16 (Laughter.)

17 MR. BOYD: Put it this way, none of our proposals
18 changed anything.

19 HEARING OFFICER CELLI: When you speak, would you
20 lay right on that mike, please.

21 MR. BOYD: It's on. Yeah, we heard the
22 conversation, I guess.

23 HEARING OFFICER CELLI: I mean, the whole reason
24 we did this and had a workshop, was so that you would
25 participate in this conversation.

1 MR. BOYD: Well, I tried.

2 HEARING OFFICER CELLI: And it isn't necessarily
3 that we're clunking heads and beating you into submission,
4 and making everybody agree.

5 MR. BOYD: Well, I think it was the other way
6 around, I was beating them into submission.

7 HEARING OFFICER CELLI: I mean, the point is,
8 there shouldn't be any surprises at this point, because
9 everybody was talking openly about whatever it is that was
10 resolved.

11 Okay, so I just want to make sure -- I want to
12 make sure there's due process and there's no notice
13 issues, so that's basically what I'm --

14 STAFF COUNSEL BABULA: And people on the phone
15 also commented, so they participated as well.

16 HEARING OFFICER CELLI: Excellent. Well, then --
17 okay, with that, then please let's call your first
18 witness. I'm going to have to have your witnesses sworn.

19 STAFF COUNSEL BABULA: I have a panel here Dr.
20 Beth Bagwell and Beverly Bastian

21 HEARING OFFICER CELLI: Well, if you would, Mr.
22 Peters, please swear them in.

23 (Thereupon the witnesses were sworn, by the
24 court reporter, to tell the truth, the whole
25 truth and nothing but the truth.)

1 Quality for considering cumulative effects under the
2 National Environmental Policy Act.

3 These documents emphasize the importance of using
4 data to form our conclusions. The actual number of
5 archeological sites on the project vicinity is unknown.
6 But by using the highest quality of data available to me,
7 I estimated the number of archeological sites likely to be
8 present at two regional scales, the I-10 corridor, between
9 Blythe and Desert Center, and the southern California
10 desert region.

11 So past and present and reasonably foreseeable
12 construction could potentially destroy more than 800 sites
13 within the I-10 corridor and 17,000 sites within the
14 southern California desert region.

15 The Genesis project would contribute in a small
16 but significant way to these cumulative considerable
17 adverse impacts. And one of the reasons for that is
18 because cultural resources are a non-renewable resource.
19 Unlike biology, where you can repair the environment to a
20 certain degree and encourage plants and animals to return.
21 Once you've destroyed cultural resources, they're gone
22 forever.

23 And in the case of standard recommended
24 mitigation, specifically only for archeological sites
25 where we're recovering information, modern excavation

1 techniques can indeed recover some, but not all of this
2 information. And unfortunately data recovery doesn't
3 mitigate the loss of other kinds of values that would be
4 part of these resources, spiritual values, cultural
5 values.

6 As time passes, archaeological techniques
7 improve, and we're able to retain more information from
8 sites. So, for example, things that were excavated a
9 hundred years ago, to a certain degree that information is
10 only partially useful. They didn't collect the kinds of
11 information that we needed. And that's the case here,
12 sometimes waiting provides an improved data set.

13 STAFF COUNSEL BABULA: Okay, thank you. Based on
14 your assessment of the existing data and your knowledge of
15 the project, do you believe your conclusion of significant
16 cumulative impacts should be fatal to the project?

17 DR. BAGWELL: No, I don't.

18 STAFF COUNSEL BABULA: Can you briefly explain.

19 DR. BAGWELL: Well, first of all, I think that
20 the Conditions of Certification that we propose will
21 mitigate direct impacts of the project to less than
22 significant. Second of all, actually data recovery means
23 that we're learning things about these past peoples. And
24 so from that purely scientific perspective, it's exciting
25 to learn more about these ancient peoples. We don't know

1 all that much about them. And so adding to that
2 information at that level, I think, is one potential
3 advantage to the public.

4 Finally, though, impacts to cultural resources
5 must be weighed against the benefits of a project like
6 this. And this is a pretty common thing that happens with
7 cultural resources. This is generally a painful yet
8 common decision in these cases.

9 You know, we cannot fix or repair them, like some
10 resources. And at some point, cultural resources in the
11 southern California desert region will be in danger of
12 kind of extinction, as they will be all gone.

13 But considering the current number of actually
14 constructed projects, we have not reached this point yet
15 in my professional opinion.

16 STAFF COUNSEL BABULA: Thank you. The second and
17 last area I want to touch on is what I'm going to call
18 spiritual resources, which I believe may have a more
19 technical term and you may explain what that is.

20 In your Staff Assessment, you stated these
21 spiritual resources have not yet been evaluated, and as
22 such, staff does not know if these resources are
23 significant or if any mitigation is needed or appropriate,
24 is that correct?

25 DR. BAGWELL: Yes, that's correct.

1 STAFF COUNSEL BABULA: Why have you not evaluated
2 spiritual resources?

3 DR. BAGWELL: Well, staff's background research
4 into the types of cultural resources present nearby the
5 Genesis Project area identified certain kinds of
6 resources, such as springs, rock art trails and geoglyphs
7 that local Native American communities have identified as
8 important parts of their current spiritual beliefs and
9 practices. As a cultural resources professional, I can
10 identify these resources as ones of potential concern, but
11 I'm not a member of this local community.

12 Guidance at the federal level makes it clear that
13 only members of the community that values the resource can
14 evaluate its significant impact or suggest mitigation.

15 STAFF COUNSEL BABULA: So does that mean that
16 potential spiritual resources are just going to be
17 ignored?

18 DR. BAGWELL: No, not at all. In fact, as part
19 of our concern over these spiritual resources, staff has
20 proposed the creation of the prehistoric trails network
21 cultural landscape as described in Cul 1.

22 This landscape and its contributors are eligible
23 for listing in the California Register of Historical
24 Resources, and potentially the National Register of
25 Historic places. And as a result, they are eligible for

1 certain kinds of protection under State and federal law.

2 The potential significance of these resources was
3 based on their possible cultural importance, their
4 association with important events in our history, as well
5 as their information potential. And mitigation of direct
6 and indirect effects to these sensitive resources was
7 proposed in a number of our conditions.

8 However, I do want to make a point that, because
9 the Genesis Project is proposed to be built on federal
10 land, it is legally the responsibility of the federal
11 agency in this case, BLM, to assess the impacts and
12 suggest mitigation for what we're calling ethnograph
13 resources, as required by Section 106 in the National
14 Historic Preservation Act.

15 In this process that we've discussed before, BLM
16 initiates government-to-government consultation with any
17 federally recognized tribe to identify impacts to
18 resources of interest to them. Agreements reached about
19 mitigation to these resources are included in a
20 Programmatic Agreement. The applicant, of course, will be
21 subject to any mitigation BLM determines is necessary
22 through this PA.

23 STAFF COUNSEL BABULA: So this impact assessment
24 and mitigation development for spiritual resources is
25 really within the responsibility and jurisdiction of

1 another agency, the BLM, and not the Commission. And it
2 is expected that the appropriate mitigation would be
3 adopted by BLM through the PA after this consultation?

4 DR. BAGWELL: Correct.

5 STAFF COUNSEL BABULA: Okay. The applicant
6 states that Genesis believes the impacts to ethnographic
7 resources have not been evaluated, because no ethnographic
8 or spiritual resources have been identified. That was in
9 the testimony. They've stated that they have consulted
10 with BLM.

11 You know, at this point, based on what they've
12 done, what's your response to the consultation or if
13 there's been information that has come out regarding these
14 ethnographic resources?

15 DR. BAGWELL: As far as I know, no specific
16 formally identified traditional cultural property has been
17 mentioned in or near Genesis by Native American groups,
18 which were contacted.

19 But it is generally common knowledge among
20 cultural resources professionals, that native American
21 groups rarely provide information about spiritual
22 resources, when requested to do so by letter, Email, or
23 telephone.

24 And, in fact, religious beliefs may prevent
25 individuals from specifically talking about such places.

1 Religious leaders are unlikely to communicate secret or
2 important religious information to someone they have not
3 met in person or have not previously worked for. The
4 formal consultation process with BLM may provide more
5 information on this topic.

6 STAFF COUNSEL BABULA: And the conditions we just
7 agree upon, there's a component in there regarding where
8 engagement with Native American Community. Do you believe
9 that would be something that would help address this
10 issue?

11 DR. BAGWELL: I do think that the changes that
12 we've made to inn Cul 16 would address that.

13 STAFF COUNSEL BABULA: Great. Just one more
14 question here. There's been some question that given the
15 timetable of evaluating these projects, staff has just
16 simply not had enough time to perform an adequate analysis
17 as required by CEQA. Do you agree?

18 DR. BAGWELL: I do not. The schedule was quite
19 tight, but I had plenty of time.

20 STAFF COUNSEL BABULA: Okay. Is there any other
21 information you'd like to provide based on evaluating the
22 comments or the testimony that the intervenors have
23 subsequently filed or any other information that has come
24 up?

25 DR. BAGWELL: Yeah, briefly. A number of the

1 comments by Dr. Whitley expressed a concern that our
2 conditions and our discussion hadn't sufficiently
3 addressed what he refers to as the Heritage Resources.

4 And I guess that's what we're trying to talk
5 about with spiritual resources or ethnographic resources.
6 And I just would really like to say that that's very much
7 been an important part of our conditions, not just Cul 16,
8 which is one that we've been working on in our workshop
9 recently, but particularly Cul 1, which created the
10 prehistoric trails network cultural landscape. That's
11 very much intended to deal with not just the information
12 aspects of archaeological sites, but the more cultural
13 spiritual aspects as well.

14 STAFF COUNSEL BABULA: Is there anything else
15 you'd like to say?

16 DR. BAGWELL: That's primarily it for me.

17 STAFF COUNSEL BABULA: Beverly.

18 MS. BASTIAN: I don't need to add anything.
19 Thank you.

20 STAFF COUNSEL BABULA: Well, I have no further
21 questions. They're available for cross.

22 HEARING OFFICER CELLI: Was there any physical
23 evidence you wanted to put into evidence?

24 STAFF COUNSEL BABULA: Well, the 441 when we -- I
25 was --

1 HEARING OFFICER CELLI: Have you moved that in
2 yet?

3 STAFF COUNSEL BABULA: I haven't moved it in yet,
4 because it's being worked on.

5 HEARING OFFICER CELLI: Oh, that's right.

6 STAFF COUNSEL BABULA: So I wasn't sure if you
7 wanted to -- just before you excuse them after cross, then
8 allow for or we could put it in and with -- like, we could
9 have them go through the motion of --

10 HEARING OFFICER CELLI: Well, I just don't want
11 to forget it.

12 STAFF COUNSEL BABULA: Okay. We won't forget it.
13 I do have one -- I have something -- Mike Monasmith has a
14 short statement regarding the significant unmitigable
15 impacts that tie in. So if they go -- he can go now and
16 be subject to cross altogether or if you want to just have
17 them be subject to cross, but his statement is probably
18 like 30 seconds.

19 HEARING OFFICER CELLI: Okay. Well you'll need
20 to be sworn, Mr. Monasmith, and you'll need your
21 microphone to be turned on.

22 So, Mr. Peters, would you swear Mr. Monasmith in.
23 (Thereupon MR. MICHAEL MONASMITH, was sworn, by
24 the court reporter, to tell the truth, the whole
25 truth and nothing but the truth.)

1 HEARING OFFICER CELLI: State your name and spell
2 it for the record, please.

3 SITING PROJECT MANAGER MONASMITH: Mike
4 Monasmith. Last name M-o-n-a-s-m-i-t-h.

5 STAFF COUNSEL BABULA: Mr. Monasmith, you were
6 the author of the executive summary of the Staff
7 Assessment?

8 SITING PROJECT MANAGER MONASMITH: That's
9 correct.

10 STAFF COUNSEL BABULA: Okay. And do you have a
11 statement you'd like to state right now regarding staff's
12 view on the unmitigable impacts in Cultural?

13 SITING PROJECT MANAGER MONASMITH: Correct. The
14 Energy Commission staff, as Dr. Bagwell just testified to,
15 believe that the cumulative impacts associated with
16 Cultural Resources for the Genesis Project will be
17 significant. There's no feasible mitigation that would
18 reduce the impacts to a level that is less than
19 significant, given the scale of the projects that were
20 cumulatively considered.

21 Notwithstanding the unmitigable impacts,
22 consideration needs to be given to the fact that the
23 project is a solar powerplant that will help California
24 meet its renewable portfolio standard of 33 percent in
25 2020 and AB 32 greenhouse gas emission reduction goals.

1 As such, it will provide critical environmental
2 benefits by helping the State reduce its greenhouse gas
3 emissions. And these positive attributes must be weighed
4 against the project's adverse impacts. It is because of
5 these benefits and the concerns regarding the adverse
6 impacts that global warming will have upon the state and
7 our environment, reducing desert ecosystems, that staff
8 believes it would be appropriate for the Commission to
9 approve the project based on a finding of overriding
10 considerations, consistent with CEQA guideline's Section
11 15093 in section 1755 of the Commission's siting
12 regulations.

13 If the Commission adopts staff's proposed
14 mitigation measures contained in Condition of
15 Certification. Staff's position on the Genesis project
16 should not be read as a blanket endorsement of all solar
17 projects, nor as an indication that we will consistently
18 conclude that it's appropriate for the Commission to adopt
19 overriding considerations for unmitigable and significant
20 environmental impacts. Our determinations will be made on
21 a case by case basis.

22 As will all electricity infrastructure projects,
23 site selection is a critical factor in determining impacts
24 of staff's position on whether a condition override is
25 appropriate or warranted.

1 The fact that the Genesis Project is adjacent to
2 and in the vicinity of extensive existing and plan
3 develop, include two State prisons, Interstate 10 and
4 existing electricity infrastructure, including major
5 transmission lines and other solar power projects, it is a
6 significant factor in reaching the conclusion that an
7 override is appropriate in this case.

8 Energy Commission staff may not support an
9 override for a project in a remote location. Staff
10 believes renewable energy development should occur in an
11 area approximate to existing transmission infrastructure,
12 and loads centers and recognizes that it is important to
13 protect the unique cultural resource of the desert and to
14 preserve the special qualities of remoteness and isolation
15 that are inherent in the appeal of desert landscapes.

16 In summary, staff supports a finding of
17 overriding considerations based on extensive mitigation
18 and data collection that Genesis would be subject to; the
19 direct impacts to cultural resources on the Genesis site
20 that would be mitigated to levels of less than
21 significant; Genesis's ability to assist California in
22 meeting its RPS goals of 33 percent of retail electrical
23 power. Sales by 2020, Genesis ability to support U.S.
24 Secretary of the Interior Ken Salazar's orders 3283 and
25 3285, making the production, development, and delivery of

1 renewable energy top priorities for the United States
2 government.

3 Genesis's ability to support the greenhouse gas
4 reduction goals of AB 32, and lastly Genesis's ability to
5 sustain and stimulate the economy in southern California
6 by helping to ensure an adequate supply of renewable
7 electrical generation while creating additional
8 construction and operations employments, increasing
9 expenditures in local businesses, and stimulating economic
10 recovery.

11 STAFF COUNSEL BABULA: Thank you. I have no
12 further questions.

13 HEARING OFFICER CELLI: Thank you. We're going
14 to go off the record for a moment. Please standby.

15 (Thereupon a discussion occurred off the record.)

16 HEARING OFFICER CELLI: Thank you for your
17 indulgence again, folks. These little conferences
18 actually save a lot of time in the end.

19 We're at cross by applicant of staff's witnesses.

20 CROSS-EXAMINATION

21 BY MR. GALATI

22 Dr. Bagwell, in the Revised Staff Assessment,
23 there is two tables. One is called Cultural Resources
24 Table 4, Dates of BLM Inquiries Made to Native American
25 Groups; and Cultural Resources Table 5, Details of

1 Communications Between BLM and Native American Groups.

2 Are you familiar with those tables?

3 DR. BAGWELL: Yes.

4 MR. GALATI: In today's workshop, and in public
5 comment, there seemed to be some criticism about the
6 Energy Commission not working or reaching out and having
7 Native American consultation. Can you describe your
8 understanding of the BLM consultation with Native
9 Americans and contrast that with the consultation or
10 outreach that you did in your analysis?

11 DR. BAGWELL: That's a good question. And my
12 understanding of this process is that, as a State agency,
13 when federal agencies are the lead in a project such as
14 this, that it's actually inappropriate for a State agency
15 to play a role. And so we stepped back and delegated
16 those responsibilities to the BLM.

17 And although that there was a beginning stage at
18 which we request that letters be sent on the part of the
19 applicant, technically, and help me here, Beverly, if I'm
20 getting the Energy Commission guidance wrong, that we
21 aren't actually required to consult with Native Americans
22 at all. Although, we tend to, because we choose to and we
23 encourage that kind of level of participation.

24 MR. GALATI: And do you believe that in order for
25 the Genesis Project to receive all of its entitlements,

1 both federal and State, that there will be a federal BLM
2 consultation with the Native Americans.

3 DR. BAGWELL: I think there will be a general
4 consultation as required with Section 106. However, I do
5 not know if the specific resources of concern to the
6 Energy Commission culture resources staff will be
7 addressed.

8 MR. GALATI: No further questions.

9 HEARING OFFICER CELLI: Thank you.

10 Cross by CBD, please.

11 CROSS-EXAMINATION

12 BY MS. BELENKY:

13 Yes, I just have one question. In the
14 Conditions -- in Condition Cultural 16, which is on page
15 27 of the new recommended -- I don't remember what I said
16 the number on this is.

17 DR. BAGWELL: That's fine.

18 MS. BELENKY: I just wanted to -- if you could
19 explain a little. The first condition on page 27, the
20 product owner shall -- it discusses having a security gate
21 or guard on the access road. And I think there was some
22 concern during the workshop that that might limit access
23 for Native Americans.

24 And I guess my understanding was that that would
25 limit access for people who were not authorized to be on

1 site. So I would just -- if you could, just explain a
2 little bit about your thinking on that condition.

3 DR. BAGWELL: Actually, I did not provide that.
4 It was something that the applicant provided. Although,
5 it has some language similar to a different condition,
6 where we proposed putting some sort of barrier to vehicle
7 traffic along the wilderness boundary. I could elaborate
8 more on why we suggested that, if that would be helpful.

9 MS. BELENKY: Yes, that would. Thank you.

10 DR. BAGWELL: The environmental conditions in
11 that part of the world when they say desert pavement, they
12 really mean it looks a lot like pavement. And you can
13 take your truck on it very easily. And actually, when
14 I -- it's very difficult to tell where exactly the
15 boundaries are, where it's legally allowed for you to be
16 driving off-road or where the boundary of the wilderness
17 is.

18 And I was concerned with people who, number one,
19 were unaware of where that boundary was driving onto all
20 kinds of sensitive resources. And number two, people who
21 didn't care about the legality of it. Their ease of
22 access to a place that was definitely -- you know, it's a
23 wilderness and it's therefore very sensitive.

24 MS. BELENKY: Thank you.

25 MS. BASTIAN: May I add something?

1 MS. BELENKY: Yes, please.

2 MS. BASTIAN: With respect to that gate, I may
3 not be correct on this, so applicant please let me know.
4 The installation on that gate, I think may be up to BLM.
5 They will have to permit that that will happen. And it's
6 my understanding in instances where BLM has fenced off
7 something of concern to Native Americans, I believe they
8 did that with the, what are called, the Blythe Intaglios,
9 BLM has provided means for Native Americans to have
10 access.

11 So I would just, in an analogous way, assume
12 there was something that the Native Americans needed --
13 wanted to get to and the Blythe access gate was an issue
14 that BLM would have arranged for that to be -- that access
15 to be given to them -- excuse me, Genesis.

16 MS. BELENKY: Thank you. That's very helpful.

17 HEARING OFFICER CELLI: Nothing further from CBD.
18 CURE, cross-examination of the panel.

19 CROSS-EXAMINATION

20 BY MS. KOSS:

21 Thank you, yes. And I guess both of you or
22 either of you can respond. How did you determine that the
23 archeological sites within the project area of potential
24 effect are CEQA significant?

25 DR. BAGWELL: We looked at the information that

1 was provided to us, primarily the raw data, of the site
2 forms, as well as discussions in the confidential cultural
3 resources report. And also we did some background
4 research on our own about what other people have found in
5 the region and considered important resources.

6 MS. KOSS: Thank you. And in your evaluation of
7 the site space on the site records provided by the
8 applicant, were all of those site records completed fully
9 and adequately?

10 DR. BAGWELL: In our comments, both in terms of
11 data adequacy and later on when we made data requests, we
12 did request that the applicant amplify some of the
13 information on those forms.

14 MS. KOSS: And is it correct that you identified
15 7 out of 8 site records as an inadequate?

16 DR. BAGWELL: I've actually never made a
17 calculation.

18 MS. KOSS: Okay. Did the applicant subsequently
19 provide information -- well, let me back up. I'm sorry.

20 When you evaluated the sites using the records
21 from the applicant, was that prior to your request for
22 additional information?

23 DR. BAGWELL: I did a preliminary assessment and
24 made the request and then completed it.

25 MS. KOSS: Completed it when?

1 DR. BAGWELL: After receiving additional
2 information. Some sites had plenty of information and
3 some did not.

4 MS. KOSS: Okay, thank you.

5 Were any excavations conducted, for example, to
6 positively determine if subsurface deposits are present?

7 DR. BAGWELL: No, there wasn't. And actually
8 that was part of overall plan that -- this was discussed
9 in detail. I can get the correct page for you here. In
10 the Staff Assessment pages 81 and 80.

11 HEARING OFFICER CELLI: We're referring to
12 exhibit what number here?

13 DR. BAGWELL: This is the Cultural Resources
14 Staff Assessment that was -- Jared will have to help us
15 here.

16 MS. KOSS: I believe it's 402.

17 HEARING OFFICER CELLI: Is that the Revised Staff
18 Assessment?

19 DR. BAGWELL: Correct.

20 HEARING OFFICER CELLI: 402.

21 MS. MICHAEL: What page?

22 MS. KOSS: Cultural was a separate exhibit. The
23 Cultural Revised Staff Assessment was a separate exhibit
24 from the rest of the Revised Staff Assessment. And I
25 believe the cultural portion is Exhibit 402.

1 HEARING OFFICER CELLI: I'm just checking that to
2 make sure, because I had received cultural.

3 MS. KOSS: I apologize, 401.

4 HEARING OFFICER CELLI: Cultural, right. I had
5 received cultural as a separate bundle, and then we
6 received the RSA after that containing cultural in its
7 entirety, right?

8 SITING PROJECT MANAGER MONASMITH: The
9 supplement.

10 HEARING OFFICER CELLI: The RSA supplement.

11 SITING PROJECT MANAGER MONASMITH: Yeah, the RSA
12 that was published on June 11th, the supplement came out
13 subsequent that contained cultural, air quality, TSE,
14 Appendix A. It was within the Cultural was then docketed.
15 So it was in the supplement and I don't know what the
16 exhibit number is right now.

17 HEARING OFFICER CELLI: Yeah, I'm concerned you
18 guys know what will happen is pages will change, from one
19 addition to the next, from one that you have versus the
20 RSA. Presumably, the RSA is the more current document. I
21 don't know if you have a copy of the RSA with you.

22 MS. KOSS: Well, there's the RSA and then there's
23 the supplement.

24 DR. BAGWELL: I can tell you the section number.

25 MS. KOSS: Anyway, which one are you referring

1 to.

2 MS. BASTIAN: The one thing everybody needs to
3 understand too -- I'm going to jump in here because both
4 the RSA as separately published and the RSA in the
5 supplement are the same. There's no difference.

6 MS. KOSS: Okay. Is it fair to say --

7 MS. BASTIAN: That's correct, Mike?

8 SITING PROJECT MANAGER MONASMITH: I'm looking at
9 the exhibit list. I need to get an exhibit list right
10 now. But the cultural section was published within the
11 supplemental. And C3 is the page number 86. And the
12 exhibit list is the supplemental, it's not the RSA.

13 HEARING OFFICER CELLI: Ms. Koss, you're at --
14 you were saying page C.3-

15 MS. KOSS: Dr. Bagwell?

16 DR. BAGWELL: -- 80 and

17 STAFF COUNSEL HOLMES: And 81, and potentially 79
18 through 81.

19 SITING PROJECT MANAGER MONASMITH: It's 403,
20 Hearing Officer Celli, On Exhibit 403 page C.3-80 and 81.

21 MS. BASTIAN: 79, 80, and 81.

22 SITING PROJECT MANAGER MONASMITH: 79, 80 and 81.

23 HEARING OFFICER CELLI: Oh, boy.

24 DR. BAGWELL: We would be happy to do a brief
25 summary of what we discussed in that section, but I was

1 going to ask Beverly to address it, because it was more of
2 a policy.

3 MS. KOSS: If I may?

4 HEARING OFFICER CELLI: Yes, this is on cross.

5 MS. KOSS: Yes. It was just a yes or no
6 question, and I actually got an answer. I don't really
7 need anything more.

8 HEARING OFFICER CELLI: But it does raise a
9 problem, which I have, which is now there's all these
10 various iterations of cultural flowing out there. And I
11 instinctively go to the most recent one I have, which is
12 the RSA supplement filed 7-2-10. I don't think there's
13 anything since then, although we're about to get another
14 document.

15 STAFF COUNSEL BABULA: I mean, what you're
16 getting with -- those are just COC changes.

17 STAFF COUNSEL BABULA: The Analysis is the same.
18 There's been no changes in the text of the analysis.

19 HEARING OFFICER CELLI: May I request -- so the
20 Revised Staff Assessment filed and docketed on the 2nd, is
21 Exhibit 40 --

22 SITING PROJECT MANAGER MONASMITH: Yes, the
23 Revised Staff Assessment was published on June 11th, and
24 then we published the supplement, which is what the
25 Revised Staff Assessment, which contained the complete 200

1 plus page cultural resources, which is in your hand right
2 now. That's exhibit 403.

3 HEARING OFFICER CELLI: This is 403?

4 SITING PROJECT MANAGER MONASMITH: Correct.

5 HEARING OFFICER CELLI: Thank you. So let's stay
6 with Exhibit 403 as we refer to anything having to do with
7 the cultural testimony, so that we're all literally on the
8 same page. Thank you, I'm sorry for the interruption.

9 MS. KOSS: No, not a problem.

10 Okay. Were excavations conducted to determine
11 whether sites are likely to contain human cemeteries?

12 DR. BAGWELL: No.

13 MS. KOSS: Were artifacts collected for
14 laboratory analysis?

15 DR. BAGWELL: No.

16 MS. KOSS: So all of the information on the sites
17 then was derived from visual examination of the ground
18 surface, is that correct?

19 DR. BAGWELL: Yes.

20 MS. KOSS: Is it always possible to determine the
21 size, nature, and significance of sites based solely on
22 visual examinations of the ground surface.

23 DR. BAGWELL: No.

24 MS. KOSS: Can you confidently determine, for
25 example, whether or not burials are present within sites

1 slowly based on visual examinations of the ground surface?

2 DR. BAGWELL: No.

3 MS. KOSS: What is required to determine with
4 reasonable certainty whether burials are present within a
5 site?

6 DR. BAGWELL: I would say that you would need to
7 go through the testing process, which does involve
8 excavation.

9 MS. KOSS: Thank you.

10 And since no test excavations were conducted, is
11 it then correct to say that we have no real way to
12 estimate what cemeteries might be impacted by the proposed
13 project?

14 DR. BAGWELL: I'm not sure I entirely agree. It
15 definitely depends on the geology of the region.

16 MS. KOSS: Okay. A moment ago, you did say that
17 to identify with reasonable certainty whether burials are
18 present on the site, test excavations would need to be
19 conducted?

20 DR. BAGWELL: I think that's the best method,
21 yes.

22 MS. KOSS: Thank you. Are you aware of the four
23 primary criteria for CEQA significance?

24 DR. BAGWELL: Yes.

25 MS. KOSS: And which criterion did you assume

1 that the archeological sites would qualify under?

2 MS. BASTIAN: I'd like to interject, that isn't
3 CEQA significance. That's cultural -- that's California
4 Register for Historical Resources eligibility criteria,
5 that's what you're referring to.

6 MS. KOSS: Yes, I think --

7 MS. BASTIAN: 1 through 4.

8 MS. KOSS: Correct. Sorry, I'll repeat the
9 question. Sorry, I'll repeat the questions. Which
10 criteria did you determine that the archeological sites
11 would qualify under?

12 DR. BAGWELL: Which sites

13 MS? KOSS: Which criterion, the 1 through 4?

14 DR. BAGWELL: It depends on which sites.

15 MS. KOSS: Oh, which sites, I'm sorry.

16 DR. BAGWELL: You could do it by type, if you
17 wanted. I'm not going to remember the numbers
18 specifically.

19 MS. KOSS: Okay. Well, I guess you haven't
20 determined ethnographic resources yet, correct, so we have
21 historic and prehistoric resources?

22 DR. BAGWELL: We do have historic and
23 pre-historic and some of those pre-historic resources we
24 determined were part of the pre-historic trails network.
25 And all contributors to those networks were determined

1 eligible on both criterion one and four. Four is their
2 information potential, and one is their more association
3 with important issues and history, which would be the
4 appropriate criterion for an ethnographic resource.

5 MS. KOSS: One or four would be?

6 DR. BAGWELL: One.

7 MS. KOSS: Did you consider the possibility that
8 sites within the area of potential effect might be
9 significant under criterion C, for example, the village
10 site might contain ceramic pots that would qualify as a
11 distinctive master works of art?

12 DR. BAGWELL: That's not the most common thing
13 that people consider for pre-historic village sites.
14 Although, that would have to be -- certainly could be
15 added. I didn't find any information that I was able to
16 examine that would qualify a site in that way.

17 MS. KOSS: Did you consider that criterion for
18 any of the resources?

19 DR. BAGWELL: I considered all the criterion.

20 MS. KOSS: Thank you. Are you aware of the
21 different levels of significance that are determined when
22 a site is it listed in the national register, for example,
23 the differences between local, regional, and national
24 levels of significance?

25 DR. BAGWELL: Yes.

1 MS. KOSS: Is a salvage excavation an appropriate
2 form of mitigation for all sites, regardless of the
3 criteria that make them significant?

4 DR. BAGWELL: It would depend on a case-by-case
5 basis.

6 MS. KOSS: Can you explain?

7 DR. BAGWELL: Cultural resources and archaeology
8 it's a historical science. And so in each case, each
9 place, and in the case an archaeological site would
10 contain information about particular historic events. And
11 as such they're unique, and so they need to be -- how one
12 gathers information about them is specific to each
13 individual case.

14 MS. BASTIAN: And I'd like to ask what you mean
15 by salvage?

16 DR. BAGWELL: Yeah.

17 MS. KOSS: I guess data recovery.

18 HEARING OFFICER CELLI: Ms. Bastian, if you would
19 speak right into the mike. Thank you.

20 MS. BASTIAN: CEQA really offers us only two
21 options for dealing with thing -- well, that's not maybe
22 the way to put it, but there's avoidance or data recovery.
23 And avoidance was not going to be possible on any sort of
24 site-by-site basis, where the extensive arrangement of
25 these array fields would not let little spot places be

1 preserved, nor did it seem as if that would be of
2 satisfaction to either -- primarily Native Americans, who
3 are the ones who often want to have avoidance be the
4 preferred mode of mitigation.

5 MS. KOSS: What do you consider to be the best
6 treatment or mitigation for human cemeteries, given Native
7 American religious concerns?

8 MS. BASTIAN: We would certainly have
9 advocated -- if there were indications that there could be
10 cemeteries, we certainly would have advocated for
11 avoidance with those.

12 MS. KOSS: How does data recovery mitigate the
13 destruction of a sacred site when the salvage itself or
14 the recovery itself destroys the sacred site?

15 DR. BAGWELL: I would say data recovery is
16 probably not going to necessarily mitigate that particular
17 kind of impact.

18 MS. KOSS: Thank you.

19 DR. BAGWELL: And I'm not sure there is any kind
20 of mitigation for it.

21 MS. KOSS: Avoidance, I suppose.

22 HEARING OFFICER CELLI: The record should reflect
23 that the witness is nodding in the affirmative.

24 MS. KOSS: Would you think that Data recovery
25 real only mitigates impacts that involve potential loss of

1 scientific information?

2 DR. BAGWELL: I think that's how it's intended.

3 MS. KOSS: Thank you. Given your previous
4 answer, would it be fair to say that the assumption of
5 research significance and the plan to mitigate impacts by
6 data recovery really only properly pertains to one of the
7 potential significance criteria that the sites may hold?

8 DR. BAGWELL: True, but that was why we were
9 suggesting a number of different kinds of mitigation. Not
10 just the data recovery, particularly, for example, parts
11 of Cul 1 and Cul 16.

12 MS. KOSS: And would Cul 1 and Cul 16 mitigate
13 for the destruction of burial sites?

14 DR. BAGWELL: Potentially, but I don't know.
15 When you're talking about mitigation of damage to
16 something sacred, you would have to ask the people who
17 that thing is sacred to. I certainly wouldn't want
18 anybody to excavate a major cemetery, if we could avoid
19 it.

20 MS. KOSS: Thank you. Are you aware of the
21 regulatory differences between CEQA and the Energy
22 Commission's archaeological guidelines versus the National
23 Historic Preservation Act?

24 MS. BASTIAN: The Energy Commission's
25 archaeological guidelines are -- to what are you

1 referring?

2 MS. KOSS: We'll just stick to CEQA versus the
3 National Historic Preservation Act

4 DR. BAGWELL: For the most part, although Beverly
5 knows a lot better than I.

6 MS. BASTIAN: Yes, I'm aware of those.

7 MS. KOSS: Thank you.

8 HEARING OFFICER CELLI: I just want to caution
9 the witnesses that both of your voices tend to trail off
10 as we get away from the microphone. So when you're
11 speaking I need you to please speak right into the mike.
12 Thank you.

13 MS. KOSS: Are you aware that CEQA has a
14 five-year time limit on baseline data and that if five
15 years had elapsed, the studies must be redone?

16 DR. BAGWELL: Yes.

17 MS. KOSS: A series of previous inventories or
18 surveys had been conducted within the Genesis study area
19 mostly for transmission corridors. Were any of these over
20 five years old?

21 DR. BAGWELL: Yes.

22 MS. KOSS: Were the areas they covered
23 resurveyed?

24 DR. BAGWELL: Yes.

25 MS. BASTIAN: I'm going to add to that. Only

1 those parts that the proposed project would conceivably
2 impact would have been resurveyed, not the -- they were
3 not going to retrace everybody's transmission line surveys
4 for the whole length.

5 MS. KOSS: Of course, thank you.

6 Are you aware of CEQA's requirement that each
7 potential adverse impact or proposed project must be
8 identified, described, and discussed and potential
9 mitigation measures proposed?

10 DR. BAGWELL: Yes.

11 MS. KOSS: Were potential impacts to human
12 cemeteries discussed and potential mitigation measures
13 proposed for them?

14 It's just a yes or no answer.

15 DR. BAGWELL: Yes.

16 MS. KOSS: Can you point me to the place in the
17 record that analyzes them, please?

18 STAFF COUNSEL BABULA: I'm going to object that
19 this is -- I mean, there's nothing in the record that says
20 there are human cemeteries, that I'm aware of.

21 HEARING OFFICER CELLI: Overruled. That wasn't
22 the question. This question was, can she point to the
23 record where there was this discussion that she just said
24 there was a discussion of.

25 STAFF COUNSEL BABULA: About human cemeteries?

1 HEARING OFFICER CELLI: Yes. Well that's -- if I
2 have good recall on that, that's what just transpired.

3 STAFF COUNSEL BABULA: Did we establish it's in
4 the record?

5 HEARING OFFICER CELLI: No, but that's the
6 question she's asking.

7 MS. KOSS: I asked if they were analyzed. The
8 answer was yes. I just want to know where it was
9 analyzed.

10 MS. BASTIAN: I may have misunderstood your
11 question. I thought you were asking if we knew that this
12 was -- okay, get me back to what you originally asked
13 about human cemeteries and --

14 MS. KOSS: Sure. Were potential impacts to human
15 cemeteries analyzed?

16 MS. BASTIAN: Okay. I was incorrect in saying
17 they were analyzed -- or -- and I instructed Beth.
18 They're not analyzed, but they are considered within the
19 context of the citations of the aspects of California law
20 that provide for treating or dealing with the discovery of
21 human remains under a construction situation. Those
22 are -- that is referred to in our conditions, I believe.
23 And I also believe it's referred to -- I'd have to
24 look back at the section, but we almost always talk about
25 that with respect to potential for mitigation or having to

1 do with construction and discoveries made during
2 construction.

3 MS. KOSS: Okay. I'm going to come back to what
4 you just talked about California law, and come back to
5 that. But let me just ask one question.

6 Did you determine whether the site, the Genesis
7 site, does or does not contain burials?

8 DR. BAGWELL: No.

9 MS. BASTIAN: Not specifically, no.

10 MS. KOSS: And then the California -- the law
11 that you were -- I don't know if it was California, but
12 the law that you were just referring to a moment ago, are
13 you talking about the Native American Graves Protection
14 and Repatriation Act.

15 MS. BASTIAN: No. That's a federal law.

16 MS. KOSS: You're talking about a California Law.
17 What law?

18 MS. BASTIAN: I'm not going to be able to
19 remember the number exactly, and I don't have the whole
20 document in front of me, but it specifically provides what
21 should happen -- and this involves notifying the
22 coroner -- if human remains are found, the coroner must be
23 notified of that county. And if the coroner determines
24 that the remains are not of concern to the coroner, and
25 probably are Native American, then the Native American

1 Heritage Commission is notified. And they notify someone
2 who has agreed to be, what's called, the most likely
3 descendant for the area or the -- probably the Native
4 American group that would be -- have concerns about that
5 locality.

6 And that individual or individuals would then
7 have 48 hours to look at the remains and make
8 recommendations for the appropriate disposition of them.
9 And there are three or four possibilities, options that
10 they have to exercise in regard to that.

11 MS. KOSS: Okay, thank you.

12 Are you aware that CEQA explicitly specifies that
13 preservation in place is the preferred mitigation measure
14 fore archaeological sites?

15 DR. BAGWELL: Yes.

16 MS. KOSS: And the proposed project timeline and
17 the Energy Commission staff conditions indicate that the
18 archaeological mitigation will include data recovery for
19 all sites assumed significant. Does that satisfy CEQA's
20 preference for preservation in place?

21 DR. BAGWELL: I think my understanding of CEQA is
22 that during this process, when we talk about a proposed
23 project, that when sites are identified then the applicant
24 would have an opportunity to change, for example, the
25 route of their transmission line. And actually they have

1 avoided several sites. Just last week, they arranged to
2 avoid one of the -- a very large one by changing the route
3 of their transmission line.

4 So in that sense, we haven't had to insist that
5 they avoid anything in our conditions. They volunteered
6 to do that. And so our conditions are left to address
7 those points where they really felt that they could not
8 make those kind of compromises. And so, yes, we've
9 suggested avoidance. Yes, avoidance has happened. Yes, I
10 feel that we're satisfying CEQA in that sense.

11 MS. KOSS: Okay, thank you.

12 My question was actually does data recovery
13 satisfy preservation in place?

14 DR. BAGWELL: I wouldn't say so.

15 MS. KOSS: Thank you. Do you have any empirical
16 evidence concerning whether the sites within the area of
17 potential effect that will be directly impacted by the
18 project have values other than potential research
19 importance? And let me stress the directly impacted
20 portion of that question.

21 DR. BAGWELL: Empirical evidence proving or that
22 I suspect that they have those?

23 MS. KOSS: Both.

24 DR. BAGWELL: I can identify sites that I suspect
25 are likely to have those values that Native American

1 groups have identified as important, for example, trails
2 and rock art sites. But again, as I discussed earlier, I
3 can't provide evidence proving that.

4 MS. KOSS: Thank you. How did you determine the
5 size of the archaeological sites within the Area of
6 Potential Effect?

7 DR. BAGWELL: By the boundaries drawn on the site
8 sketch maps for the site forms that were provided to us
9 from the applicant.

10 MS. KOSS: And those were based on surface
11 evidence alone, correct?

12 DR. BAGWELL: That is my understanding.

13 MS. KOSS: Would you agree that surface evidence
14 alone can be deceptive with respect to site size and
15 significance?

16 DR. BAGWELL: It can. Although, I think it
17 depends on the local geology.

18 MS. KOSS: Don't archaeologists commonly conduct
19 test excavations, which include surface artifact mapping
20 and collection to accurately determine site size?

21 DR. BAGWELL: That can be one part of the
22 process, yes.

23 MS. KOSS: According to the staff report, the
24 sizes of at least two sites were enlarged from their
25 originally recorded boundaries as estimated during the

1 Class 2 inventory based on revisits during the Class 3
2 survey. Is it possible that the sizes of additional sites
3 within the Area of Potential Effect have been
4 underestimated based on single visits using only surface
5 evidence?

6 DR. BAGWELL: In the particular cases that you're
7 referring to, I would consider those to be actually not
8 incorrect measurements of the size of the site, but a
9 decision to lump together two things that had originally
10 been defined as two separate things. So I think they
11 correctly identified the first thing, and then correctly
12 identified the second thing and decided, after revisiting,
13 that they really should be considered one thing.

14 MS. KOSS: And was the site size larger after
15 that reconsideration?

16 DR. BAGWELL: Not significantly.

17 MS. KOSS: But it was larger?

18 DR. BAGWELL: In the cases that I am recalling, I
19 would need you to be more specific about which site you're
20 referring to, but not appreciably larger. The main
21 difference would be because you're considering two things.

22 MS. KOSS: Okay, and would you agree that it is
23 possible that other sites could have been underestimated,
24 even if it was a small underestimation?

25 DR. BAGWELL: That is possible, but that's pretty

1 common in our archaeological work.

2 MS. KOSS: Thank you.

3 And according to the staff report, two recorded
4 site locations may be, in fact, components of two other
5 larger sites? And I'm referring to Riverside 9224, which
6 may be a part of Riverside 260, that's the first. And the
7 second is Riverside 6900, which may be a portion of
8 Riverside 663. In both cases, wouldn't this increase the
9 sizes of the cultural resources significantly?

10 DR. BAGWELL: Possibly. Although, all of those
11 sites have been since avoided. And I think the problem
12 with those sites, when I looked at the original site
13 records, was that the people who submitted those site
14 records originally in perhaps the 70 that I am not
15 remembering exactly, didn't include formal boundaries.
16 And so the information center, when they provided
17 information to the applicant, and when I evaluated that
18 information, there was no clear distinction between those
19 site boundaries, whether they overlapped, whether they
20 were subsumed.

21 But, in the case, I think the point is moot,
22 because they changed the project area to entirely avoid
23 that location.

24 MS. KOSS: How far from that location will the
25 project be built?

1 DR. BAGWELL: I'd have to look at a map and
2 measure. Perhaps a mile, half a mile. I'd really have to
3 look. The new transmission route I've only seen the map
4 once.

5 MS. KOSS: Okay, the reason I asked is no test
6 excavations have been performed, so a mile, half mile,
7 maybe less, we don't know.

8 DR. BAGWELL: It's true. I am concerned about
9 those particular sites having buried deposits.

10 MS. KOSS: Thank you.

11 HEARING OFFICER CELLI: Ms. Koss, how are we
12 doing on time here?

13 MS. KOSS: Ten more questions.

14 HEARING OFFICER CELLI: Thank you.

15 MS. KOSS: One of the larger sites adjacent to
16 the latest revised project Area of Potential Effect is
17 Riverside 260, which is estimated to cover about 62 acres,
18 and to contain over 1,000 artifacts on the ground surface.
19 According to the staff report, it was not revisited as
20 part of the field work for the current project.

21 Is it normal to not revisit a site, especially
22 one of this size and significance, during the Class 3
23 inventory?

24 DR. BAGWELL: I was surprised not to receive the
25 information, but I think that may have been in the

1 category of a typo. I spoke with the applicant later.
2 And what they told me was that they had visited the site,
3 but not been able to relocate it.

4 MS. KOSS: Okay, thank you.

5 DR. BAGWELL: Am I getting that right, you guys,
6 Site 260?

7 MS. KOSS: We'll address it when we're up.

8 HEARING OFFICER CELLI: Yes, thank you.

9 DR. BAGWELL: Sorry.

10 HEARING OFFICER CELLI: Just to remind everybody,
11 this isn't a conversation. It's testimony.

12 DR. BAGWELL: I apologize.

13 HEARING OFFICER CELLI: The witness asks --
14 rather the attorney asks, the witness answers. That's how
15 it goes.

16 STAFF COUNSEL BABULA: You can say you don't
17 know, if you don't know.

18 MS. KOSS: The Riverside 260 and Riverside 9224H
19 are, in fact, components of the same site as the staff
20 report suggests is a possibility, then the geographical
21 distribution of the archaeological sites in the project
22 area would change relative to the existing site location
23 maps, is that correct?

24 DR. BAGWELL: Can you restate the question?

25 MS. KOSS: Sure. In the staff report, it states

1 that there's a possibility that two sites, Riverside 260,
2 and Riverside 9224H are components of the same site.
3 They're one in the same. So if that's the case, then
4 wouldn't the geographical distribution of the sites in the
5 project area change relative to the existing site location
6 maps?

7 DR. BAGWELL: Minorly, although since they're so
8 close together, they sort of flow together.

9 HEARING OFFICER CELLI: Did you get an answer to
10 your question, because I thought it was a yes or no.

11 MS. KOSS: I think it's a yes. I'm going to take
12 it as a yes. You can say no, if you'd like.

13 DR. BAGWELL: How about I don't know.

14 HEARING OFFICER CELLI: That's good.

15 MR. BOYD: That's allowed.

16 MS. KOSS: Fair enough.

17 How can you determine, for example, in a
18 relatively narrow survey corridor whether the direct
19 project impacts will affect archaeological sites, if the
20 site locations are not accurately mapped?

21 DR. BAGWELL: It's difficult.

22 MS. KOSS: Thank you. And therefore, you
23 wouldn't be able to avoid those sites whose boundaries
24 have not been determined, is that correct?

25 DR. BAGWELL: Yes.

1 MS. KOSS: Thank you. Would it then be fair to
2 say that what these sites contain has not yet been
3 determined and we don't accurately know how much
4 archaeology will be destroyed by the project?

5 DR. BAGWELL: It depends on which sites you're
6 referring to. But in a broad way, I would agree.

7 MS. KOSS: Thank you. Just one moment, please.

8 HEARING OFFICER CELLI: Sure.

9 MS. KOSS: No further questions.

10 HEARING OFFICER CELLI: Thank you, Ms. Koss.

11 Mr. Boyd, cross-examination of this panel?

12 MR. BOYD: Could I go off the record for a
13 second. I had a logistical question.

14 HEARING OFFICER CELLI: Well, let's just stay on
15 the record and you can go ahead and ask your logistical
16 question.

17 MR. BOYD: Parking across the street, what time
18 does that lot close?

19 MS. KOSS: Seven p.m.

20 HEARING OFFICER CELLI: You know what, we'll
21 probably take a break if we need to go this late. I don't
22 imagine we will, but if we have to go past 6 o'clock, we
23 should take a break. If you're parked across the street,
24 you should get your car out of there and park on the
25 street because after 6 o'clock it's free.

1 MR. BOYD: So I pay them \$20 before 6 o'clock.

2 PRESIDING MEMBER BOYD: It closes at 7.

3 HEARING OFFICER CELLI: It closes at 7 and they
4 lock it. You can get your car out. So that's why it's
5 imperative that you if did park in there, you get your car
6 out before then.

7 MR. BOYD: Okay, that's an important issue for
8 me.

9 CROSS-EXAMINATION

10 BY MR. BOYD:

11 Okay, so the first question I guess I'll start
12 with you Mike. You were testifying about CEQA overriding
13 consideration. Was that specific just to the Cultural
14 Resources or were there other issues that would -- where
15 the CEQA finding of overriding considerations would come
16 in?

17 SITING PROJECT MANAGER MONASMITH: The Deputy
18 Director, Terry O'Brien, sponsored the override testimony
19 for Land Use and Visual resources, which was discussed
20 last week, and today for Cultural Resources.

21 MR. BOYD: So it's Land Use, Cultural --

22 SITING PROJECT MANAGER MONASMITH: And Visual
23 Resources

24 MR. BOYD: And are you an attorney?

25 SITING PROJECT MANAGER MONASMITH: Fortunately,

1 no.

2 MR. BOYD: So what subject matter expertise do
3 you have on CEQA, if you're not an attorney. Is it
4 through like experience or what's the professional
5 experience? What's your qualifications to testify on
6 CEQA, in other words? And I'm going to ask you both the
7 same question.

8 MR. GALATI: And I'm going to object to that.
9 The question is -- the line of questionings do not call
10 for a CEQA interpretation. Mr. Monasmith's testimony had
11 to do with the facts, upon which he believed the project's
12 benefits outweigh the impacts. It didn't have to do with
13 any legal interpretation of the finding of override. It
14 was facts only.

15 HEARING OFFICER CELLI: But I think that while
16 that is true, I believe that the question is how are you
17 qualified to speak to CEQA. And I think that's a fair
18 question.

19 SITING PROJECT MANAGER MONASMITH: And yes, I'll
20 answer it. That's fine.

21 MR. GALATI: He didn't.

22 SITING PROJECT MANAGER MONASMITH: Neither the
23 Deputy Director nor myself are attorneys. However, we do
24 have a high degree of familiarity with this proceeding,
25 and with the facts that went into staff's testimony as I,

1 staff counsel indicated, wrote the executive summary for
2 this project. And it was that in that context that I was
3 able to speak to Dr. Bagwell's testimony and of Ms.
4 Bastian which we heard earlier.

5 So it's a familiarity with CEQA that allows you
6 to make the -- our recommendation to the Commission and
7 the Committee themselves who will have the ultimate say in
8 the override.

9 MR. BOYD: I guess my follow-up question is do
10 you agree with what Mr. Galati said that that's not a
11 legal issue?

12 SITING PROJECT MANAGER MONASMITH: I don't know
13 if it's a necessary issue or not.

14 STAFF COUNSEL MAYER: Objection. He's not an
15 attorney.

16 HEARING OFFICER CELLI: Sustained.

17 MR. BOYD: That's okay. Well --

18 HEARING OFFICER CELLI: The objection is
19 sustained, because it lacks foundation.

20 MR. BOYD: I understand. Well, the only reason
21 I'm raising that because it seems to me it would be more
22 appropriate to be something dealt with in the briefings
23 than say as an Exhibit. You know, it's -- I'm just
24 suggesting that this may not be the appropriate place to
25 raise the issue of overriding.

1 HEARING OFFICER CELLI: That's a legal issue.
2 What you're doing right now is arguing, which is --

3 MR. BOYD: Okay, I don't want to argue if that's
4 what I'm doing.

5 HEARING OFFICER CELLI: And I mean argue in the
6 sense that -- like legal argument, but this is
7 cross-examination.

8 MR. BOYD: I understand.

9 HEARING OFFICER CELLI: So my recommendation
10 right now is take advantage of the witnesses.

11 MR. BOYD: I'm done with him.

12 HEARING OFFICER CELLI: Okay, good.
13 Cross-examine your witnesses.

14 MR. BOYD: Now, the same question that I asked
15 him. What's your subject matter expertise in CEQA? You
16 were talking about CEQA.

17 MS. BASTIAN: Since I work for a State agency
18 that often has the -- well, when I'm working at all on a
19 project, we have the lead authority on a project where
20 perhaps only CEQA, or in all likelihood, only CEQA is
21 involved, I've had to -- I would put it this way, exercise
22 my knowledge of cultural resources law, both within the
23 State and federal context, as appropriate to CEQA. And
24 I'm as familiar as I need to be with those aspects of CEQA
25 that deal with cultural resources.

1 DR. BAGWELL: And I would say something
2 equivalent for myself, yes.

3 MR. BOYD: Okay. So now, I also heard that --
4 I'm looking at these cultural -- the cultural conditions
5 that have been proposed. And frankly, I agree with CURE's
6 attorney, I don't see where there's mitigation here. I
7 see monitoring maybe. I see you're doing data collection,
8 but I don't see any mitigation or avoidance of harm to the
9 resources being proposed.

10 Is that because you're expecting BLM, as part of
11 their consultation, to come up with additional mitigation?

12 DR. BAGWELL: Mitigation in the form of
13 avoidance, as I mentioned earlier, has taken place. The
14 applicant has avoided several cultural resources sites in
15 changes in their transmission line, in the shape of their
16 project, the shape and the size of their project. And we
17 consider that part of the process of participating in
18 avoidance of cultural resources. That leaves us with data
19 recovery. And those are the mitigations that we've
20 suggested

21 MR. BOYD: Is that statement based on your own
22 knowledge, based on your visiting the site and looking at
23 the site they were changing the line from to? Did you
24 actually go out there and inventory on the sites in
25 question and personally verify where they were moving it

1 from to was going to actually address any of that?

2 STAFF COUNSEL BABULA: I object, a compound
3 question. If you'd break that up a little bit.

4 HEARING OFFICER CELLI: Sustained.

5 MR. BOYD: Sure.

6 Did you actually personally visit the site to
7 verify any of the proposed locations for the facilities?

8 DR. BAGWELL: I did visit the site. I did not
9 visit all of the archaeological sites.

10 MR. BOYD: Okay. The last question is, do you
11 believe it's appropriate to defer mitigation measures
12 until after the record is closed and after the public
13 comment period has been held on the CEQA document?

14 MR. GALATI: I'm going to object. I beat you to
15 it. I'm going to object on the grounds that it assumes
16 facts not in evidence, and calls for a legal conclusion on
17 deferral mitigation.

18 STAFF COUNSEL BABULA: I had the same objection.

19 HEARING OFFICER CELLI: Okay. As to the assumes
20 facts not in evidence, I would say it's okay for him to
21 ask a hypothetical, but it does -- so I would overrule
22 that objection, but I would sustain the calls for a legal
23 conclusion objection, because it does.

24 MR. BOYD: I don't -- I'm not asking for a -- I'm
25 just asking if based on their personal experience with

1 CEQA, is it appropriate to put the mitigation off till
2 after you've completed your analysis?

3 STAFF COUNSEL BABULA: Same objection.

4 HEARING OFFICER CELLI: Overruled.

5 MS. BASTIAN: We have not deferred with the
6 formulation of mitigation, which is what CEQA requires.

7 MR. BOYD: What do you mean, I thought you
8 deferred it to BLM to decide.

9 MS. BASTIAN: Our conditions are mitigation. We
10 have formulated mitigation.

11 MR. BOYD: The conditions on BLM, right?

12 MS. BASTIAN: And the actual conduct of the
13 mitigation happens after the project is certified.

14 MR. BOYD: So you just answered my question.
15 Thank you. I'm done.

16 HEARING OFFICER CELLI: Nothing further. Thank
17 you. We are at redirect -- yes, redirect for the staff.

18 STAFF COUNSEL BABULA: There's one person on the
19 phone.

20 HEARING OFFICER CELLI: Oh, thank you. Mr.
21 Budlong, are you still with us?

22 MR. BUDLONG: Yes, I am here.

23 HEARING OFFICER CELLI: Oh, great. Do you have
24 any cross-examination of these cultural witnesses?

25 MR. BUDLONG: No.

1 HEARING OFFICER CELLI: Thank you. Thank you for
2 reminding me.

3 STAFF COUNSEL BABULA: A couple of redirect
4 questions.

5 REDIRECT EXAMINATION
6 BY STAFF COUNSEL BABULA:

7 Do you need to know everything about a site to
8 develop mitigation?

9 DR. BAGWELL: No.

10 STAFF COUNSEL BABULA: And just to reiterate, as
11 part of the process, the applicant has avoided areas that
12 you had concerns with?

13 DR. BAGWELL: Yes.

14 STAFF COUNSEL BABULA: Is it appropriate, in some
15 cases, to assume the site is significant as a baseline to
16 say assume it's significant and develop mitigation based
17 on that, and then if information comes out later, that
18 says otherwise, to back off on the mitigation?

19 DR. BAGWELL: Practically speaking, much of
20 archaeological practice works that way.

21 STAFF COUNSEL BABULA: No further questions.

22 HEARING OFFICER CELLI: Recross by applicant.

23 MR. GALATI: Well, I know there will be other
24 recross, so I might as well take one shot.

25 RECROSS-EXAMINATION

1 BY MR. GALATI:

2 Did staff assume all of the sites within the
3 project footprint would be significant?

4 DR. BAGWELL: We did as part of a -- I'm not
5 exactly sure how to term it, Beverly, could you help.

6 MS. BASTIAN: A procedural maneuver.

7 DR. BAGWELL: A procedural maneuver Cul's Option
8 3 --

9 MS. BASTIAN: Approach 3

10 DR. BAGWELL: -- Approach 3. And I could
11 elaborate if you would like me to.

12 MR. GALATI: I'm familiar with Approach 3, but
13 maybe you can tell the Committee, did all of the projects
14 seeking ARRA funding, was that approach available to them?

15 DR. BAGWELL: Yes.

16 MR. GALATI: And for the I-10 corridor projects,
17 did they all select Option 3?

18 DR. BAGWELL: That is my understanding.

19 MR. GALATI: No further questions.

20 HEARING OFFICER CELLI: So you want to articulate
21 Option 3, just so we're clear on the record, please.

22 MS. BASTIAN: Because of the timeframes in which
23 we were working, large sites, multiple projects of large
24 sites, we formulated this approach as a means of arriving
25 at the same place ultimately, in terms of what both we

1 feel CEQA requires and what Section 106 requires, but to
2 essentially delay some of the process of evaluation until
3 after the project is certified and the mitigation is going
4 in effect. So the mitigation ends up incorporating part
5 of the evaluation phase.

6 And to do this, we initially -- just a blanket
7 assumption that all of the identified sites that would
8 probably be impacted were assumed eligible, and that all
9 of the impacts to these sites were assumed significant,
10 and the mitigation that would be provided would determine
11 which were eligible and what data recovery would be
12 needed.

13 And we would end up in the same place. We just
14 wouldn't be doing the evaluation prior to certification.

15 HEARING OFFICER CELLI: In other words, it's an
16 assumption of the worst case scenario?

17 MS. BASTIAN: Correct.

18 HEARING OFFICER CELLI: All those sites are
19 there, and they're all significant sites?

20 MS. BASTIAN: Correct.

21 HEARING OFFICER CELLI: Okay, clear.

22 MR. GALATI: Just for the record, that is
23 identified in Exhibit 7.

24 HEARING OFFICER CELLI: Thank you.

25 We were with recross with CBD.

1 MS. BELENKY: None at this time.

2 HEARING OFFICER CELLI: Thank you.

3 Ms. Koss, any further recross?

4 MS. KOSS: No, thank you.

5 HEARING OFFICER CELLI: I just couldn't imagine
6 that you'd have more on this, but I thought I'd ask
7 anyway.

8 (Laughter.)

9 MR. BOYD: No I don't have anything.

10 HEARING OFFICER CELLI: Mr. Boyd, you have no
11 further questions.

12 Mr. Budlong?

13 MR. BUDLONG: Yes.

14 HEARING OFFICER CELLI: Recross?

15 MR. BUDLONG: No.

16 HEARING OFFICER CELLI: Thank you.

17 Redirect?

18 STAFF COUNSEL BABULA: I have nothing. I think
19 right now what -- if we're done with these witnesses, I
20 can have -- we have the Exhibit 441.

21 HEARING OFFICER CELLI: Actually, we're not
22 actually. The Commissioners are going to want to ask some
23 questions, but go ahead.

24 STAFF COUNSEL BABULA: Okay. I was just going to
25 say that I believe the changes were done to 441, so I'd

1 like to give Bev a chance to just look at them on the
2 laptop here. So maybe while the other parties are doing
3 their direct, she can take a look and then -- because
4 they're going to sponsor -- they'll be the panel to
5 sponsor.

6 HEARING OFFICER CELLI: How much time do you
7 think Ms. Bastian is going to need?

8 MS. BASTIAN: I'd like maybe 10 to 15 minutes.

9 HEARING OFFICER CELLI: Okay. We're going to go
10 off the record for a moment.

11 (Thereupon a discussion occurred off the record.)

12 HEARING OFFICER CELLI: Okay ladies and
13 gentlemen. We're back on the record. It's 4:35. We
14 would like to take a 10 minute break at this time to give
15 cultural a chance to take a look at the new conditions.
16 So please be back in your seats ready to go at 4:45, and
17 we will begin at that time. I guess we've -- no, we're
18 still with staff because we need to get this exhibit in.

19 STAFF COUNSEL BABULA: Yeah, we'll get this into
20 the record.

21 HEARING OFFICER CELLI: Also make sure that these
22 conditions are Emailed to the POS.

23 Thanks.

24 (Thereupon a recess was taken.)

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

1 This is Ken Celli, Hearing Advisor, in the Genesis Solar
2 Energy Project. And where we're at right now is that
3 staff's project manager is getting us hard copies of the
4 new Cultural Condition of Certification number 16, I think
5 it is.

6 DR. BAGWELL: It's all of them.

7 HEARING OFFICER CELLI: All of them. Okay, all
8 of the Conditions of Certification. And at which time
9 then I believe the staff will move in their evidence and
10 has no further witnesses.

11 STAFF COUNSEL BABULA: Correct.

12 HEARING OFFICER CELLI: Okay, so we've completed
13 staff's case in chief. We're going to turn to the
14 applicant after that, and applicant has a witness or two
15 to call.

16 MR. GALATI: Two witnesses.

17 HEARING OFFICER CELLI: One witness. After that
18 we'll call CARE's witness and that's why -- did he hang
19 up? Mr. Figueroa, are you still on the line?

20 MR. FIGUEROA: I'm here, yeah. I'm still here.

21 HEARING OFFICER CELLI: Okay, good. So after --
22 we're going to hear from another group of witnesses and
23 then Mr. Boyd will be calling you as a witness. And then
24 CURE has one witness. And then if there's no rebuttal
25 testimony, then we will close the record on Cultural at

1 that time.

2 STAFF COUNSEL MAYER: I had a housekeeping
3 question.

4 HEARING OFFICER CELLI: Yes, go ahead.

5 STAFF COUNSEL MAYER: It sounds like the
6 intervenors have agreed to Bio 19 is now a briefing matter
7 rather than a hearing matter. So I wanted to be able to
8 let the staff know that they can go home.

9 HEARING OFFICER CELLI: And I think I need a
10 motion from staff.

11 STAFF COUNSEL MAYER: I move to close the record
12 on Biology.

13 HEARING OFFICER CELLI: Hang on a minute. I'm
14 not sure I have all of your evidence. I've got -- okay.
15 Let's get clear here. We have -- for the record, the
16 record should reflect that Exhibits 432 through 441 were
17 received into evidence today. 442 was withdrawn.
18 443 -- okay, I have 444 and 445 here, but I don't have a
19 443.

20 STAFF COUNSEL MAYER: 443 was Soil and Water
21 conditions.

22 PRESIDING MEMBER BOYD: Soil and Water.

23 HEARING OFFICER CELLI: Okay, 443 is Soil and
24 Water.

25 STAFF COUNSEL MAYER: 444 is early air quality

1 testimony, and 445 is the revised Bio 19.

2 HEARING OFFICER CELLI: Okay. And 444 and 445.

3 PRESIDING MEMBER BOYD: 444 was greenhouse gas
4 specifically.

5 HEARING OFFICER CELLI: No, it's not. It's
6 dispersion modeling and changes in conditions.

7 PRESIDING MEMBER BOYD: I stand corrected.

8 HEARING OFFICER CELLI: So 444 was already
9 received into evidence. 445 is already received into
10 evidence. And if they weren't they're received now.

11 (Thereupon the Exhibits 444 and 445 were
12 received into evidence.)

13 STAFF COUNSEL BABULA: So you don't have 441 yet.
14 That's what we're waiting for. You said that that was
15 received into evidence, but that's the cultural Conditions
16 of Certification.

17 HEARING OFFICER CELLI: I want to go back to 443,
18 you said was soil and water.

19 STAFF COUNSEL MAYER: Right, the stipulated soil
20 and water conditions. Those were entered very early in
21 the day now.

22 HEARING OFFICER CELLI: And did I already receive
23 that into evidence.

24 STAFF COUNSEL MAYER: I believe you did.

25 MR. GALATI: Yes, you did.

1 HEARING OFFICER CELLI: Everybody is nodding
2 their head. Okay, then 443 was received. We are up to
3 the last Exhibit then is 445.

4 STAFF COUNSEL MAYER: Yes, numerically, yes.

5 HEARING OFFICER CELLI: So at this time, we have
6 received Exhibits 400 through 445, except 442, which was
7 withdrawn, and 441 which has not been offered yet.

8 STAFF COUNSEL BABULA: Correct.

9 HEARING OFFICER CELLI: Thank you very good.

10 With that then, 441 is up being Xeroxed off right
11 now, is that the --

12 STAFF COUNSEL BABULA: That's my belief.

13 HEARING OFFICER CELLI: So biology then, we
14 received all of the evidence in biology.

15 STAFF COUNSEL MAYER: Yes.

16 HEARING OFFICER CELLI: So your witnesses are
17 excused. Your biology witnesses are excused.

18 STAFF COUNSEL MAYER: Thank you.

19 HEARING OFFICER CELLI: Biological Resources is
20 closed as a topic area then. The evidence is closed on
21 biology.

22 We're just waiting for -- so we're going to go
23 off the record. And I had some questions for -- we have
24 staff questions, don't we?

25 Okay, why don't we go ahead and ask those now.

1 The Committee has some questions for staff's witnesses.

2 STAFF COUNSEL BABULA: Would that be Dr. Bagwell?

3 HEARING OFFICER CELLI: Yes.

4 MR. BELENKY: I'm sorry. I was a little confused
5 when we were closing biology. I don't want to interrupt,
6 but Exhibit 439 is the one that I had asked for rebuttal,
7 and I was unable to obtain any expert witness who could
8 speak to that issue today. I just wanted the record to
9 reflect that we object to this being provided in evidence,
10 because we were not given a chance to rebut it. And
11 that's just so that the record reflects that.

12 HEARING OFFICER CELLI: Okay, so, correct me if
13 I'm wrong, I thought you had received this by way of
14 Email.

15 MS. BELENKY: Last night.

16 HEARING OFFICER CELLI: Last night.

17 MS. BELENKY: At like after 6 or something.

18 HEARING OFFICER CELLI: So last night you did
19 receive 439. And 439 was discussed today during your
20 workshop?

21 MS. BELENKY: No.

22 HEARING OFFICER CELLI: That's a question.

23 MS. BELENKY: It was not discussed in the
24 workshop.

25 HEARING OFFICER CELLI: Okay. That's right.

1 This was the exhibit that came up when Roger Johnson was
2 testifying. So your objection is preserved.

3 MS. BELENKY: Thank you.

4 HEARING OFFICER CELLI: Sarah, did you have a
5 question?

6 MS. MICHAEL: I do of staff. Sarah Michael,
7 advisor to Commissioner Boyd. There have been a lot of
8 numbers talked about about how many historical sites are
9 actually located on the footprint. And on page 44 of the
10 Revised Staff Assessment, it says a total of 12. And so I
11 wanted to just clarify why the numbers are so different,
12 and in what -- are there nine known sites actually located
13 on the footprint?

14 DR. BAGWELL: Did you mean the site footprint or
15 did you mean the linear corridor?

16 MS. MICHAEL: Well, on page 44 of the Revised
17 Staff Assessment, it says a total 9 of the 312 previously
18 identified sites are within the GSEP plant site footprint
19 or linear corridor.

20 DR. BAGWELL: Of the previously identified,
21 that's correct. I do admit that the numbers of sites and
22 the way that they were presented by the applicant and the
23 way that we ended up putting them in the tables became
24 confusing. I was confused as well, and spent a lot of
25 time counting and making sure that the totals were

1 correct.

2 HEARING OFFICER CELLI: So there's nine?

3 MS. MICHAEL: And then --

4 PRESIDING MEMBER BOYD: Let's find out, what is
5 the final answer, nine or 12?

6 DR. BAGWELL: I stand by the --

7 PRESIDING MEMBER BOYD: The nine.

8 DR. BAGWELL: Whatever it says. I do not have it
9 in front of me at the moment.

10 ASSOCIATE MEMBER WEISENMILLER: You want a copy
11 of it?

12 HEARING OFFICER CELLI: Do you have your RSA
13 there?

14 STAFF COUNSEL BABULA: There's so many documents.

15 DR. BAGWELL: What that section is referring to
16 is previous work not done by the applicant but done by
17 other archaeologists in relation to another projects. And
18 the way that I did my analysis was that there was a very
19 early previous study that affected where the applicant
20 chose to place their site footprint. And I included that
21 first survey as part of previous work done.

22 MS. MICHAEL: So is it nine?

23 DR. BAGWELL: Are you -- what number are you
24 trying to get at?

25 MS. MICHAEL: Well, I'm confused. I'm not trying

1 to get at any number.

2 DR. BAGWELL: Go to the very first page of the
3 Cultural Resources Section, and the number of sites that
4 are mentioned there are those sites that are directly
5 impacted. And I believe the number is -- is it 27?

6 HEARING OFFICER CELLI: Yes.

7 DR. BAGWELL: That is the number of sites that
8 are directly impacted by the project, both the linear
9 corridor and the site location.

10 MS. MICHAEL: Okay. I mean, because there were
11 different numbers.

12 DR. BAGWELL: True.

13 MS. MICHAEL: And that was a question I had. And
14 that's all I have.

15 HEARING OFFICER CELLI: Commissioner Boyd, do you
16 have questions?

17 PRESIDING MEMBER BOYD: No.

18 HEARING OFFICER CELLI: Mr. Weisenmiller?

19 ASSOCIATE MEMBER WEISENMILLER: No.

20 HEARING OFFICER CELLI: Okay, then are we ready
21 to proceed? Oh, we're still waiting for this.

22 I just have a question. Generally, the
23 conditions require that there be a cultural resource
24 specialist who monitors, to be out in front essentially of
25 the construction people checking for artifacts and find

1 them and all that sort of stuff.

2 I was always under the impression that they're
3 actually out there collecting that stuff, photographing
4 it, and taking it someplace to be curated. That's
5 generally the way it's done. And today, there was a lot
6 of discussion about leaving things alone and in place.
7 And I just -- I just wanted to -- it seemed to me that an
8 artifact is going to do better in a drawer in some museum
9 than it is out in the wild being rained on and earthquaked
10 and ridden over by off-road vehicles or whatever. And I
11 just -- is that the case or do I have that wrong?

12 DR. BAGWELL: It's a bit more complicated. And
13 what I would say is that archaeology sites are not just
14 the artifacts. They are this larger thing that has to do
15 with the physical relationships between the artifacts and
16 the features and the eco facts, which are things like
17 plants that tell us about the environment in the past.

18 And so the information that's contained within
19 them is not just what you would learn from studying, for
20 example, a piece of pottery, but where the potter is
21 found, where it's found in relation to other pieces of
22 pottery. And so to a certain extent, leaving it in place
23 preserves that contextual information.

24 And what tends to get disturbed by, for example,
25 off-road vehicles are things primarily on the surface. So

1 if you have mostly a surface site, then they're extremely
2 vulnerable. And in the desert that's often the case.

3 Along the edge of the lake shore, there's far
4 more potential for buried sites. And so to a certain
5 degree, they're protected, but then again they're
6 potentially larger in three dimensions.

7 So it's going to be a tradeoff. And when you're
8 talking about direct effects, then sometimes gathering as
9 much information as you can is one kind of -- one kind of
10 mitigation. It's better than finding out nothing about it
11 and just bulldozing it.

12 But professionally speaking, we prefer to
13 preserve. And the only way to do that with archaeology is
14 to avoid it. And so that's the bounds that you're seeing.
15 Does that make sense?

16 HEARING OFFICER CELLI: Very clear. Thank you.

17 Did you have a question about the cemeteries?

18 MS. MICHAEL: Oh, yes. Since this area was used
19 mostly as temporary camps, and according to the site
20 descriptions. Are temporary camps used generally for
21 burial sites? You just mentioned that burial sites might
22 be along the lake. But I just wondered if temporary camps
23 are used for that purpose as well?

24 DR. BAGWELL: First of all, it's important to
25 understand that we haven't excavated a lot of sites along

1 the edges of these lakes. And so we're not sure if there
2 were actually permanent long-term villages around these
3 edges.

4 Also, keep in mind, that we're talking about the
5 last 10,000 years. And during that time, the environment
6 has changed a great deal, and those lakes had water in
7 them some of those times. Getting the resolution about
8 when that level of water was available, we can talk maybe
9 several hundreds of years, but being able to get down to a
10 five-year period when there was enough water for people to
11 live there full-time, and then they would have potentially
12 considered burying people there, we just don't know.

13 And so when you identify potential habitation
14 site in this region, the idea that there might be burials
15 is very high, and so we must assume that that's the case.

16 HEARING OFFICER CELLI: Okay, so we're still
17 waiting on Mr. Monasmith.

18 STAFF COUNSEL BABULA: We are.

19 HEARING OFFICER CELLI: What I'm going to do then
20 is move on to the applicant and then remind me that you
21 need to move in the last of your evidence, okay.

22 STAFF COUNSEL BABULA: Okay.

23 HEARING OFFICER CELLI: If that's acceptable to
24 the applicant?

25 MR. GALATI: You bet.

1 HEARING OFFICER CELLI: Thank you. Go ahead and
2 call your first witness.

3 MR. GALATI: We're ready to go. At this time,
4 I'd like to call Reid Farmer and Jenna Farrell. They
5 haven't been sworn yet.

6 HEARING OFFICER CELLI: Can you stand and be
7 sworn. If you would, Mr. Peters.

8 (Thereupon the witnesses were sworn, by the
9 court reporter, to tell the truth, the whole
10 truth and nothing but the truth.)

11 Whereupon,

12 REID FARMER and JENNA FARRELL
13 were called as witnesses herein, and after first
14 having been duly sworn, were examined and
15 testified as follows:

16 HEARING OFFICER CELLI: Please state your names
17 and spell it for the record.

18 MR. FARMER: Reid Farmer, R-e-i-d and Farmer like
19 it sounds.

20 MS. FARRELL: Jenna Farrell. J-e-n-n-a.
21 F-a-r-r-e-l-l.

22 DIRECT EXAMINATION

23 BY MR. GALATI:

24 I'm going to go ahead and direct most of my
25 questions right now to you, Mr. Farmer. And Ms. Farrell,

1 please jump in.

2 Mr. Farmer, did you previously file written
3 testimony in this matter Exhibit 60?

4 MR. FARMER: I did.

5 MR. GALATI: Actually, I apologize. I identified
6 that as the wrong exhibit number. It's Exhibit 63 -- no,
7 it's not. Exhibit 62, is that what it is?

8 I'm going to try again.

9 (Laughter.)

10 PRESIDING MEMBER BOYD: It's catching.

11 MR. GALATI: It's actually Exhibit 64. That's 6
12 and a 4. Together that would be 10, but it's 6 and a 4,
13 not 62 or 61 or 63.

14 Did you file testimony, that one is particularly
15 called Exhibit 64, revised opening testimony cultural
16 resources?

17 MR. FARMER: I did.

18 (Thereupon a voice came over the line.)

19 HEARING OFFICER CELLI: Hello, I'm going to mute
20 you, whoever that was.

21 Go ahead.

22 MR. GALATI: Have you also reviewed the cultural
23 testimony, Dr. Whitley?

24 MR. FARMER: I have.

25 HEARING OFFICER CELLI: Okay. I want to ask you

1 first a couple of questions. We heard staff's testimony,
2 specifically about avoidance. Can you describe for the
3 committee what the project has specifically done to avoid
4 constructing within known sites?

5 MR. FARMER: Well, I think from the very
6 beginning of the project, everyone realized that there was
7 a high potential for cultural resources in the area, as it
8 was and is a dry lake. And so the entire approach has
9 been to try to identify areas of high site likelihood and
10 avoid them.

11 And that was why the initial approach for the
12 initial survey was a Class -- it was called a Class 2
13 survey, which is a brand of sample of the large area where
14 you might want to site the project.

15 The sample survey then allowed us to identify the
16 areas where it was most likely the sites would be. And,
17 you know, based upon the information gathered in that
18 survey, and based on that, the site footprint was narrowed
19 to near the area where it is today. And that was to avoid
20 a number of much larger sites further west along the north
21 lake shore of the Ford Dry Lake.

22 Also, actually, once the footprint was arrived
23 at, we pared it down one more time, because there is very
24 large sites, CA-Riv-9072, which is located along the
25 western boundary of the plant footprint. And the plant

1 footprint was reduced again to minimize, to the extent
2 possible, the impacts on that site. The site is very
3 large. It's nearly half a section in size. And we've
4 narrowed the actual impact of the plant down to something
5 more like 50 or 60 acres.

6 We did a similar sort of thing with the linears.
7 We surveyed a whole series of corridors through there. If
8 you look at the area surveyed, it's a big, you know,
9 mish-mash of alternatives. And as Beth Bagwell mentioned
10 earlier, we've been able to route that -- the linears to
11 avoid large sites down in that area.

12 MR. GALATI: Mr. Farmer, there's been a lot of --
13 I guess the crux of the issue is, have we moved far enough
14 away from what we think is the extent of the site? What's
15 your opinion on that?

16 MR. FARMER: There have been some good points
17 made, as far as that goes. And, you know, I do understand
18 if we had had a testing program, we might have a better
19 handle on site boundaries.

20 One of the things that we have looked at for
21 this, and actually we have had some preliminary
22 discussions with the BLM about it, who, of course, would
23 have to approve this, would be that we would do our, you
24 know, initial routing kind of micro-routing based on what
25 we see in the surface manifestations of the sites down

1 there.

2 And that in areas where we seem to be possibly
3 impinging or coming somewhat near the site boundaries we
4 see on the surface, we could do present set absence
5 testing. Basically non-site testing, assuming that the
6 site was there. If we do hit artifacts or something like
7 that, we then would immediately stop and, you know, move
8 out. So we could inform our micro-routing to make sure
9 that we really do avoid those sites.

10 MR. GALATI: There's also been quite a bit of
11 discussion about finding human remains, because this is
12 near a lake bed. Do you have any evidence at this stage
13 of whether you believe that there is a high likelihood of
14 human remains to be uncovered in the site footprint?

15 MR. FARMER: Well, we haven't seen any, which is
16 point one. And I think one of the things to perhaps
17 inform, give some background information on some of this
18 is, as the point has been made, we did not do any
19 subsurface testing program. However, we did, at the CEC's
20 request, conduct a geomorphology geoarchaeology
21 investigation out there. So we did have a geologist
22 looking along the lake shore, and actually did do some
23 probing to determine, you know, what the deposits in
24 general look like out there.

25 And what he found was, specially along the north

1 side of the lake shore, where we do have these big sites,
2 is that the deposits, the holocene, or recent period
3 deposits that date from 12 or 14 thousand years and
4 younger, where we would expect to find the possibility of
5 finding buried deposits of any sort, are really relatively
6 shallow. And I have some visual aids here to talk about
7 this.

8 This rests on top of a soil that dates to the
9 Pleistocene, in the neighborhood of 20,000 years of age,
10 which appears to be too old to, you know, predate human
11 occupation of the area. So most of the holocene deposit
12 appears to be two feet or less.

13 MR. GALATI: What I'm handing out are two figures
14 from Exhibit 35 that have been given to the parties
15 earlier today. So once those get out, you can speak
16 directly to them.

17 STAFF COUNSEL BABULA: Hearing Officer Celli,
18 before we finish his, I'd like to note that our expert,
19 Dr. Bagwell, has a flight to catch. And I'm hoping she
20 can just leave now. I could -- Beverly can sponsor the
21 Exhibit 441 as they were both co-authors.

22 HEARING OFFICER CELLI: That's right. Everybody
23 has had a chance to cross examine her.

24 STAFF COUNSEL BABULA: I don't believe they're
25 needed for anything, because cross is done, and so she

1 should be free to go.

2 HEARING OFFICER CELLI: Well, you may have cause
3 for rebuttal, but that's your call.

4 STAFF COUNSEL BABULA: Well, I mean --

5 HEARING OFFICER CELLI: She's your witness. You
6 can dismiss her.

7 STAFF COUNSEL BABULA: Okay, you can go.

8 HEARING OFFICER CELLI: Thank you.

9 MR. BOYD: I just wanted to let you know that Mr.
10 Lundahl informed me he's got to commit to a prior
11 engagement at 6. So we were hoping we could get to him
12 before 6.

13 HEARING OFFICER CELLI: I don't know. Let's see
14 what we can do with this witness, and then we'll move on.

15 MR. BOYD: Okay.

16 MR. GALATI: Mr. Farmer, if you could describe to
17 the Committee the two figures that they have in front of
18 them and what you think they show.

19 MR. FARMER: Well, the chart basically shows the
20 orange soil, the hue OAF, is the early Pleistocene soil,
21 which would pre-date human occupation of the area. In
22 fact, I think our geologist made it orange because it
23 really is an orange looking soil. It's very, very
24 distinctive. And the yellow and green layers above it are
25 the holocene soils, which would be the ones most likely

1 where there would be cultural deposits.

2 And as you can see there -- you know, the scale,
3 the vertical scale, is 12 inches. So it's really very
4 shallow. And we also have, I believe, a photograph where
5 you can see one of his tests -- test kits that he put in
6 for geology purposes.

7 HEARING OFFICER CELLI: Who's he?

8 MR. FARMER: I'm sorry, that's Miles Kenney who
9 is the geologist who authored that.

10 MR. GALATI: If I can have just a moment. I
11 recognize that I only handed to the intervenors earlier
12 today two of these figures. And I will get the other --
13 the third one to them. My mistake. I don't think I
14 handed those photographs to you, correct? I think just
15 the two figures.

16 MR. FARMER: And you can see there he had -- the
17 geologist identifies in that drawing the different soils.
18 And you can see, you know, that's really relatively thin.

19 So, I mean, we've had some discussion and
20 intimations that we, you know, could have a lot of deeply
21 buried material here. And, in fact, before we had this
22 study done, we felt that way too.

23 I think the fact that the potential deposit is
24 fairly -- as we can see, fairly thin, that if there were a
25 large number of burials or cremations or something of that

1 sort in the area, then we might see something eroding out.
2 The area really is subject to, you know, a fair amount of
3 erosion. So I think the potential for deeply buried
4 material and deeply buried structures and human burials is
5 somewhat less.

6 MR. GALATI: Mr. Farmer, is there going to be any
7 underground work? Are you going to do any excavation on the
8 site?

9 MR. FARMER: Yes.

10 MR. GALATI: How is that going to work? Describe
11 to the Committee this testing and testing protocol.

12 MR. FARMER: I'm not sure which testing protocol
13 you're talking about? For the data recovery?

14 MR. GALATI: Yeah. Describe for the Committee
15 how underground excavation and work will be done.

16 MR. FARMER: Well, I'll site 9072, where the
17 large site with data recovery. The way the protocol is
18 set up, and in the terms there is that you don't go
19 blindly in and start data recovery quick. What you do is,
20 in essence, a testing program through the site to where
21 you do gather data, to where you can find out more about
22 the conditions. And then you go back, based upon that
23 information you've given, and meet with the CPM to discuss
24 exactly specifically where you're going to dig and why,
25 and what you hope to see.

1 So there is, in essence, a Phase 2 requirement
2 built into the COC's. And we're doing similar sorts of
3 things on the small sites. We're putting one by one to
4 explaining those things.

5 MR. GALATI: This witness is available for
6 cross-examination.

7 HEARING OFFICER CELLI: Thank you.

8 Cross by Mr. Boyd. I need you to say yes or no.

9 MR. BOYD: No.

10 HEARING OFFICER CELLI: Cross by Ms. Koss?

11 MS. KOSS: No, thank you.

12 HEARING OFFICER CELLI: Cross by Ms. Belenky.

13 MS. BELENKY: No, thank you.

14 HEARING OFFICER CELLI: Cross by staff?

15 STAFF COUNSEL BABULA: No cross.

16 HEARING OFFICER CELLI: Okay. Thank you. Then
17 where are we --

18 PRESIDING MEMBER BOYD: Mr. Budlong.

19 HEARING OFFICER CELLI: Oh, thank you. Mr.
20 Budlong --

21 MR. BUDLONG: No.

22 HEARING OFFICER CELLI: -- I'm so sorry to forget
23 you.

24 Okay, no cross by Mr. Budlong.

25 Are you going to excuse your witness at this

1 time?

2 MR. GALATI: Yep, unless the Committee has any
3 questions.

4 HEARING OFFICER CELLI: Questions?

5 PRESIDING MEMBER BOYD: No questions.

6 HEARING OFFICER CELLI: No questions from the
7 Committee. Thank you very much.

8 Anything further?

9 MR. GALATI: I would like to retain -- actually,
10 I think what I'll do is if it's okay by offer of proof,
11 once that exhibit gets in, we're going to say we agree
12 with it. So if the parties don't mind me saying that,
13 I'll excuse the witness.

14 HEARING OFFICER CELLI: Thank you. We'll do
15 that. Let's take that now. So, staff, you have a motion.

16 STAFF COUNSEL BABULA: Yeah, the motion to enter
17 Exhibit 441 into the record, which is the recommended
18 Conditions of Certification for Cultural Resource 1
19 through 18. And this is the product of a workshop and
20 meeting today and a workshop, so this would be the July
21 21st, 2010 version. And to sponsor that, I have Beverly
22 Bastian.

23 (Thereupon the above-referenced document was
24 marked as Exhibit 441 for identification.)

25 HEARING OFFICER CELLI: Before we -- is there any

1 objection to the receipt from applicant of Exhibit 441
2 marked for identification as 441?

3 MR. GALATI: You mean received from staff, but
4 yes no objection.

5 HEARING OFFICER CELLI: Yes.

6 Any objection, Mr. Boyd, to receipt of Exhibit
7 441?

8 PRESIDING MEMBER BOYD: I don't object to
9 receiving it. I don't agree with it, but I don't object
10 to it.

11 HEARING OFFICER CELLI: Thank you.

12 Ms. Koss.

13 MS. KOSS: No.

14 HEARING OFFICER CELLI: Ms. Belenky?

15 MS. BELENKY: No.

16 HEARING OFFICER CELLI: Okay. Mr. Budlong?

17 MR. BUDLONG: No.

18 HEARING OFFICER CELLI: There being no objection,
19 Exhibit 441 marked for identification Cul 1 through Cul 8
20 -- 18 rather, is received into evidence.

21 (Thereupon Exhibit 441 was received into
22 evidence.)

23 STAFF COUNSEL BABULA: Okay. Ms. Bastian --

24 HEARING OFFICER CELLI: I don't think it's
25 necessary, because it just was received in evidence.

1 STAFF COUNSEL BABULA: I wasn't sure. Okay,
2 we're good.

3 HEARING OFFICER CELLI: Thank you.

4 MR. GALATI: Mr. Celli, by way of offer of proof
5 from the applicant, we had previously filed opening
6 testimony and rebuttal testimony. In our opening
7 testimony, we proposed changes to Conditions of
8 Certification. We served on the parties a change to
9 Conditions of Certification. At this time, we would like
10 the following statement to replace that.

11 We agree with the Conditions of Certification as
12 they are outlined in Exhibit 441.

13 HEARING OFFICER CELLI: Thank you. Noted in the
14 record.

15 MR. GALATI: Just to make sure, our rebuttal
16 testimony I have not withdrawn that.

17 HEARING OFFICER CELLI: Thank you. So in other
18 words, parties we don't have to -- you don't have to
19 attack him for that inconsistency because he just cleared
20 that up.

21 Thank you.

22 Now, Mr. Boyd, your case in chief. Do you want
23 to call your first -- or make a motion with regard to your
24 exhibits.

25 MR. BOYD: Yeah, but first before we do that, I

1 did notice a couple of discrepancies in the exhibit list
2 that I picked up. I'm trying to find here. And what I'm
3 doing is I'm reconciling what's on the website against
4 what's on the list here. And everything's good and
5 agrees, until I get to Exhibit 613, which you call
6 testimony of David S, Whitley dated June 4th, 2010. I
7 don't know who that is. It's not my witness.

8 So now, what --

9 HEARING OFFICER CELLI: Wait, wait. Let me get
10 with you for a moment.

11 MR. BOYD: Tell me when you're ready.

12 HEARING OFFICER CELLI: So you're moving in --
13 you've got 600 -- 613 is not an exhibit that you're
14 sponsoring.

15 MR. BOYD: I don't know who that is.

16 PRESIDING MEMBER BOYD: You sat next to him most
17 of the day.

18 MR. BOYD: Okay, that's CURE's. But what 613
19 should have been is, and it showed on the website, is
20 10-CRD-1 cover to testimony and exhibits of CARE. And
21 it's a PDF.

22 HEARING OFFICER CELLI: I have that.

23 MR. BOYD: Yeah. That should be 613.

24 HEARING OFFICER CELLI: But here's my question
25 about that, that's just a cover letter.

1 MR. BOYD: Yeah.

2 HEARING OFFICER CELLI: Is there any evidence
3 contained in that?

4 MR. BOYD: It's just like a list of exhibits in
5 the cover letter. That's all it is.

6 HEARING OFFICER CELLI: Okay, and we're calling
7 that Exhibit 613 is the cover letter --

8 MR. BOYD: To testimony and exhibits of CARE.

9 HEARING OFFICER CELLI: -- to testimony -- and it
10 was signed by?

11 MR. BOYD: Me.

12 HEARING OFFICER CELLI: On what date?

13 MR. BOYD: I have to open it up and look. Hold
14 on a second.

15 Dated June 4th.

16 HEARING OFFICER CELLI: Okay.

17 MR. BOYD: And then 614 you have as testimony of
18 Alfredo Figueroa, which is correct. That one is correct.

19 615, you have listed as the video. Actually, 615
20 is an unsigned testimony and declaration of Robert
21 Lundahl.

22 HEARING OFFICER CELLI: I'm sorry, what is it?

23 MR. BOYD: It's the testimony of Robert --
24 testimony and declaration of Robert Lundahl, my witness on
25 the phone.

1 HEARING OFFICER CELLI: Okay, I don't --

2 MR. BOYD: And I made copies of everything, just
3 so in case you didn't have it.

4 HEARING OFFICER CELLI: Because I don't have
5 that.

6 MR. BOYD: Which one is it?

7 HEARING OFFICER CELLI: I have --

8 MR. BOYD: 615, okay here you go.

9 HEARING OFFICER CELLI: So I'm going to need your
10 new 613.

11 MR. BOYD: Well, 613 is on -- I have a copy of
12 613.

13 HEARING OFFICER CELLI: I have 615 right here in
14 fact.

15 MR. BOYD: Yeah, that's the testimony of Robert
16 Lundahl.

17 HEARING OFFICER CELLI: No, 615 is the video.

18 MR. BOYD: That's of 616, sir. Here's 615.

19 HEARING OFFICER CELLI: You know what, let's keep
20 the video at 615, and the declaration of Robert Lundahl
21 616.

22 MR. BOYD: You got it. No problem. You still
23 need it though, right?

24 HEARING OFFICER CELLI: Yes.

25 MR. BOYD: Can you pass that down.

1 So 615 is the video and that agrees with what you
2 already got.

3 And then 616 now becomes the testimony and
4 declaration of Robert Lundahl.

5 And then the last exhibit we had was 617, a copy
6 of the Florentine Codex. You should have that too.

7 HEARING OFFICER CELLI: Have all of the parties
8 received these?

9 MR. BOYD: Yes, I did mail them -- I did send
10 them to all of them, and I sent copies to the docket
11 office too. That's how it got on the web here.

12 HEARING OFFICER CELLI: Okay. Well, if they
13 didn't then I'm sure we'll hear from them.

14 STAFF COUNSEL BABULA: Is that this public
15 highways within subject areas?

16 MR. BOYD: No. Ignore those. That witness
17 wasn't able to come forward.

18 HEARING OFFICER CELLI: Mr. Ittings or something.

19 MR. BOYD: Mr. Ittings, yeah, he sent me an
20 Email -- or a message saying that he just couldn't do it.
21 We didn't have enough time. So that's just one.

22 STAFF COUNSEL BABULA: That would be that last
23 submission that you Emailed.

24 MR. BOYD: Just ignore that. Pretend you never
25 got it.

1 STAFF COUNSEL BABULA: I was going to object to
2 everyone.

3 MR. BOYD: So that's it. That's all the exhibits
4 now, 600 through 617.

5 (Threreupon the above-referenced documents
6 were marked as Exhibits 600 through 617 for
7 identification.)

8 HEARING OFFICER CELLI: Okay. Now, do you
9 want -- you have some options here. We can either deal
10 with these exhibits and deal with people's objections to
11 them, or because I got the sense that you need to hurry up
12 and take your witnesses, do you want to take your
13 witnesses' testimony and then we'll deal with the
14 exhibits.

15 MR. BOYD: Well, first what I would ask is does
16 any of the parties have any objections?

17 HEARING OFFICER CELLI: Let me ask that, okay?

18 MR. BOYD: Okay.

19 HEARING OFFICER CELLI: Is there any objection --
20 or lets put it this way. Would the parties be willing to
21 stipulate that Exhibits 600 through 617 be received into
22 evidence, staff?

23 STAFF COUNSEL BABULA: I would object to Exhibit
24 612.

25 HEARING OFFICER CELLI: It's just a yes or no

1 question.

2 STAFF COUNSEL BABULA: No.

3 HEARING OFFICER CELLI: So since I don't have
4 unanimity already, we're going to have to duke it out
5 exhibit by exhibit.

6 MR. BOYD: Okay, that's fine.

7 HEARING OFFICER CELLI: In light of that, do you
8 want to do that now or do you want to call a witness?

9 MR. BOYD: Well, first, he mentioned 612. That's
10 me. So I don't -- you can call me whenever. Okay, but if
11 he doesn't object to -- if he doesn't object to 616, who's
12 the person who wants to be called right away, Mr. Lundahl.
13 If no one objects to Mr. Lundahl's testimony and
14 declaration, then what I would propose to do is to move
15 everything but the one that you have any cross on. So the
16 only one I heard is 612. Does staff -- I mean, does the
17 applicant have any specific exhibits --

18 HEARING OFFICER CELLI: Let me conduct this for
19 you.

20 MR. BOYD: Sorry.

21 HEARING OFFICER CELLI: So you have -- staff, you
22 have no objection to anything other than 612?

23 STAFF COUNSEL BABULA: Yeah, just 612.

24 HEARING OFFICER CELLI: Applicant?

25 MR. GALATI: Yeah, I object to 621, 613, and 614

1 as all relating to the cultural resource consolidated
2 matter about the confidentiality of BLM documents. I
3 don't see how it's relevant in the Genesis proceeding,
4 specifically because there's already been a ruling there.

5 So with that being said, if the Committee gives
6 it that weight, I don't think it should come in, but if
7 you want to let it in, just give it that appropriate rate.
8 It's not relevant to Genesis.

9 HEARING OFFICER CELLI: Actually, I think we're
10 going to hear argument on each exhibit later, but right
11 now I'm just trying to get a sense of what we can
12 streamline in.

13 So any objection from CURE on Exhibits 600
14 through 617?

15 MS. KOSS: No.

16 HEARING OFFICER CELLI: No objection at all.

17 Mr. Budlong, any objection to Exhibits 600
18 through 617?

19 MR. BUDLONG: I have no objection to these
20 exhibits.

21 HEARING OFFICER CELLI: Thank you, Mr. Budlong.
22 CBD just stepped out.

23 Is she going to be back soon?

24 HEARING OFFICER CELLI: Her computer is here.
25 I'm sure she'll be back.

1 Thank you, Ms. Jennings. The record should
2 reflect that the Public Adviser is going to inquire as to
3 what happened to Ms. Belenky.

4 If there's -- presuming there's no objection,
5 what I'm proposing to do then, because we have no
6 objection from Budlong, no objection from CURE, and staff
7 and applicant object to 612 through 614, that we would
8 receive the remaining evidence.

9 Ms. Belenky I'm sorry to drag you in here.

10 MS. BELENKY: No, I thought we weren't doing the
11 Exhibits right away.

12 HEARING OFFICER CELLI: Anything can happen.

13 Do you have any objection to CARE's Exhibits 600
14 through 617?

15 MS. BELENKY: That's not including that last set.
16 No, then I don't have any --

17 HEARING OFFICER CELLI: No objection okay.

18 MS. BELENKY: -- Any objections.

19 HEARING OFFICER CELLI: There being no objection,
20 Exhibits 600, 601, 602, 603, 604, 605, 606, 607, 608, 609,
21 610, 611, 615, 616, and 617 are received into evidence.

22 (Thereupon Exhibits 601 through 611 and 615
23 through 617 were received into evidence.)

24 MR. BOYD: Okay, and then on 612 -- I mean not
25 612. 613, the cover letter.

1 HEARING OFFICER CELLI: 613, the cover letter.

2 MR. BOYD: You know, I'm willing to stipulate
3 that that's not necessary. You don't have to have that.

4 HEARING OFFICER CELLI: In other words, you're
5 withdrawing it.

6 MR. BOYD: I'll withdraw 613.

7 MR. BOYD: That will help.

8 HEARING OFFICER CELLI: 613 is withdrawn at the
9 motion of CARE.

10 MR. BOYD: And that leaves us with 612, my
11 testimony, and 614 the Declaration of Alfredo Figueroa.

12 HEARING OFFICER CELLI: Correct.

13 MR. BOYD: I would propose to call Alfredo next.

14 HEARING OFFICER CELLI: Mr. Figueroa, are you --
15 can you hear us?

16 MR. FIGUEROA: Yes.

17 HEARING OFFICER CELLI: Okay. I'm going to need
18 you to stand and raise your right hand.

19 MR. FIGUEROA: Stand?

20 HEARING OFFICER CELLI: Stand and raise your
21 right hand, please, to be sworn.

22 MR. BOYD: You've got to be sworn in.

23 HEARING OFFICER CELLI: Do you want to swear him
24 in, Mr. Peters?

25 (Thereupon MR. ALFREDO FIGUEROA was sworn, by the

1 court reporter, to tell the truth, the whole
2 truth and nothing but the truth.)

3 Whereupon,

4 ALFREDO FIGUEROA

5 was called as a witness herein, and after first
6 having been duly sworn, was examined and
7 testified as follows:

8 HEARING OFFICER CELLI: Please state your name
9 and spell it for the record

10 MR. FIGUEROA: Alfredo, A-l-f-r-e-d-o, Figueroa,
11 F-i-g-u-e-r-o-a.

12 HEARING OFFICER CELLI: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. BOYD:

15 Alfredo, I'm asking you about your declaration of
16 5-26-2010. Did you prepare this declaration?

17 MR. FIGUEROA: Yes.

18 MR. BOYD: And are you -- and it's based on your
19 personal information and knowledge?

20 MR. FIGUEROA: Yes.

21 MR. BOYD: And do you have any additions to your
22 declaration that you would like to add?

23 MR. FIGUEROA: I've got a lot of reasons, but
24 it's long, long time --

25 MR. BOYD: Briefly.

1 HEARING OFFICER CELLI: Mr. Figueroa, this is
2 Hearing Advisor Ken Celli, we're having a hard time
3 hearing you. I need you to really speak loudly into your
4 phone, please.

5 MR. FIGUEROA: Okay. Go ahead and tell me again
6 Mr. Boyd.

7 MR. BOYD: Oh, I'm just asking you if you have
8 any brief additions to your declaration?

9 MR. FIGUEROA: Well, like I said, the 10,000
10 years of our history of the migrations is hard to say it
11 in a short declaration.

12 MR. BOYD: Well, you don't have to you. If you
13 don't want to, you don't have to add to your declaration.

14 MR. FIGUEROA: Yeah, that explains roughly what
15 the sacred area of this site where the proposed Genesis,
16 Blythe, and Palen projects are proposed to be put. They
17 all entail the migration of the third of one era, the
18 era -- be the area of the edge of the con --

19 HEARING OFFICER CELLI: Mr. Figueroa, again, we
20 need you to really speak slowly and clearly into the
21 phone, and stay right on your phone, because you trailed
22 away, we couldn't hear what you were saying.

23 MR. FIGUEROA: Is that right, I'm hollering right
24 now.

25 HEARING OFFICER CELLI: That's much better.

1 MR. FIGUEROA: Anyway, this is all part of the
2 Aztec's migration, and based on the Aztecs' calendar,
3 which has 104,000 years of recorded history. That's why
4 when you're talking right there about the sites along the
5 north edge of the Ford Dry Lake, that's all part of the
6 migration. Our people will continue following this
7 migration as always to the west, and then they would go
8 both ways and east and north. And right here, like I told
9 you, like I said before, where the powerplant was built,
10 it was at the cross roads. This is very, very sacred.
11 It's the most sacred area in the world. And you will
12 learn pretty soon how sacred it is.

13 And it's just bad that we have to continue
14 struggling to educate the non-traditional people, because
15 it's been a pain. It hurts me to even reveal these
16 things, these sites that we're working against a long
17 resistance, like you mentioned, right now, that we don't
18 want to reveal all these, but yet we have to, because
19 we're forced to. We're against the wall. We're like the
20 sword against the wall.

21 HEARING OFFICER CELLI: Okay, the question before
22 you was whether there was anything further for your
23 declaration that you wanted to put into the declaration?

24 MR. FIGUEROA: I think that would cover it just
25 broadly, is that limited -- these sites are all very

1 sacred.

2 HEARING OFFICER CELLI: Thank you. Mr. Boyd, go
3 ahead.

4 MR. BOYD: I'm done. And the witness is
5 available for questions.

6 HEARING OFFICER CELLI: Okay. Now, Mr. Figueroa
7 you're going to be asked on cross-examination -- you're
8 going to be asked questions by other lawyers on
9 cross-examination.

10 MR. FIGUEROA: No problem. That's okay.

11 HEARING OFFICER CELLI: So first I'm going to
12 start -- I guess I'll start with staff, cross-examination
13 of Mr. Figueroa.

14 STAFF COUNSEL BABULA: I don't have any cross.

15 HEARING OFFICER CELLI: Thank you.

16 Mr. Galati, cross-examination on behalf of the
17 applicant?

18 MR. GALATI: I guess I'd first like to clear up.
19 I apologize, 614 was the declaration of Alfredo Figueroa.
20 I had him marked as being associated with Cultural
21 Resources, the CRD1, 10-CRD1 confidential information. So
22 I withdraw my objection to 614 coming in. So I apologize
23 for that, but I have no cross-examination.

24 HEARING OFFICER CELLI: Thank you.

25 MR. BOYD: So can we move 614 in?

1 HEARING OFFICER CELLI: Any objection -- there is
2 no objection then to 614, having already polled the
3 parties.

4 So Exhibit 614 is received into evidence.
5 (Thereupon Exhibit 614 was received into
6 evidence.)

7 MR. BOYD: Okay, Alfredo and Robert we're both
8 done with you.

9 PRESIDING MEMBER BOYD: You've got other lawyers.

10 MR. BOYD: Oh, wait. There are other lawyers.

11 HEARING OFFICER CELLI: We're not finished with
12 you, because the other lawyers get to ask questions as
13 well.

14 Is there anything further from applicant?

15 No further questions, Mr. Galati?

16 MR. GALATI: No.

17 HEARING OFFICER CELLI: Ms. Koss, any questions
18 of Alfredo Figueroa?

19 MS. KOSS: No, thank you.

20 HEARING OFFICER CELLI: Ms. Belenky, any
21 questions for Mr. Figueroa?

22 MS. BELENKY: No, thank you.

23 HEARING OFFICER CELLI: Mr. Budlong?

24 MR. BUDLONG: No questions.

25 HEARING OFFICER CELLI: Thank you.

1 Any redirect?

2 MR. BOYD: No.

3 HEARING OFFICER CELLI: Okay. Then we can excuse
4 Mr. Figueroa.

5 MR. FIGUEROA: Thank you very much.

6 HEARING OFFICER CELLI: Thank you very much.

7 Your next witness please, Mr. Boyd.

8 MR. BOYD: I'm my own witness, I guess.

9 So what do I do?

10 HEARING OFFICER CELLI: Well, before we get in to
11 that, do you have any other witnesses besides yourself.

12 MR. BOYD: The last item is 612, my testimony and
13 declaration.

14 HEARING OFFICER CELLI: Okay, which has been
15 objected to.

16 MR. GALATI: Yeah, I can renew the objection.
17 The objection is relevance. This is answer and questions
18 to the siting committee on who should get confidential
19 information, BLM, CEC, or CURE. And specifically, these
20 are answering the questions, the way I read it, in that
21 proceeding. And so I don't understand how that's
22 relevant.

23 HEARING OFFICER CELLI: Okay. So, Mr. Boyd,
24 something is relevant if it has any tendency and reason to
25 make the existence of a fact more likely or less likely

1 than it would be without that evidence.

2 And so what fact does this Exhibit 612 support,
3 or facts, that would be relevant to what we're dealing
4 with today, Cultural Resources?

5 MR. BOYD: Well, first, I'm not a lawyer,

6 HEARING OFFICER CELLI: That's why I gave you the
7 definition.

8 MR. BOYD: But looking at it, it's talking --
9 yes, it is talking about the confidential information, but
10 it's also talking about the BLM's handling of relevant
11 data to the project site. I mean because the BLM -- this
12 is talking about the process for the data that I assumed
13 staff was using to make their -- to come up with their
14 mitigation proposals, their proposed conditions, based on
15 information essentially that is critical. What baseline
16 information is available and when is critical, I would
17 think to the veracity of the conditions imposed and any
18 proposed mitigation measure.

19 So if you don't have all the information,
20 obviously that should be relevant and -- that should be
21 relevant to what's being recommended by staff or the
22 applicant for that matter or intervenors is valid.

23 STAFF COUNSEL BABULA: But I don't see that. I
24 mean, my objection is, as Mr. Galati said, that's not
25 really what this is about. This is about you opining your

1 beliefs on what should happen with certain questions.

2 And I would also like to object that, at least at
3 this point, I'm not clear what Mr. Boyd's expertise is to
4 even testify on the subject.

5 HEARING OFFICER CELLI: Let's get to that first.
6 Mr. Boyd, do you have a CV or a resume, because my -- the
7 evidence that I have I did not receive any --

8 MR. BOYD: I didn't provide you my resume,
9 because I assume you still had a copy on file, because I
10 provided it probably at least 10 times to you. I mean,
11 I'd be happy to provide it again, if you need.

12 HEARING OFFICER CELLI: Let me put it --

13 MR. BOYD: I have a degree in physics.

14 HEARING OFFICER CELLI: That's -- okay so what
15 you need to do is make a record --

16 MR. BOYD: State my qualification.

17 HEARING OFFICER CELLI: -- of what your
18 qualifications would be to testify, but I want to -- let's
19 direct this to this Exhibit 612.

20 MR. BOYD: Certainly.

21 HEARING OFFICER CELLI: The basis -- what it is
22 you want to get into the record in your 612 and then your
23 qualifications.

24 And, by the way, I haven't ruled yet on Mr.
25 Galati's relevance.

1 MR. BOYD: That's fine.

2 You know, it's not really a big deal to me. I'm
3 happy to withdraw it, if it's -- it's not going to kill me
4 if my testimony is not in there. It's for -- I mean -- I
5 mean, I think I stated why I think it's relevant, okay.
6 And if -- because I think fundamentally the issue here is,
7 this is -- the BLM owns the data, the BLM controls the
8 data, and it's critical that everybody you have the data,
9 in order to meaningfully participate in the process. And
10 that's why I thought that this was relevant.

11 Now, as I said, I'm not an attorney. And so it's
12 your call. I mean, my feelings won't be hurt if you don't
13 accept it is what I'm saying.

14 HEARING OFFICER CELLI: That's fine. Before I
15 even get to that though, you were saying that you would
16 withdraw the motions. And if you withdraw it, then we
17 don't have to -- I'd have to satisfy everybody's
18 objections.

19 MR. BOYD: Okay, I withdraw it.

20 HEARING OFFICER CELLI: That being the case, then
21 612 is withdrawn.

22 MR. BOYD: Does that help?

23 HEARING OFFICER CELLI: Well, it speeds things
24 up.

25 MR. GALATI: Yeah. Not to be a jerk, although I

1 am a natural jerk, and I actually work at it, but not for
2 that purpose, I need to protect the record so that we
3 continue to make things that are relevant.

4 MR. BOYD: Okay, I have a procedural question.

5 HEARING OFFICER CELLI: So therefore, the
6 objection based on relevance is moot. I don't need to
7 rule on it. The exhibit is withdrawn.

8 Go ahead, please.

9 MR. BOYD: Do I need to sponsor Mr. Lundahl's
10 video?

11 HEARING OFFICER CELLI: Mr. Lundahl's video has
12 been seen by the Committee. Everybody's seen it. Is
13 there any -- and there's been no objection to it's receipt
14 into evidence. Therefore, there's an adequate -- I'm
15 going to determination that there's an adequate
16 foundation.

17 MR. BOYD: Okay.

18 MR. GALATI: We waive any objection to that video
19 coming into evidence or that -- or any objection that Mr.
20 Lundahl is qualified as a videographer to have taken that
21 video.

22 HEARING OFFICER CELLI: Very good. And I'm sure
23 that's true for everybody, but there's no point in getting
24 to that since everybody already waived their objections
25 and didn't object to its receipt. So it's in evidence.

1 MR. BOYD: Okay, so now am I done?

2 HEARING OFFICER CELLI: No.

3 Because the parties get to cross-examine. I just
4 want to go around make sure that everybody -- to see if
5 anybody has any questions for any of your witnesses.

6 Ms. Koss?

7 MS. KOSS: No.

8 HEARING OFFICER CELLI: Ms. Belenky?

9 MS. BELENKY: No.

10 HEARING OFFICER CELLI: Mr. Babula.

11 STAFF COUNSEL BABULA: You're just talking about
12 what Mr. Figueroa --

13 HEARING OFFICER CELLI: Mr. Figueroa is pretty
14 much finished.

15 STAFF COUNSEL BABULA: Right, what witnesses,
16 because, I mean, he had testimony, but now he just
17 withdrew it, so I don't know. He's not testifying to
18 anything.

19 HEARING OFFICER CELLI: That's right.

20 STAFF COUNSEL BABULA: Then I have no further
21 questions.

22 HEARING OFFICER CELLI: Ms. Budlong, any
23 questions?

24 MR. BUDLONG: No.

25 HEARING OFFICER CELLI: Applicant?

1 MR. GALATI: No questions for Mr. Boyd.

2 HEARING OFFICER CELLI: We have some questions.
3 The Committee has some questions.

4 In the video, there are several intaglios that
5 are shown. The large ones, there's a character of a man, a
6 character of a woman, a character of a dog. They appear
7 to be encircled by fencing?

8 MR. BOYD: That's correct.

9 HEARING OFFICER CELLI: Are they on the plant --
10 the proposed Genesis --

11 MR. BOYD: Those intaglios, no.

12 HEARING OFFICER CELLI: Okay. Can you give us a
13 vague idea how -- where -- how close is the nearest
14 intaglios to the Genesis site, if you know?

15 MR. BOYD: The other side of -- it's more closer
16 to the Blythe is where the intaglios are, like the
17 Kokopilli.

18 HEARING OFFICER CELLI: Can you give us some --
19 like it's 10 miles away, 15, 5?

20 MR. BOYD: No, it's like two miles.

21 HEARING OFFICER CELLI: Okay.

22 MR. BOYD: Now, what -- see Genesis is next to a
23 dry lake bed. You don't expect to see anything in the dry
24 lake bed, because it's a dry lake bed, okay. Maybe some
25 four-wheel drive tracks on it, but that's about all we

1 expect to see.

2 What's unique about this area is you have the dry
3 lake bed --

4 STAFF COUNSEL BABULA: I'm going to object,
5 because he's testifying, and we haven't established yet of
6 any credentials to testify. I mean, you asked about the
7 video, but now he seems to be going beyond the video.

8 HEARING OFFICER CELLI: Let me ask this, were you
9 in the airplane when the video was taken?

10 MR. BOYD: No, sir.

11 HEARING OFFICER CELLI: Oh, I'm sorry. I
12 misunderstood.

13 MR. BOYD: Mr. Lundahl was in the plane, but
14 unfortunately he's gone now.

15 HEARING OFFICER CELLI: Okay. Objection.
16 Sustained, for lack of foundation.

17 In other words --

18 MR. BOYD: Objection to what?

19 HEARING OFFICER CELLI: You were going on to say
20 where these things were. And I was asking about where
21 things were, and he had objected, based on a lack of
22 foundation.

23 MR. BOYD: I see what you're saying. We don't
24 expect to see them there. What we expect to see is there
25 could be a village there, because that was not where we

1 see them. That area -- there isn't stuff there. We
2 expect that between the spring and the dry lake is where
3 the village was.

4 HEARING OFFICER CELLI: Okay. Anything further,
5 Mr. Boyd? Any exhibits?

6 MR. BOYD: No, sir. You've got them all.

7 HEARING OFFICER CELLI: Okay, so good then.

8 MR. BOYD: I've got to go move my car.

9 HEARING OFFICER CELLI: You're right.

10 MS. KOSS: He has until 7.

11 HEARING OFFICER CELLI: Oh, yes.

12 PRESIDING MEMBER BOYD: Plenty of time.

13 HEARING OFFICER CELLI: There is plenty of time
14 actually, but I want to try to remember that we have to
15 take care of your cars.

16 Then that concludes CARE's evidence with regard
17 to cultural.

18 Let's move on to CURE now.

19 HEARING OFFICER CELLI: You know, actually, Mr.
20 Boyd, if you would wouldn't mind, I'll make sure that
21 before 5 -- before 6:30, I get everybody out of here, so
22 they can move their cars.

23 MR. BOYD: There's still someone for me to pay
24 there till 7.

25 HEARING OFFICER CELLI: Until 7.

1 And I just want to make sure that you're present,
2 so thank you for staying.

3 MR. BOYD: I just don't want to leave my car
4 there overnight.

5 HEARING OFFICER CELLI: Ms. Koss, it's CURE's
6 case.

7 MS. KOSS: Thank you. CURE calls Dr. David
8 Whitley.

9 HEARING OFFICER CELLI: Can you stand and be
10 sworn.

11 (Thereupon MR. DAVID WHITLEY was sworn, by the
12 court reporter, to tell the truth, the whole
13 truth, and nothing but the truth.)

14 Whereupon,

15 DAVID WHITLEY
16 was called as a witness herein, and after first
17 having been duly sworn, was examined and
18 testified as follows:

19 HEARING OFFICER CELLI: Please state your name
20 and spell it for the record, when you get to the
21 microphone.

22 DR. WHITLEY: David Whitley, W-h-i-t-l-e-y. Good
23 afternoon.

24 HEARING OFFICER CELLI: Good afternoon. Please
25 proceed.

1 MS. KOSS: Dr. Whitley, whose testimony are you
2 sponsoring today?

3 DR. WHITLEY: I'm sponsoring my own rebuttal
4 testimony.

5 MS. KOSS: And do you have any changes to your
6 sworn testimony?

7 DR. WHITLEY: No, I do not.

8 MS. KOSS: Are the opinions in your testimony
9 your own?

10 DR. WHITLEY: Yes, they are.

11 MS. KOSS: Can you describe for us what it was
12 CURE asked you to do?

13 DR. WHITLEY: CURE retained me to look over and
14 evaluate the archaeological studies and issues on this
15 project.

16 MS. KOSS: Can you ever so briefly describe your
17 principal findings.

18 DR. WHITLEY: Ever so briefly, yes, indeed.

19 Primarily, my conclusion is that the proposed
20 procedures -- the procedure proposed by CEC staff and the
21 applicant to comply with CEQA for this particular
22 application, in fact, is out of compliance.

23 CEQA requires that each impact, each potential
24 impact, be identified, be analyzed, and appropriate
25 mitigation measures for each of those impacts be

1 considered.

2 With respect to archaeological resources, adverse
3 impacts consist of the destruction of the significant
4 characteristics attributes, qualities, that make those
5 resources eligible for the listing in the California
6 Register of Historical Resources, or alternatively under
7 Section 106 in the National Register. The criteria are
8 similar.

9 But under CEQA, the issue here is that an impact
10 results when the qualities of the resource that make it
11 significant are damaged or destroyed. To determine what
12 the qualities of the resources are that make them
13 significant, test excavations are required. It's that
14 simple.

15 For example, we simply do not know whether human
16 burials are present in these sites or not. And there's no
17 way to determine that, and I think all archaeologists
18 would concur without test excavations.

19 No tests were done. Therefore, in fact, no
20 identifications of the actual characteristics or qualities
21 that make these sites significant was, in fact, provided.
22 Significance was assumed, and significance was assumed
23 based on research potential. And I'm not saying that's
24 not there, but that's only one of the qualities
25 potentially that's out there.

1 Data recovery was proposed or has been proposed
2 as the mitigation measure. And that certainly would cover
3 for research significance, but that's a single value.
4 It's not all of the potential values of these sites.

5 The results is, quite simply, this procedure is
6 out of step with the last 25, 30 years of CEQA compliance
7 and implementation. It's a catastrophic approach. It's
8 exactly the approach that was used at the Playa Vista
9 Project under the Army Corps of Engineers that resulted in
10 the unearthing of over 380 human burials, at a cost in
11 excess of \$12 million, unanticipated cost, and a delay of
12 years, if not a decade or more.

13 That is the procedure that is being proposed
14 here, and I don't think that's -- it both is not in
15 compliance with CEQA and I don't think it's in the best
16 interests of the applicant, the CEC, or to save California
17 in general.

18 MS. KOSS: Thank you. Earlier you heard Reid
19 Farmer testifying to the depth of the deposits. And he
20 referenced these figures that were distributed. Can you
21 please tell us how deep most buried sites in California
22 are?

23 DR. WHITLEY: Well, most subsurface
24 archaeological deposits -- and this was actually a
25 question I was asked on my Ph.D. qualifying exams in 1981.

1 On average, California archaeological sites are 50
2 centimeters thick, 50 centimeters meters deep, half a
3 yard.

4 So the idea that you have, on average, two feet
5 of holocene soil, which, in fact, means the last 10,000
6 years, is typical for all of California. And it's on no
7 measure an indication that diminishes the likelihood
8 either of subsurface archaeological deposits or human
9 burials. They're commonly not any deeper than that.

10 MS. KOSS: Thank you. And referring to these
11 figures again, how old is the orange Pleistocene soil?

12 DR. WHITLEY: Orange Pleistocene soil is a
13 signature across the California deserts. Anywhere that
14 you get deep exposures, you immediately recognize it.
15 It's present everywhere. It's terminal Pleistocene in
16 age. I've dated it in the central Mojave desert in the
17 9,800 years old. I have found archaeological sites in it.
18 And needless to say, they're 10,000 years old, and they're
19 very significant.

20 The idea that because there is this oxidized
21 terminal Pleistocene paleosol, that's what we call it, an
22 ancient soil, then that diminishes the likelihood of
23 archaeological sites likewise is not correct. And, in
24 fact, it says to me that there's greater potential for
25 significant sites in this area.

1 MS. KOSS: Thank you. I have no further
2 questions, unless you would like to add anything else.

3 DR. WHITLEY: Not that I can think of.

4 MS. KOSS: He is available for cross-examination.

5 HEARING OFFICER CELLI: Ms. Belenky, cross?

6 MS. BELENKY: No, thank you.

7 HEARING OFFICER CELLI: Mr. Babula,
8 cross-examination?

9 CROSS-EXAMINATION

10 BY STAFF COUNSEL BABULA:

11 I thought I had two questions. I might have
12 three now.

13 DR. WHITLEY: Or maybe four.

14 STAFF COUNSEL BABULA: How would pre-construction
15 testing have prevented the delays in costs entailed in the
16 Army Corps of Engineers' project you cited?

17 DR. WHITLEY: How would they have?

18 Had they tested in advance, they wouldn't have
19 come up with the idea of putting a reconstructed wetlands,
20 a humanly made wetland in a historic village. This, in
21 fact, is the historic every Gabrielino village of Suangna.

22 And, in fact, under federal regulations, it's
23 allowed to -- a project is allowed to go in this
24 direction, but under CEQA there's no such dispensation.

25 So easily, test excavation, you'd find that there

1 were not only human burials, but historic human burials
2 that had metal artifacts, clothing still preserved. I
3 mean, this is the 19th century, the last Gabrielino
4 cemetery in Los Angeles.

5 STAFF COUNSEL BABULA: Okay. But does CEQA
6 require any specific method of site assessment?

7 DR. WHITLEY: Well, obviously it can't, because
8 CEQA is considering a variety of historical resources so
9 defined. Everything from houses, historic houses, to
10 roadways, to pre-historic sites, to historic camps. So it
11 can't -- it cannot specify exactly how every circumstance
12 is treated, because obviously you can't excavate a
13 historic building.

14 On the other hand, it's implied, and in my
15 experience in my 35 years of CEQA experience, I've never
16 seen an application move ahead that didn't have test
17 excavations. I should say in the last 25 years of my
18 experience, I haven't seen one move ahead without test
19 excavation, where final determinations of adverse effect
20 could be specified, and appropriate mitigation measures
21 presented and provided.

22 And I changed that number because early on in the
23 seventies, this was common practice. There are
24 archaeological sites out there. We'll approve the
25 project. You go test them. And, you know, take care of

1 them at the back end. And guess what, city halls were
2 picketed, burials were flying all over the place. It was
3 a recipe for catastrophe, as I say.

4 That's why every CEQA agency I've worked in in
5 the last 25 years, we want to see test excavation data
6 before we've got a draft EIR.

7 STAFF COUNSEL BABULA: Okay. Well, based on that
8 response then, why would -- so assuming that the known
9 sites are significant and treating them accordingly, and
10 having mitigation beyond avoidance, which they already
11 did, but why wouldn't that work?

12 DR. WHITLEY: Well, because they're not avoiding
13 the sites that are in the impact area, the area of direct
14 impact. What they did, and don't be confused by this
15 illusion, they did some early studies to decides where it
16 would cost them less to put their project, because of our
17 archaeological resources, but they're --

18 MR. GALATI: Objection. Assumes facts not in
19 evidence. This witness has not can't test --

20 HEARING OFFICER CELLI: Sustained.

21 DR. WHITLEY: Okay. They're not preserving any
22 of the sites within the project direct impact area.
23 They're preserving none of those 27 sites. The procedure
24 that's proposed is straight to data recovery, admittedly
25 with an expedited or compressed Phase 2, phase 3. But

1 that isn't a procedure that allows them to decide, okay,
2 we need to redesign project, because we've got 400 human
3 burials here. That's just frankly to figure out how much
4 it's going to cost to do the data recovery.

5 STAFF COUNSEL BABULA: Okay, but for those sites,
6 they will be doing data recovery, so there is some form of
7 mitigation?

8 DR. WHITLEY: There's mitigation for one value of
9 those sites, which frankly is the most innocuous, the
10 cheapest, and the most expedient. This is a path to make
11 it easy. It is not based on an analysis of the values
12 that these sites may have. It's just an assumption that
13 this is cheap, easy, and dirty.

14 STAFF COUNSEL BABULA: Last question. You said
15 CEQA prefers avoidance, but that's not required?

16 DR. WHITLEY: I actually didn't say that. I
17 think that was in early testimony. But it is, it
18 states -- CEQA states in no uncertain terms, preservation
19 is the preferred option for the sites within the direct
20 impact area that was never considered. As was noted by
21 Ms. Bastian, this was a procedural process that went
22 straight to data recovery without analysis.

23 STAFF COUNSEL BABULA: Thank you. No further
24 questions.

25 HEARING OFFICER CELLI: Applicant?

1 MR. GALATI: No cross.

2 HEARING OFFICER CELLI: Mr. Boyd?

3 CROSS-EXAMINATION

4 BY MR. BOYD:

5 Do you believe -- is it your opinion that
6 the -- is there any way that you know of that the
7 applicant or the Commission staff could propose mitigation
8 measures for the BLM that's issued its final report on the
9 resources here?

10 DR. WHITLEY: Mitigation measures are only
11 appropriate after evaluations or Phase 2 test excavations
12 of determinations of significance have occurred.

13 I cannot speak for the BLM, but my understanding
14 from the workshop last week and from working with the BLM
15 for the last 30, 35 years is that they are going to
16 require an evaluation phase, essentially a Phase 2 test
17 excavation, then they are growing to do Native American
18 consultation. Then they will determine what the
19 mitigation measures are from their perspective.

20 What that basically means is, in fact, the
21 applicant can't do final construction plans and designs
22 until they know what those final recommendations and
23 mitigation measures are. This is one of the reasons why
24 Phase 2 test excavations before the fact are in the
25 applicant's best interest. To postpone these things, as I

1 say, it's a recipe for catastrophe. Land developers all
2 over California have caught on. And I guess we're behind
3 the curve here, because these people aren't building
4 houses and haven't been doing this for 20 or 30 years.
5 But mitigation measures are proposed, once you've done
6 your impact analysis, and that has only been half done
7 here.

8 MR. BOYD: So if the -- is it your opinion that
9 if we close the record on cultural resources and issued a
10 decision before that BLM assessment was complete, that the
11 record would be incomplete for cultural?

12 DR. WHITLEY: You know, I mean, that's a
13 procedural issue that I can't really respond to.

14 MR. BOYD: Would you believe -- I'm asking you,
15 in your opinion, do you believe that all the necessary
16 information is in the record now short of that BLM?

17 DR. WHITLEY: Well, no. For the CEQA process
18 Phase 2 test excavations and true determinations of
19 significance, not assumptions of research importance, are
20 required.

21 MR. BOYD: So actual test results are necessary
22 before --

23 DR. WHITLEY: Yes.

24 MR. BOYD: -- it would be a complete -- in your
25 opinion, would be complete?

1 DR. WHITLEY: In my opinion, and my decades of
2 experience with CEQA implementation.

3 MR. BOYD: Okay, that's all I have.

4 Thank you.

5 HEARING OFFICER CELLI: Redirect?

6 MS. KOSS: No, thank you.

7 HEARING OFFICER CELLI: I just want to be clear
8 that you heard the testimony that they are assuming that
9 all of the sites on the -- all of the archaeological or
10 cultural resources on the site are significant.

11 DR. WHITLEY: Yes. No, I understand completely.
12 And the point here, the assumption of significance is
13 fully appropriate under one circumstance, and that's
14 preservation in place. Otherwise, if you're going to data
15 recovery, you're not simply assuming significance. You're
16 arguing that the sites are only significant due to one
17 value or characteristic, and that's research importance.

18 And whereas that is probably true, that each site
19 is important or significant on that characteristic, what
20 hasn't been established, is if the sites are also
21 significant due to other attributes, traits,
22 characteristics, not the least of which is human
23 cemeteries.

24 And frankly, we're dealing with a bunch of sites
25 along a dry lake bed. And one thing that you should be

1 clear about, these dry lake beds are dry today. They are
2 seasonally moist. They periodically refill with water.
3 There was a circumstance in the 1940s where Lake Mojave in
4 the Mojave Desert held water for over two years. It's
5 been documented and published by Robert Heizer, a famous
6 California archaeologist.

7 There were locations where Native Americans went
8 and settled and created villages. We have sites in the
9 project area that give me every indication, from what I've
10 read, these are major villages. And the likelihood of
11 them having burials in them, frankly, is high or at least
12 reasonable.

13 So, yes, significance has been assumed on one
14 attribute. But remember CEQA says, it's impacts are
15 impacts to the qualities, the characteristics, the traits
16 that make a particular cultural resource significant or
17 eligible or important. And we just don't know what those
18 are yet.

19 HEARING OFFICER CELLI: Thank you. Are there
20 any -- you can redirect after that question, Ms. Koss?

21 MS. KOSS: No, thank you.

22 HEARING OFFICER CELLI: Okay. Staff, anything on
23 the question that I asked, limit it to that?

24 STAFF COUNSEL BABULA: No.

25 HEARING OFFICER CELLI: Applicant?

1 MR. GALATI: No.

2 HEARING OFFICER CELLI: Mr. Boyd?

3 MR. BOYD: No.

4 HEARING OFFICER CELLI: Mr. Budlong?

5 MR. BUDLONG: I have a -- I think it's a
6 question --

7 HEARING OFFICER CELLI: I need you to speak up
8 much louder. Maybe pick up your handset if you can.

9 MR. BUDLONG: I'm on it. I'm right at it.

10 HEARING OFFICER CELLI: Okay, yell.

11 CROSS-EXAMINATION

12 BY MR. BUDLONG:

13 What is the potential of missing something by
14 proceeding without your expectations -- is missing
15 something really significant with respect to the history
16 of man in this area?

17 DR. WHITLEY: Okay. The question is what is the
18 potential for missing something very significant without
19 test excavation, I think is very high.

20 As I say, we're on a lake shore. We've got major
21 sites. We don't know how big they are. They haven't been
22 tested. The probability that they've got human remains in
23 them, I think is moderate to high. And that alone would
24 cause me to say that there is a strong potential here for
25 something significant having been missed at this stage.

1 MR. BUDLONG: Would you be able to extract that
2 significance if you went on to construction and didn't
3 preserve the artifacts?

4 HEARING OFFICER CELLI: I'm sorry. Mr. Budlong,
5 I'm sorry, but there was some disturbance in the room here
6 as you were speaking. We need you to ask the question
7 again very loudly.

8 MR. BUDLONG: Would you be able to extract that
9 significance, if during construction you discovered the
10 artifacts, removed them, and studied them in preservation?

11 DR. WHITLEY: It depends on what significance
12 we're talking about. The proposed mitigation addresses
13 one particular value, which is the research or scientific
14 value. And in theory, data recovery or salvage
15 excavation, in fact, recovers the information that is
16 contained in an archaeological site.

17 If the value was religious or sacred, then I
18 don't think any Native American or Native American tribal
19 group would agree that excavating out the burials,
20 removing them from their resting place, and taking them
21 somewhere else would be a mitigation. They would consider
22 that, I believe, a form of destruction.

23 MR. BUDLONG: No more questions.

24 Thank you.

25 HEARING OFFICER CELLI: Thank you, Mr. Budlong.

1 Where am I?

2 Ms. Koss, redirect?

3 MS. KOSS: No, thank you.

4 HEARING OFFICER CELLI: Any further witnesses?

5 MS. KOSS: None.

6 HEARING OFFICER CELLI: Or evidence?

7 MS. KOSS: No.

8 HEARING OFFICER CELLI: Thank you.

9 Thank you, Mr. Whitley.

10 DR. WHITLEY: Thank you. May I move my car now?

11 HEARING OFFICER CELLI: Yes, you may, but no one
12 else.

13 (Laughter.)

14 DR. WHITLEY: Well, I don't want to jump the gun.

15 HEARING OFFICER CELLI: I just want to ask, Ms.
16 Belenky, do you have any witness?

17 MS. BELENKY: No.

18 HEARING OFFICER CELLI: Mr. Budlong, do you have
19 any witnesses on cultural?

20 MR. BUDLONG: No, I do not.

21 HEARING OFFICER CELLI: Then I believe we have --
22 we are set to close the record on cultural.

23 I don't see any objection from any parties.

24 With that, then cultural -- the record on
25 cultural is closed. And I believe, someone correct me if

1 I'm wrong, we've closed the record on all of the evidence
2 in the Genesis Solar Energy Project.

3 Is there anything left open?

4 People are nodding their heads no.

5 MR. GALATI: I don't believe there is.

6 HEARING OFFICER CELLI: I don't think so either.
7 I've been wrong before.

8 Okay. With that, then let's --

9 STAFF COUNSEL BABULA: I'll just -- Mike, you are
10 going to Email out the 441?

11 SITING PROJECT MANAGER MONASMITH: Yes, it was
12 already served and we docketed it tomorrow. All parties
13 were Emailed prior to distribution.

14 HEARING OFFICER CELLI: 441. Okay. There being
15 no members of the public -- are there any members of the
16 public who are here right now who wish to speak in the
17 room?

18 Seeing none.

19 Is there anyone on the telephone who wishes to
20 make a public comment at this time?

21 MR. EVENSON: This is Dale Evenson with the
22 County Fire. I don't know that I have a comment. I do
23 have a question.

24 HEARING OFFICER CELLI: Please.

25 MR. EVENSON: The video that was referred to

1 numerous times today, is that posted on the Internet?

2 HEARING OFFICER CELLI: Mr. Boyd, is the video
3 that's is called La Cuna de Aztlan and is that posted on
4 the Internet?

5 MR. BOYD: I don't know. I do not believe it is
6 yet. The reason that I couldn't get it posted is because
7 Dockets Office couldn't accept a DVD, but I sent them a CD
8 this time. But I haven't heard back if they had any
9 issues with it.

10 MR. KLINE: This is George Kline, BLM I believe
11 it is on YouTube.

12 HEARING OFFICER CELLI: It's on YouTube. Can you
13 give us more identification?

14 MR. BOYD: Can you give us a link to the website?

15 MR. KLINE: I believe it's La Cuna de Aztlan.

16 HEARING OFFICER CELLI: Well, there you go, Mr.
17 Evenson, you can catch it on YouTube apparently, if you
18 look up La Cuna de Aztlan, A-z-t-l-a-n.

19 MR. EVENSON: I've got a link to the exhibits.
20 It might be on the CEC's website.

21 MR. BOYD: I sent it to the CEC, and I don't know
22 if they are capable of putting it on yet.

23 HEARING OFFICER CELLI: Boy, I'll tell you, the
24 last time I tried to put a video here on our website took
25 about six months to do, and they shrunk it down to about

1 the size of a quarter.

2 MR. BOYD: I could post the link. If they're
3 able to post the link, I could post the link. I don't
4 know if they could.

5 HEARING OFFICER CELLI: That might be useful.

6 MR. BOYD: And what I'll do is I'll send that

7 MR. EVENSON: I think there were other people in
8 the room that have since left that were interested in
9 seeing it also.

10 HEARING OFFICER CELLI: Now, they can go to
11 YouTube and see it.

12 Go ahead, Mr. Evenson, anything further?

13 MR. EVENSON: Well, that was it. I was saying if
14 the could post the link, I think that would suffice.

15 HEARING OFFICER CELLI: Okay. Well, thank you
16 for your comments tonight. And also, Mr. Kline, thank
17 you. Was there anything further you wished to say, Mr.
18 Kline?

19 MR. KLINE: No.

20 HEARING OFFICER CELLI: I'm sorry. Say again?

21 MR. KLINE: No. There is nothing else.

22 Thank you.

23 HEARING OFFICER CELLI: Thank you. Well, that
24 takes care of everybody who's on the phone and everybody
25 who's present.

1 If there's nothing further from any of the
2 parties -- I'm not seeing anything from anyone -- then the
3 record will be closed.

4 And, Mr. Commissioner Boyd, as the Presiding
5 Member, if would you adjourn the hearing.

6 PRESIDING MEMBER BOYD: Well, with all the
7 nervous people in the room with respect to the future of
8 their automobiles, I'll be brief.

9 Thank you, everybody. It's been an interesting
10 and informative day, an interesting and informative
11 process. And we look forward to reading additional
12 documents on this subject in the future when they're
13 filed. So thank you. And --

14 STAFF COUNSEL BABULA: Are there briefs, by the
15 way.

16 HEARING OFFICER CELLI: Briefs, yes.

17 PRESIDING MEMBER BOYD: That's what I had in
18 mind.

19 HEARING OFFICER CELLI: Of course, here's the
20 briefing schedule. If you wish to make a brief -- briefs
21 are not -- I don't know -- briefs will be do seven days
22 from the date of the availability of the transcript, just
23 like last time.

24 STAFF COUNSEL MAYER: There were two days that
25 the transcript was available, the first time, so I'd like

1 a confirmation of the actual date.

2 HEARING OFFICER CELLI: The subject matter that
3 was covered on day one on the 12th, was due seven days
4 after that transcript came off. The subject matter that
5 was due, that was --

6 STAFF COUNSEL MAYER: That was Friday.

7 HEARING OFFICER CELLI: -- on the 13th was due
8 seven days after that. And --

9 MS. BELENKY: That's not what I thought.

10 MS. KOSS: Actually, it was eight days. And it
11 seems a little ridiculous to have three briefs. Can we
12 just combine the hearings from the 12 and 13th into one.
13 And does anybody object to eight days from the release of
14 the 13th transcript?

15 MS. BELENKY: Well, because otherwise we'd get 20
16 each, and that wasn't what I understood.

17 MS. KOSS: Take it back on the briefs.

18 MR. GALATI: You just increase a lot.

19 HEARING OFFICER CELLI: The only issue that the
20 Committee was interested in hearing briefing was the ARRA
21 conditions issue. Now, that's mostly applicant's issue.
22 And the other parties will end up rebutting -- one moment,
23 please. We're off the record.

24 (Thereupon a discussion occurred off the record.)

25 HEARING OFFICER CELLI: Okay. I want to -- let

1 me just be clear again. Like just as with last time, the
2 briefs -- we had asked previously for briefing on any
3 impacts that appeared to be unmitigable, and that was from
4 last time. Again, that comes up in this context, which it
5 didn't in cultural. We would like briefing on that.

6 We want to hear -- the Committee needs to hear
7 about the ARRA conditions, how to deal with that
8 accelerated construction issue that was raised by ARRA.
9 Other than that, the parties are free to brief anything
10 they feel needs to be briefed. However, the parties are
11 limited to a 20-page maximum brief.

12 The briefs will be due -- and I guess it would be
13 humane of us to enable everybody to file their briefs in
14 the next seven days, you can file all of your arguments,
15 all of your briefs on that day, seven days from the date
16 that the transcript is made available.

17 The rebuttal will be due seven days from the date
18 of the filing of the opening brief. Is that clear?

19 MR. GALATI: I have a clarifying question. I
20 thought that you wanted two rounds of briefs. Are you now
21 saying you want one round of brief from today's
22 transcript? I thought the first round of briefs was eight
23 days from --

24 HEARING OFFICER CELLI: That's the way it was
25 originally set up.

1 MR. GALATI: And you're now changing that to say
2 the opening brief covers all topics, specifically
3 addressing the ones the Committee just asked for, but all
4 topics, and it is due seven days from the date the
5 transcript from this hearing is due, is that what you're
6 saying now?

7 HEARING OFFICER CELLI: Because you see there's a
8 little method to this madness. If you give me a 20-page
9 brief seven days from the date that this comes off, then
10 that will be the brief I receive. So if you want to put
11 everything in that one brief, there's your 20-page brief.

12 If you want to respond according to the original
13 timelines we gave you, which was a 20-page brief on the
14 12th, followed by the 20-page brief on the issues raised
15 on the 13th, followed by the 20-page brief on the issues
16 raised in this hearing, you could go with the original
17 schedule. I leave it to the parties.

18 STAFF COUNSEL MAYER: Staff would like Option 2.

19 MR. GALATI: Yeah, I just can tell you that I can
20 think of three reply briefs I'll be filing, based on
21 others choosing to do 60 pages of briefs now.

22 HEARING OFFICER CELLI: But they better be
23 timely.

24 MS. BELENKY: One do Monday, one due Tuesday and
25 then one --

1 HEARING OFFICER CELLI: That's right. I hope you
2 don't have that much to talk about.

3 MR. GALATI: I thought what you were saying last
4 time we were talking about this was that there would be
5 one brief that would take care of the 12th and 13th
6 transcript. And the only question we have is when does
7 the eight days start to run, from the 12th, from the day
8 that one was available or the day the 13th was available?
9 To me it makes sense that that would be one brief, and I'm
10 final with the eight days starting from Monday, which was
11 the date the 13th was available?

12 HEARING OFFICER CELLI: If you read the
13 transcript, the way that we set it up was that we were
14 going to have it be eight days from the date that the
15 transcript was made available, but there were two days of
16 transcripts, okay.

17 PRESIDING MEMBER BOYD: One hearing.

18 HEARING OFFICER CELLI: We've got three hearings
19 now.

20 MR. GALATI: I'll reply to what anybody files. I
21 mean I will file --

22 (Laughter.)

23 MS. BELENKY: And we get seven days to reply.

24 HEARING OFFICER CELLI: Right, seven days after
25 the opening briefs are received, then seven days for a

1 reply brief. And then that's it. We're not going to
2 entertain any further briefs after that.

3 Mr. Boyd.

4 MR. BOYD: On the ARRA issue, at the last break,
5 I was trying to get from your applicant, specifically --
6 my understanding is there's certain portions of the
7 project that can be, let us say, expedited to qualify for
8 the five percent, but there's other things -- and I was
9 like asking them specifically about the transmission
10 facilities, if that's one of the things they could do soon
11 for the road, and be eligible. And so it would be helpful
12 for me, if I'm doing a brief, to know which portions of
13 the project are even eligible under the ARRA that they're
14 seeking, so that I'm not briefing on something that's
15 irrelevant.

16 HEARING OFFICER CELLI: That's a good question.
17 And let me be clear, you will not be briefing that.
18 You're probably going to be rebutting their brief.
19 They're going to come out with a brief in seven discussing
20 these issues, and then you're going to write a responses
21 to the brief that will be due seven days after that.

22 MR. BOYD: Thank you.

23 MR. GALATI: And I just want it to be clear
24 again, we keep throwing this in as an ARRA thing. It is a
25 large site thing okay, where construction will take place

1 in a method such that the plans could be staged based on
2 that resource area by the CPM. This is not what can we do
3 on the site in an expedited fashion for you guys to
4 approve and get us out there quickly, so that we can
5 qualify for ARRA funding. We will handle that by just
6 having the flexibility in the plans that are submitted.
7 We're not asking you to change any condition, other than
8 just empower the CPM to accept that maybe my stormwater
9 pollution prevention plan is far more detailed on the road
10 and the first part of our grading, and is vague on the
11 others, so that the CPM could have a second submittal to
12 get that specificity in later. Those are the kinds of
13 things we want the CPM to be able to do.

14 And this turned into, we want to put the well in,
15 so we can qualify kind of concept, which is not what
16 Genesis is proposing. Others have. That's not what we're
17 proposing.

18 HEARING OFFICER CELLI: Well, we'll read about
19 that in the brief.

20 MR. GALATI: So nobody needs to know anything
21 crazy that we're doing, that we're only going this, okay.
22 That's not what we're doing here.

23 HEARING OFFICER CELLI: Okay. Well, we'll see.

24 PRESIDING MEMBER BOYD: I think that's a fair
25 statement, because that is the way it was introduced to us

1 earlier, and it did kind of morph into an ARRA thing.

2 HEARING OFFICER CELLI: Very clear.

3 Anything further from any of the parties?

4 PRESIDING MEMBER BOYD: Well, if it's all clear
5 to you, then thank you all. --

6 MR. BOYD: Clear as mud.

7 PRESIDING MEMBER BOYD: This hearing is
8 adjourned.

9 (Thereupon the hearing adjourned at
10 6:36 p.m.)

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