

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Abengoa Mojave)
Solar Project) Docket No.
) 09-AFC-5
_____)

CALIFORNIA ENERGY COMMISSION

1516 9TH STREET

HEARING ROOM A

SACRAMENTO, CALIFORNIA

MONDAY, JUNE 28, 2010

10:06 A.M.

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COMMITTEE MEMBERS PRESENT

Anthony Eggert, Commissioner, Presiding Member

James D. Boyd, Vice Chair, Associate Member

HEARING OFFICER

Kourtney Vaccaro

ADVISORS

Sarah Michael

Lorraine White

STAFF AND CONSULTANTS PRESENT

Christine Hammond, Counsel

Craig Hoffman, Project Manager

Mike Conway, CEC staff

Christopher Dennis, CEC Staff

Jennifer Jennings, Public Advisor

Heather Blair, consultant

Gus Yates, HydroFocus

John Fio, HydroFocus

APPEARANCES (continued)

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Christopher Ellison
Shane E. Conway

Abengoa Solar
Christopher B. Hansmeyer
Frederick H. Redell
Alice Karl
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Vic Kelson
Jack Witmann

LOCAL GOVERNMENT

Bart Brizzee, County of San Bernardino
(via telephone)

Tonya Moore, California Department of Fish & Game
(via telephone)

Robert Wagner, Mojave Basin Watermaster

Eric Weiss, California Department of Fish & Game
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1 PROCEEDINGS

2 COMMISSIONER EGGERT: Good morning, everyone. My
3 name is Anthony Eggert, and I'm the presiding member on
4 this case.

5 This is the evidentiary hearing for the proposed
6 Abengoa Mojave Solar Energy Project.

7 I am accompanied by my fellow Commissioner James
8 Boyd, who's the associate member to this case.

9 Also, we have up here at the dias advisor to
10 Commissioner Boyd, Sara Michael. My advisor to my left
11 here is Lorraine White. And this hearing is going to be
12 overseen by a very capable hearing officer, Kourtney
13 Vaccaro.

14 I think we'll take introduction from the parties.

15 I would just say before getting started, very
16 much looking forward to a good, expeditious, and fair
17 hearing today. Make sure we get through all the issues in
18 an expedited fashion. I think we had a good pre-hearing
19 conference last week to prepare for this hearing today.
20 And I think we're in pretty good shape.

21 In terms of the Commission staff, go ahead and
22 introduce.

23 MS. HAMMOND: Good morning. I'm Christine
24 Hammond, Senior Staff Counsel for Commission staff.

25 To my right is Craig Hoffman, the project

1 manager.

2 COMMISSIONER EGGERT: Okay. And from the
3 applicant?

4 MR. ELLISON: Good morning. Chris Ellison,
5 Ellison, Schneider, and Harris on behalf of the Abengoa
6 Solar.

7 To my right is Shane Conway, also Ellison,
8 Schneider, and Harris representing Abengoa Solar.

9 And to her right, Fred Redell, project manager.

10 We have a number of other witnesses and
11 representatives of the company in the audience who will be
12 introduced as needed as we go forward.

13 COMMISSIONER EGGERT: Okay. From CURE? Anybody
14 in the room or on the phone from CURE? Elizabeth
15 Klebaner? Nope. Okay.

16 County of San Bernardino, Bart Brizzee? Anybody
17 else from county of San Bernardino? Nope.

18 Anybody on the line or in the room from Luz Solar
19 Partners? Nope.

20 Okay. Let's see. Public officials or government
21 agencies? We had representation from Department of Fish
22 and Game. Is there anybody from any other State or
23 federal agencies? Nope.

24 Actually, do we have anybody from the Mojave
25 Water Agency on the phone? Nope.

1 MS. HAMMOND: Commissioner, we have Mr. Robert
2 Wagner. He is available to answer questions about the
3 adjudication. And he is here in the audience.

4 COMMISSIONER EGGERT: Excellent. Welcome.

5 Also want to introduce our public advisor,
6 Jennifer Jennings. Actually, she may have just stepped
7 out for a second. When she comes back in, we'll point her
8 out.

9 And then I think I'd like to ask to see if my
10 fellow Commissioner has any words before we get this
11 started today.

12 COMMISSIONER BOYD: Thank you, Commissioner
13 Eggert.

14 It's good to be back at work. People in the
15 audience should know that I'm suffering from three weeks
16 vacation.

17 So in any event, I look forward to today's
18 hearing. And this is the first chance the Commissioner
19 and I have had to sit on this case together. It started
20 out with a different team. And I welcome him to the
21 group. And I feel gratified that he is the presiding
22 member. It's a good way to learn.

23 In any event, I know we will have a series of
24 questions, so I won't get into any particulars. I will
25 just confess to being interested and concerned about the

1 water issue. And that's just a product of having spent so
2 much of my working life associated with California's water
3 resources. So there will be some questions in that arena,
4 but I think we should get going. Thank you.

5 COMMISSIONER EGGERT: Okay. I'll turn it over to
6 Hearing Officer Vaccaro.

7 And also just want to thank Mr. Wagner for being
8 here today to answer questions. Appreciate you taking
9 time out of your schedule.

10 HEARING OFFICER VACCARO: Good morning. I think
11 Ms. Jennings, who was previously identified as being the
12 public advisor, and we indicated when she walked in the
13 room we'd also let you know who she is by maybe her waving
14 her hand. She left the room to find out whether or not
15 the intervenor CURE, who is a party to this action, has
16 attempted to call in and had to difficulty calling in. We
17 had some problems with the phone number this morning. So
18 I'm going to find out if we might have CURE on the phone
19 at this point or if anyone else might have joined us on
20 the phone line. No.

21 So what I'd like to do -- again, I certainly
22 apologize for any delays, but Ms. Jennings will return in
23 just a few moments. And I just want us to go off the
24 record and pause for a few moments to see if we do have
25 our additional party who has been present throughout all

1 of the proceedings to date. It's very odd they are not
2 represented today. So just if you could be patient for
3 another two or three moments, we'd greatly appreciate
4 that.

5 (Off the record)

6 (Thereupon all prospective witnesses were sworn.)

7 HEARING OFFICER VACCARO: Great. Thank you.

8 I think what we'll do just so we get a sense of
9 who it is we're speaking with this morning, starting there
10 with the gentleman in the burgundy tie, if you would just
11 please go ahead and introduce yourself. Give us your
12 name. We don't need to have you give us a description of
13 your qualifications. And we don't need you to summarize
14 your testimony at this point either. But if you'd just
15 identify who it is that you are, that would be helpful to
16 us.

17 MS. HAMMOND: I beg your pardon, Hearing Officer
18 Vaccaro. We do have four witnesses, not three.

19 HEARING OFFICER VACCARO: Refigured. Thank you.

20 MR. CONWAY: Hi. My name is Mike Conway. I'm
21 with the soil and water group here at the CEC.

22 MR. YATES: Gus Yates with HydroFocus, a
23 consultant to staff here at CEC.

24 MR. FIO: John Fio with HydroFocus, consultant to
25 staff.

1 MR. DENNIS: Christopher Dennis, technical staff,
2 Energy Commission.

3 MR. WITTMAN: I'm Jack Wittman with Layne
4 Christensen. And we're the consultants on water for
5 Abengoa.

6 HEARING OFFICER VACCARO: Thank you.

7 MR. KELSON: I'm Vic Kelson. I'm with Layne
8 Christensen also.

9 MR. REDELL: Fred Redell, Abengoa Solar.

10 MR. HANSMEYER: I'm Christopher Hansmeyer,
11 general counsel for Abengoa.

12 HEARING OFFICER VACCARO: Okay. And Mr. Wagner
13 is where? Would you mind coming to the podium, please?
14 Thank you. And you need to press the button so you get a
15 green line.

16 One thing again before we proceed -- and thank
17 you all so much for the introductions.

18 Ms. Jennings did remind me that because we have
19 people on the telephone, it's really important that they
20 know who's speaking at any given time. So it is a habit
21 that most of us aren't accustomed to, but if you would
22 please state your name before you speak into the
23 microphone, that would be very helpful. And it would be
24 helpful for the transcript as well.

25 So Mr. Wagner, if you could please briefly

1 identify yourself.

2 MR. WAGNER: I'm Robert Wagner. I am the
3 engineer for the Mojave Basin Area Watermaster.

4 HEARING OFFICER VACCARO: Okay. And if you
5 wouldn't mind, just by way of background for the
6 Committee -- and again, this is for everyone's benefit.
7 The Committee is interested in clarification and just
8 understanding and having the same understanding that all
9 of the rest of you do with respect to the facts. No one
10 is being put on the hot seat today. This is a matter of
11 answering and asking questions so that we can get some
12 clarification. So I just want to ensure that we all
13 understand the spirit, the intent, and the tone of the
14 questions that are going to be coming from the Committee.
15 They're primarily coming from me, and I'm hardly
16 threatening. But I just want to make sure that we're all
17 understanding it's for clarification purposes.

18 MR. ELLISON: Hearing Officer Vaccaro, that's a
19 good segue into -- we have a brief statement of counsel
20 that I would like to make. We can make that at whatever
21 time you deem appropriate, now or later.

22 HEARING OFFICER VACCARO: On the topic of water
23 resources? Yes. Why don't we go ahead and let Mr. Wagner
24 finish his introduction, and then I think we'd be pleased
25 to hear what you have to say to sort of set the playing

1 field.

2 MR. WAGNER: Besides my name and affiliation,
3 what else would you like to hear from me?

4 HEARING OFFICER VACCARO: Well, I think if you
5 could please explain for us your relationship with what
6 we've been referring to as the Watermaster, what your role
7 is. Because you are not, in fact, the Watermaster. And
8 there's no one individual who holds that position as I
9 understand it. It's an agency. And you are here as an
10 agent of the Watermaster to help us understand. So I
11 think for purposes of the record, it's better to hear it
12 from you than to hear my very truncated summary.

13 MR. WAGNER: I will try to keep that description
14 brief.

15 The Mojave Water Agency sits as a court-appointed
16 Watermaster. And the Board of Directors of the Mojave
17 Water Agency are effectively appointed collectively as the
18 Watermaster. So the Board of Directors is a collective
19 unit. The Watermaster individually, of course, they're
20 elected, and they represent districts within the Mojave
21 Water Agency boundary.

22 As Watermaster, the Board operates as one unit as
23 an arm of the court to implement the terms of the
24 judgment, the Mojave basin area judgment, which
25 adjudicated the water resources of the Mojave Water

1 Agency. Administrative boundary and the hydrologic
2 boundary effectively drain to the Mojave river, including
3 its groundwater basins.

4 So the Board of Directors, actually the
5 Watermaster, my function as its engineer is to interpret,
6 implement, develop programs for the judgment largely to
7 manage the water resources. It's my function annually and
8 as requested to report back to the court. I file an
9 annual report and monthly report to the Watermaster and
10 regularly throughout the month work with staff to
11 implement the judgment working with all the parties in the
12 area.

13 HEARING OFFICER VACCARO: Thank you. That was a
14 great introduction. I think that gives us some context.

15 I've been reminded that I was somewhat remiss. I
16 was so focused on the individuals sitting around the table
17 being sworn in that before you actually start answering
18 some of our questions, it's important that you are as
19 well. So if you'd please have the court reporter swear
20 you in.

21 (Thereupon Mr. Wagner was sworn by the reporter.)

22 HEARING OFFICER VACCARO: Okay. Mr. Ellison, did
23 you want to go ahead and give your statement?

24 MR. ELLISON: Yes. Thank you. Very briefly.

25 I want to reiterate something that we said at the

1 pre-hearing conference, which is that Abengoa in order to
2 pragmatically move this case forward and meet the
3 deadlines for funding has agreed to some staff conditions
4 that we feel strongly are not required to bring this
5 project into compliance with applicable laws or to
6 mitigate any impact under CEQA. And I want to reiterate
7 that here for two purposes.

8 First, for future cases, I don't want our
9 agreement to those conditions to be cited as evidence that
10 those types of conditions are required to comply with
11 applicable law.

12 And secondly, to say that we did that with the
13 belief that that would take these water issues off the
14 table and move this case forward.

15 If for some reason that turns out not to be the
16 case, given the testimony that we are taking today and the
17 Committee's questions -- and we don't know what that will
18 be or lead to -- but I do want to make very clear that our
19 agreement to those conditions and our withholding of
20 certain arguments and testimony that we were otherwise
21 going to present was conditioned on the understanding that
22 it would resolve the issue.

23 So if it turns out that's not the case, we may
24 ask the Committee to consider further argument. There's a
25 couple of court cases, for example, that I think goes

1 directly to these questions of whether an adjudication
2 defines the applicable law that the Commission needs to
3 enforce and things of that nature. It's certainly our
4 very strong belief that the adjudication does define the
5 applicant's water rights in this case and that that's a
6 law the Commission is bound by and needs to enforce.

7 Thank you very much.

8 HEARING OFFICER VACCARO: Okay. Thank you.

9 Staff, do you have anything at all that you
10 wanted to say?

11 MS. HAMMOND: Not at this time.

12 HEARING OFFICER VACCARO: Okay. Thank you.

13 Mr. Ellison, we understand your position. I
14 think it's been made clear in the papers and again at the
15 pre-hearing conference. Our goal today truly is to get
16 clarification to some questions. And if, in fact, what
17 that leads to is potential briefing or anything else that
18 might be required, we would certainly give everyone a full
19 and fair opportunity to address that. But at this point,
20 it really is a matter of ensuring that the Committee is
21 understanding the information as everyone intended to
22 present it and that we understand it in the same way.

23 MR. ELLISON: That's fine. And that's what we
24 understand.

25 HEARING OFFICER VACCARO: So Mr. Wagner, since we

1 have you for such a short amount of time, I think we'll
2 begin with you. And you did in your introduction give us
3 a sense of the adjudication and what it is. But could you
4 maybe briefly summarize for us with a little more detail
5 though what the adjudication is and what the Watermaster's
6 rule is with respect to the adjudication?

7 MR. WAGNER: Yes, Ms. Vaccaro. Let me back up in
8 time and do a brief history of how we got to the
9 adjudication and where we are now.

10 In 1991, the city of Barstow filed a lawsuit
11 naming all of the upstream pumpers as defendants claiming
12 that they impaired the water supply of the city of
13 Barstow. At that time, water levels had been falling and
14 falling in the desert for quite a while. There was a
15 perception of overdraft and overdraft was real. There was
16 a number of problems. And the parties somebody wanted to
17 do something about it.

18 1991, Mojave Water Agency filed a cross-complain
19 which effectively became the case that we have now as the
20 adjudication. What the cross-complain did was named all
21 the parties in the adjudicated area and some of the
22 parties the city of Barstow didn't name. And we went
23 through the process of attempting to identify all of the
24 hydrologic issues, resources that were related to water
25 supply and then attempted to adjudicate them.

1 The case went to trial. The court fashioned
2 physical solution, actually adopted the one that the
3 Mojave Water Agency and other parties presented. That
4 ultimately was appealed by five parties and was overturned
5 in part on appeal. The part that was upheld was the good
6 part, and that is the implementation of the physical
7 solution that was adopted with the appellant court
8 decision. And subsequently what the supreme court
9 decision said was we couldn't bind people to what is
10 effectively a contract without their permission, make it
11 very simple.

12 So relative to all of the other parties, and
13 there were about 500, the judgment was in fact, and all of
14 those issues were settled around 2001 finally.

15 And we have functioned as a Watermaster
16 effectively managing the water resources of the agency
17 under the jurisdiction of the court since the Watermaster
18 was organized in 1993. And there's still roughly 500
19 parties. And this is a very large area of something on
20 the order of 4,000 square miles. I think the number is
21 actually 38 or 3900. Encompasses a significant
22 geographical area, mountains, desert. Of course, the
23 Mojave River from the San Gabriel mountains runs out
24 through the desert out about 90 miles through Baker and
25 discharges through abnormal storm events.

1 The water supply is varied. It's solely a
2 function of precipitation and runoff in the mountains and
3 then recharged to the groundwater basins through the
4 river.

5 HEARING OFFICER VACCARO: Are you familiar with
6 what the applicant's rights are under the adjudication?

7 MR. WAGNER: Yes.

8 HEARING OFFICER VACCARO: Could you explain sort
9 of what your understanding of their rights are?

10 MR. WAGNER: The applicant is identified in our
11 court documents is Abengoa Solar, I believe. And they
12 hold what is referred to as a base annual production of I
13 think the number is 10,470 acre feet as of this moment.
14 And that is -- that base annual production is effectively
15 a number, a pumping right that allows them the opportunity
16 to pump water under certain conditions that are imposed by
17 the judgment and is really more like a ranking relative to
18 all of the other producers in the basin.

19 The primary purpose of the judgment was to
20 allocate water supply equitably. And the easiest way to
21 do that under the constraints that existed at the time the
22 adjudication was developed was to figure out what
23 everybody was doing at some point in time and then rank
24 them relative to one another, and then pro rata share of
25 the yield based on that ranking. So in the case of

1 Abengoa, they have their 10,478 acre feet represents a
2 proportionate share of the yield of the area they pump
3 from.

4 HEARING OFFICER VACCARO: Is there a
5 relationship? And if so, could you explain the
6 relationship between what you were discussing -- I'll use
7 the acronym BAP -- and the free production allowance and
8 how that applies to the applicant?

9 MR. WAGNER: Yes. My apologies. Base annual
10 production, BAP. Free production allowances is a
11 derivative of the base annual production. The derivative,
12 it's a percentage. What it means essentially is the
13 amount of water that a party to the judgment can pump
14 without incurring the obligation to buy replacement water
15 from Watermaster. So free production allowance, the
16 amount you can pump for free, essentially without having
17 to replace it.

18 And the derivative directly from BAP base annual
19 production is effectively the right is related to a
20 concept called ramp down where we, Watermaster, reduces
21 the available free production allowance on an annual basis
22 as needed with the goal of balancing supply and demand.
23 So in this case, currently the free production allowance
24 is 80 percent of the base annual production amount.

25 HEARING OFFICER VACCARO: Thank you.

1 These are pretty generic questions. I have one
2 more specific to the project. And if the answer to the
3 question is no, that's fine. Again, the goal is not to
4 put anyone on the spot. We have other witnesses who can
5 certainly I think answer the question.

6 But have you or anyone to your knowledge on
7 behalf of the Watermaster reviewed the proposed
8 sequestration conservation measure that's being discussed
9 in the context of this project?

10 MR. WAGNER: We've had a couple different
11 discussions with staff regarding that concept over the
12 past several weeks, several months.

13 HEARING OFFICER COTE: Could you tell us your
14 understanding of -- were you a participant in those
15 conversations or you just anecdotally know about them?

16 MR. WAGNER: No, I was a participant in the
17 conversations. The concept from the staff's point of
18 view -- and I'm sure they can tell you their ideas better
19 than I can. But relative to us, Watermaster was to set
20 aside sufficient free production allowance so that if it
21 was somehow determined that there was an unforeseen impact
22 or say a lowering of the groundwater table that was
23 undesirable and unforeseen, there would be enough cushion
24 in the free production allowance that had been sequestered
25 to mitigate it.

1 Said a different way, it's an amount of water
2 that won't be pumped as long as the project is -- through
3 the life of the project.

4 HEARING OFFICER VACCARO: And is that something
5 that actually involves the Watermaster to do something, to
6 engage in monitoring, to somehow play a role in ensuring
7 or verifying whether or not the water is, in fact,
8 sequestered?

9 MR. WAGNER: The Watermaster will take into
10 consideration, of course, whatever terms are put in the
11 permit when Abengoa or another party comes to us for an
12 action that requires Watermaster's participation, for
13 example, a transfer of free production allowance. And we
14 would certainly give consideration to whatever the terms
15 and conditions are from an outside agency.

16 Watermaster doesn't really have that requirement,
17 that requirement being that you set aside free production
18 allowance for -- that you don't pump water -- we'll call
19 it sequestration. We don't have that mechanism. Our
20 mechanisms are a little bit different. The difference is
21 the main tool Watermaster has to control over pumping is
22 ramp down and also the purchase of supplemental water.

23 In the case of Harper Lake, it's not a -- let's
24 say it's not viable. It's not come to fruition yet,
25 because there aren't facilities to deliver water. But if

1 pumping was continued -- water levels continued to fall or
2 continue to be negative consequences, Watermaster would
3 take the steps necessary, report to the court there may
4 need to be additional ramp downs.

5 We also adjust pumping rights according to uses.
6 And this is a provision that directly -- you know, it's a
7 requirement of the judgment. If a pumping right was
8 developed for a certain purpose and the water is going to
9 be used for a different purpose, Watermaster makes an
10 adjustment to account for the potential impact from
11 changing purpose of use.

12 For example, an agricultural use likely has a
13 larger percentage of return flow to the groundwater body
14 than an industrial use, one where water is used
15 exclusively for evaporation. On the one hand, the
16 consumptive use is probably 100 percent. Let's back up a
17 little bit on consumptive use. The amount of water pumped
18 out of the ground and applied to a use if all of it is
19 evaporated, we would say it's 100 percent consumptively
20 used. If some of it returns through the soil through
21 percolation, that portion of it would be subtracted from
22 100 percent. It would be less than 100 percent
23 consumptive use.

24 We can go into detail on that if you'd like. I
25 just want to be clear that we're talking about two

1 different things, water produced and water consumed.

2 So we do make an adjustment for purpose of use to
3 mitigate -- essentially to mitigate impacts.

4 HEARING OFFICER VACCARO: Okay. And I don't mean
5 to belabor this point, and perhaps I'm not being very
6 articulate in my questioning and I apologize for that. If
7 at some point in time the Committee, the Commission, or a
8 third party wanted to get a sense of verification that
9 sequestration was taking place and this water, in fact,
10 wasn't getting pumped, how would someone be able to do
11 that? Would they go to the Watermaster to get data? Do
12 you keep any of that kind of data logs, anything? Would
13 you on behalf of the Watermaster or someone else on behalf
14 of the Watermaster have any of that type of information?

15 MR. WAGNER: Not quite certain that I understand
16 the intent of your question. And it's probably me who's
17 not articulating the answering, not you are not
18 articulating the question.

19 Watermaster keeps detailed records of water
20 consumption, water production through whatever means is
21 available to us actually on a quarterly basis and all
22 elements that effect water supply and use to the extent
23 data is available to us. And we keep detailed track of
24 the free production that has been transferred and is
25 currently in play. So if it's being pumped, we know about

1 it.

2 Enforcing -- if I understand your question,
3 enforcing a condition of your permit isn't something
4 specifically that we would do. Our review on an annual
5 basis would be how much water is being pumped, whether
6 it's consistent with the available free production
7 allowance, whether water levels were rising or falling.
8 We would certainly make notes in our records that some
9 portion of the free production allowance has been
10 sequestered. That's something we would know. Now whether
11 we would take action, I think we would expect you to do
12 something if it was your permit.

13 HEARING OFFICER VACCARO: Exactly. And the
14 enforcement aspects of it, in fact, are not even something
15 that we're focused on articulating now. But did you
16 answer the question, which is essentially that there's
17 recordkeeping that the Watermaster engages in that does
18 provide specific data with respect to pumping? And that's
19 something that would then allow a third party to get a
20 sense of here's how much is being pumped, here's what's
21 not being pumped by the district with respect to the
22 project.

23 Great. Thank you.

24 MR. ELLISON: Can I just note for the record that
25 the witness nodded yes to that last question.

1 HEARING OFFICER VACCARO: Thank you.

2 COMMISSIONER EGGERT: So actually I'll just make
3 a quick comment. This is extremely useful and valuable
4 for somebody who doesn't have a long history in California
5 water policy. I guess I would invite maybe through this
6 period of questioning or maybe at the end if -- is it Mr.
7 Ellison? You made the comment about the stipulation to
8 some of the conditions for purposes of moving this case
9 forward and that some of those were done explicitly to
10 move the case forward. If you are inclined to do so, I
11 would be interested, and I suspect Commissioner Boyd would
12 be as well, to understand what those conditions that you
13 think perhaps should be considered as we look to future
14 cases. Because I think a lot of this is trying to
15 understand what's going on with respect to this case. We
16 have a lot of other cases going on with solar development,
17 including issues concerning water. And to understand your
18 position on those items, I think would be useful if you're
19 willing to share those. But I leave that up to you.

20 MR. ELLISON: We're happy to articulate that or
21 not as the Committee directs.

22 I do want to make clear we are agreeing to all
23 the staff's conditions. I certainly wasn't trying to be
24 ambiguous about that for the purposes of this case. And
25 we did that for the purpose of moving the case forward and

1 keeping to the schedule. And so the issues that you
2 describe we don't think are necessary to the Committee's
3 decision in this case. We don't want this case to become
4 a sort of test case for renewable water policy in
5 California, because that would defeat the purpose of
6 moving it forward. But we are happy to respond to any
7 questions you may have or to articulate the issues that
8 you've described.

9 HEARING OFFICER VACCARO: Okay, Mr. Wagner, thank
10 you for your patience.

11 COMMISSIONER BOYD: Excuse me. Just a thought
12 before he steps away, if I might ask a question.

13 In reading the staff's proposed verification
14 requirement regarding sequestration, it is that it would
15 be documented in the annual compliance report to submit it
16 to our project manager? And it will have annual and
17 cumulative totals.

18 And I guess the question is, since you indicated
19 there is no required reporting to you of this information,
20 is this something that's going to find its way to you in
21 terms of any discussion you've had with the staff? Or is
22 this data -- I think it would be of interest to you but
23 not -- well, let's just say not in a binding sense. I'm
24 just wondering, our staff will be collecting the data. Is
25 it our intention to pass that information on to the

1 Watermaster as just part of the general information they
2 might be interested in? Or am I missing something here
3 and that data is going to be available to them through
4 some mechanism that's not clear to me yet? So I guess
5 this is a question almost directed to staff or to Mr.
6 Wagner while he's still at the podium.

7 MR. WAGNER: Well, I can make a fairly simple
8 recommendation from our standpoint. The data we will
9 collect is what we always collected. And for this
10 discussion, water production data will figure out how much
11 water is being pumped. And there are requirements that
12 the applicant has under the judgment to provide us with
13 fairly detailed information. And if we're not happy with
14 it, we'll ask them for more. And they have a requirement
15 under the judgment to provide that. There's a couple of
16 reasons for that. One, they pay assessments on it. So
17 they are actually -- they pay a charge based on the amount
18 of water they pump. So they have an interest, as does the
19 court and the Watermaster has an interest, in having the
20 good water production, good detailed water production
21 data.

22 As far as the issue that you're concerned with on
23 the sequestration, it's relatively easy for us to figure
24 it out. The algebra is pretty simple. It's just not
25 something that is a requirement that we have. If your

1 staff wants to send us its annual report on, we would be
2 happy to have it and certainly as the normal course of our
3 activities take notice of it.

4 COMMISSIONER BOYD: Okay. Thank you.

5 HEARING OFFICER VACCARO: We did have I think one
6 additional question for you, Mr. Wagner. And again,
7 forgive the unartful phrasing, because you're an expert in
8 this and I certainly am not.

9 With respect to the sequestered water and the
10 assumption is that sequestered water is water that is not
11 going to be pumped or used. But how is the Watermaster
12 going to look at that? Is there a right of access or
13 right of use or appropriation that the Watermaster might
14 have with respect to that sequestered water?

15 MR. WAGNER: Well, the short answer is no. The
16 mechanism -- let's say there's not -- let's just say you
17 don't have sequestration. There is a project. They're
18 going to pump a certain amount of water. They want to use
19 their available free production allowance. We would do
20 the consumptive use required by the judgment. We might
21 ask -- as we have some other cases, we might ask the
22 applicant to tell us the amount of water you are going to
23 use for a given purpose. We don't have to do that, but we
24 can.

25 But generally we would make a consumptive use

1 adjustment so we know the amount of water that's going to
2 be pumped relative to the consumptive use conditions that
3 existed when the base annual production right was
4 determined. And if that over time was to cause water
5 levels to fall, some negative impact -- but water level is
6 the easiest thing to measure -- to continuously fall, we
7 would -- compelled might be a little too strong. Under
8 certain conditions of the judgment, we're compelled to
9 recommend to the court that we continue to reduce the free
10 production allowance until we get to a balanced water
11 supply condition where demands equal supply. So the
12 judgment itself has an automatic -- kind of an automatic
13 reset. If we don't have the sequestered water, too much
14 water is being pumped, we will get to balanced water
15 supply and demand conditions eventually.

16 HEARING OFFICER VACCARO: Thank you.

17 Unless the Committee has any further questions
18 specifically for Mr. Wagner, I think you're free to go.

19 COMMISSIONER EGGERT: I just want to thank you
20 again very much. I understand you're on a tight time
21 schedule to move on to perhaps more interesting activities
22 later today. So very much appreciate you coming here
23 today to be with us to answer these questions.

24 HEARING OFFICER VACCARO: Mr. Ellison, you look
25 like you've got something to say. So why don't you go

1 ahead.

2 MR. ELLISON: Yes, thank you. We have a couple
3 of questions for Mr. Wagner, if that would be permitted.

4 HEARING OFFICER VACCARO: And they're sort of in
5 the same nature of the questions, not in the nature of the
6 cross, but just sort of an understanding clarification?

7 MR. ELLISON: Precisely.

8 HEARING OFFICER VACCARO: That would be fine.

9 MS. CONWAY: Thank you.

10 Mr. Wagner, when you balance supply and demand,
11 does that ensure that pumping in the basin including in
12 the future the projects pumping avoid adverse impact to
13 the health of the basin?

14 MR. WAGNER: Well, the idea of balancing supply
15 and demand is to avoid adverse impacts. Whether we
16 absolutely make that happen, I don't know. But that is
17 certainly the intent of the judgment, yes.

18 MS. HAMMOND: And Hearing Officer Vaccaro, I'd
19 like to object to that question and the answer on whether
20 or not pumping or any action is an adverse impact as going
21 to a legal conclusion. It involves the California
22 Environmental Quality Act, and I don't think that's
23 appropriate for Mr. Wagner to respond to that.

24 HEARING OFFICER VACCARO: What I'm going to do is
25 overrule the objection. And here's what I'd like to see

1 happen. What this is again is not about direct testimony,
2 cross, redirect, recross. What we're trying to do is
3 solicit information.

4 Your concern is a valid concern in that some of
5 these issues that we're discussing necessarily involve
6 mixed law and fact. What Mr. Wagner is doing is giving
7 his opinion as a layperson of what this entails. And he
8 has a role. He has some understanding of what's going on
9 with respect to the adjudication in the ground basin. His
10 opinion is a valid opinion. The weight that's given to
11 that opinion, whether or not it's treated as evidence and
12 whether or not we are willing to look at it as a legal
13 conclusion is something that the Committee knows how to
14 and will go through as it's going through all of the
15 evidence and all of the information in the record.

16 MS. HAMMOND: Thank you for the clarification and
17 qualification.

18 MS. CONWAY: Mr. Wagner, I have just a few more
19 questions.

20 Is the intent of the judgment to maintain
21 production (inaudible)?

22 MR. WAGNER: A short answer is yes. I should
23 explain that a little bit. Let's say that's the goal of
24 the judgment.

25 MS. CONWAY: Is the judgment consistent with

1 California state water law and policy?

2 MR. WAGNER: Well, the judgment certainly was
3 developed within the context of balancing supply and
4 demand. Watermaster takes things like conservation very
5 seriously. Beneficial use -- reasonable and beneficial
6 use are concepts imbedded in the judgment. So to the
7 extent the fundamental -- if the fundamental water law is
8 reasonable and beneficial use, yes, it's consistent.

9 MS. CONWAY: Thank you.

10 Just one more. Does the Watermaster administer
11 the judgment in accordance with those terms?

12 MR. WAGNER: Yes.

13 MS. CONWAY: Thank you.

14 HEARING OFFICER VACCARO: Ms. Hammond, did you
15 have any clarifying questions that you would like to ask
16 of Mr. Wagner?

17 MS. HAMMOND: Yes, I do. Just one question.

18 Mr. Wagner, you mentioned that the Watermaster
19 does not normally require, as we're phrasing it,
20 sequestration. Is the Watermaster empowered to require
21 sequestration?

22 MR. WAGNER: That's a very interesting question,
23 Ms. Hammond. The Watermaster has in some respects very
24 narrow latitude in how it implements and interprets the
25 judgment and how it implements it. But that's fairly wide

1 latitude in the kind of things it can take an action on.
2 All of them have to go back to court eventually for
3 approval no matter what they are. The provision of the
4 judgment that gives a little bit of wide latitude for
5 something like that is the need to always protect the
6 basin and to ramp down and make consumptive use
7 adjustments.

8 So I don't think it would be -- well, let me say
9 it this way. I don't think -- in fact, I know we have not
10 told an individual party that you can't pump part of your
11 water right unless it's within the construct of the
12 judgment. Typically, that kind of action comes from a
13 condition that's placed on a sub-area through ramp down
14 and the condition on third party through consumptive use
15 adjustment for a specific project.

16 So the question you asked me is could we do that?
17 Could we take a certain project and say we want more than
18 what's actually required by the judgment? Yes, I think we
19 could.

20 MS. HAMMOND: Thank you.

21 COMMISSIONER BOYD: I have a couple questions.

22 Mr. Wagner, since the judgment was made and this
23 became an adjudicated groundwater basin, has it
24 consistently been in a surplus position or in a deficit
25 position or does it -- has it gone back and forth since

1 the beginning of this process?

2 MR. WAGNER: There are five sub-areas in the
3 adjudicated area. To a greater extent or lesser extent,
4 depending on which ones we're looking at, they're
5 interconnected. Not one of the basins has been in a
6 straight surplus condition relative to the long term
7 average yield probably since the -- probably since the
8 judgment was filed in 1996. The upper basin where most of
9 the pumping is and really most of the economic activity
10 occurs was in a state of overdraft for a long time and
11 since implementation of the judgment has achieved what we
12 consider to be a rough balance, certainly a balanced
13 hydrologic condition relative to the judgment. And on an
14 annual basis, we see water levels in various parts of the
15 upper basin falling and rising depending on geologic and
16 hydrologic conditions. Since about five years ago, the
17 upper basin has been roughly in balance. The lower basin
18 is out of balance and has remained so for 50 or 60 years.

19 The area that is of interest here, the middle
20 basin, centro sub-area, it's known in the judgment and
21 Harper Lake is a part centro sub-area. And it responds
22 hydrologically a little differently. We have seen it
23 being the Harper Lake area, seen water levels recover in
24 some wells as pumping stresses have been reduced. And
25 then in other areas, we are still seeing water level

1 decline.

2 So I think the question is -- I think the short
3 question is how are we doing out there? Are things going
4 up or are they going down? What's happening since the
5 adjudication? And I think generally speaking it's as
6 expected and been pretty positive.

7 COMMISSIONER BOYD: One last broader question.
8 It's actually been a long time since I was in the water
9 business. To me, having an adjudicated groundwater basin
10 is a little unusual. Is this kind of the exception rather
11 than the rule with regard to groundwater basins throughout
12 California?

13 COMMISSIONER BOYD: Virtually every groundwater
14 basin in southern California has been adjudicated. And if
15 there is one out there that hasn't, somebody needs to get
16 busy I think. So it's quite common in southern
17 California.

18 COMMISSIONER BOYD: Thank you very much.

19 HEARING OFFICER VACCARO: Thank you, Mr. Wagner,
20 for taking the time.

21 MR. WAGNER: Thank you for having me early.

22 HEARING OFFICER VACCARO: Now we have a few
23 questions that are specific to applicant and staff. And
24 again, I just reiterate the tone and the purpose is
25 clarification. I don't anticipate cross-examination.

1 Don't anticipate anything other than perhaps another
2 clarifying questions that might come from the applicant
3 and staff.

4 The way we're going to do this, because the goal
5 again isn't to put one witness up at a time. The purpose
6 of having a panel is to allow those who have the
7 particular expertise or who can answer the question go
8 ahead and answer it. If there is someone who can
9 supplement or further define, that would be ideal as well.

10 Again, before you speak into the microphone, we
11 do need you to go ahead and identify yourselves again for
12 us, even though we took your names initially, but also for
13 anybody on the telephone who's listening.

14 So I think what we'll do is start with the
15 applicant. Again, Mr. Ellison, we understood everything
16 you said about agreeing to conditions and terms that the
17 applicant may not necessarily agree are required.
18 Nonetheless, we do have Soil and Water 11 and 12 and those
19 are conditions that the applicant has agreed to and indeed
20 has engaged in a lot of work in helping to formulate the
21 terms and the logistics of those conservation measures, at
22 least with respect to 11 in particular.

23 So I think what I'd like to hear is an oral
24 narrative. Explain to us how does this work. What's it
25 mean? What are the rights that are being exercised? And

1 we did hear from the Watermaster. But we want to hear
2 from the applicant what is this proposal under Soil and
3 Water 11? How is it going to work?

4 And you've got I think four witnesses present
5 today. And you know better than we do who's better able
6 to speak to it. Perhaps all four. Perhaps one or two.
7 So if you can go and maybe identify who can get started
8 and then others can chime in as need be.

9 MS. CONWAY: Thank you.

10 I think Fred Redell could explain condition 11,
11 maybe with some help or input from Christopher Hansmeyer.

12 MR. REDELL: Sure. Forgive me if I make a
13 mistake. The condition 11 for soil and water, the idea of
14 that was that we could set aside an additional amount of
15 water every year. We estimated originally on our
16 application that we would be pumping somewhere around 2160
17 acre feet per year. This estimate was made to not
18 over-restrict the amount of water that we may pump or make
19 us curtail and lose the ability to produce electricity.

20 We then further refined our estimates down to
21 right around 1700 by doing further analysis to say what do
22 we actually expect to happen. So with that 1700 acre feet
23 that we expect to use every year and given that our fuel
24 source being the sun is reasonably fixed, we're going to
25 vary a little bit year to year. We are not like a gas

1 combined cycle plant where you could run a different
2 schedule, produce more power. We feel that number was
3 roughly what may happen.

4 So the adjudication said, well, we're going to
5 switch this from industrial use -- or from an agricultural
6 use to industrial use. That says that we're going to have
7 to use 3400 acre feet of our rights to proceed with the
8 project. We then added to that another 1700 or depending
9 on whatever we may pump that year an additional amount of
10 water sequestered. So essentially we're applying upon
11 ourselves a three to one set-aside for any amount of water
12 we use.

13 HEARING OFFICER VACCARO: I know you're a little
14 bit on a roll, but if I could just take you back for a
15 moment to help me at least understand when you said that
16 you'll be using 3400, how does that work?

17 MR. REDELL: I'm sorry. Mr. Wagner, when he made
18 a description, he was describing the difference between
19 the consumptive use and the amount of water that you
20 produced. The project has agricultural rights. The
21 10,478 acre feet are agricultural based. And to use them
22 for our industrial project, in the adjudication, there is
23 a two to one set-aside. So if we are going to use one
24 acre foot of agricultural rights as an industrial purpose,
25 we're going to have to take away two of our acre feet. So

1 what we said to that was, okay, we could then add an
2 additional acre foot to that, essentially making a three
3 to one set-aside. Does that help?

4 COMMISSIONER EGGERT: So just to follow on.
5 Again, I'm probably not getting the terms right. But the
6 assumption was for the agricultural rights 50 percent
7 would go back into the groundwater table.

8 MR. REDELL: Yes. I believe that's the basic
9 assumption of the adjudication. Whether or not it's
10 absolute isn't for sure.

11 HEARING OFFICER VACCARO: So it sounded like you
12 had more to say to explain this process.

13 MR. REDELL: Okay. I think what Dr. Wagner
14 described would be we have to report every year the amount
15 of water use. That gets reported to the Watermaster in
16 that we report to them and then also have to report to the
17 compliance project manager how we are maintained in
18 compliance with this condition.

19 But we would then report that we pumped some
20 amount of water of our rights and that those rights were
21 converted from an agricultural purpose to an industrial
22 purpose. And then we would also report that we have this
23 amount of remaining rights that weren't used that year
24 which are greater than or equal to the amount that we
25 would be offering as the conservation.

1 HEARING OFFICER VACCARO: And what's the method
2 of verifying the amount that you're actually pumping? I
3 mean, what type of record system? I mean, metering?
4 What's the device or the mechanics of verification?

5 MR. REDELL: The Watermaster has several
6 different ways that you're allowed to meter the amount of
7 water that you use. And it will depend on what's
8 installed. But we'll have flow meters that totalize the
9 flow of water out of every well and record that as our
10 actual water use. Other methods would be that you could
11 calibrate a well that you could know the amount of energy
12 it took to extract water and then convert that from energy
13 to water pumped. But we'll have flow meters and
14 totalizers to do that.

15 MS. WHITE: If I might ask a question just to
16 make sure I'm getting this math right. This is Lorraine
17 White.

18 So under the adjustment rights that the
19 Watermaster would impose, when you take the 10,000 ag
20 right and you use it for consumptive industrial purposes,
21 for every unit you use, you must keep two in the grounds;
22 is that correct?

23 MR. REDELL: Under the adjudication for every
24 unit we use, we have to keep one in the ground. And then
25 the additional amount, the extra one, which becomes three,

1 would be part of this condition.

2 MS. WHITE: Okay. So you're going to be tracking
3 how much water you're actually using. And how much then
4 according to the adjustment of the rights that the
5 Watermaster would impose they would identify that one part
6 that under the adjustment would have to stay. And then
7 how are you going to be informing the Watermaster of this
8 additional unit or part that would also have to stay? And
9 essentially I'm sure if you want to conserve this water,
10 you don't want somebody else pumping it and using it.

11 MR. REDELL: Right. As part of our annual
12 report, we report that initial amount, the amount that the
13 Watermaster is administering.

14 The part or the compliance with the Energy
15 Commission, we could submit that to the Watermaster as
16 they could then see that.

17 MS. CONWAY: May I clarify one thing? The
18 language of the condition in the verification only
19 requires reporting to the compliance manager?

20 HEARING OFFICER VACCARO: Uh-huh.

21 MS. CONWAY: But what Mr. Redell said, the
22 applicant could report the amount that is being
23 sequestered under the condition to the Watermaster, and
24 then I suppose it's up to the Watermaster how they want to
25 keep it in their records.

1 COMMISSIONER EGGERT: Actually, I guess this is a
2 follow-on in line with my previous invitation. I guess
3 this does seem to be kind of a new area, this sort of
4 concept. And I guess my question would be -- I may be
5 asking a legal opinion here. But is this sequestration
6 condition something that you see as something that would
7 be normally required as a mitigation under CEQA?

8 MR. ELLISON: Let me address that. The answer is
9 no. And the reason is two fold. First of all, as the
10 Watermaster explained, the adjudication without this
11 condition already balances supply and demand to ensure
12 there is no adverse impact on the water basin from
13 everybody's pumping. That was one of the questions that
14 Ms. Conway asked him. So there is no evidence in this
15 record of an environmental impact to mitigate with this
16 condition. So CEQA would not require this condition in
17 our opinion for that reason.

18 Secondly, Ms. White's question, as well as I
19 think other questions, go to this problem of how do you
20 know that this additional water that we've agreed not to
21 pump remains in the basin and isn't pumped by somebody
22 else?

23 And our answer to that is you don't know that.
24 And I don't think there is any way that you can know that.

25 And beyond that, I will tell you that at least it

1 is my understanding -- and I am not a water expert. I'm a
2 lawyer. But it is my understanding that what the
3 Watermaster will do is take the actual pumping, which in
4 our case would be reduced by this condition, and factor
5 that in in setting the free production allowance for
6 everybody else. And our reduced pumping may very well
7 have the effect of raising the free production allowance
8 for everybody else.

9 So the second answer to your question from me is
10 that not only is there no impact to mitigate here, but
11 this mitigation may very well have the effect of simply
12 creating an economic benefit for other users in the basin
13 and not making any difference to the amount of water
14 that's actually in the ground. Those are among the
15 reasons, not the only ones, but they are among the reasons
16 why we feel that this is an objectionable condition but
17 one we thought we should agree to in order to move this
18 case along.

19 COMMISSIONER EGGERT: So I really appreciate that
20 response.

21 And I guess given all that, I guess you could
22 almost characterize this as additional head room in the
23 case of reductions of the FPA. In other words, you have
24 quite a bit of head room in your adjudicated balance that
25 you're provided by the 10,000, at least if my math is

1 correct. I guess it would be the 1700 plus the 1700 --
2 okay. That's very helpful. Thank you.

3 HEARING OFFICER VACCARO: So Mr. Ellison, just to
4 make sure I'm understanding, this conservation measure the
5 applicant is agreeing to, you say -- you know, it doesn't
6 seem as though staff or applicant are saying this is
7 required for CEQA or there is CEQA mitigation, but that,
8 in fact, this really goes to harmonizing the difference in
9 opinion on whether or not State policies with respect to
10 the use and conservation of water are at issue in this
11 case. Does this go to the second, or is it something all
12 together different?

13 MR. ELLISON: Well, staff can speak for
14 themselves on this issue. I'm not going to attempt to
15 characterize their position.

16 Our position is as I just described. This is not
17 required by CEQA. We also believe it is not required by
18 any other law or policy in the state. And if you wanted
19 to take the time, we could go through each one of them and
20 I could explain to you why we take that position. But we
21 do not believe that this condition is consistent or
22 required by any applicable law, including CEQA. But
23 having said that, I wanted to reiterate again that we've
24 agreed to this condition and we are more than prepared to
25 follow its terms.

1 HEARING OFFICER VACCARO: Thank you.

2 Did anyone have any further questions for the
3 applicant regarding this?

4 I am sorry. Did someone on the phone speak?

5 UNIDENTIFIED SPEAKER: No. My apologies. I
6 thought the operator was connecting me.

7 HEARING OFFICER VACCARO: Okay. I think it would
8 be interesting to hear staff's perspective as well with
9 respect to the condition. Certainly not whether or not
10 there is agreement or disagreement on whether the
11 conditions are required, but more specifically is there
12 something to add, supplement? Or do you have a different
13 perspective on how the sequestration is going to work,
14 what its efficacy is going to be?

15 MR. DENNIS: This is Christopher Dennis.

16 I don't disagree with the way the Soil and Water,
17 11 and 12 have been stated and characterized. I would
18 like to add though that for the sequestration isn't
19 something that the Watermaster is concerned about. They
20 keep records of pumping and the amount of water the
21 applicant will use will maintain their pumping -- volumes
22 will be maintained that way.

23 In addition, we're requiring meters to be put on
24 the wells that the applicant is proposing to install.
25 Records will be kept that way and reported in the annual

1 compliance report in addition to the amount of water
2 that's sequestered. We would be happy to provide the
3 Watermaster with the amount of water -- the information
4 that's provided in the annual compliance report. I don't
5 think the Watermaster is particularly interested in that
6 information.

7 HEARING OFFICER VACCARO: Thank you.

8 And in terms of the mechanics or the logistics in
9 the sequestration process, it seems as though it's very
10 carefully articulated in the documents. Again, sometimes
11 hearing the shorter version orally makes it that much more
12 clear. Is there anything that you would like to add or
13 supplement in terms of what's been said today or give us a
14 brief version of what staff's view is of how this is going
15 to work?

16 MR. DENNIS: Yes. As the applicant articulated
17 quite nicely, we haven't identified CEQA impacts. This is
18 because of what the water conservation plan is for LARS
19 and policy non-conformance. We're asking for one to one
20 sequestration, the amount of water that's pumped.

21 The Watermaster had indicated there may be
22 additional ramp downs in this Harper Lake area. If that
23 happens, the applicant may not have enough water to
24 sequester on a one-to-one basis. That's where condition
25 of certification 12 kicks in, where the difference between

1 the amount of water that can be sequestered and that's
2 required under 11 to be made up through the water
3 conservation program with the Mojave Water Agency. They
4 have water conservation programs.

5 HEARING OFFICER VACCARO: Okay. Thank you.

6 And again, Mr. Ellison, we understand that you
7 don't necessarily agree that there isn't sufficient water.
8 I think at least that's what the papers suggest. Yet, the
9 applicant is still willing to agree to a condition of
10 certification 12; is that correct?

11 MR. ELLISON: Yes, with one slight clarification.
12 I would put it that we don't agree that apart from CEQA
13 that any other applicable law requires this as opposed to
14 saying insufficient water. We believe we're without this
15 condition in full compliance with all California water
16 laws, with the Energy Commission's policy, with the Water
17 Board's policies, et cetera. But we've agreed to put
18 aside that disagreement in the interest of moving this
19 case along.

20 MR. HANSMEYER: This is Christopher Hansmeyer as
21 well.

22 I think it's important to point out that when we
23 went through the site selection process, just speaking
24 from a project applicant's perspective and looking to your
25 regulations for guidance way back from the starting point

1 of how we go about a site assessment, we looked to the
2 Mojave adjudication and the body of law that existed there
3 to determine what level of water rights we needed to
4 acquire.

5 I think it's important to note that today we're
6 really operating in kind of a condition of luxury that
7 wouldn't normally exist for a project applicant. We
8 happened to acquire a site that had an extensive history
9 of water rights and had much more water than we would use
10 a single 250 megawatt project. So that gives us the
11 ability today to be flexible.

12 So as our outside counsel Chris has said, we are
13 in a position where we're trying to be accommodating in
14 order to look past some of these biological concerns and
15 hydrological impacts that could arise.

16 However, that's not going to be the case for our
17 next project or another applicant's projects. Just
18 because we have 10,400 acre feet of free production
19 allowance doesn't mean we have that available to kind of
20 horse trade with. So I just want to make sure that's
21 understood.

22 As far as the other arguments, whether or not
23 CEQA adequately would provide for sequestration, you know
24 it's our understanding and my understanding -- and I've
25 been looking at the Mojave adjudication since 1997 both

1 for this client where I'm now in-house counsel and
2 external clients, that the portion that would address
3 hydrological impacts that would address the public trust.
4 Public benefit issues was incorporated into the physical
5 solution in the ramp down.

6 The purpose of the ramp down, from an ag use to
7 an industrial use, is to provide a balancing for the
8 recharge and the hydrological and biological impacts to
9 the basin. So here we're really getting hit twice for
10 that. On the one hand, we're going on two to one
11 reduction, and then we're offering up an additional volume
12 of water. So we're paying twice into the biological
13 impact argument.

14 And again, we're willing to do that from the
15 applicant's perspective simply to move past some of the
16 arguments that started to arise both in our direct
17 testimony and the staff's counter to our testimony.

18 COMMISSIONER EGGERT: Actually, that's very
19 helpful.

20 And this condition assumes that the water is 100
21 percent consumed; is that correct? And in terms of the
22 1700

23 MR. HANSMEYER: It really doesn't have a basis.
24 Coming from an engineering standpoint, it's not tied to
25 anything real. It's simply because we're going in a two

1 to one ramp down, it's kind of a language where you're
2 accustomed to in the development industry. So offering an
3 additional sequestration or an agreement to not produce a
4 volume of water is kind of in the language of the
5 adjudication. So it's something I thought the agency as
6 well as the Energy Commission could wrap their mind
7 around.

8 COMMISSIONER EGGERT: Okay. Thank you.

9 HEARING OFFICER VACCARO: Okay. Thank you all
10 for your time and your patience. I think your answers
11 have been helpful to the Committee.

12 One final question, and I think it's a bullet
13 point. And I think this might be better answered by the
14 attorneys. It's under Soil and Water 11. And the
15 language says, "sequestration shall continue annually for
16 the life of the project owner." It appears to me that
17 there might be somewhat of an additional word in there.
18 But if that's really what's intended, please -- it's the
19 third bullet under that condition. I think it probably
20 should say, "for the life of the project." But I want to
21 ensure that we're all speaking the same language.

22 I see smiles coming from the applicant, so why
23 don't we start there.

24 MS. CONWAY: I would agree, Hearing Officer, that
25 I believe just "owners" needs to be stricken. I think the

1 intent was for the life of the project.

2 HEARING OFFICER VACCARO: Okay. So basically the
3 intent is that any successor owners, if there might be
4 any, are going to be bound through the life of this
5 project to this term, because the assumptions is they're
6 also going to be getting those water rights; is that
7 correct? I don't see there's anything that really deals
8 with succession. The assumption is that the project owner
9 is going to be the project owner. But we're talking about
10 rights that accrue to, as I understand it, either the
11 project or the applicant and maybe just a little bit of
12 clarification there.

13 MR. ELLISON: It's our understanding that this
14 condition would certainly apply to a future owner of the
15 power plant. If, on the other hand, this is not something
16 that runs with the land apart from the conditions
17 applicable to the power plant -- so if the power plant
18 were for some reason to be away and the land were to be
19 used for some other purpose, I don't think this condition
20 would apply. But for the life of the project, the power
21 plant project, we would agree that this runs to any future
22 owner.

23 HEARING OFFICER VACCARO: Thank you.

24 Staff, is that your understanding as well?

25 MS. HAMMOND: That is our understanding, that the

1 limitation would apply to the owner of the project
2 certified by the Commission in this proceeding.

3 HEARING OFFICER VACCARO: Or the successor
4 project owner?

5 MS. HAMMOND: Correct.

6 HEARING OFFICER VACCARO: Thank you.

7 I think we're finished with all of these
8 witnesses. Thank you very much. I think that also
9 concludes our soil and water resources topic.

10 COMMISSIONER EGGERT: Actually, can I make a --

11 HEARING OFFICER VACCARO: Yeah.

12 COMMISSIONER EGGERT: I want to thank everybody
13 for participating in this panel. This has been very
14 helpful for my own understanding of the issues.

15 I did just want to make a general comment.
16 Efficient use of water is extremely important to the
17 Commission. And so part of our evaluation of these
18 projects is concerned with making sure that we use our
19 scarce water resources in the most efficient manner
20 possible. And recognizing that we have this goal for
21 renewable generation that you're involved in helping to
22 realize with all of the projects that we're evaluating,
23 it's making sure that we're accounting for the impacts,
24 that we're looking for opportunities to use that resource
25 most efficiently. And again just appreciate all your work

1 on the evaluating and working with the staff to come to
2 agreement on the conditions.

3 HEARING OFFICER VACCARO: I think as I -- as I
4 mentioned previously, this project is truly in the
5 enviable position of having no contested items for the
6 topics that we're covering today.

7 I did mention, however, that there was the wish
8 of the applicant and staff to have some or all narrative
9 to supplement the record with respect to the two topics of
10 biological resources and project description. I think we
11 should finish up with bringing the witnesses on, getting
12 that testimony completed, then we'll move to the much more
13 expeditious process of introducing the documents into the
14 record.

15 So I think with that, I would like us to move
16 backwards and go to the project description, because
17 again, I think that really does set the frame. So unless
18 I've got objection from the parties, then we move forward
19 with that.

20 MR. ELLISON: Actually, Hearing Officer Vaccaro,
21 if we could, could we do biology first? We have our
22 biology witnesses on the phone and it would be more
23 convenient, although we can do them in any order you
24 prefer. But it would be more convenient for them if we
25 did biology first, if it's all the same to everybody else.

1 HEARING OFFICER VACCARO: I think it's all the
2 same to the Committee. I think certainly our goal was to
3 accommodate party and witness schedules with these topics.
4 So unless staff has a problem with that --

5 MS. HAMMOND: Hearing Officer Vaccaro, our
6 biology witness, Heather Blair, is not present. We had
7 expected to continue with water up until the noon hour.
8 So I apologize. We asked her not to be ready and here
9 until after the noon hour.

10 HEARING OFFICER VACCARO: Well, maybe we can get
11 a little clarification. My understanding was this was
12 really to supplement, that staff wanted to give the
13 Committee a sense of what the consultations were and
14 things of that nature. That it wasn't really putting on
15 new evidence or doing much more by way of introducing oral
16 testimony into the record.

17 So Mr. Ellison, what was your sense of having
18 your witnesses available? Was it just to have them
19 available or in case there was something that was said
20 today that you might take exception to? Or do you believe
21 there's some value in also having the record supplemented?

22 MR. ELLISON: No. It's the former. We wanted to
23 have our biological experts hear whatever staff has to say
24 and be available in case the Committee had questions of
25 them. We did not intend -- subject to whatever we hear

1 from staff, we didn't intend to put on further direct
2 testimony from those witnesses. But we do want to have
3 them hear what staff has to say.

4 HEARING OFFICER VACCARO: Understood. I think in
5 light of what we've heard, I think the fairest thing and
6 the right thing to do is go ahead and move biology to a
7 later point in time today so we can give everybody an
8 opportunity to hear what's being said so that staff can
9 actually give the direct they were hoping to give.

10 MR. ELLISON: That's fine.

11 MS. HAMMOND: Thank you.

12 HEARING OFFICER COTE: So your witness for
13 project description, is that Mr. Redell again?

14 MR. ELLISON: It is.

15 HEARING OFFICER VACCARO: And you've already been
16 sworn in, Mr. Redell, so --

17

18 DIRECT EXAMINATION

19 MR. ELLISON: Okay. Mr. Redell, in an abundance
20 of caution, could you state and spell your name for the
21 record one more time?

22 MR. REDELL: Sure. It's Fred Redell,
23 R-e-d-e-l-l.

24 MR. ELLISON: Mr. Redell's qualifications are
25 already in the record in the direct testimony that we

1 filed on June 1st. In the interest of time, I would ask
2 permission of the Committee and the parties, we're going
3 to give a rather narrative description here rather than a
4 series of questions. I'm simply going to ask Mr. Redell
5 if he could describe the project.

6 MR. REDELL: Thank you.

7 As stated, I'm Fred Redell. I'm currently
8 working for Abengoa Solar. I'm the engineering manager.
9 I was originally assigned to this project to bring it
10 through the permitting process.

11 The project is a 250-megawatt solar thermal
12 facility, much like other applications that you have seen
13 with a few exceptions. And I think these exceptions we
14 sort of take to heart on how we develop this project.

15 The project is on approximately 1765 acres. It's
16 all private land, previously disturbed, and it had prior
17 uses as agriculture.

18 Originally, this project was sited on land that
19 was considered as SEGS 11 and SEGS 12, which is next door
20 to the current plant's SEGS 8, 9, and what was going to be
21 10 to the north of those two.

22 Prior developers found this land to be good
23 benefit. There were difficulties during that time. We
24 then acquired this land later and found this to be a great
25 project, a great location. The project is very similar to

1 our neighbors. It has parabolic troughs like the solar
2 radiation. Focus it on the heat collection element. Run
3 the heat transfer fluid through that oil, water. Run a
4 steam turbine and operate a power plant. Pretty simple.

5 As we already discussed, the project would be wet
6 cooled. We would use groundwater for this purpose,
7 brackish groundwater. The water -- we feel is inefficient
8 use of that water are the way that we use that water. We
9 would cycle it up five to six times in the cooling tower,
10 then discharge that to a water treatment system, cycling
11 it up further to about 38 times, discharging only a small
12 stream of the effluent to the evaporation ponds.

13 The project, we located it -- this location has
14 many benefits. Already has an access road. Has natural
15 gas pipeline that runs to the site for auxiliary purposes,
16 such as freeze protection. Also adjacent to major
17 transmission. So all of our inter connection -- our first
18 point of inter-connection is on our site. And then
19 Southern California Edison will have their project which
20 is the upgrades to the transmission system.

21 So some of the benefits of the project. Our goal
22 is to help California meet the renewable energy goals that
23 it has of 33 percent renewable energy.

24 So some of the bullet points about this project,
25 it's 250 megawatts. The electricity would be produced

1 100 percent from solar energy, enough to supply roughly
2 70,000 homes, and would have a power purchase agreement
3 with Pacific Gas and Electric and this will help them meet
4 their RPS goals.

5 The project will displace or not create the
6 thousands of tons of emissions that natural gas plant or
7 other fossil-fired plant would produce.

8 And of course, we went through a competitive
9 selection process to negotiate. And we're working on
10 obtaining a federal loan guarantee with the Department of
11 Energy. We've been fast tracked and we're hoping to
12 benefit from the ARRA funding.

13 In addition to that, the local area, there is
14 many benefits that will be seen, most of them economic.
15 The estimated annual benefits -- sorry -- the estimate
16 annual beneficial impact from the 26-month construction
17 period is about \$158 million, and 150 combined indirect
18 and induced economic output.

19 From operations, every year we would see
20 approximately 12.6 million as direct economic output and
21 over 6 million in combined indirect and induced economic
22 output.

23 We would be creating roughly 830 jobs for the
24 construction period and about almost 1200 at the peak.
25 There would be 660 indirect employments produced and 1,045

1 induced employment or jobs created.

2 For the operation for the life of the plant, we
3 see roughly 60 to 70 full-time positions. And then the
4 induced and indirect employment would more than double
5 that.

6 So going back to what we've already talked about
7 about why we've sited this plant, we really take to heart
8 the idea of properly or responsibly developing a project.
9 We looked for this land as already been disturbed
10 agricultural land. It was our goal to acquire something
11 that had minimal impacts and allowed us to move forward
12 expeditiously knowing when you start the project, having
13 an idea what would occur at the end of the project, the
14 conditions that we would have. Those were sort of our
15 goals.

16 So we went through several years of looking at
17 biological surveys on the site, reconfigured our site, and
18 that's sort of how you see our project. Has a jagged
19 shape or maybe a different layout than you might see this
20 nice rectangle when you go back to what we'll probably
21 hear in biology. We configured our project to avoid these
22 impacts.

23 In addition to that, of course, the projects that
24 were considered there before found this site to have great
25 solar insulation. We do, too. This is some of the best

1 solar insulation available in southern California. Very
2 good resource. And so using this land for that purpose
3 definitely -- it's definitely the right location.

4 So I think we've achieved agreement with staff on
5 nearly every condition of certification. With these
6 conditions, the project complies with all applicable laws,
7 regulations and standards. There's no evidence in the
8 record otherwise. It's important for all of us to
9 understand that financing and building renewable energy
10 projects is not easy. It's not simple. And especially in
11 the current economic climate coming up with the funds
12 required to proceed on a project like this requires a
13 great deal of certainty and properly conceived project.

14 So to that, layering any additional or
15 unnecessary burdens on the project that are sort of novel
16 in nature or application or that appear disproportionate
17 or unbounded represent a serious threat to the viability
18 of the project and to others that follow.

19 These disproportionate or unnecessary economic
20 burdens stand, they threaten to make the project
21 effectively impossible. And of course they would threaten
22 the California renewable energy goals. The financial
23 burdens could also drive other utility scale solar
24 projects out of the state or drive them out of the
25 business completely. Delays and regulatory complications

1 that already negatively impact how the state is perceived
2 by utility scale solar industry leading development -- it
3 would lead development to otherwise increase cost of
4 transmission. Essentially what I'm trying to say here is
5 that if we don't do it in California, all we're going to
6 see is higher cost in transmission and people producing
7 power in other states.

8 The Commission must ensure that the project is
9 treated equitably with other conventional generation
10 projects licensed by the Commission and the California
11 projects have some reasonable parity with projects located
12 in adjacent states.

13 This is not a time to add new regulations, to add
14 new regulatory hurdles, to lower the thresholds of
15 significance, or to vastly exceed previously required
16 mitigation measures.

17 Renewable energy and the resurgence of utility
18 scale solar in particular is in its infancy with great
19 promise to compete with other conventional energy
20 producers while yielding great environmental benefits and
21 great public health benefits.

22 Over burdening this industry will cause it to be
23 stillborn, ending that promise before it ever is truly
24 begun, to the detriment of California's desert and the
25 other ecosystems, as well as to its public health and

1 economy.

2 It's imperative for this project and for future
3 projects and for the future of utility solar, again a
4 keystone of California renewable energy future, that the
5 Commission's final decision redresses these economic
6 burdens and provides an appropriately balanced foundation
7 for this project and other projects to come.

8 Thank you.

9 HEARING OFFICER VACCARO: Thank you.

10 I just want to make sure we were all clear. When
11 we were at the pre-hearing conference and again in the
12 pre-hearing conference statement that was submitted, it
13 was clear that your discussion on project description was
14 going to address overrides. So what we had from you was
15 fact and opinion and taking those facts and those opinions
16 and weaving them into argument as well, because that was
17 in part not just to tell us about the project as I
18 understand it, that was also to give applicant's
19 perspective if, in fact, there were any concerns that
20 involved overrides that you were going to address it. Is
21 that pretty fair? There wasn't just an intent to
22 summarize the project description?

23 MR. ELLISON: That's correct.

24 Although I think it is a summary of a great deal
25 of evidence that's already in the record, we wanted to do

1 that summary for the purpose of enabling the Committee, if
2 necessary, in making the findings that would be needed for
3 either a CEQA override or a LARS override, both of which
4 we think are unnecessary. Thank you.

5 HEARING OFFICER VACCARO: I have one -- before --

6 COMMISSIONER EGGERT: Actually, this is just a
7 question of curiosity. You had mentioned the federal loan
8 guarantee I guess two questions.

9 When would you expect to maybe hear about that?
10 And are you pursuing the other -- I guess it's the grant
11 in lieu of ITC. And if so, when? Again, purely
12 curiosity.

13 MR. REDELL: I'm sorry. I just wanted to make
14 sure I was clear. There's two parts that we would benefit
15 from. One would be the grant in lieu of the ITC, and the
16 other would be a federal loan guarantee. So we fully
17 intend on being able to start this project in time in a
18 manner that allows us to benefit from the ITC, the grant
19 in lieu of the ITC. In addition to that, as I mentioned,
20 we are already well engaged with the Department of Energy,
21 going through their process. We're starting the
22 engineering due diligence. And we expect to be able to
23 get a federal loan guarantee in time also from the
24 Department of Energy. Does that answer it?

25 COMMISSIONER EGGERT: Yeah. No, it does. I have

1 other questions of curiosity on the financials, but I
2 think I'll hold those.

3 HEARING OFFICER VACCARO: I have a question, Mr.
4 Redell.

5 You mentioned that you found that you've agreed
6 with staff on nearly all the conditions of certification.
7 Just to be clear, for everything that we're discussing
8 today, there is agreement, is there not, on all of the
9 issues of conditions of certification? And we're really
10 talking about some of the topics that are being held over
11 for July 15 as areas where there's still some potential
12 work to be done on reaching agreement.

13 MR. REDELL: That's correct.

14 HEARING OFFICER VACCARO: Great. Thank you.

15 Ms. Hammond, is there anything that you would
16 like to say?

17 Before I have you comment though, at the
18 pre-hearing conference, it didn't appear that staff or the
19 county of San Bernardino had any intention to
20 cross-examine Mr. Redell with respect to the presentation
21 that he was going to give. That said, there may be
22 something, because this was stated in the nature of
23 argument, that staff might want to respond to. If not,
24 you don't need to say anything. But please keep in mind,
25 the point isn't to cross-examine Mr. Redell. If there's

1 something that you'd like to clarify or a point that staff
2 would also like to make, we'll give you the opportunity to
3 do that and see if Mr. Brizzee on behalf of the county of
4 San Bernardino would like to do that as well, specifically
5 on the topic of project description.

6 MS. HAMMOND: I thank you for that.

7 I just wanted to clarify that there is some
8 discussion still with condition of certification. At the
9 appropriate time, I'm available to address that.

10 HEARING OFFICER VACCARO: Well, that's like
11 foreshadowing. So I'm going to go ahead and ask you to
12 address it now, because are you speaking about topics for
13 today, which my understanding based on the pre-hearing
14 conference there should be no issues? Are you talking
15 about the topics for July 15, or are you now surprising us
16 with a potential issue today?

17 MS. HAMMOND: I'm talking about the topics that
18 are covered today.

19 On the issue of the conditions of certification
20 noise 2, 4, and 7, I don't believe there is agreement
21 between staff and applicant. We do agree that's a matter
22 that can be handled through briefing.

23 Conditions of certification bio 3, 5, and 17 also
24 staff and applicant do not have agreement. It's again a
25 matter that can be handled through briefing.

1 Same for conditions of certification visual 1, 2,
2 and 4. Staff and applicant have agreed that we believe we
3 can come to an agreement on condition of certification
4 Transportation 4. And this is based on staff's rebuttal
5 testimony. Rather than having a conversation directly
6 with applicant and applicant only when there are other
7 parties in this proceeding, I'm going to suggest and
8 request that the Committee allow the parties to confer on
9 the phone during the lunch hour break or during the 15
10 minute or 30-minute break to finalize and come to an
11 agreement on language for Transportation 4.

12 HEARING OFFICER VACCARO: There's a big pregnant
13 pause up here, because I think I am slightly surprised
14 there's still something to be worked out with respect to
15 any of these topics.

16 I certainly understand agreeing to disagree and
17 believing that sufficient evidence has been submitted in
18 the record for the Committee to make its determination on
19 the conditions with respect to biological resources, noise
20 and vibration, and visual. But I don't understand why we
21 still have an outstanding issue with traffic and
22 transportation and why that wasn't addressed last Monday
23 at the pre-hearing conference. So maybe you can clarify
24 for us what that is so we can then sort of figure out how
25 we're going to proceed.

1 MS. HAMMOND: I think counsel for applicant did
2 raise this at the pre-hearing conference and indicated
3 that he was confident that applicant and staff could come
4 to an agreement on some of the language for the condition
5 of certification. My concern is that agreement on the
6 final language for that condition be reached between all
7 parties.

8 HEARING OFFICER VACCARO: Okay. And do you think
9 that you're going to be able to reach agreement, applicant
10 and staff, on the language today?

11 MS. HAMMOND: I personally am confident we can.

12 HEARING OFFICER VACCARO: Well, I think we're not
13 on that topic quite yet. I don't know why you need to
14 confer at lunchtime. I think if there is a topic and if
15 it's just refinement of language, let's go ahead and get
16 the refinement of language done on the record. If you
17 think that you are going to reach agreement, do you think
18 it's possible, Mr. Ellison, that we can figure out what
19 the language is going to be and get that sorted out on the
20 record today?

21 MR. ELLISON: Yes, I believe it is possible.

22 HEARING OFFICER VACCARO: Okay. So going back to
23 the initial issue then of project description, is there
24 anything else that you would like to clarify or state with
25 respect to project description, staff?

1 MS. HAMMOND: Not at this time. Thank you.

2 HEARING OFFICER VACCARO: Mr. Brizzee, you've
3 been very quiet and patient on the phone. Are you still
4 there?

5 MR. BRIZZEE: Still here, yes. Thank you.

6 HEARING OFFICER VACCARO: On the topic of project
7 description, was there any point of clarification that you
8 wanted to make? Again, not cross-examination, but
9 anything that you wanted to supplement the record on at
10 this point?

11 MR. BRIZZEE: No. I have no questions of this
12 witness. Thank you.

13 HEARING OFFICER VACCARO: Thank you.

14 Okay. What I'd like to do is turn to the exhibit
15 list that was prepared. It was a working exhibit list
16 that was prepared and presented to all of the parties in
17 advance of today's hearing. It's my understanding that
18 there are some modifications that staff would like to
19 make. I don't know if applicant has any. If so, let's go
20 ahead and get this exhibit list cleaned up, because it's
21 my understanding that staff and applicant to the extent
22 possible would like us to move these documents and by
23 stipulation without having to be topic by topic.
24 Generally in agreement with that with a few caveats that I
25 think we can clear up on the record and move forward very

1 expeditiously in getting this taken care of.

2 So Ms. Hammond, since I know you did have some
3 clarifications with respect to the exhibit list, let's go
4 through that.

5 Mr. Ellison, do you have the exhibit list?

6 MR. ELLISON: Yes, I do.

7 HEARING OFFICER VACCARO: Thank you. So let's
8 try to get through this together and now.

9 MS. HAMMOND: Thank you.

10 On the matter of Exhibit Number 300, staff had
11 provided a breakdown of the staff assessment and indicated
12 by strike out those sections that would be superceded by
13 subsequent filings. Those are executive summary, project
14 description, air quality, biological resources, cultural
15 resources, hazardous materials, land use, noise and
16 vibration, number health, soil and water resources,
17 traffic and transportation, visual resources, waste
18 management, worker safety and fire protection, and
19 transmission system engineering.

20 Staff had originally indicated that the
21 declarations and witness qualifications section of the
22 staff assessment would remain, but the declarations and
23 witness qualifications of the individuals who are
24 sponsoring those sections of testimony that are superceded
25 should similarly be struck.

1 HEARING OFFICER VACCARO: So in other words, when
2 staff issued the supplemental assessment Part A, we
3 received new topical summaries as well as new declarations
4 in support of those sections; is that correct?

5 MS. HAMMOND: That's correct.

6 HEARING OFFICER VACCARO: And those have been
7 served and filed and everyone has been made aware of those
8 in advance of today?

9 MS. HAMMOND: Yes, they have.

10 Moving on to Exhibit 301, the executive summary
11 portion of that filing and the supporting declaration and
12 witness qualification similarly has been superceded.

13 HEARING OFFICER VACCARO: Has been or will be?

14 MS. HAMMOND: I'm sorry. Will be superceded.

15 HEARING OFFICER VACCARO: In Part C; correct?

16 MS. HAMMOND: Correct.

17 HEARING OFFICER VACCARO: Okay. Do you have the
18 same concerns with Part B?

19 MS. HAMMOND: Correct. With Exhibit 302.

20 HEARING OFFICER VACCARO: What's missing?

21 MS. HAMMOND: Executive summary.

22 HEARING OFFICER VACCARO: Okay. There should be
23 no executive summary anywhere at this point. We're
24 waiting for that to come out with the supplemental Part C;
25 is that correct?

1 MS. HAMMOND: That's correct.

2 HEARING OFFICER VACCARO: Okay. Any other
3 changes of that kind?

4 MS. HAMMOND: No.

5 HEARING OFFICER VACCARO: Okay. I think what
6 would be helpful is you did go through and very nicely
7 initially for Exhibit 300 identify all of the different
8 topical areas. But what I notice what's happened with 301
9 and 302 is we don't clearly have a sense from this exhibit
10 list what are the topical areas within Part A, what are
11 the topical areas within Part B. And if, in fact, we're
12 going to entertain the parties' pre-hearing request that
13 we consider moving these in by stipulation, we really do
14 need the clarification on the record what topics are under
15 what section.

16 So maybe starting with 300, I think we are very
17 clear that everything that had a strike through no longer
18 exists. So why don't you tell us what your Exhibit 300
19 consists of, what your Exhibit 301 consists of, and what
20 your Exhibit 302 consists of.

21 MS. HAMMOND: Thank you. And thank you for your
22 patience with this.

23 Exhibit 300 would consist of the sections
24 introduction, cumulative analysis, socioeconomic
25 resources, transmission line safety and nuisance, facility

1 design, geology and paleontology, power plant efficiency,
2 power plant reliability, alternatives, general conditions,
3 and the declarations and witness qualifications of Susan
4 Phinney, Obed Obemelum, Erin Bright, Chris Davis, Michael
5 Lindholm, Craig Hoffman, Scott Debauche.

6 HEARING OFFICER VACCARO: Okay. Thank you.

7 Exhibit 301?

8 MS. HAMMOND: Exhibit 301 would consists of the
9 sections hazardous materials, noise and vibration, public
10 health, traffic and transportation, visual resources,
11 waste management, worker safety and fire protection, and
12 the declarations and witness qualifications of Alvin
13 Greenberg, Shabab Khoshmashrab, Steven Brown, William
14 Kanemoto, James Jewell, Thomas Packard, and Ellie
15 Townsend-Hough.

16 HEARING OFFICER VACCARO: Thank you.

17 302?

18 MS. HAMMOND: 302 would consist of the sections
19 air quality/GHG, biological resources, cultural resources,
20 land use, project description, soil and water resources,
21 transmission system engineering, and the declarations and
22 witness qualifications of Tao Jing, William Walters,
23 Heather Blair, Kathleen Forrest, Negar Vahidi, Susanne
24 Huerta, Christopher Dennis, John Fio, Eugene Yates, Mike
25 Conway, Ajoy Guha, Mark Hesters.

1 May I have a moment?

2 HEARING OFFICER VACCARO: Yeah.

3 MS. HAMMOND: I'd like to clarify that Exhibit
4 302 does not include transmission system engineering or
5 the declarations and witness qualifications of Mark
6 Hesters and Ajoy Guha. That section in principle in
7 addition to Appendix A will be submitted at a later date.

8 HEARING OFFICER VACCARO: Okay. That's an
9 important clarification, because I was under the
10 misunderstanding that the appendix was the only thing that
11 was going to be in Part C and that the analysis to date
12 notwithstanding the appendix was going to remain. So
13 everything is superceded and replaced with respect to TSE
14 in Part C?

15 MS. HAMMOND: That's correct.

16 HEARING OFFICER VACCARO: Any other changes or
17 corrections to staff's proposed exhibits?

18 MS. HAMMOND: No. Thank you.

19 HEARING OFFICER VACCARO: Okay. Applicant, do
20 you have any concerns or issues with these changes that
21 we've just made?

22 MR. ELLISON: No.

23 HEARING OFFICER VACCARO: Okay. Great.

24 You know, we're at that point where we can go
25 ahead and I think introduce things by way of stipulation

1 on the papers, unless applicant, you didn't indicate -- or
2 maybe you did -- whether you had any changes to make to
3 your exhibit list.

4 MR. ELLISON: We do not.

5 HEARING OFFICER VACCARO: At this point, I'm
6 aware that all the parties have received these tentative
7 exhibit lists, because I certainly sent them out to
8 everyone and we've been working on these same documents
9 since before the pre-hearing conference on the 21st.

10 Mr. Ellison, one of the questions I have before
11 we go ahead and bring in documents is that if we move
12 these in without going topic by topic, the way that your
13 exhibits are presented are just numbers and a narrative.
14 But it's really in your opening testimony where you give
15 us the sense of which exhibits of the exhibits are going
16 to be submitted or tied to a particular topic. And that's
17 really going to be significant in the drafting of the PMPD
18 to make sure that everything is properly identified and
19 brought into the discussion of the evidence.

20 So are you comfortable that everything that
21 you've identified in that opening testimony is accurate
22 and pretty much takes into account which exhibits and
23 which documents go to which topic?

24 And if you need a few moments to look it over or
25 to just look through, that's fine.

1 I know staff has already seen the opening
2 testimony as well. And there is a narrative in the
3 beginning of each declaration that says this testimony,
4 you know, refers to these exhibits. So we have a sense by
5 exhibit number. I don't know if there's been any
6 renumbering. If so, that's not a problem, as long as the
7 narrative description is accurate enough.

8 MR. ELLISON: There are a couple of corrections
9 to the testimony, misnumbered exhibits that I can make on
10 the record right now.

11 With respect to our waste management testimony,
12 there is an incorporation by reference of surface soil
13 sampling -- I believe these are data adequacy responses.
14 Surface soil sampling dated January 26th, 2010, which the
15 testimony identifies as Exhibit 13, but should have been
16 identified as Exhibit 34.

17 And similarly, in our hazardous materials
18 testimony, the very same change, surface soil sampling
19 January 26th, 2010, was misidentified as Exhibit 13 and is
20 Exhibit 34.

21 With those corrections, I believe that all of our
22 testimony references are accurate and certainly can be
23 identified from the narrative description as you
24 described.

25 If it would be convenient, we would be happy as

1 part of the briefing to identify/cross reference the
2 exhibit list to the topic areas, and we would be pleased
3 to do that if it would be helpful.

4 HEARING OFFICER VACCARO: Actually, I think it
5 would be helpful. And what it does, of course, is ensures
6 that the record is full and complete and that all of the
7 evidence is accounted for in the drafting of the PMPD.

8 MR. ELLISON: Okay. Then we will do that.

9 HEARING OFFICER VACCARO: Although I wasn't
10 anticipating post-hearing briefing, but for something of
11 that nature, I think it would be very helpful.

12 Along those lines, the conditions of
13 certification that were or the language that had been in
14 dispute at least at the time of the submission of the
15 opening testimony and those conditions for which there has
16 been agreement, how do you propose that the Committee is
17 going to get that pure, clean language of what the parties
18 are now in agreement on? Obviously not what we've talked
19 about in bio, resources, 315, 17, noise and vibration,
20 visual resources. But I think there were some others
21 where there was some fine tuning of language and there was
22 some back and forth. But it seems as though you're in
23 agreement.

24 But a clean copy of what the conditions read like
25 is, of course, going to make all of the difference in

1 putting the right conditions in the PMPD. So how do you
2 propose that the Committee gets those?

3 MS. HAMMOND: Hearing Officer Vaccaro, we could
4 provide a document with -- and I'm thinking transportation
5 4. We could provide the Committee with a copy of that,
6 introduce it as an exhibit, and have it on the record that
7 way.

8 HEARING OFFICER VACCARO: Okay. I think that's
9 certainly a possibility. Weren't there other conditions
10 that you've reached agreement on before today, language,
11 fine tuning, tweaking and the like? I think that had
12 already sort of been agreed to in concept. But there
13 wasn't a final un-red lined version that's been presented.

14 And I think all I'm suggesting is that just as
15 we're going to get a nice sort of map from the applicant
16 giving us the sense of which exhibits go to which topics,
17 I think it's important that the Committee has certainly by
18 the close of all of these proceedings on July 15 a clean
19 copy that's not red lined that gives us the appropriate
20 language to include in the conditions of certification for
21 the PMPD. So I trust that the parties can do that, review
22 it to make sure that you're in agreement, and submit that
23 to the Committee.

24 MS. HAMMOND: Certainly.

25 HEARING OFFICER VACCARO: Okay. With that, with

1 the exception of biological resources and visual resources
2 at this point, I think applicant, would you like to go
3 ahead and move your exhibits in?

4 MR. ELLISON: Yes, we would. And in the interest
5 of time, I'm going to move them as a group. We would like
6 to move the exhibits identified on the tentative exhibit
7 list as Exhibits 1 through 51. The applicant's exhibits
8 into evidence.

9 HEARING OFFICER VACCARO: Okay. With the caveat
10 we're going to be looking to your Exhibit 48, is it?
11 Opening testimony as the initial guide and that you're
12 going to give us a subsequent guide to ensure all of the
13 topic areas have been covered or any corrections have been
14 made.

15 MR. ELLISON: That's correct.

16 HEARING OFFICER VACCARO: Staff, do you have any
17 objections to that?

18 MS. HAMMOND: No, we do not.

19 HEARING OFFICER VACCARO: Okay. Mr. Brizzee, my
20 understanding is you probably don't have any objection,
21 but I'd like to hear from you anyhow on the record.

22 MR. BRIZZEE: Thank you.

23 No. No objections to those.

24 HEARING OFFICER VACCARO: Thank you. Staff,
25 would you like to move your exhibits in on all of the

1 topics, other than at this point biological resources and
2 visual?

3 MS. HAMMOND: Yes.

4 HEARING OFFICER VACCARO: And obviously you can't
5 do Part C, because it doesn't exist as of yet.

6 MS. HAMMOND: Yes. I'd like to move Exhibit 300,
7 301, 302, with the exception of biological resources, and
8 with the exception of visual from 301.

9 HEARING OFFICER VACCARO: Anything else? You
10 have exhibits that go from 300 to 311. And so far you've
11 mentioned three.

12 MS. HAMMOND: I'd also like to move Exhibits 304,
13 306, 307, 308, 309, 310, and 311 into the record, received
14 as evidence.

15 HEARING OFFICER VACCARO: Can we hold off on 304
16 since that's an errata to biological resources?

17 MS. HAMMOND: Certainly.

18 HEARING OFFICER VACCARO: So we'll save that
19 until after the panel has had its discussion.

20 Applicant, do you have any objections to any of
21 that?

22 MR. ELLISON: No.

23 HEARING OFFICER VACCARO: Mr. Brizzee?

24 MR. BRIZZEE: No objections. Thank you.

25 HEARING OFFICER VACCARO: Great. Okay. Well,

1 those exhibits are admitted into the record, and we have
2 the task of hopefully getting visual resources in as well.

3 (Thereupon the above-referenced documents were
4 admitted into evidence by the Hearing Officer.

5 HEARING OFFICER VACCARO: So why don't you go
6 ahead and give us a sense starting with the applicant of
7 where we are and what's the issue of disagreement on the
8 language of the condition and see if we can't get that
9 worked out here on the record. I'm sorry. Traffic and
10 transportation. My apologies.

11 MS. CONWAY: Thank you.

12 On this condition, the applicant agreed to an
13 alternative suggested in staff's rebuttal testimony. And
14 since the language was different than the condition
15 originally proposed by staff, applicant provided a red
16 line to the condition to staff basically following the
17 alternatives suggested in the rebuttal. And as I learned
18 today, staff had a slight change to that language.

19 I don't think -- I'm sorry. I know we do not
20 have a problem with this language. Perhaps our only
21 suggestion would be where it says, "in four equal groups."
22 We would suggest, "in four roughly equal groups," just in
23 case they can't be divided completely equally. Otherwise,
24 we agree to the condition.

25 HEARING OFFICER VACCARO: Ms. Hammond?

1 MS. HAMMOND: The nature of this condition is --
2 well, it concerns --

3 HEARING OFFICER VACCARO: I'm going to interrupt
4 you just so that we all have some context. As I
5 understand it, there was a condition that was asking
6 applicant to increase or add a turn lane or to make some
7 changes with the turn lane. And so if you could go ahead
8 and explain what it was that was at issue and what it is
9 now that's being done as an alternative, I think it will
10 help the Committee better understand this fine tuning of
11 language.

12 MS. HAMMOND: What was at issue was a
13 disagreement over whether or not an extension of the left
14 turn lane off of highway 58 was necessary to accommodate
15 the amount of traffic that would be turning from the
16 highway onto the project site during the morning commute
17 hours.

18 And initially, staff had requested an extension
19 of this lane. Steven Brown, the witness supporting this
20 testimony, did a further analysis and determined that
21 staggering the start times of the employees and limiting
22 the deliveries by large trucks delivering construction
23 equipment could mitigate the impact to less than
24 significant.

25 HEARING OFFICER VACCARO: Ms. Conway?

1 MS. CONWAY: Thank you.

2 That's correct. And the alternative was that the
3 employees starting the daytime shift in the morning would
4 be -- their start time would be staggered in four
5 approximately equal groups. And that was the mitigation
6 the applicant agreed to in lieu of lengthening the left
7 turn lane as well as being restricted in construction
8 deliveries.

9 HEARING OFFICER VACCARO: Okay. And so now we
10 have concern over whether it's equally divided four groups
11 or roughly four groups?

12 MS. CONWAY: Right. I mean -- excuse me. I
13 believe that would be implied anyways, but just to be
14 clear the number of employees starting in the morning
15 might not be an equal group that could be divided by four.
16 If you would like, I can read the language into the record
17 if that would helpful.

18 HEARING OFFICER VACCARO: Well, most certainly.
19 But I think maybe let's read into the record the language
20 that we're going to agree on. So staff, what concern do
21 you have as using the word "roughly" as a qualifier?

22 MS. HAMMOND: I would have to consult the
23 witness, Steven Brown -- yeah. I would have to consult
24 the witness.

25 HEARING OFFICER VACCARO: Well, I think this is

1 the perk of being the Committee is that I think from what
2 you've explained and at this point I think it should be
3 clear. We've looked at the evidence in the record on all
4 of the subjects at this point and have a pretty good
5 understanding. I think at this point we're hard pressed
6 to see how adding the term "roughly" is going to so
7 substantively change the nature of the intent of the
8 condition. Unless Commissioner Eggert has a different
9 view, we're going to go ahead and move this language in,
10 have it read in total and we will keep in the record
11 "roughly" at this point. And if the Committee decides at
12 some later point as we're drafting the PMPD that it really
13 poses a problem, we'll raise it and address it at that
14 time.

15 COMMISSIONER EGGERT: I roughly agree. No,
16 actually I concur.

17 HEARING OFFICER VACCARO: Okay. So Ms. Conway,
18 if we could please have you read the condition for Traffic
19 and Transportation 4 into the record in its entirety, then
20 we'll go ahead and see if we can't get agreement or
21 qualified agreement from the parties and we'll move
22 forward with introducing all of that evidence into the
23 record on the papers.

24 MS. CONWAY: Certainly. Condition Transportation
25 4 reads, "During construction, the project owner will

1 stagger the start time of employees for the daytime shift
2 (morning start) in four roughly equal groups spaced by at
3 least 30 minutes between groups. Also during
4 construction, the project owner will be restricted from
5 receiving any construction deliveries from the west
6 starting 30 minutes before the daytime shift and
7 continuing until all groups have arrived for the morning
8 shift."

9 The verification reads, "The project owner shall
10 include these restrictions in the construction traffic
11 control plan required by Trans 2."

12 HEARING OFFICER VACCARO: Thank you.

13 Ms. Hammond, do you have any problems with what
14 she just read in terms of the accuracy of the language
15 that was spoken?

16 MS. HAMMOND: No, I do not.

17 HEARING OFFICER VACCARO: Okay. I think with
18 that, applicant, would you like to move your papers into
19 the record on the topic of traffic and transportation?

20 MS. CONWAY: Yes.

21 HEARING OFFICER VACCARO: Staff, any objections?

22 MS. HAMMOND: No, we do not.

23 HEARING OFFICER VACCARO: Mr. Brizzee?

24 MR. BRIZZEE: No objection.

25 HEARING OFFICER VACCARO: And just as a point of

1 clarification, I think I misspoke earlier. I said with
2 the exception of visual. And I should have said traffic
3 and transportation. So the assumption -- and just for
4 clarification of the record -- is everything at this point
5 has been moved in by the applicant and by staff on all
6 topics with the exception of biological resources. Is
7 that everyone's understanding?

8 MR. ELLISON: Yes.

9 MS. HAMMOND: Yes. That's right.

10 HEARING OFFICER VACCARO: Thank you.

11 Unfortunately, I was really hopeful that we'd
12 have all of this completed by lunchtime and that the only
13 thing that would be left to do today would be public
14 comment at 5 o'clock. But it appears that biological
15 resources folks won't be available until when,
16 Ms. Hammond?

17 MS. HAMMOND: When you say so.

18 HEARING OFFICER VACCARO: Can they come now?

19 MS. HAMMOND: After the lunch hour. We can make
20 an effort to get her now. She should be ready no later
21 than -- well, she was expecting to testify after the lunch
22 hour. I can -- yeah.

23 HEARING OFFICER VACCARO: Why don't we see if
24 she's available, because I think we have everyone else
25 here. We are trying to move forward. I think the

1 Committee has been accommodateing in taking all the papers
2 in on stipulation, because I think both parties, staff and
3 applicant, indicated that might be expedient. So let's
4 keep that theme of expediency going and see if we can get
5 that witness here.

6 If not, we will have to reconvene today at 1:00
7 for the purposes of biological resources or after
8 conferring with Commissioner Eggert we push it back
9 further today depending on the availability of the other
10 witnesses so that we don't have to convene three times
11 today, because we still do have public comment at 5
12 o'clock.

13 So I think at this point why don't we go off the
14 record, take a break, and we'll wait to hear back from you
15 if we can get your witness, either in person or on the
16 telephone.

17 MS. HAMMOND: Thank you. After a break of --

18 HEARING OFFICER VACCARO: Five minutes would be
19 good.

20 Mr. Ellison, are you looking to say something?
21 You have that body language.

22 MR. ELLISON: You read my body language.

23 Yes, I wondered if we could just confirm that our
24 witnesses are on the phone.

25 HEARING OFFICER VACCARO: Yes. And that would be

1 Alice Karl, and she's one of our witnesses for biology.

2 And who's your other? I believe I have it written down.

3 MR. ELLISON: We have two others, Phil Leitner
4 and Lyndon Quon.

5 HEARING OFFICER VACCARO: And Kathleen Sullivan
6 is not a witness for you?

7 MR. ELLISON: She's not a witness, no.

8 HEARING OFFICER VACCARO: Thank you.

9 So why don't we -- actually, since I talked a
10 little more than I intended in that two minutes, why don't
11 we come back at 20-after based on the clock in the back of
12 this room.

13 COMMISSIONER EGGERT: Should we check to see if
14 they're on the phone? I think that was the request --

15 MR. ELLISON: Yeah. I just want to make sure
16 they, in fact, are here, in case we need to go get them.

17 MS. KARL: This is Alice. I'm here.

18 MR. LEITNER: And this is Phil Leitner.

19 HEARING OFFICER VACCARO: Okay.

20 MR. ELLISON: How about Lyndon Quon and Joshua
21 Zinn? Sounds like they are not available, and we will try
22 to solve that problem.

23 HEARING OFFICER VACCARO: Okay. We will be back
24 in a few minutes.

25 (Thereupon a recess was taken from

1 12:14 p.m. to 12:20 p.m.)

2 HEARING OFFICER VACCARO: I think we'll go ahead
3 and -- Ms. Hammond, it looks as though you were able to
4 accomplish the goal. So thank you for that. Is that a
5 correct statement?

6 MS. HAMMOND: That is correct. Ms. Blair is
7 here.

8 MS. BLAIR: I apologize.

9 HEARING OFFICER VACCARO: No apologies necessary.
10 Thank you for being here.

11 Mr. Ellison, did you have similar good fortune?

12 MR. ELLISON: We're prepared to proceed.

13 HEARING OFFICER VACCARO: Great. Okay. So
14 Ms. Hammond, again, at the pre-hearing conference and in
15 the pre-filed statements before the pre-hearing
16 conference, you indicated that staff would like to make a
17 presentation with respect to biological resources. Seemed
18 as though again it was more in the nature of supplementing
19 and complementing things that were already in the record
20 but adding that clarity for the evidentiary record here at
21 today's proceeding. Is this a fairly accurate statement?

22 MS. HAMMOND: That is accurate. Thank you.

23 We have Eric Weiss and Tonya Moore of the
24 California Department of Fish and Game on the phone.

25 I had hoped that the Fish and Wildlife Service

1 could also be joining us. Unfortunately, she could not.
2 And I'm going to ask for your forbearance again and before
3 all documents relating to evidence are received
4 Ms. Blackford -- Ashleigh Blackford of the U.S. Fish and
5 Wildlife Service is expecting to send us a written
6 statement on the subject of the coordination between the
7 agencies. And I think it will be helpful to the Committee
8 to see the Fish and Wildlife Services statement about the
9 level of coordination between the agencies, in particular
10 because we are not expecting the biological opinion to be
11 coming in any time soon. So to the extent that this input
12 from the service helps the Committee, I would ask that the
13 Committee wait to receive that statement from
14 Ms. Blackford.

15 HEARING OFFICER VACCARO: When you say wait to
16 receive, do you really just mean leave the record open on
17 biological resources until everyone, including the
18 applicant, has had an opportunity to see what's in the
19 document and to give everyone the opportunity to be
20 responsive?

21 MS. HAMMOND: Yes.

22 HEARING OFFICER VACCARO: Okay.

23 Applicant, do you have any problem with that or
24 any concerns?

25 MR. ELLISON: No. That's fine.

1 HEARING OFFICER VACCARO: Okay. With that, I
2 think we need to go ahead and have the court reporter
3 swear in folks on the phone. We can't see you, but we are
4 trusting that you're going to follow the honor system and
5 actually raise your right hand as this is done.

6 (Thereupon Eric Weiss and Tonya Moore were
7 sworn by the reporter.)

8 MS. HAMMOND: Would we need to swear in Ms. Blair
9 as well?

10 HEARING OFFICER VACCARO: Yes.

11 (Thereupon Ms. Blair was sworn by the reporter.)

12

13 DIRECT EXAMINATION

14 MS. HAMMOND: Ms. Blair, would you please state
15 and spell your name for the record?

16 MS. BLAIR: My name is Heather Blair,
17 H-e-a-t-h-e-r, B-l-a-i-r.

18 MS. HAMMOND: Did you prepare the testimony
19 entitled biological resources in the document marked as
20 Exhibit 32, the supplemental staff assessment Part B for
21 the Abengoa Mojave Solar Project?

22 MS. BLAIR: Yes.

23 MS. HAMMOND: Was the statement of your
24 qualifications attached to this testimony?

25 MS. BLAIR: Yes.

1 MS. HAMMOND: Did you prepare the rebuttal
2 testimony entitled "Biological Resources" in the document
3 marked as Exhibit 306, staff's rebuttal testimony to the
4 applicant's opening testimony?

5 MS. BLAIR: Yes.

6 MS. HAMMOND: And do the opinions contained in
7 both the prepared opening testimony and prepared rebuttal
8 testimony represent your best professional judgment?

9 MS. BLAIR: Yes.

10 MS. HAMMOND: Ms. Blair, can you briefly
11 summarize your analysis and conclusions regarding whether
12 the Abengoa Mojave Solar Project would result in any
13 significant adverse impacts?

14 MS. BLAIR: Yes. Just briefly, the proposed
15 project is located on disturbed lands. There are areas
16 that are developed, some areas of fallen agriculture and
17 active agriculture. Overall, the proposed project area is
18 degraded habitat of marginal suitability for special
19 status species and does not support a diverse assemblage
20 of native plants or wildlife.

21 However, the proposed project area is adjacent to
22 the Harper Dry Lake, area of critical environmental
23 concern and otherwise essentially surrounded by known
24 occurrences of special status plants and wildlife,
25 including the state-threatened Mojave ground squirrel and

1 the federally and state threatened desert tortoise.

2 Otherwise adjacent to the proposed project area
3 are desert tortoise critical habitat, desert wildlife
4 management area, and Mojave ground squirrel conservation
5 area. Therefore, transient individuals of these special
6 status species could occur on site as they travel between
7 areas of suitable habitat adjacent to the proposed
8 project.

9 And given the proximity of the proposed project
10 to the sensitive biological resources, construction and
11 operation of the project would result in various indirect
12 and direct effects.

13 I worked closely with Fish and Wildlife and the
14 California Department of Fish and Game to develop various
15 conditions of certification to avoid, minimize, and
16 mitigate these effects. And as stated in my staff
17 assessment, implementation of these proposed conditions of
18 certification would ensure that compliance with LARS is
19 achieved and the proposed project does not result in any
20 significant impacts to biological resources under CEQA.

21 MS. HAMMOND: Ms. Blair, can you elaborate on the
22 extent of your coordination with staff from the California
23 Department of Fish and Game and the U.S. Fish and Wildlife
24 Service?

25 MS. BLAIR: Yes. Largely, the coordination

1 between these two agencies and myself was ongoing and
2 informal, meaning that it consisted of many phone calls
3 and e-mails. I was able to essentially pick up the phone
4 with questions or other issues and they were readily
5 available and very responsive.

6 But there are a few I would say coordination
7 milestones or events that were of particular importance to
8 the development of my staff assessment. Initially, it
9 began with the AFC review. I ensured that all agencies
10 had copies. And after a thorough review, we had a
11 conference call to discuss the project and any concerns
12 and to begin to outline some of the conditions of
13 certification and of course any data requests that might
14 be necessary.

15 From that, I began to prepare the staff
16 assessment, and I provided a draft of the staff assessment
17 to Fish and Game and Fish and Wildlife for their review.
18 They provide comments on all aspects of my staff
19 assessment, including the environmental setting, the
20 impact analysis, and of particular importance, the
21 conditions of certification. I took their comments and
22 integrated them.

23 Following that, the staff assessment was
24 published and the Department of Fish and Game and Fish and
25 Wildlife Service then participated in the staff assessment

1 workshop. When we received comments on the staff
2 assessment, which were received from the applicant and
3 from Defenders of Wildlife, we had a conference call
4 between the service and the department and myself to
5 discuss these comments and whether and how they should be
6 incorporated into my staff assessment, into the
7 supplemental staff assessment and device any responses to
8 comments.

9 So then I prepared the supplemental staff
10 assessment and again provided a draft to these two
11 agencies for their review. Again, they provided comments
12 and I integrated them. And the staff -- the supplemental
13 staff assessment was published. But I would like to note
14 that I think the input from the department was integral to
15 the preparation of the staff assessment.

16 MS. HAMMOND: Ms. Moore and Mr. Weiss, do you
17 agree with Ms. Blair's characterization of the
18 coordination between the CEC and the Department of Fish
19 and Game?

20 MR. WEISS: This is Eric Weiss from the
21 department, and I do.

22 MS. MOORE: This is Tonya Moore, and I do.

23 MS. HAMMOND: Do you have anything to add to
24 Ms. Blair's characterization of the coordination between
25 the agencies?

1 MR. WEISS: I do not.

2 MS. MOORE: Tonya Moore. I do not.

3 MS. HAMMOND: Have you reviewed -- this is going
4 to Ms. Moore and Mr. Weiss. Have you reviewed Ms. Blair's
5 conditions of certification?

6 MR. WEISS: This is Eric Weiss. (Inaudible) I
7 went through each of the processes that she some
8 previously outlined through the various iterations she put
9 forth.

10 MS. MOORE: This is Tonya. Yes, I have.

11 MS. HAMMOND: Do you agree with the conditions of
12 certification in Ms. Blair's testimony as far as
13 conformity with the California Endangered Species Act?

14 MR. WEISS: Yes, I do. Eric Weiss.

15 MS. MOORE: I do.

16 MS. HAMMOND: Thank you very much. I have no
17 further questions.

18 COMMISSIONER EGGERT: No questions.

19 I guess I just want to say I appreciate the
20 commentary about the close coordination among the State
21 agencies and the federal agencies as well. I think that's
22 obviously critical for us to do an adequate review. So
23 appreciate your input.

24 HEARING OFFICER VACCARO: And just as we did with
25 project description, if the applicant has anything that

1 you'd like to say, supplement, or clarification questions
2 again, we're not going through a full cross-examination.
3 But I want to be fair in terms of the process. Is there
4 anything that you might want to pose to any of these
5 biological resources witnesses?

6 MR. ELLISON: I have no questions. I would
7 simply also express our appreciation to all of the
8 witnesses coordination among the agencies.

9 HEARING OFFICER VACCARO: Thank you.

10 Mr. Brizzee, did you have anything that you might
11 want to add with respect to biological resources?

12 MR. BRIZZEE: No question of these witnesses.
13 Thank you.

14 HEARING OFFICER VACCARO: Thank you, all.

15 Thank you, Ms. Blair, for making yourself
16 available on very short notice.

17 I think with that, why don't we go ahead and move
18 into the evidentiary record everything on biological
19 resources, knowing that Ms. Hammond would like to
20 supplement the record with this document. So we'll keep
21 the record open with the purpose for receiving the
22 information and allowing the applicant the opportunity to
23 be responsive to the document. So applicant if I want to
24 go ahead and move in your biological resources.

25 MR. ELLISON: So moved.

1 HEARING OFFICER VACCARO: Any objections, staff?

2 MS. HAMMOND: None.

3 HEARING OFFICER VACCARO: Mr. Brizzee?

4 MR. BRIZZEE: No objection. Thank you.

5 HEARING OFFICER VACCARO: Okay. Ms. Hammond, I
6 know you had very specific exhibit numbers that you wanted
7 to move into the record on biological resources.

8 MS. HAMMOND: Yes. That would be Exhibit 302,
9 the section on biological resources and the declaration
10 and witness qualification of Heather Blair and Exhibit
11 306, CEC staff rebuttal testimony, the section entitled
12 "Biological Resources."

13 HEARING OFFICER VACCARO: Any objections,
14 applicant?

15 MS. HAMMOND: I beg your pardon, as well as
16 Exhibit 304, CEC staff's errata to supplemental staff
17 assessment Part B, biological resources.

18 HEARING OFFICER VACCARO: Any objections to that
19 change?

20 MR. ELLISON: No.

21 HEARING OFFICER VACCARO: Thank you.

22 Mr. Brizzee?

23 MR. BRIZZEE: No objections.

24 HEARING OFFICER VACCARO: Okay. Great. It looks
25 like we have everything at this point for all the topics

1 for today's discussion entered into the evidentiary
2 record.

3 (Thereupon the above-referenced documents
4 were admitted into evidence by the Hearing
5 Officer.)

6 HEARING OFFICER VACCARO: We made a lot of
7 progress today, which puts us ahead of schedule, which is
8 always very nice.

9 I think it's pretty clear to everybody we won't
10 need tomorrow to continue with the evidentiary hearings.
11 We certainly will move forward with July 15. But we do
12 have a few outstanding issues at the moment. We do have a
13 5 o'clock public comment period. It's always hard to know
14 how long the hearings will go and when public can actually
15 participate. So as an accommodation, we did a specified
16 time as opposed to just allowing public comment to happen
17 at the end of the proceeding. I think what we'd like to
18 do is get a sense if there is anyone on the telephone, is
19 there any members of the public that would like to make a
20 public comment at this time?

21 Okay. Hearing none, I think what we'll do -- are
22 there any members of the public here in person who wanted
23 to speak who might have already completed a blue card or
24 who might still need to complete a blue card?

25 Seeing none in person, it appears that at this

1 point we have no public comment. Doesn't mean that we
2 won't, because we noticed it for 5:00, which puts us at an
3 interesting crossroads. And I think I just need to confer
4 with Commissioner Eggert for one moment to decide how we'd
5 like to proceed in terms of re convening.

6 Okay. So I think where we are is, of course, the
7 parties have every right to come back at 5:00 to hear the
8 public comment, if there is any public comment. But we
9 have no expectation that you do so. Certainly, the
10 Committee will be here. The court reporter will be here
11 to take whatever public comment there might be. We
12 encourage you and welcome you to be here as well. But if
13 we don't see you again until July 15th, that's fine as
14 well.

15 A few parting comments though before Commissioner
16 Eggert at least closes this part of today's hearing before
17 we reopen for public comment.

18 The presiding member's proposed decision is
19 intended to go out at the end of July. We stated at the
20 pre-hearing conference, there's nothing at this point that
21 would make us believe that's changed. That takes into
22 consideration the hearing on July 15th. We're hopeful
23 that when we do convene on the 15th, it's going to be as
24 expeditious as today's proceeding. But please anticipate
25 that we're going to move very swiftly on getting that PMPD

1 issued and out for public comment and review.

2 So I think before I turn it over to Commissioner
3 Eggert, is there anything else that we didn't cover today
4 that we need or anything else that needs to be taken care
5 of. Applicant?

6 MR. ELLISON: For our part, no. But I believe
7 staff may have one item.

8 HEARING OFFICER VACCARO: Ms. Hammond?

9 MS. HAMMOND: Ms. Hearing Officer, during the
10 break, we were able to confer with the applicant's
11 counsel, and I'd like to clarify that there is no
12 disagreement on the conditions of certification noise 2,
13 4, and 7; bio 3, 5, and 17; or visual 1, 2, and 4.

14 HEARING OFFICER VACCARO: Okay. Do you concur?

15 MR. ELLISON: We do.

16 HEARING OFFICER VACCARO: Okay. Great. Thank
17 you.

18 Anything else?

19 Mr. Brizzee, is there anything else that you'd
20 like to say or comment on?

21 MR. BRIZZEE: Nothing from me. But thank you for
22 your courtesy today.

23 HEARING OFFICER VACCARO: You're welcome. Thank
24 you for participating.

25 COMMISSIONER EGGERT: Again, thank you, everyone,

1 for participating in the hearing today. And as we said at
2 the beginning, we're looking forward to a fair and
3 expeditious hearing. I think we've accomplished that.

4 Also again want to thank the staff for their hard
5 work, especially a lot of us worked to make sure all of
6 the loose ends have been tied up as we go into the final
7 stage of this in moving towards the PMPD.

8 Just echo Ms. Vaccaro's statement that we do
9 intend to -- the Committee intends to move expeditiously
10 towards a PMPD by the end of July. At least everything
11 I've seen today suggests that's quite feasible.

12 I want to thank the applicant for all of the
13 information that's been provided today, including on the
14 water issue and your working with the staff to come to
15 some conditions of compliance for all of the items that
16 have been discussed today.

17 Want to thank the intervenors, county of San
18 Bernardino for your participation, and the others.

19 So I guess we're going to reconvene here at 5:00
20 for those of you who want to stick around. I know I'll be
21 here. And also want to thank Ms. Vaccaro for running such
22 an efficient hearing.

23 So thank you all, and we'll see all of you again
24 either today or on July 15th.

25 (Thereupon a recess was taken from

1 12:41 p.m. to 5:02 p.m.)

2 COMMISSIONER EGGERT: Welcome back. I guess
3 we're going to have a few closing items before closing out
4 today's evidentiary hearing. So Ms. Vaccaro.

5 HEARING OFFICER VACCARO: And this is redundant,
6 because I said it just before we went back on the record,
7 but we did notice 5:00 p.m. public comment. It is just a
8 bit after 5:00. Looking in the room here, we have no
9 members of the public present. We have not received any
10 blue cards today, nothing to read into the record. Is
11 that correct, Ms. Jennings?

12 MS. JENNINGS: Yes, that's correct.

13 HEARING OFFICER VACCARO: And we just checked on
14 the telephone, and it appears that we don't have any
15 members of the public on the phone. So we're going to go
16 ahead and move forward with a few items of housekeeping.

17 I was just apprised of these just moments before
18 5:00, so this is news to me as well. I think what we'll
19 do is let Ms. Hammond explain to us what the situation is
20 and then we'll propose some solutions.

21 MS. HAMMOND: Thank you.

22 I apologize for this oversight and not bringing
23 it up earlier during the hearing, but I need to move into
24 evidence the declarations and witness qualifications in
25 support of the staff's rebuttal testimony. It's I believe

1 purely an administrative oversight. It should have been
2 attached to the rebuttal. But I'm offering it as a
3 separate exhibit.

4 HEARING OFFICER VACCARO: Just to make sure I'm
5 understanding. When we went through the exhibit list
6 today and you had identified I think Exhibits 300 through
7 311 or 314, something like that --

8 MS. HAMMOND: I have 311.

9 HEARING OFFICER VACCARO: Okay. Where would this
10 fit in your exhibits? What by exhibit number? Which
11 exhibit do these declarations go to?

12 MS. HAMMOND: I'm proposing to offer them as a
13 separate exhibit.

14 HEARING OFFICER VACCARO: As Exhibit 312 is what
15 you're suggesting and that you would want to have the
16 rebuttal testimony and the related declarations as your
17 Exhibit 312; is that correct?

18 MS. HAMMOND: The rebuttal is identified as
19 Exhibit 306.

20 HEARING OFFICER VACCARO: Okay. I think that's
21 what I was just asking you. I already have an exhibit,
22 but what you don't have are the corresponding declarations
23 that would go with that them?

24 MS. HAMMOND: That's correct.

25 HEARING OFFICER VACCARO: So those would be

1 something that you would be looking to add to I think
2 Exhibit 306.

3 MS. HAMMOND: I'm fine with that. Yes, thank
4 you.

5 HEARING OFFICER VACCARO: Okay. And at this
6 point, I'm understanding that no one has seen the
7 declarations as of yet; is that correct? And rebuttal
8 testimony was served and filed and docketed. We all
9 received the actual narrative, but not the attachments.

10 MS. HAMMOND: That's right. And so no one has
11 seen the declarations, but they are standard form in the
12 form that people are quite familiar with. And this was
13 just some change in language to change it from supplement
14 at staff assessment to rebuttal testimony.

15 HEARING OFFICER VACCARO: Okay. Mr. Ellison, do
16 you have any comments or thoughts on this? We can solve
17 this a couple of different ways. But I think I'd like to
18 hear from you first.

19 MR. ELLISON: We have no objection to the
20 admission of the standard form declaration. If it turns
21 out there is a surprise in them after we see them, we'll
22 deal with it on July 15th. But I'm sure there isn't.

23 HEARING OFFICER VACCARO: Okay.

24 MR. ELLISON: We're fine.

25 HEARING OFFICER VACCARO: Thank you.

1 So then I think what we'd like to do then is make
2 sure that we get those filed, served, docketed tomorrow so
3 we can all at least see them. And in the mean time, why
4 don't you go ahead and make your motion.

5 MS. HAMMOND: May I move to reopen the record and
6 add the declarations and witness qualifications of the
7 following witnesses in support of staff's rebuttal
8 testimony. And this would be added to Exhibit 306. These
9 are the declaration of witness qualifications of Heather
10 Blair, Alvin Greenberg, Shahab Khoshmashrab, Christopher
11 Dennis, John Fio, Eugene Yates, Mike Conway, Steven Brown,
12 Thomas Packard, William Kanemoto, James Jewell, and Ellie
13 Townsend-Hough.

14 HEARING OFFICER VACCARO: Okay. Thank you.

15 MS. HAMMOND: Thank you.

16 HEARING OFFICER VACCARO: Applicant, no
17 objection?

18 MR. ELLISON: No objection.

19 HEARING OFFICER VACCARO: Thank you for noting
20 that those were missing. This is a perfect time to get
21 those entered. And all of those documents are entered,
22 reserving the right, of course, for applicant to raise a
23 concern if, in fact, there's something in there that is
24 out of the ordinary. Because right now, the objection is
25 made with the documents sort of site unseen.

1 (Thereupon the above-referenced documents
2 were admitting into evidence by the Hearing
3 Officer.)

4 HEARING OFFICER VACCARO: Well, seeing there are
5 no public comments and we've taken care of the last order
6 of business, the next thing is to see each other again on
7 July 15th to cover the remaining topics of executive
8 summary, air quality, TSE, including the appendix, and
9 worker safety.

10 I'll turn it over the Commissioner Eggert.

11 COMMISSIONER EGGERT: Does this mean we can all
12 make tomorrow off and go hiking?

13 I don't really have much to say. It's after
14 5:00, and I suspect everybody is anxious to get going. So
15 again, I just want to thank the applicant and the staff
16 for all the hard work over the last several weeks. And I
17 think this case is in good shape. I look forward to the
18 July 15th. Is that going to be here in Sacramento or --

19 HEARING OFFICER VACCARO: It is in Sacramento.
20 Unfortunately, it is not scheduled for Hearing Room A.
21 It's scheduled for a conference room. But it will be in
22 Sacramento.

23 COMMISSIONER EGGERT: Okay. So I'll see you all
24 in a couple weeks. Thank you.

25 (Thereupon the hearing adjourned at 5:09 p.m.)

1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported electronically by PETER PETTY,
7 and I, Tiffany C. Kraft, a Certified Shorthand Reporter of
8 the State of California, and thereafter transcribed into
9 typewriting.

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

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

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