

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 97-AFC-1
)
Application for Certification)
for the High Desert Power)
Project)
_____)

INFORMATIONAL HEARING

Mojave Desert Air Quality Management District
Board Chambers
15428 Civic Drive
Victorville, California 92392

Friday, April 16, 1999
10:00 a.m. to 11:45 a.m.

Reported and Transcribed by: Marie T. Estebo

A P P E A R A N C E S

Commissioner Present:

ROBERT A. LAURIE

Staff Present:

STANLEY W. VALKOSKY, Chief Hearing Officer

ROSELLA SHAPIRO, Advisor to Commissioner Sharpless

For the Staff of the Commission:

RICHARD BUELL, Project Manager

CARYN HOUGH, Staff Counsel

For the Applicant:

ALLAN THOMPSON, Project Counsel

THOMAS BARNETT, Project Manager

ANDREW WELCH, Project Director

MICHAEL CARROLL, Environmental Counsel

Interveners:

NANCEE MURRAY, Department of Fish and Game

MARK JOSEPH, California Unions for Reliable Energy

GARY LEDFORD, Taxpayer

ANDREW BETTWY, Counsel for Southwest Gas Corporation

KEITH BROWN, Regulatory Specialist, Southwest Gas Corporation ç

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PROCEEDINGS
FRIDAY, APRIL 16, 1999, VICTORVILLE, CALIFORNIA
10:00 A.M.

ç

COMMISSIONER LAURIE:~ Ladies and gentlemen, ç
good morning and welcome to the hearing on -- this is ç
a preconference hearing.~ This is a preconference ç
hearing for the High Desert Power Project.~

The predominant purpose for today's ç
meeting is to -- at the conclusion of such -- is to ç
determine a hearing date.~ So we're going to be ç
talking about the issues that will permit us to reach ç
that decision.~

So for introduction, my name is ç
Robert~Laurie. I'm a member of the California Energy ç
Commission.~ And at this moment, I am the committee ç
that is responsible for hearing and providing ç
recommendations for the full commission on this ç
project.~ It is likely that a second member of this ç
committee will be appointed before too long.~

As you are aware, up until just a few ç
days ago, Commissioner Jan Sharpless was presiding ç
member of this committee.~ Commissioner Sharpless' ç
term expired and is therefore no longer with the ç
commission.~ I will be acting as presiding member ç
until I am formally named as such, if that occurs.~

To my left is Mr. Stan Volkosky.~ ç
Mr.~Volkosky is our hearing officer.~ He is our ç
committee legal officer.~ To my right is ç
Ms.~Rosella~Shapiro.~ And Ms.~Shapiro is the senior ç
staff advisor to Commissioner Sharpless and will ç
continue such for whichever commissioner is named as ç
associate member of this committee.~

We do have, again, a specific purpose for ç
today's meeting. And that is to talk about those ç
items in sufficient depth to allow this committee to, ç
at the conclusion of this meeting, set a hearing ç
date.~

I would like to ask for introductions at ç

this point.~ First, I'd like to have staff introduce ç
all of their members and then the applicant and then ç
the other interveners.~

Mr. Buell.

~~~~~MR. BUELL: Good morning.~ My name is ç  
Rick~Buell.~ I'm the staff's project manager for the ç  
High Desert Power Project. And to my left is ç  
Caryn~Hough, who is staff counsel for the staff.~ And ç  
all that's all of the staff members today.~

~~~~~COMMISSIONER LAURIE:~ Thank you.~  
Would the applicant introduce yourself, ç
please.

~~~~~MR. BARNETT: My name is Tom Barnett. I'm the ç  
project manager for the High Desert Power Project.~

~~~~~COMMISSIONER LAURIE:~ And would you like to ç  
introduce the rest of your representatives that are ç
joining in the dais, please?~

MR. BARNETT: Certainly.~

To my right is Andy Welch, who is the ç
project director for the High Desert Power Project.~ ç
To my left is our counsel, Allan Thompson.~ And to my ç
far right is our environmental counsel --

MR. CARROLL: Mike Carroll.~

MR. BARNETT: -- Mike Carroll. Thank you.

You'd think I'd be able to remember.

~~~~~COMMISSIONER LAURIE:~ I'd often think my wife ç  
would remember my name. Thank you.~

Interveners, please.

~~~~~MS. MURRAY: My name is Nancee Murray.~ I'm ç  
with the California Department of Fish and Game.~

MR. JOSEPH: My name is Mark Joseph. I ç
represent the California Unions for Reliable Energy.

MR. LEDFORD: My name is Gary Ledford and I'm a ç
taxpayer.~

~~~~~COMMISSIONER LAURIE:~ Thank you very much.~

MR. BETTWY: My name is Andrew Bettwy. I'm an ç  
attorney for Southwest Gas Corporation.~ Also with me ç  
but not at the table is Joe Provenza, who has been ç  
named as a potential witness and ç  
supervisor/engineering for Southwest Gas. And ç  
Keith~Brown, our regulatory specialist.~

~~~~~COMMISSIONER LAURIE:~ Thank you.~

All of the interveners are parties and ç
all have an equal right to offer comment today as will ç
be the public.~

Ms. Mendonca, would you like to introduce ç
yourself and offer any introductory comments that ç
you'd like, please?~

MS. MENDONCA: Thank you.~

I'm Roberta Mendonca with the Energy ç
Commission, public adviser.

It's a pleasure to be here this morning.~ ç
I was at San Jose last week at a group community ç
meeting with 250 people that are active on an ç
application that hasn't even been filed yet.~ So ç
putting it in perspective, it is great to be here.~

MR. JOHNSON: My name is Bill Johnson.~ I'm an ç

intervener for the Department of Water and Power, ☿
Los Angeles Department of Water and Power. ✓

~~~~~COMMISSIONER LAURIE: ✓ Thank you, sir, very much. ✓

As an intervening party, you are entitled ☿  
to sit at the dais, if you desire to do so. ✓

Mr. Volkosky, would you -- do you have ☿  
any introductory comments, please? ✓ Do you have any ☿  
introductory comments? ✓

What I'd like to do is ask each of the ☿  
parties for a brief opening statement before we get ☿  
into any details.

~~~~~MR. VOLKOSKY: ✓ Thank you, Commissioner. ✓

I'd just like to add that, as we ☿
explained in the March 9th notice, this is today's ☿
second prehearing conference. ✓

Based upon the first prehearing ☿
conference held in February, it is the committee's ☿
understanding that a lot of the topic, that there is ☿
no dispute among the parties on a lot of the topic ☿
areas. ✓ To the extent that's changed, committee would ☿
appreciate being advised of that. ✓ If that has not ☿
changed, the purpose of today's prehearing conference ☿
is to focus on the topic areas of air quality, ☿
biology, water resources and supply, hazardous ☿
materials management, cultural resources, public ☿
health, potential for the use of dry cooling, gas ☿
pipeline, engineering and operation. ✓

These are the issues that, to the ☿
committee's understanding, were left open as a result ☿
of the last prehearing conference. ✓ So I'd appreciate ☿
you addressing your comments to those areas as well as ☿
any other changes in your statements. ✓

Thank you, Commissioner. ✓

~~~~~COMMISSIONER LAURIE: ✓ I would like to note that ☿  
evidently our microphones, it looks like, perhaps only ☿  
allows one of us to speak at a time. ✓ So make sure you ☿  
push the button when you're ready to go. ✓

Also, I would like to note that this ☿  
hearing is being transcribed. ✓ I would ask the court ☿  
reporter to let us know at any time we are speaking ☿  
unintelligibly, which may be more often than any of us ☿  
are willing to admit, or if you want us to slow down ☿  
or you need a break at any time. ✓

Mr. Thompson, or, Mr. Barnett, do you ☿  
have an opening comment? ✓

MR. BARNETT: ✓ Yes, we do. ✓ Thank you very much. ✓

As has already been noted, we had a ☿  
prehearing conference back in February. ✓ I think at ☿  
that time we identified general agreement on most ☿  
areas. And we did identify some other areas that we ☿  
felt we were not ready to go forward with. ✓

I think we have made progress since that ☿  
last prehearing conference. ✓ We have focused, of ☿  
course, on the issues that we had not reached ☿  
agreement on last time. ✓ And I think there's still ☿  
perhaps some area of discussion on exactly how many of ☿  
the issues that you listed are still -- still need ☿

resolution. But as was the case back in February, clearly the two biggest areas are with regard to air quality and water resources.

As far as the applicant is concerned, the other areas we have essentially reached agreement on with the exception of perhaps a few issues related to them. And hopefully we could try to pin those down here today. But I think, as most of you know by now, what we have concentrated on since the last prehearing conference is discussions with one of the principal interveners, the California Unions for Reliable Energy, to see if it was possible to find a common area that we could reach a proposed settlement with.

And I think we have had very productive meetings with CURE. We had, as was indicated in both CURE's prehearing conference statement and our prehearing conference statement, we had hoped by today at the latest that we would be able to present to the committee our proposed settlement.

Despite best efforts on both our parts, we are not quite there yet. I want to make clear that that does not mean that we have -- are in any way at an impasse. It simply means that we are dealing with some complex issues. These are issues that as in any settlement negotiation, you can't do it piecemeal. Everything has to be resolved. And until you have everything resolved, you really don't have anything resolved.

So we are not there yet. We are, I believe, very close. I think CURE would share that sentiment. We are very hopeful that we will have a settlement to propose to the committee for their consideration in the very near future.

I don't think it would be productive for me to specify a drop dead date, but I certainly think that it's conceivable that it would be as early as next week and hopefully not much beyond that. So we're talking a very short time frame there. I'm not talking about something that's going to drag on for weeks.

But because of the nature of any settlement discussions, there are a number of topics that we really don't feel we can talk about here today because it could jeopardize the discussions we're having with CURE. We believe that if these discussions are successful, that the proposed settlement that we will offer for your consideration will address all the outstanding issues. And we certainly are hopeful that we'll address them in a way that you will find satisfactory; therefore, we'll quickly provide the avenue towards saying that all of the outstanding issues are in fact resolved and therefore are ready to go forward with hearings.

I think what we would like to concentrate on today is to have -- I think we still have a constructive discussion about the schedule, because we would like to offer to you a schedule that presumes

that the submittal of our joint settlement proposal ☐ would be Day Zero, that we can talk, I believe, ☐ meaningfully about how many days after that events can ☐ occur.~

And to that end, we have prepared a ☐ schedule that I'd like to ask Andy to hand out to you ☐ now that does that.~ It shows the settlement proposal ☐ as Day Zero. And again, it's my belief that that ☐ settlement proposal will be offered in the very near ☐ future.~

~~~~~COMMISSIONER LAURIE:~ Please make copies ☐ available to all parties.~

MR. BARNETT: We have enough, I think, for most ☐ of the people at the dais. And we'll have to make ☐ copies available for anyone else here.~

Before I give you a brief walkthrough of ☐ this, I would like to reiterate the idea that we ☐ expressed back in the February hearings.~ And that is, ☐ we are certainly -- we certainly believe we are ☐ prepared to go forward with hearings on those topic ☐ areas that we're in agreement with.~ And we think that ☐ the staff's submittal, which lists 21 of them, is that ☐ we are in agreement with that.~ We think those areas ☐ have been resolved and we could go forward with those ☐ if the committee feels that that is appropriate.~

But clearly, what we're interested in, as ☐ you are, is getting all of them done.~ And the ☐ schedule that we've laid out here is a schedule that ☐ what we sort of consider the long leadtime schedule, ☐ in a way, the worse case schedule that would allow us ☐ to have the hearings on all of the issues, including ☐ these last few ones that have not yet reached ☐ resolution.~

~~~~~COMMISSIONER LAURIE:~ Mr. Barnett, before you ☐ proceed to your schedule, let me comment briefly.~

Your top line makes reference to the ☐ joint settlement proposal between your company and ☐ CURE.

MR. BARNETT: Yes.~

~~~~~COMMISSIONER LAURIE:~ The terms and conditions ☐ of that settlement proposal, I do not consider the ☐ business of this committee.~ The nature of any dispute ☐ between CURE and your company that is not officially ☐ on this record is none of our business.~

Therefore, whatever agreements you folks ☐ reach on any issue is solely and completely up to ☐ you.~ What we're interested in is resolution to the ☐ outstanding issues.~ To the extent that one or more ☐ intervening parties confirms agreement with that ☐ resolution, it is certainly most helpful.~ This ☐ committee will not base its decision making on a ☐ private agreement between two parties.~ ☐

Before I ask you to go through the proposal -- and I ☐ appreciate your comments -- let me ask staff and then ☐ the other interveners if they have any brief opening ☐ comments in response to Mr. Barnett.

~~~~~MR. BUELL: Staff would like to comment that ☐

certainly we --

~~~~~COMMISSIONER LAURIE:~ Mr. Buell, why don't you ☿  
hit your microphone, please.~

MR. BUELL: Thank you for reminding me.~

We applaud the applicant and CURE for ☿
their negotiations, but we are still waiting to try to ☿
understand what the applicant's proposal is on this ☿
project.~ And we agree that we're ready for hearings ☿
on the 21 areas that we've identified in our ☿
prehearing conference area, leading air and water and ☿
perhaps biology is the three outstanding areas.~

We need to know exactly what the ☿
applicant is proposing in terms of water and air in ☿
order to be able to proceed to hearings to complete ☿
our analysis.~ So we are awaiting that information ☿
from the applicant.~

I presume that that would come out at the ☿
Day~Zero when the applicant announces its settlement ☿
proposal, one way or another.~ And then we can proceed ☿
from that.~ Until we know that, we can't define ☿
exactly what issues we may or may not have with ☿
various issues.~ We can get into more specifics, if ☿
you'd like.~

~~~~~COMMISSIONER LAURIE:~ Well, let me -- and I ☿  
want to make sure that I'm not confused here.~

This committee is not going to sit and ☿  
wait for a settlement proposal.~ This committee needs ☿  
to know when it's going to go to hearing, which means ☿  
it needs to know when the parties are going to be ☿  
ready.~

I don't want to know about a settlement ☿  
proposal.~ I want to know when all the parties are ☿  
going to be ready to go to work.~ This committee will ☿  
not be held to a time table of private parties doing ☿  
their negotiation.~

I respect what -- I respect the ☿  
communications that are occurring.~ I think it is ☿  
important. And I am encouraging that, but our efforts ☿  
are the efforts of the entitling agency.~ And whatever ☿  
A or B or C or D may agree to privately is not going ☿  
to be the basis upon which this committee makes its ☿  
decision.~

So, Mr. Buell, I understand that you're ☿  
waiting for information, but I do not want to see any ☿  
reference to us waiting for a settlement proposal.~ If ☿  
we're waiting for a certain critical data, then this ☿  
committee will wait for that certain critical data.~ ☿  
I'm not going to wait for a private agreement between ☿  
two parties.~

Mr. Volkosky, what am I missing?~ What am ☿  
I not understanding?~ If I am misunderstanding, then I ☿  
feel very free to be corrected.~

~~~~~MR. VOLKOSKY:~ I think, Commissioner Laurie -- ☿  
and then please, Mr. Thompson, or, Mr. Barnett, ☿
correct me if I'm wrong -- as I understand the ☿
proposal being developed between CURE and the ☿
applicant, it would contain a partially, at least, a ☿

set of mitigation measures to address CURE's concern
in various environmental areas. Those, of course, would be subject to review by all the other parties and everything else.

Am I correct so far, gentlemen?

MR. BARNETT: You are correct, yes.

MR. VOLKOSKY: It would not necessarily -- it would not be binding in the sense that the committee certainly could not modify it or other parties could challenge any of those.

Essentially what it means, I think, insofar as the committee is concerned, the bottom line is that in scheduling hearings, it would give us a better sense for how many witnesses are appearing and whether a given issue is going to be contested between some parties. And I think that's essentially the extent of it, in my view, at this point.

If I might, I do have one question. And, Mr. Barnett, you indicate that you're reaching settlement. I would look at it as proposed mitigation, proposed environmental mitigation, between yourselves and the unions. To what extent, if any, would this -- is this intended to address the concerns raised by staff, Fish and Game, Mr. Ledford, the other parties that are participating in this proceeding?

MR. BARNETT: I think that perhaps it is not intended to address those specifically, but I believe that the outcome of this mitigation measures that we hope to agree to with CURE will in fact address most, if not all, of those concerns.

MR. VOLKOSKY: Right. So then the sequence, as I understand it, would be that you and CURE would jointly propose these mitigation measures. The other parties would then have an opportunity to review, comment, take a position and develop their evidence on it at future hearings?

MR. BARNETT: Yes, yes. That would be the case.

If I might add in response to what Commissioner Laurie had said. I apologize if I was not very clear. I didn't mean to imply that everyone needed to wait for us and that this would be something that you had to buy off on.

Clearly I understand your comments. And we are and since the last hearing, we have not been idle. We have, as I said at the outset, been in active discussions with the regulatory agencies. And we think we've made very good progress. On April 12th we, in fact, submitted our water plan. We have had discussions with the EPA and we think -- we understand there's a letter from the EPA that we think reflects those discussions.

So our position has been set forth. But the point that I was trying to make is that there is -- there are some key mitigation measures that will clearly address some of the concerns of the staff and other interveners that we aren't yet in a position to

make public.~ And so we expect to be in a position to ~
do that very soon.~ And we will offer them for ~
everybody's consideration to see whether they will -- ~
they are under the obligation to accept them or not.~

~~~~~COMMISSIONER LAURIE:~ Thank you, Mr. Barnett.~

And I apologize.~ I did not intend to be ~  
as irascible as perhaps I sounded.~ I'm worried about ~  
the record. And it's not only been you folks, but the ~  
term "proposed settlement agreement" appears ~  
throughout the record.~ And I think it is in fact a ~  
term commonly used.~ It's terribly inappropriate for ~  
the proceeding in front of us.~

If the applicant is going to propose ~  
mitigation measures, and those mitigation provisions ~  
are agreed to by one of the interveners, that is very ~  
helpful.~ And we consider that to be very positive and ~  
would look forward to further communications in that ~  
regard.~

Let me ask Fish and Game if you have any ~  
comments at this point.~

MS. MURRAY: This is Nancee Murray with the ~  
Department of Fish and Game.~

We probably -- I'll comment first just ~  
from our statement and then get to the settlement ~  
agreement or proposed biological mitigation.~

As we indicated in our second prehearing ~  
conference statement, we believe the topics of ~  
biological resources and water resources are not ready ~  
to go to hearing.~ And we have no comment on the other ~  
20 topic areas listed as ready to go to hearings.~

And I want to first address the ~  
biological resources.~ And the department believes ~  
that the biological resources issue is tied to the ~  
water resources issue. In that there are biological ~  
resources that will be impacted or could be impacted ~  
by the ground water pumping that the High Desert Power ~  
Project might do when they cannot obtain state water ~  
project water.~ And we feel it would be difficult to ~  
separate those two issues.~ First go to hearing on ~  
this one with that element not -- the water resource ~  
element not yet settled.~

So I guess that's the first thing I want ~  
to emphasize is that we believe the biological ~  
resources topic is not ready to go to hearing and ~  
should be -- if there's any bifurcation, it should go ~  
with the water resources element.~

As to the biological resources element, ~  
we do believe that we've made significant progress ~  
since the first prehearing conference.~ We've agreed ~  
upon a mitigation ratio, but we have not yet agreed ~  
upon the total amount of acreage that would be -- ~  
might be impacted by the project.~

So we don't quite have resolution as to ~  
who would be the owner of the mitigation land.~ And we ~  
feel that those issues can be resolved but have not ~  
yet been resolved. And so we would need additional ~  
time to allow staff and the applicant to work that ~

out.~

Secondly, on the water resources, the applicant made reference to having a water plan submitted on the 12th.~ Our consultant just received it and has not yet had time to review it, has some initial concerns just from reading the cover page.~ And I feel like that needs to be addressed separate from this joint settlement proposal.~

I believe -- I have no idea what they've been saying to CURE or how that might affect our resources -- but that we're the trustee agency for, but it does disturb me that this assumes a workshop on water 11 days after this joint settlement proposal.~ And we feel like -- I have very little confidence that we would be ready, given just the very recent nature of this last water plan, our initial concerns that if they were to come to agreement tomorrow with CURE, we'd be ready for a workshop on water 11 days later.~

So now I will turn to the proposed schedule, which again the applicant has said that the CURE settlement contained some biological provisions, it's not intended to address our biological concerns but it may.~ And my concern is we've been working as the trustee agency with the applicant to come up with some mitigation measures.~ We have no idea what CURE's interests are or what they've been talking about and if they are representing our interests and if we would be satisfied with that.~

So it's confusing, at best, to say that ground zero would be a CURE settlement.~ So we feel that we should draw it as when we -- from the department's perspective is when we make progress on the biological resources information and the data and information on water resources.~

And in our prehearing conference statement, we did indicate that that would take time.~ And possibly the fall, again we might have by the fall, a decision in the Supreme Court case in the Mojave litigation, which would again give us better indication of water availability for the project and reliability.~

~~~~~COMMISSIONER LAURIE:~ Thank you, Ms. Murray.~  
Mr. Joseph.~

MR. JOSEPH: Thank you, Commissioner Laurie.~

I first want to say that I concur with the initial statement that Mr. Barnett made about the level and intensity of the discussions that we've had and the progress that we have made.~

I also want to quickly, very quickly say that I agree with everything he just said.~ Our intent here is to try to come up with a mutually agreeable proposal supported by adequate evidence for consideration by the staff, by the other agencies and ultimately from the commission.~

The commission has to make its decision based on evidence in the record.~ And what we are hoping to do is to come up with a set of mitigation

measures -- using that term broadly -- that we can support with substantial evidence that the commission will be able to approve. And we're never under any illusions that any arrangement we make is anything more than a proposal to the commission and to the other appropriate agencies.

~~~~~COMMISSIONER LAURIE: Thank you, Mr. Joseph.

Again, my comments were primarily for the record, but also in indication that this committee -- first of all, this committee again understands the nature of the discussion and understands that the parties understand what the purpose of the discussions are and that we expect proposed mitigations to stem from any agreement. But the subject of a settlement agreement between two parties is something that is irrelevant to us, and really, I would prefer never to see in any of our staff reports again.

Do you have any more comments, Mr. Joseph?

MR. JOSEPH: Yes.

You will never see the word "settlement" again from me. I will always from now on call it a joint proposal, which is what I had hoped we would call it today.

I think it's worth pointing out that, first of all, the subject of our proposal to the commission will be exclusively that which is within the commission's jurisdiction, not with respect to any other issues which we may agree on. That's all that's appropriate to the commission. That's all we're going to talk about with the commission.

Second, we think that the commission's ultimate process will be aided if we are able to reach a joint proposal, because at least with respect to one intervener, there will be fewer issues contested at hearings. We hope that the proposed mitigation we come up with will address the other issues that have been raised by other agencies and other parties. If we are successful, then that will further -- and they agree -- and that will further shorten any other hearings. If we're not, then we'll have hearings.

~~~~~COMMISSIONER LAURIE: Thank you, sir.

MR. JOSEPH: Thank you.

~~~~~COMMISSIONER LAURIE: Mr. Ledford.

MR. LEDFORD: Thank you, Commissioner Laurie.

I think everyone knows that my focused issue is water. And the focus of that issue is that the project has no unconditional will-serve letters to supply water for the project.

Although my issues have been raised at workshop hearings and I have submitted a prehearing conference statement which clearly outlines the issues that I have, and some of those issues are issues that are pending before the Supreme Court, the applicant has not contacted me for any resolution of those issues, although I believe that I put forward some alternative resolutions.

I've also attempted to conduct some discovery on issues specifically related to proposals that they've had on ground water, and have basically been stonewalled. Fortunately, I've found that CURE took some of the same positions, although I didn't know about them until they produced their alternative report on air cooling, which was an excellent report. I responded to that with some issues that I think supported that the alternate costs might be even closer to being on balance than what they had.

As an intervener, one little piece of housekeeping on my prehearing conference statement, I neglected to add myself as a witness. And as a housekeeping matter, I'd like to add myself as a witness.

COMMISSIONER LAURIE: Okay.

MR. LEDFORD: Thank you.

COMMISSIONER LAURIE: Southwest Gas.

MR. BETTWY: Thank you, Commissioner.

Just briefly. As we've indicated in our intervention petition as well as in our prehearing conference statements, Southwest continues to be an integral part of the applicant's case. So as a practical matter, Southwest doesn't bring separate issues to the table. Southwest will not impede or be an obstacle to any -- I almost said the "s" word -- to any joint proposal between the applicant and any of the other parties, and are ready to participate in whatever hearings the commission schedules and on a schedule that's convenient for all the rest of the parties.

COMMISSIONER LAURIE: Thank you, sir.

MR. BETTWY: Thank you.

COMMISSIONER LAURIE: L.A. desire to make any comment?

MR. JOHNSON: No comment.

COMMISSIONER LAURIE: Thank you.

Just a note to staff. You folks are not the first and you're not the only ones to have used the term "settlement proposal." I mean that's something that has been used. I'm just advising that in the future, I think it's inappropriate and would prefer not to see it.

Before the day's over, I do want to get into the issues, because we need to have an understanding of everybody's position to the extent that you're prepared to put it on the record.

At this point, I'd like Mr. Barnett to take a minute and go through your schedule, if that's what you'd like to do.

MR. BARNETT: It is. Thank you, Commissioner Laurie.

Let me make one further attempt to clarify in light of what Ms. Murray has commented on. First with regard to the workshop on water. This is a suggested time frame. We are certainly unfortunately not in a position to reach agreement on our proposed

mitigation measures tomorrow.~ I expect it will be at ~  
least a week. And so therefore, our feeling was ~  
there'd be -- there should be sufficient time ~  
somewhere in that time frame for the water and ~  
biological issues to be addressed sufficiently to hold ~  
a meaningful workshop.~

Certainly there is no -- there has ~  
intended to be no implication that the mitigation ~  
measures that we will propose is something that you ~  
have to take or not.~ We have, as you say, been ~  
working with you and your consultants, and we still ~  
stand by those efforts to resolve the issues. And ~  
certainly we expect that you will have to be fully ~  
satisfied with whatever we ultimately propose.~

I think that what we are really trying to ~  
say with the schedule that's in front of you is that ~  
at this Day Zero, we will be ready to submit our ~  
proposed mitigation measures with, as Mr. Joseph ~  
indicated, full supporting documentation behind it, ~  
essentially our written testimony.~ And at that ~  
point~-- this is purely from a timing point of view -- ~  
that is the point that we will have all of our ~  
positions on the table; and therefore, we think from ~  
our position, that the schedule can flow from there.~

We would like to start with two workshops ~  
on the key outstanding issues.~ One on the water and ~  
then one on the other issues, mitigation issues that ~  
we will have proposed on Day Zero.~ And they will ~  
largely relate to air, but they will address other ~  
issues as well.~

And we feel that would be a productive ~  
way to see if all the parties aren't in agreement on ~  
what's been put on the table so that we can then ~  
proceed forward from there with a good mutual ~  
understanding.~

We think that -- so that whether the ~  
workshop on the water is 11 days from Day Zero or 13 ~  
days, somewhere in that time frame, we think would be ~  
appropriate to hold both of these workshops.~ And we ~  
think there should be sufficient time for people to ~  
get a good look at the issues, given everything that's ~  
on the table already.~ And that will have been ~  
supplemented by what we will submit on Day Zero.~

I think one of the key drivers of the ~  
schedule is the next point, which is this draft of the ~  
FDOC to be issued by the Mojave Desert Air Quality ~  
Management District.~ We have argued that we do not ~  
believe that another draft needs to be issued, but EPA ~  
and the other regulators have countered that they ~  
believe such a draft does need to be issued.~

We still are troubled by this, because ~  
it's going to add significantly to the time table.~ ~  
And we ask if there's any way that this could be ~  
avoided.~ The essence of our argument is that the ~  
changes that will be made to the PDOC are clearly more ~  
stringent.~ And all the entities that commented on ~  
that have already -- we believe all of their comments ~

will have been addressed.~ So we feel that there ç  
really isn't a need to go back out with another draft ç  
or a public comment period.~

But nevertheless, we have, as I said ç  
earlier, this sort of represents from our view a worse ç  
case.~ We have presumed that following the workshop on ç  
our proposed mitigation measures, which will include ç  
our position on certain air issues, that very quickly ç  
thereafter we believe that the district will be able ç  
to issue another draft. This case, a draft of the ç  
final DOC, if required.~ And that will run for a ç  
30-day comment period.~ And then depending on the ç  
number of comments that are raised during that comment ç  
period -- and we believe there will not be many -- the ç  
final DOC will be able to be issued.~

We've given a two-week allowance for ç  
that.~ And that takes us roughly at 60 days.~ And we ç  
think that shortly thereafter written testimony by ç  
staff and all parties should be able to be submitted. ç  
And then shortly thereafter there can be -- staff can ç  
convene a workshop on the permit conditions. And then ç  
we think we should be able to go relatively quickly ç  
thereafter into the hearings.~

All of this -- frankly all of this time ç  
table which has some relatively short time periods in ç  
it is predicated on the fact that we believe given the ç  
work that has gone into the past many, many months, ç  
and in particular in the past few weeks, that we think ç  
all of the parties should be able to reach agreement ç  
based on the outcome of the workshops that are held ç  
early on in this process.~ And therefore we don't ç  
expect that there's going to be controversy, comments ç  
and need for extensive review in the rest of this ç  
process.~

We certainly recognize that if that ç  
happens, that would extend it, but at this point our ç  
hope is that this is a realistic schedule and that ç  
would leave us if in fact a draft FDOC has to be ç  
issued with a 30-day public comment period that we'd ç  
be out somewhere in the neighborhood of 80 days from ç  
when we are in a position to submit our final ç  
mitigation measures.~ And if you assume that that date ç  
for ground zero is the end of next week or early in ç  
the following week, which is what we hope, this would ç  
put hearing somewhere in the mid to late July time ç  
frame.~

~~~~~COMMISSIONER LAURIE:~ Thank you, sir.~

~~~~~MR. VOLKOSKY:~ Excuse me. Mr. Barnett, could ç  
you just clarify again for me the air quality permit ç  
time frame that you have here?~ When you say "draft ç  
FDOC," are you referring to something other than what ç  
could be characterized as the third revision of the ç  
PDOC?~

MR. BARNETT: I believe that's what it is.

~~~~~MR. VOLKOSKY:~ Okay.~ So we're talking about ç  
the third revision of the PDOC?~

MR. BARNETT: That's correct.

~~~~~MR. VOLKOSKY:~ Okay.

~~~~~MR. BARNETT: That is correct, sir.~ And that is part of the reason why we think it's really -- that under these circumstances, it's not necessary, and we certainly would like to avoid it.

~~~~~MR. VOLKOSKY:~ Right.~ But my understanding from the second prehearing conference was that EPA was likely to require it; is that correct?

MR. BARNETT: Well, the EPA letter, which was just received, urges that that be the case.

~~~~~MR. VOLKOSKY:~ Okay.~ I haven't reviewed that letter. So is it strongly urges?

MR. CARROLL: I would say it is probably strongly urges. We have had discussions on this issue with both Mojave Desert Air Quality Management District and EPA Region 9.~ And the letter from EPA, which came out yesterday, the substance of it is that they have -- in essence said that they are satisfied with all issues that have been raised have either been resolved, or in the case of the interpollutant ratio, they have set forth what they would find acceptable on the interpollutant trade ratio.

In our discussions with them, we have expressed our view that there's no legal requirement to go out for another public comment period.~ And I can't speak for them, but I think that counsel for the district and EPA might be inclined to agree with that.~ But as a matter of public policy, they think it's important that we go out and provide the public with one more opportunity to comment on the package that all of the agencies have now agreed to.

And again, our view is that it is a practical matter.~ We have no new issues here.~ There have been several rounds of public comment already. To the extent that anything is going to be changed in the document, it is going in the direction of more environmental conservatism and that there shouldn't be anything that anyone will want to comment on.~ And therefore it is adding 30- to 45-day window time to our efforts here that really is not necessary.

On the other hand, the agency seems to be rather firm in their position that that is the way they would like to go to ensure that there is a complete and clean record.

~~~~~MR. VOLKOSKY:~ Okay.

Then again your 14-day revision period is based on your belief that there will be no new major comments on the third revision of the PDOC?~ And that's the reason for the quick turnaround into a final DOC, correct?~

MR. CARROLL: That's exactly right.

~~~~~MR. VOLKOSKY:~ Now, has the air district indicated that it can meet this time schedule?

MR. CARROLL: Again, I don't want to speak on their behalf.

MR. ZELLER: This is the first time we saw it.

~~~~~MR. VOLKOSKY:~ Sir, could you identify

yourself, please?~

MR. ZELLER: Bob Zeller with the air district, ~  
Mojave Desert AQMD.~

This is the first time we've seen the ~  
schedule.

~~~~~MR. VOLKOSKY:~ Thank you.

MR. BARNETT: Let me just make a comment.~

Obviously, as he's indicated, they have ~
not seen this, and so they're not in a position to ~
commit to it, but I believe it would be an accurate ~
representation to say that we've had ongoing, nearly ~
continuous discussions with the district on these ~
issues.~ I believe that the district supports the idea ~
that they don't think this needs to go back out for a ~
30-day public comment period.~ And I think that ~
they're -- our understanding was that they are ~
prepared to issue this FDOC or draft FDOC, if ~
required, quickly. And therefore, our understanding ~
is that the time table we've indicated here doesn't ~
seem unreasonable based on our discussions.~ And ~
clearly the district needs to evaluate it and concur.~

~~~~~COMMISSIONER LAURIE:~ Question of the staff.~

You noted in your statement that you ~  
believe there still may be a public health issue.~ Is ~  
that still your view?~

MR. BUELL: In CURE's comments on our essay ~  
that we published earlier this year, they had ~  
identified a public health issue related to sulfate ~  
emissions from the cooling tower.~ And they had ~  
promised to write additional information clarifying ~  
the nature of their concerns.~ We have not received ~  
that information yet, so we're not confident whether ~  
that issue has been put to bed or not.~

We believe our testimony as it stands now ~  
is complete, although it does not address that issue ~  
because we don't have the information that CURE had ~  
promised.

~~~~~COMMISSIONER LAURIE:~ Do any of the parties ~  
have any additional input on the issues beyond that ~
which is contained in your statements that would help ~
us to understand the status of any agreements or ~
disagreements that currently exist?~

MR. BUELL: I'd like to jump in, if I might, ~
and explain this. We received on April 7th, a copy of ~
the applicant's revised water plan.~ I believe that's ~
the correct title.~ Our consultant has just begun ~
review of that document, but has identified that we ~
have concerns with the analysis that was provided.~

The schedule that we had outlined in our ~
prehearing conference statement, the last paragraph on ~
the last page, indicated that assuming we had a ~
complete and adequate study that we could produce ~
testimony in 30 days.~ Consequently, I'm not sure that ~
we can guarantee that analysis being provided in 30 ~
days.~

Certainly the workshop that the applicant ~
has identified is critical to us understanding that ~

study.~ And there may be issues that need to be ç
resolved.~ I'd also note that our schedule we ç
recommended after staff publishes our testimony that ç
we conduct a second workshop to discuss the proposed ç
mitigation measures, that staff would propose to ç
implement the plan and share that most significant ç
environmental impacts resulted.~ And I think those are ç
critical, not knowing what the applicant's proposal is ç
at this time, that we have the opportunity to discuss ç
those and make sure that all the parties agree to ç
those.~

MR. BARNETT: Can I just clarify that I think, ç
Rick, we had intended that, next to the last line, ç
that that would be a workshop that can pull together ç
everything including that.~ And I certainly want to ç
emphasize that the water plan we've submitted -- and I ç
understand that you all are just getting into your ç
analysis and you have some initial concerns and we ç
certainly stand by that -- we don't mean necessarily ç
that you need to wait in any way to evaluate that.~

We believe that we will have some ç
additional mitigation measures as a result of our ç
discussions with CURE, but we in no way mean for you ç
to be sitting.~ That submittal was turned in and we ç
would urge you to go forward and we'd like to begin ç
addressing any concerns you have as quickly as ç
possible.~

MR. BUELL: And certainly staff is not holding ç
up any of its analysis of that report pending ç
anything.~

MS. MURRAY: For the record, I would just like ç
to clarify, Rick, I think, mentioned the water plan ç
was received on April 7th.~ It was due to be received ç
on April 7th.~ The department consultant received it ç
yesterday, the 15th, and like I said, has only had a ç
chance to look at the cover letter so far.~ Has ç
concerns with the cover letter and has not had a ç
chance to even go into the analysis.

So for the record, it was not received on ç
April 7th, but at least received by the department on ç
the 15th of April.~

~~~~~COMMISSIONER LAURIE:~ Thank you, Ms. Murray.~

What we're going to do, ladies and ç  
gentlemen, it is now ten minutes to 11:00.~ We're ç  
going to break.~ The committee's going to break for ç  
ten minutes.~ During the course of that ten minutes, I ç  
would ask the parties to speak off the record ç  
regarding the schedule and see if any understanding, ç  
any education, any progress can be made in that short ç  
period of time.~ If not, then I'm going to direct ç  
staff to convene a scheduling workshop to discuss the ç  
scheduling.~

If there is lack of agreement at that ç  
point, then I will ask for a formal written request ç  
from each party as to a proposed schedule.~ It doesn't ç  
do me any good to sit here and listen to this.~ It is ç  
not helpful at all, frankly.~

Before I -- we take that break, does any member of the public wish to offer question or comment at this point? The hearing is not over. We will provide ample opportunity for members of the public to comment before the day's over.

If not, we're going to take a ten-minute break. The court reporter is directed to not report on any comment. See what we get at 11:00 o'clock. Depending upon the outcome of that, we may determine to hold the scheduling workshop.

Thank you.

(Recess was taken.)

~~~~~COMMISSIONER LAURIE: The committee stands reconvened.

I understand there's been some discussion regarding a proposed schedule. Before we do that, I understand the City of Los Angeles has a comment, Mr. Bill Jones. Mr. Jones, would you like to offer a comment?

MR. JONES: Well, I wasn't exactly certain as to when the comment should come in, so I guess now is as good a time as any.

The City is primarily concerned about the public safety regarding our existing transmission lines. And the factors involved are the design characteristics of the proposed gas line and the points where the transmission lines would be crossed by the proposed transmission lines.

Our concerns are that of requiring some sort of a review and approval position with regards to the standards that are used for design and construction regarding the abatement of dust where the lines are concerned in the construction process, that is, the existing transmission lines are concerned in the construction process.

And in fact, we are working with the applicant and will continue to do that. However, we would like to remain in the mix until we are satisfied that we will have the kind of review and approval that will make sure that the public is going to have a safe venture here.

Thank you.

MR. VOLKOSKY: Mr. Jones, my understanding -- and please, Mr. Buell, correct me if I misstate it -- but from the papers that have been filed, I understand that staff has discussed this matter with LADWP, and in their March 19th errata to the testimony proposed conditions specifically facility design condition 3 in an attempt to meet your concerns.

Is that correct, Mr. Jones?

MR. JONES: I have not personally seen that, but again, until at such time that we see that there is a compliance that is in order, we will remain involved, if you will.

~~~~~MR. VOLKOSKY: Okay.

~~~~~ Mr. Buell, did I characterize your position correctly?

MR. BUELL: Yes. We did a draft of the condition on mechanical engineering condition number 5, other than number 3. But you're right about the document that it was contained in.

MR. VOLKOSKY: And you don't know if it's acceptable to LADWP, correct?

MR. BUELL: My staff had contacted the technical staff of LADWP. And we were under the impression that we had satisfied their concerns, but I leave that to the City to speak for themselves on whether they're satisfied.

MR. VOLKOSKY: Well, I guess, Mr. Jones, I just would encourage you to continue discussions with staff. And as you've heard, staff has at least made an attempt to address LADWP's concerns and certainly has a willingness to do it. So perhaps discussions between you and staff would lead to a more firm resolution.

COMMISSIONER LAURIE: Mr. Barnett, would you like to offer a report at this point?

MR. BARNETT: I would. Thank you.

We very much appreciated the approach which you offered us, Commissioner Laurie. That was very productive. We were able to have, I think, a good discussion between all of the involved parties about the time table. And I would like to turn it over to Caryn Hough to disclose what it is we agreed on.

Thank you.

COMMISSIONER LAURIE: Ms. Hough.

MS. HOUGH: Thank you.

What I'll do is go over the proposed schedule that was handed out this morning since everybody's got it in front of them and just pencil in the changes. Is that okay, Commissioner?

COMMISSIONER LAURIE: Does the audience have any of these copies?

MS. MENDONCA: There are copies on the table.

COMMISSIONER LAURIE: Thank you.

MS. HOUGH: All right. The first change was obviously to change the first line to "mitigation proposal," Day Zero. The second line, "Workshop on Water" has been postponed, so just cross it out on your copy for now. The next line would read "Workshop on Proposal and Air." And obviously in days, that becomes Day 12 as opposed to Day 1. And the cumulative day is 12.

Our understanding is that the Mojave Desert District is concerned about making sure that all the issues are aired before they release a PDOC if they're going to do so as recommended by U.S. EPA. We are hopeful that that will happen at the workshop on Proposal and Air, because everything will be -- everything will be settled at that point.

So assuming that the district does go forward with the PDOC, the next line would obviously be changed too. Instead of "Draft FDOC," it would be

"PDOC issued."~ There is then a new line ç
put in for a water workshop.~

~~~~~MS. SHAPIRO:~ Caryn, I have a question.~

MS. HOUGH: Yes.~

~~~~~MS. SHAPIRO:~ Would it be two days after the ç  
workshop and therefore on Day 14 --~

MS. HOUGH: Yeah.~ I think it makes sense from ç
this point forward, so just change the cumulative days ç
because it doesn't --

~~~~~MS. SHAPIRO:~ Okay.~

~~~~~COMMISSIONER LAURIE:~ Wait, wait, wait, wait.~ ç

Please, just make sure that you don't ç
talk over each other because we are transcribing.~

~~~~~MS. SHAPIRO:~ Would the cumulative day be ç  
Day~14 for the issuance of the third PDOC?~

MS. HOUGH: Yes.~

~~~~~MS. SHAPIRO:~ Okay. Thanks.

~~~~~MS. HOUGH: Then on cumulative Day 15, the next ç  
line would be a water workshop.~ The next line, ç  
"Comment period ends on," it would be "PDOC" and it ç  
stays Day 44.~ It would be followed by a new line ç  
entitled "Second Water Workshop."~ And that would ç  
happen on Day 45.~ From that point on, the schedule ç  
remains unchanged.~

I do have to add a caveat, though.~ I ç  
think the Department of Fish and Game wants to reserve ç  
the right after the second water workshop to address ç  
scheduling issues.~ I understand they have some ç  
significant constraints on the availability of their ç  
two hydrologists.~ If Nancee wants to add anything to ç  
that, she can.~ But that is fundamentally the schedule ç  
that we agreed to.

~~~~~MS. MURRAY: This is Nancy Murray with the ç  
Department of Fish and Game.~

I would like to just highlight the caveat ç
that Caryn mentioned.~ We believe that there are some ç
significant issues to work through with the model that ç
was presented. And both Fish and Game and CEC staff ç
have some basic questions about it, some of the ç
assumptions.

So we see the first workshop as getting ç
through just what are the issues, common understanding ç
about the models. Having then the next workshop 30 ç
days later, so we have time to rerun the models, look ç
at it. And then therein having the second workshop at ç
Day 45 and within this overall schedule, there's a ç
huge assumption that we come to an agreement on that ç
model and are able to work through those.~

So I think we'll know at that second ç
water workshop if we are going down a path that we can ç
all agree to.~ So that's why I would like a caveat ç
right immediately after the second water workshop to ç
revisit the schedule to see, are we close? Are we far ç
apart? Are we close but not quite there yet?~ So it ç
might be in everyone's interest to get better science ç
before we go forward.~ The department certainly would ç
feel better versus locking unconditionally as to a ç

hearing date today with so many outstanding scientific issues.

COMMISSIONER LAURIE: Whatever schedule is determined to be is always at the discretion of the committee based upon new information or attorney testimony. In addition, there will be regular status reports. And given your statement and your comments, you have advised the committee that there may be an expectation of Fish and Game wanting to go back and revisit the schedule. We understand that; therefore, we would not be surprised to receive such a communication from you at some future point in time.

Thank you, Ms. Murray. Anything else?

MS. MURRAY: No.

COMMISSIONER LAURIE: Any other party wish to comment?

MR. DESALVIO: Yes, Commissioner Laurie. I have a question just for point of clarification.

COMMISSIONER LAURIE: Sir, could you --

MR. DESALVIO: Alan DeSalvio with the Mojave Desert. Alan DeSalvio with the Mojave Desert AQMD.

The workshop on conditions on Day 72 is specifically to address CEC licensing conditions?

MS. HOUGH: That's correct.

MR. DESALVIO: It confuses me because we'll have conditions in the FDOC which will be final.

MS. HOUGH: Right. We understand that.

COMMISSIONER LAURIE: Anybody else have questions on Ms. Hough's statements or comment?

Sir, could you stand and identify yourself for the court reporter, please.

MR. CAOUCETTE: Norman Caouette, Mojave Water Agency. That's C-a-o-u-e-t-t-e. I'm used to spelling that.

Just a point of clarification on the issue of dry cooling, wet cooling in the air quality. I understand there's a direct relationship between emissions and whether project goes wet and dry. My only question is is the air quality analysis going to be linked to those two alternatives so it's not a question later, or has that been rejected summarily?

COMMISSIONER LAURIE: Let me ask staff to respond to the question.

MR. BUELL: If dry cooling were proposed by the applicant, we would certainly incorporate that into our air quality analysis, which would be provided, on this schedule, on Day 65. So yes, we would address that change in the project description.

MR. CAOUCETTE: So it will be tied to that determination?

MR. BUELL: Yes.

COMMISSIONER LAURIE: Thank you.

Mr. Barnett.

MR. BARNETT: I would like to just make one brief comment.

It was my understanding that the second water workshop, there is some possibility that we

might not have to have it.~ I just wanted to make ç
sure. Perhaps we could note that it's as needed.~

Certainly our hope is that we're a lot ç
closer than perhaps as indicated by the first review ç
of our water plan.~ We may be able to resolve issues ç
at the first workshops.~

~~~~~COMMISSIONER LAURIE:~ Mr. Volkosky.~

~~~~~MR. VOLKOSKY:~ Just to make sure that I'm on ç  
the same page.~

When you refer to written testimony, I am ç
assuming that this is written testimony on the topics ç
of air, water supply or water resources, whichever ç
you'd like to look at it, and biology;~is that ç
correct?~ Are there any additions or deletions to ç
that?~

Mr. Joseph?~

MR. JOSEPH: With respect to the staff, I think ç
that sounds correct.~ Of course, interveners haven't ç
put in any written testimony yet, so I'd assume that ç
would be any written testimony we have would be on ç
that date.~

~~~~~MR. VOLKOSKY:~ Okay. Mr. Joseph, while we're ç  
talking, you indicated in your first prehearing ç  
conference statement that there were potential ç  
difficulties with staff's position on hazardous ç  
materials handling and possibly public health.~ Has ç  
your position changed on that or has it progressed? ç  
Has it become more definitive?~

MR. JOSEPH: We hope to resolve both of those ç  
issues with the joint mitigation proposal that will ç  
come on Day~Zero.~

~~~~~MR. VOLKOSKY:~ Okay. And as of today, though, ç  
those remain open issues; is that correct?~

MR. JOSEPH: Yes.

~~~~~MR. VOLKOSKY:~ Do the staff's intervening ç  
filings, specifically the March 19th errata and ç  
supplemental testimonies of March 25th and April 9th, ç  
create any additional issues?~

MR. JOSEPH: If I'm remembering what each of ç  
those various pieces of testimony is, I think the ç  
answer is no.~

~~~~~MR. VOLKOSKY:~ Okay.~

Mr. Thompson, do those same filings ç
create any additional issues between you and staff?~

MR. THOMPSON: I don't believe so, sir.~

~~~~~MR. VOLKOSKY:~ Ms. Murray?~

MS. MURRAY: No, I don't think so.~

~~~~~MR. VOLKOSKY:~ Mr. Buell, do you -- or to what ç  
degree do you agree with the Department of Fish and ç
Game that water resources and biological resources are ç
linked?~ Let me clarify that.~ Are linked to the ç
extent that we could not proceed to hearing on one ç
without the other?~

MR. BUELL: I believe that they're linked ç
because the water plan that as we currently ç
understand, the water plan could potentially impact ç
biological habitat and therefore it has a biological ç

implication to it.~ So they're linked in that ç
context.~

~~~~~MR. VOLKOSKY:~ And do you agree or disagree ç  
with Fish and Game's position?~

MR. BUELL: Yes, we agree.~

~~~~~MR. VOLKOSKY:~ So that at this point, as far as ç  
staff is concerned, water resources and biological ç
resources are area subjects of dispute?~

MS. HOUGH: Mr. Volkosky, can I just step in ç
for a second?~

I know that this question has come up ç
from a couple of other people because of the fact that ç
the biological resources testimony and the staff ç
assessment doesn't directly address this issue.~ It ç
just refers to the staff's water testimony.~ And ç
because of that, there's been some questions raised ç
about the link, but they are linked.~ Because if the ç
water issue isn't solved, there will be an adverse ç
biological resources impact.~

So even though the biological resources ç
testimony doesn't state that directly, if you tried to ç
go forward with biology before water is solved, we ç
could not make conclusions that there wouldn't be any ç
adverse impacts and recommend approval without the ç
water.~

~~~~~MR. VOLKOSKY:~ Okay.~ That's what I wanted to ç  
know in staff's opinion the biological resources ç  
mitigation is not presently acceptable.~

MS. HOUGH: Correct.~

~~~~~MR. VOLKOSKY:~ Okay.~

Mr. Ledford, do you have anything to add ç
in these areas, and is the proposed schedule ç
acceptable as far as you're concerned?~

MR. LEDFORD: My only comment is as far as ç
scheduling goes in my issues, I can argue my issues at ç
whatever time.~ I think that the issues that I raised ç
can't fit in that time schedule because they're issues ç
that deal with adjudication to a great deal and to ç
whether or not either the Victor Valley Water District ç
or MWA can supply water to the project.~ And there's ç
another court that could have jurisdiction over those ç
issues. And at this point in time, we've been advised ç
that that court has no jurisdiction unless and until ç
such time that there is a final outcome in the ç
California Supreme Court.~ But as far as my ç
argumentative issues, I'm ready to go.

~~~~~MR. VOLKOSKY:~ Okay. So I guess your bottom ç  
line is then regardless of the outcome of this process ç  
that the parties have agreed to, you are still likely ç  
to dispute the water area; is that correct, I mean in ç  
future evidentiary terms?

~~~~~MR. LEDFORD: Just based on what I've seen so ç  
far, staff has told me wait till I see the conditions, ç
so maybe I should be patient.~

~~~~~MR. VOLKOSKY:~ Okay. And that was my next ç  
question.~ You haven't -- or have you looked at any of ç  
the conditions that have been proposed by staff upon ç

the applicant concerning water usage?

MR. LEDFORD: Well, they don't work. I mean, they don't work in relation to relying on will-serve letters that have conditions that may or may not ever be able to be met.

MR. VOLKOSKY: Okay. And you do realize, however, that the conditions out there are not yet final?

MR. LEDFORD: I understand that. And they've also informed me that they're still working on --

MR. VOLKOSKY: It's a work in progress.

MR. LEDFORD: And maybe I should still be patient.

MS. MURRAY: For the record, I do want to reiterate one comment that the department made at the first prehearing conference, in that there is a Supreme Court matter now pending before the Supreme Court. Briefs have been filed and that due date has passed. Oral argument has not yet been set, but we do believe that that will be set expeditiously, and possibly a final decision by the fall. And this could affect MWA, Mojave Water Agency's authority to supply water to this project greatly.

And so in dovetailing on what Mr. Ledford said, another approach which might -- which actually I think the department has recommended and would still recommend is to wait for the outcome of this Supreme Court case before you go too far forward to know if this -- the reliability of the water supply. And I just want to reiterate that as another option that you have.

MR. VOLKOSKY: Ms. Murray, when you say "fall," could you be more specific? Are we talking September? Are we talking November?

MS. MURRAY: It's all secondhand conjecture. We have heard there is one justice very interested in this case who wants this decided sooner rather than later and this year. And that would entail having the oral argument over the summer, late spring, and then potentially decision by fall.

COMMISSIONER LAURIE: Perhaps this committee can issue an order to the Supreme Court.

MR. VOLKOSKY: Or we could do their work for them.

COMMISSIONER LAURIE: Thank you, Ms. Murray. Mr. Thompson.

MR. THOMPSON: For the record, we would disagree with the idea of holding our process up for a schedule of the California Supreme Court. We think that that is just much too difficult to ascertain any timing.

The broad range of the scope of the issues in these cases, I suspect it being that there are all these cases before one court or another. And we do not agree with the Department of Fish and Game on this and don't see any reason to hold up the progress of the case.

~~~~~COMMISSIONER LAURIE:~ Thank you, Mr. Thompson.~

~~~~~MR. VOLKOSKY:~ Mr. Thompson, I don't mean to bring up ancient history, but could you please update me on the status of the federal review of the appropriate portion of this project?~

MR. THOMPSON: The short answer is no, but Mr. Barnett probably can.~

MR. BARNETT: You're talking about on the environmental impact statement side?~

MR. VOLKOSKY: I am.~

MR. BARNETT: I think -- and I'll ask Mr. Welch to fill in the gaps here.~ I have to give him a second or two to come up with something here.~

The answer is that we are continuing to work with them.~ We have meetings.~ I've had a series of meetings since our last prehearing conference.~ I think that -- well, I'm not sure that I have the exact timing.~ I know that the key documents, the biological assessment, is about to be submitted.~ That will start a clock ticking on the EIS process.~ And it's my understanding that's going to happen within the next few weeks.~

So it is at least in my mind still a complicated process. And it's hard for me to ascertain exactly what the end of that schedule is, but I know that the submittal of a BA, which will happen in the next few weeks, is a key milestone in it.~ So we are making progress.~

~~~~~MR. VOLKOSKY:~ But you are unable to predict an end to that process?~

MR. BARNETT: Well, I can -- we know it's got to run a long term.~ I mean, I think -- I think at this point -- actually up until we've been working through the schedule, I would say it was a longer term that we were on.~ But I think now it would probably be on pretty much a parallel track.~ You may very well see the necessary take permits that are associated with the environmental impact statements. It should be coming out towards the end of this year.~ But I do think that this process that we are engaged in will necessarily run ahead of it to a certain extent.~

And as I said in the last prehearing conference, our understanding is that that's the way it needs to be because the final draft of the EIS which needs to be issued for public comment is dependent on the PMPD.~ That's our understanding.~ So it needs to be -- this process needs to be running a little ahead of that one.~ And I think that generally speaking they're on a time table that ducktails together.~ If we can adhere to the schedule that's been outlined here today, and that the PMPD is issued along the line -- on a similar schedule as other projects, then I think that will fit in pretty closely with the time that the EIS process will be ready to issue its draft for public comment, so I think they're working together.~

~~~~~MR. VOLKOSKY:~ Thank you.~

~~~~~COMMISSIONER LAURIE:~ Ms. Mendonca, any ç  
questions, comments?~

MS. MENDONCA: My only comment -- thank you ç
very much.~

The reason I sort of planted the seed ç
with the workshop in San Jose with 250 people was the ç
workshop was held at night. And I believe that we ç
would benefit by having our water workshop, the one ç
follow-up, an evening meeting here in the community.~

~~~~~COMMISSIONER LAURIE:~ Thank you.~ We will do ç  
that.~ Any member of the audience wish to ask question ç  
or offer comment at this time, please feel very free ç  
to do so.~

I wish to thank the -- whose building is ç  
this?~ Is this the --

The accommodations are quite comfortable. ç  
We appreciate your assistance very much.~

Any closing comments by any of the ç  
parties?~

Ms. Shapiro?

~~~~~MS. SHAPIRO:~ No.

~~~~~COMMISSIONER LAURIE:~ Mr. Volkosky?

~~~~~MR. VOLKOSKY:~ No.

~~~~~COMMISSIONER LAURIE:~ Ladies and gentlemen, the ç  
matter stands under submission.~ The committee will ç  
issue an order within a matter of days in light of the ç  
proposed, jointly proposed schedule.~ And we ç  
appreciate your efforts very much.~

(Thereupon the hearing concluded at 11:45 a.m.)

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CERTIFICATE OF TRANSCRIPT

I, Marie T. Estebo, as the Official ç

Transcriber, hereby certify that the attached ¶  
proceedings before Chief Hearing Officer Valkosky, ¶  
California Energy Commission,

In the Matter of:

Application for Certification ) Docket No. 97-AFC-1  
for the High Desert Power )  
Project )  
\_\_\_\_\_)

were held as herein appears and that this is the ¶  
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I further certify that this transcript is a ¶  
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