

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 97-AFC-1
HIGH DESERT POWER PROJECT)
-----)

COUNCIL CHAMBERS
VICTORVILLE, CALIFORNIA

THURSDAY, OCTOBER 7, 1999
9:05 A.M.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Robert Laurie, Presiding Member

David Rohy, Vice Chairman, Associate Member

STAFF PRESENT

Stanley Valkosky, Hearing Officer

Bob Eller, Adviser to Vice Chairman Rohy

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

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City of Victorville

ALSO PRESENT

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

2 9:05 a.m.

3 PRESIDING MEMBER LAURIE: Ladies and
4 gentlemen, good morning, and welcome to the
5 evidentiary public hearing on the High Desert
6 Power Project.

7 My name is Robert Laurie; I'm a
8 Commissioner with the California Energy
9 Commission, and Presiding Member of the Committee
10 responsible for hearing the evidence and
11 submitting the recommendation to the Commission as
12 a body.

13 To my left is Mr. Stan Valkosky. Mr.
14 Valkosky is an attorney; he is the Hearing Officer
15 assigned to this case. Mr. Valkosky will
16 administer the proceedings today.

17 To Mr. Valkosky's left is my Associate
18 on the Committee, the Vice Chairman of the
19 Commission, Dr. David Rohy. And to Dr. Rohy's
20 left is Dr. Rohy's Senior Advisor, Mr. Bob Eller.

21 This meeting is being recorded today for
22 the purposes of transcription. Therefore we will
23 ask that all witnesses and all individuals
24 offering comment speak slowly. If we need to
25 interrupt you for any reason because the reporter

1 is having a problem, we will feel free to do so.

2 During much of today's hearing you will
3 see a formal nature with witnesses presenting and
4 questions being asked and answered. You should
5 also be aware that this is an opportunity for the
6 public to offer comment. And we assure you that
7 there will be ample opportunity for you to do so.

8 At this time I would ask if Dr. Rohy has
9 any opening comments, Commissioner Rohy?

10 VICE CHAIRMAN ROHY: I have no opening
11 comments, thank you.

12 PRESIDING MEMBER LAURIE: Mr. Valkosky,
13 could you, at this time, go over the process and
14 procedures that we're going to use today. And
15 then perhaps an introduction of the parties.

16 HEARING OFFICER VALKOSKY: Thank you,
17 Commissioner Laurie.

18 Today and tomorrow's, if necessary,
19 hearings will conclude the evidentiary hearings
20 thus far scheduled for the High Desert Power
21 Project.

22 The procedures we're going to use today
23 are the same procedures we've used in previous
24 hearings held on September 16 and September 30th.

25 The topics on the agenda for today are

1 the conclusion of the socioeconomics testimony,
2 air quality, biological resources and water
3 issues, including the use of dry cooling. At the
4 small table up in front there is a copy of the
5 agenda.

6 Documents pertinent to today's topics
7 are reflected on the tentative list of exhibits,
8 which is also on the table. Basically they
9 include various testimony filed by California
10 Unions for Reliable Energy, applicant, staff,
11 California Department of Fish and Game, and Mr.
12 Gary Ledford. These documents are also identified
13 as exhibits on the list.

14 Briefly, the procedures that will occur
15 today -- okay, very briefly --

16 (Laughter.)

17 HEARING OFFICER VALKOSKY: Briefly, --
18 maybe that's the key word -- the procedures we'll
19 use today are first applicant, then the staff,
20 then the intervenors will present witnesses
21 presenting evidence on each topic. This will be
22 followed by cross-examination, recross and
23 redirect, as appropriate. Rebuttal witnesses will
24 follow the presentation of direct testimony by all
25 parties.

1 At the conclusion of each topic area we
2 will invite members of the public to offer unsworn
3 public comment on that topic area. Our Public
4 Adviser, Ms. Mendonca, will be circulating
5 throughout the audience explaining to you when
6 those comments would be appropriate.

7 After we have concluded the evidentiary
8 presentations on all topics either late today or
9 tomorrow, the Committee will provide an
10 opportunity of approximately 20 minutes for each
11 party to present any closing arguments it deems
12 appropriate. Are there any questions on this
13 procedure?

14 MR. THOMPSON: None from applicant,
15 thank you.

16 HEARING OFFICER VALKOSKY: In order to
17 conclude hearings by Friday, the Committee advises
18 the parties to proceed in as focused, direct and
19 nonrepetitive manner as possible. If necessary,
20 we will impose time limits on each party.

21 Finally, matters which are not factual
22 or evidentiary in nature, but more in the line of
23 argument, should be presented during the period
24 reserved for closing arguments.

25 Before we engage in housekeeping

1 procedural matters, I'd like, at this point, the
2 parties to identify themselves. Mr. Thompson.

3 MR. THOMPSON: Thank you very much, Mr.
4 Valkosky, my name is Allan Thompson; I'm CEC
5 Project Counsel for the High Desert Power Project.

6 To my right is Mr. Tom Barnett, who is
7 Project Manager for the Developer; and to my left
8 is Mr. Andy Welch, who is number two Developer --
9 I don't know what your exact title is -- for the
10 Developer.

11 In the audience we have our witnesses
12 for today and tomorrow who will be presented when
13 the time is appropriate.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MR. BUELL: Good morning, my name is
16 Rick Buell. I am the Energy Commission Staff's
17 Project Manager for the High Desert Project. To
18 my left is Caryn Holmes, Staff Counsel. And in
19 the audience today we have, at this time at least,
20 Tuan Ngo.

21 MS. REYNOLDS: I'm Lizanne Reynolds; I'm
22 Counsel for CURE, the California Unions for
23 Reliable Energy, an intervenor in this proceeding.

24 HEARING OFFICER VALKOSKY: Mr. Adams.

25 MR. ADAMS: Steve Adams, Staff Counsel

1 for Fish and Game, and one witness, Becky Jones.
2 We'll be participating in the biology and water.

3 HEARING OFFICER VALKOSKY: Thank you,
4 Mr. Adams. Mr. Ledford?

5 MR. LEDFORD: Thank you. My name is
6 Gary Ledford and I am intervening with my
7 principal interests in the water issues.

8 HEARING OFFICER VALKOSKY: Okay. Thank
9 you. Before we get to the presentations I'd like
10 to note for the record that we have one received
11 exhibit designated as 116, which are Mr. Ledford's
12 excerpts from the Base reuse EIR. I trust all the
13 parties have a copy of that.

14 (The above-referenced document was
15 marked Intervenor Ledford exhibit
16 116 for identification.)

17 HEARING OFFICER VALKOSKY: And second, I
18 assume it's okay with Mr. Adams, I'd like to
19 identify their declaration as exhibit 132, and
20 this is the declaration of Thomas W. Bilhorn. The
21 cover page is dated October 4, 1999.

22 (The above-referenced document was
23 marked CDF&G exhibit 132 for
24 identification.)

25 HEARING OFFICER VALKOSKY: Are there any

1 other corrections to the list of exhibits as we
2 have it.

3 MS. REYNOLDS: Actually, yes. CURE has
4 one on exhibit 91, the testimony of John Hughes.
5 His last name is misspelled, so we'd just like
6 that to be corrected.

7 HEARING OFFICER VALKOSKY: Consider it
8 done.

9 MS. REYNOLDS: Thank you.

10 HEARING OFFICER VALKOSKY: Staff have
11 any corrections?

12 MS. HOLMES: None.

13 HEARING OFFICER VALKOSKY: Mr. Ledford,
14 do you have any corrections to the exhibit list?

15 MR. LEDFORD: Not at this time, I will
16 later.

17 HEARING OFFICER VALKOSKY: Mr. Thompson?

18 MR. THOMPSON: Yes, thank you very much.
19 I have two, exhibit number 35 is the exhibit
20 sponsored by Mr. Wally that was placed into the
21 record at the last set of hearings. I incorrectly
22 identified it as 36 in his prepared testimony.
23 The exhibit and witness list that I submitted
24 correctly identified it as 35. So, I would move
25 that into evidence and avoid the confusion.

1 HEARING OFFICER VALKOSKY: Okay, that
2 will be received.

3 (The above-referenced document,
4 previously marked Applicant exhibit
5 35, was received in evidence.)

6 MR. THOMPSON: Additionally, exhibit 45,
7 sponsored by Mr. Cook, if I failed to move that
8 into the record I would like to do so now.

9 HEARING OFFICER VALKOSKY: No, that has
10 been moved. It was just omitted from this draft
11 list.

12 MR. THOMPSON: The tally, as I see it
13 now, is Allan Thompson mistakes 10, Committee 1.

14 HEARING OFFICER VALKOSKY: Excuse me?
15 (Laughter.)

16 HEARING OFFICER VALKOSKY: You'll not
17 get a stipulation to that one, there's no doubt
18 about it.

19 MR. THOMPSON: That's all I have on the
20 exhibit list, Mr. Valkosky.

21 HEARING OFFICER VALKOSKY: Thank you.
22 Are there any other procedural matters at this
23 time?

24 MS. REYNOLDS: Yes, CURE would just like
25 to state that we only intend to be present for the

1 socioeconomics portion of these two days of
2 hearings. We do not have any unresolved issues in
3 the air and water areas. Through working with
4 staff and the other parties, our concerns have
5 been addressed and reflected in the staff's
6 conditions.

7 So we just wanted to make that clear.
8 And we also waive closing argument.

9 HEARING OFFICER VALKOSKY: Okay, thank
10 you, Ms. Reynolds.

11 At this time I understand there's a
12 gentleman who has severe time constraints and
13 would like to address the Committee. Sir? Would
14 you identify yourself for the record, please. And
15 would you put the recording microphone up there?

16 MR. HAMPSON: Thank you, Mr. Chairman,
17 Members of the Committee and staff. My name is
18 Roy C. Hampson. I'm a professional civil engineer
19 in the State of California.

20 I have in my background been the
21 Executive Officer of the Water Quality Control
22 Board for 13 years, which is dealing with water
23 matters in this area.

24 I've also been historically the Chief
25 Engineer of the Mojave Water Agency. And thirdly,

1 I have been a major witness in the adjudication
2 process.

3 I have problems in testifying before
4 this group in the next two days. I'm in a serious
5 court matter and I have to prepare documents under
6 the direction of the court. So I cannot stay and
7 testify today.

8 My request is basically I would comment
9 in writing, I'd prepare my comments over the
10 weekend, and if the record is kept open thence I
11 will make those comments available to you.

12 Primarily it will address the issues of
13 water. I think your staff has done an excellent
14 job and ought to be commended. Yet, errors do
15 creep in, in my judgment, and we don't want that
16 to happen. We want to have the best record
17 possible. And I think I have something to offer,
18 in terms of some of the information, for your
19 consideration.

20 You did indicate the procedures. Really
21 what I'm after here today is a request on your
22 part to insure that the record be kept open so
23 that I can prepare my written comments. They
24 probably will be available the first part of next
25 week.

1 HEARING OFFICER VALKOSKY: Okay, sir,
2 the first part of next week by, shall we say next
3 Wednesday, is that --

4 MR. HAMPSON: That's fine.

5 HEARING OFFICER VALKOSKY: Okay, fine.
6 You may, of course, submit those written comments.

7 MR. HAMPSON: Thank you, and I
8 appreciate the good work you're doing.

9 HEARING OFFICER VALKOSKY: Thank you,
10 sir.

11 Mr. Thompson.

12 MR. THOMPSON: Thank you. And these
13 possibly should have been brought forward when we
14 were discussing exhibits, but they do transcend
15 into other areas.

16 We have two exhibits that have been
17 identified as applicant exhibits and cover letters
18 on three additional exhibits that we will not
19 offer into evidence. And with the Committee's
20 direction we can either strike them now, or inform
21 the parties of the sections of those exhibits that
22 will not be offered.

23 We were informed by staff that they had
24 substantial cross in certain areas yesterday, and
25 in an effort to get this project completed, the

1 application and the hearings completed in these
2 two days, additionally keeping in mind that we
3 have an agreement on the conditions of
4 certification, we are not going to offer these in
5 evidence, in hopes that we can reach closure
6 sooner.

7 If the Committee would like, I'll
8 identify those for the record.

9 HEARING OFFICER VALKOSKY: So are we to
10 understand that you're basically withdrawing these
11 then?

12 MR. THOMPSON: That's exactly correct.

13 HEARING OFFICER VALKOSKY: Totally?
14 Let's do it now, Mr. Thompson, let everybody know.

15 MR. THOMPSON: We will move to strike
16 and/or not offer into evidence exhibits identified
17 as 80 and 81. Similarly, we would move to strike
18 and/or not offer into evidence the cover letters
19 signed by either Mr. Welch or myself, to exhibits
20 65, 71 and 101.

21 I would note for the record that an
22 additional part of our motivation was a review of
23 California Fish and Game's rebuttal testimony that
24 mentioned specifically exhibits 80 and 81. And
25 given Mr. Bilhorn's required absence, we thought

1 that this would make it easier for all parties.

2 HEARING OFFICER VALKOSKY: Okay, just so
3 that I'm clear on this. On 65, 71 and 101 you are
4 withdrawing only the cover letters, and not the
5 material behind the cover letters?

6 MR. THOMPSON: That's correct.

7 HEARING OFFICER VALKOSKY: Okay, Mr.
8 Thompson, it is certainly your option to structure
9 your evidence as you see fit, so we'll reflect
10 those actions for the record, those withdrawals.

11 (The above-referenced documents,
12 previously marked Applicant
13 exhibits 80 and 81, and cover
14 letters to exhibits 65, 71 and 101
15 were withdrawn.)

16 MR. THOMPSON: Thank you very much. I
17 have two other -- one is a substitution of a
18 witness in air quality and in water. And if you
19 want me to handle those when those topic areas
20 come up, I will do that.

21 HEARING OFFICER VALKOSKY: Well,
22 actually why don't we just do it now so
23 everybody's on notice what's happening.

24 MR. THOMPSON: We will not be offering
25 Ms. Cuellar in air quality. Ms. Head will sponsor

1 exhibit 3-45 and 3-46. Our prepared testimony
2 lists those as being jointly prepared. In
3 conversations with both Ms Cuellar and Ms. Head,
4 it's more appropriate for Ms. Head to sponsor the
5 entirety of those two. They are responses to data
6 requests proffered by CURE in this proceeding.

7 HEARING OFFICER VALKOSKY: Okay, that's
8 fine. Delete Ms. Cuellar.

9 MR. THOMPSON: Secondly, the response to
10 CURE's data request number 68, which I was going
11 to have Mr. Barnett testify to, after having Mr.
12 Barnett take a look at it, I was persuaded by my
13 client that Mr. Seidler will sponsor that.

14 HEARING OFFICER VALKOSKY: Okay, that's
15 fine.

16 MR. THOMPSON: And that is all I have.
17 But, as a housekeeping matter, if you hear a
18 mobile phone at this desk we apologize in advance.
19 Mr. Barnett is waiting for a phone call from his
20 son who is flying back to the Continental United
21 States and hopefully he'll call and let dad know
22 when his plane arrives.

23 HEARING OFFICER VALKOSKY: That's fine.
24 Thank you. Are there any other preliminary
25 matters before we begin?

1 MR. LEDFORD: Can I just ask as
2 question? Exhibit 65 is being removed?

3 MR. THOMPSON: I'm sorry if I wasn't
4 clear --

5 MR. LEDFORD: Exhibit 65 is being
6 removed?

7 MR. THOMPSON: Exhibits 65, 71 and 101
8 consist of cover letters by Mr. Welch or myself.
9 And then material behind the cover letters. What
10 I'm not going to offer are the cover letters.
11 Those cover letters that are either signed by Mr.
12 Welch or myself.

13 The material behind it that was
14 transmitted by those cover letters we will be
15 offering.

16 MR. LEDFORD: Okay.

17 MR. THOMPSON: Thank you.

18 HEARING OFFICER VALKOSKY: Okay,
19 anything else?

20 All right, the first topic on the agenda
21 is a continuation of socioeconomics, and as I have
22 it, CURE will present Mr. Hughes for direct and
23 cross-examination. Ms. Reynolds.

24 MS. REYNOLDS: CURE would like to call
25 John Hughes. And I believe the witnesses are down

1 there. And I believe he needs to be sworn.

2 HEARING OFFICER VALKOSKY: Sir, you have
3 to be sworn first.

4 Whereupon,

5 JOHN HUGHES

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

9 DIRECT EXAMINATION

10 BY MS. REYNOLDS:

11 Q Good morning, Mr. Hughes.

12 A Good morning.

13 Q Please state your name for the record.

14 A John B. Hughes.

15 Q Who is your employer, Mr. Hughes?

16 A International Brotherhood of Electrical
17 Workers, Local 477.

18 Q And what is your position?

19 A I'm the Business Manager for that Local.

20 Q And how long have you held that
21 position?

22 A It's about 14 years.

23 Q You have before you a document marked
24 exhibit 91 entitled testimony of John Hughes on
25 behalf of California Unions for Reliable Energy on

1 socioeconomic effects of the High Desert Power
2 Project, and it's dated August 16, 1999.

3 Is this a testimony you submitted on
4 behalf of CURE in this proceeding?

5 A Yes, it is.

6 Q Are the contents of your testimony true
7 and correct to the best of your knowledge?

8 A They are.

9 MS. REYNOLDS: Thank you, Mr. Hughes.
10 Mr. Hughes is available for cross-examination.

11 HEARING OFFICER VALKOSKY: Mr. Thompson.

12 MR. THOMPSON: One or two.

13 CROSS-EXAMINATION

14 BY MR. THOMPSON:

15 Q Good morning, Mr. Hughes.

16 A Good morning.

17 Q IBEW 477, is that correct?

18 A That's correct.

19 Q Where's the office located of 477?

20 A The office is in San Bernardino,
21 California.

22 Q And are you confident that this project
23 can be constructed with -- do you have sufficient
24 labor to be able to construct this project on an
25 adequate time schedule?

1 A Yes, our jurisdiction covers all of San
2 Bernardino County, Inyo, Mono Counties. One-third
3 of my manpower is in the high desert, very close
4 here. There would be no problem.

5 Q Great.

6 MR. THOMPSON: Thank you very much.
7 That's all I have.

8 HEARING OFFICER VALKOSKY: Ms. Holmes.

9 MS. HOLMES: No questions.

10 HEARING OFFICER VALKOSKY: Mr. Ledford.

11 MR. LEDFORD: Thank you.

12 CROSS-EXAMINATION

13 BY MR. LEDFORD:

14 Q Mr. Hughes, I'm right behind you.

15 A Okay.

16 Q I hate to look at the back of your head,
17 but --

18 (Laughter.)

19 HEARING OFFICER VALKOSKY: Mr. Hughes,
20 maybe you could shift.

21 BY MR. LEDFORD:

22 Q I thought you did a rather admirable job
23 of talking about the short-term benefits, Mr.
24 Hughes, and I'm assuming that you're not a
25 professional economist?

1 A That's true.

2 Q But, I had provided what I call rebuttal
3 testimony, and I was wondering if you had an
4 opportunity to look at that?

5 A No, I haven't.

6 Q Okay. In the long term, Mr. Hughes, is
7 the job market in southern California based on
8 growth for your union members?

9 A On growth? Yes.

10 Q And my basic argument was that you
11 didn't look at the long-term benefit of the
12 alternative of using water in condensing towers as
13 opposed to using dry cooling.

14 Now, if dry cooling were incorporated
15 into this project would that provide more work for
16 your union members?

17 A I really have no expertise in the area
18 you're asking about, water. Mine is in labor,
19 economic relationships, labor.

20 Q Well, I understand that. I guess my
21 basic question to you is if we're denied 4000
22 acrefeet of water will that deny growth to this
23 area?

24 A I can only speak in respect to the labor
25 consequences of that power plant. And, again, the

1 water issues, I do not have the expertise.

2 Q So the bottomline here today is that
3 you're not prepared to testify as to anything
4 other than the economic benefit of -- the short-
5 term economic benefit of creating construction
6 jobs to build the plant?

7 A I don't believe it's short term, but --

8 Q Well, any why don't you believe it's
9 short term?

10 A Because the power plant will be here for
11 many many years, and supply jobs, power for
12 industry, other jobs, will bring socioeconomical
13 influx of hopefully manufacturing to this whole
14 community. Power is the main source.

15 MR. LEDFORD: All right, fine. Thank
16 you.

17 HEARING OFFICER VALKOSKY: Redirect, Ms.
18 Reynolds?

19 MS. REYNOLDS: No.

20 HEARING OFFICER VALKOSKY: Questions
21 from anyone else for Mr. Hughes?

22 Thank you, sir.

23 Are there any members of the public who
24 wish to comment on the topic of socioeconomics?
25 There are none.

1 Ms. Reynolds, before you go, just one --

2 MR. LEDFORD: Is this the time for me to
3 move my testimony into -- it's been marked in as
4 an exhibit. I would like to offer it.

5 HEARING OFFICER VALKOSKY: I thought we
6 had --

7 MS. REYNOLDS: Actually, could I move
8 Mr. Hughes' testimony before we get to that?

9 HEARING OFFICER VALKOSKY: Yes.

10 MS. REYNOLDS: Exhibit 91.

11 HEARING OFFICER VALKOSKY: Is there any
12 objection to receipt of exhibit 91 into the
13 evidential record?

14 There is none. That will be admitted.

15 (The above-referenced document,
16 previously marked Intervenor CURE
17 exhibit 91, was received in
18 evidence.)

19 HEARING OFFICER VALKOSKY: Mr. Ledford.

20 MR. LEDFORD: I believe it is marked --

21 HEARING OFFICER VALKOSKY: We have
22 received your exhibit 97. We did that at the last
23 hearing. That's your rebuttal testimony.

24 MR. LEDFORD: On -- yes.

25 HEARING OFFICER VALKOSKY: The rebuttal

1 testimony to John --

2 MR. LEDFORD: On socioeconomics? Okay,
3 it's --

4 HEARING OFFICER VALKOSKY: Right, that's
5 in already.

6 MR. LEDFORD: All right.

7 HEARING OFFICER VALKOSKY: Okay?

8 MR. LEDFORD: Thank you. I just wanted
9 to make sure of that.

10 HEARING OFFICER VALKOSKY: Okay. Now,
11 Ms. Reynolds, am I correct in understanding your
12 earlier statement that CURE endorses the
13 conditions of certification proposed by staff in
14 the areas of water, air quality and biology?

15 MS. REYNOLDS: Yes, we -- as far as
16 biology, those issues were still kind of up in the
17 air for us, and we don't really claim to have
18 expertise in those issues. They were really
19 issues involving the agencies and what they were
20 going to require as far as habitat compensation or
21 other types of mitigation.

22 Our main concerns were in the areas of
23 air quality and water resources. In both of those
24 areas when the initial staff conditions of
25 certification came out we did have some problems

1 with those, and we did file some testimony on
2 behalf of CURE in the air quality area.

3 Subsequent to filing that testimony we,
4 as well as other parties, met with staff and
5 staff, through discussions with all of us, changed
6 the conditions of certification to address our
7 concern. In air quality that was primarily
8 related to construction emissions. And they added
9 the requirement of the soot filters on large
10 construction equipment, which addressed our main
11 concern. Because that really helps eliminate
12 construction PM10 emissions.

13 And so we withdrew our air quality
14 testimony in response to staff making that change.
15 That's also a mitigation measure that was included
16 in the joint proposal by the applicant and CURE.

17 And in the area of water resources we
18 didn't file any testimony on that because all the
19 parties were still kind of in a workshop phase.
20 And we thank the Committee for giving us the time
21 to work through those issues.

22 We were able to, through some long
23 tedious workshops, to resolve our concerns, and we
24 now believe that the conditions proposed by staff
25 reflect the joint proposals submitted by CURE and

1 the applicant.

2 HEARING OFFICER VALKOSKY: Okay, thank
3 you very much for the clarification.

4 MR. LEDFORD: Is that testimony that
5 gets to be cross-examined?

6 HEARING OFFICER VALKOSKY: No, that is a
7 clarification by an attorney as to the status of
8 the party's position.

9 MR. LEDFORD: Isn't that wonderful.

10 HEARING OFFICER VALKOSKY: But I'm sure
11 Ms. Reynolds would be happy to discuss it with you
12 at some time.

13 MR. LEDFORD: I bet she would.

14 (Laughter.)

15 HEARING OFFICER VALKOSKY: Okay, there's
16 nothing more on the matter of socioeconomic
17 before we move on to air quality, then?

18 Thank you, Ms. Reynolds.

19 MS. REYNOLDS: Thank you.

20 HEARING OFFICER VALKOSKY: Okay. Next
21 topic on the agenda is that of air quality. Mr.
22 Thompson.

23 MR. THOMPSON: Thank you very much, Mr.
24 Valkosky. Applicant would like to call Ms. Sara
25 Head. Ms. Head has not been sworn.

1 Ballentine will be sponsoring the health risk
2 assessment portion of that exhibit.

3 Q My mistake. So you will be co-
4 sponsoring exhibit 4?

5 A Right.

6 Q Okay. If I were to ask you the
7 questions contained in your prepared direct
8 testimony today would your answers under oath be
9 the same?

10 A Yes, they would.

11 Q Would you please -- do you have any
12 corrections, additions or deletions to make to
13 your material?

14 A Not at this time.

15 Q Would you please give the Commission a
16 brief overview summation of your material?

17 A Okay. Just to start with, I work for
18 ENSR Corporation and we're the environmental
19 consulting firm hired by High Desert to prepare
20 primarily the air quality analyses for the
21 project.

22 I'm ENSR's Project Manager, and I've had
23 direct oversight in terms of basically all of the
24 air quality analyses which have included the best
25 available control technology assessments, the

1 modeling and air quality impact assessments, the
2 visibility assessments, and also preparation and
3 looking at the offset issues.

4 So I have pretty much direct knowledge
5 and participation in preparation of all of those
6 materials, as well as we have additional technical
7 experts today that -- Howard Ballentine, who was
8 involved in the modeling issues and health risk
9 assessment, and the ozone interpollutant trade
10 ratio.

11 So I can attempt to answer questions on
12 those, but if you, you know, want more detailed or
13 technical expertise, we have additional support
14 here today.

15 The project also has Mr. John Seidler,
16 who also had a lot of direct input on the
17 emissions calculations and the control
18 technologies assessments.

19 Q Thank you. The only other change that I
20 would suggest to your testimony is after exhibits
21 3-45 and 3-46 it says, part. And would you agree
22 with me that given what I have said earlier this
23 morning, we should delete the words part after
24 those exhibits?

25 A Yes, that's correct.

1 Q Do you have anything else to add to the
2 record?

3 A No, I do not.

4 MR. THOMPSON: Thank you very much. Ms.
5 Head is tendered for cross-examination.

6 MS. HOLMES: No questions from staff.

7 HEARING OFFICER VALKOSKY: Mr. Ledford?

8 MR. LEDFORD: Yes, thank you.

9 CROSS-EXAMINATION

10 BY MR. LEDFORD:

11 Q Ms. Head, for the purpose of the
12 project and your modeling, can you describe the
13 area that you looked at, how large an area?

14 A You mean -- okay, in terms of the air
15 quality impact assessment, basically the way that
16 that works is that we select receptor grids that
17 go out as far as we feel necessary to define the
18 maximum impact or actually the impact to a
19 significance level.

20 And, to tell the truth, I can't recall
21 exactly what distance that is, but we feel that we
22 made a valid attempt to define the area where
23 impacts would occur.

24 Q Could you just estimate, would that be a
25 radius of one mile or five miles, or 20 miles?

1 MR. BALLENTINE: I can answer that but
2 not --

3 THE WITNESS: Yeah, I guess I would ask
4 to defer that question until Mr. Ballentine's
5 testimony.

6 MR. THOMPSON: He will be our next
7 witness, Mr. Ledford.

8 MR. LEDFORD: Fine, and you may be able
9 to answer it before I get there.

10 BY MR. LEDFORD:

11 Q And to the extent that you don't feel
12 like you're the best witness for any of these
13 questions, that's fine, you can just say that.

14 A Okay.

15 Q Can you describe when the plant is fully
16 operational will the air quality in the high
17 desert be worse than it was before it started, in
18 layman's terms, because all these reports are very
19 technical, so.

20 A Well, of course it's a very complex
21 issue, but because the project is required to
22 provide offsets and mitigation for the project in
23 general, the ratio is greater than one-to-one for
24 its emissions.

25 I believe that the air quality in the

1 high desert will not be degraded.

2 Q That wasn't my question, unfortunately.
3 My question was when the plant goes into
4 operation, and forgetting the offset issues, the
5 plant, itself, goes into operation, will the air
6 quality be worse than it is today, that's my
7 question.

8 And I'll give you an opportunity to
9 describe the offsets and how that works, because
10 that's important.

11 A Well, right. I mean basically the way
12 offsets work is that you're required to provide
13 reductions in emissions elsewhere for the
14 emissions that are added.

15 Q I understand. Can you just answer my
16 first question first? I want you to explain the
17 offsets second, but please answer the first
18 question. Will the air quality in the high desert
19 in the vicinity of this plant, when this plant
20 goes into operation, be worse when the plant goes
21 in operation than it is today? That is my
22 question.

23 A Yes.

24 Q Okay. Now help me out for the offsets,
25 because I think that is very important.

1 A Okay.

2 Q And I think that's --

3 A Right, and I guess, you know, it'll be
4 worse, but it's all been analyzed to be within
5 safe levels. It will not cause or contribute to
6 exceedances of health standards. It will be below
7 significance levels for health criteria. And so
8 all of that is done without the benefit of the
9 offsets that the impacts of the emissions of
10 themselves will be worse, but not significant.

11 And then beyond that, the project will
12 provide emission reductions from other sources
13 which will further mitigate the impacts.

14 And the way that works is for instance
15 you reduce emissions at some location to make up
16 for emissions from the plant. And different
17 pollutants are done at different ratios and in
18 different matters and come from a variety of
19 different sources.

20 Q All right, and perhaps just a kind of a
21 question in the middle. Your analysis of the air
22 quality in the high desert is that the air quality
23 up here is -- I'm asking for a word. Is it good,
24 is it great, is it --

25 A Oh, the air quality currently in this

1 area has been designated by the Federal
2 Environmental Protection Agency as unhealthful for
3 ozone and particulates. In actuality -- and I
4 believe that personnel from the Air Quality
5 District are here and they might be better able to
6 answer this question, but air quality is actually
7 better than those current designations.

8 Q But in reading the report, again they're
9 very technical, but trying to get to a layman's
10 part of this, it appears to me that the analysis
11 is that a good part of our air quality degradation
12 is actually coming from what we consider up here
13 to be down the hill, or from the South Coast Air
14 Basin?

15 A That's correct.

16 Q And one of the reasons that you are
17 justifying some of the offsets was because of
18 that, is that --

19 A That's correct.

20 Q -- also correct? Now, my understanding
21 of this, also in layman's terms, is that the
22 offsets that were being purchased weren't
23 available locally, so they had to be made
24 available from down the hill?

25 A There were sufficient offsets locally,

1 there are some offsets being purchased locally,
2 but there wasn't enough. And so some of those
3 emission reductions are being purchased from the
4 South Coast Air Basin.

5 Q And so the issue is a regional issue,
6 this air quality issue isn't really focused at
7 George Air Force Base. It is a much broader issue
8 as far as how it's looked at?

9 A That's true.

10 Q And the mitigation measures that are
11 being imposed on the air quality are that this
12 project has to solve problems that they didn't
13 create someplace else, is that correct?

14 A Yes, I'd say that's correct from the
15 viewpoint that they have requirements in this area
16 that's primarily being driven by bad air quality
17 down in the Los Angeles region.

18 Q And can you tell me approximately how
19 much those offset credits are going to cost?

20 A Actually I don't have that information.

21 Q Will some other witness have that
22 information?

23 MR. THOMPSON: I guess I would argue
24 relevance of cost information. I think when
25 offsets are purchased there may be some cost data

1 that goes into the bank and it's made public.
2 But, we are not planning on presenting a witness
3 who would discuss the cost components of the
4 project.

5 MR. LEDFORD: Well, I guess my argument,
6 quite frankly, sir, is that this is a regional
7 issue. And in order for your plant to get
8 approved you are required to mitigate air quality
9 issues of a regional significance that are outside
10 of the scope of your project.

11 So the project issues are much broader.
12 And in order for you to get your project approvals
13 you are having to buy offsets.

14 I believe one of your arguments relative
15 to water, and the reason that you shouldn't have
16 to comply with the terms of the judgment, is that
17 you aren't causing a problem. My comment
18 basically is in order to mitigate the air quality
19 issues on a regional basis you are required to
20 mitigate issues outside of your project area.

21 I would simply like to know what that
22 cost is. And I think it's a fair question.

23 MR. THOMPSON: I would recognize that
24 you're curious, sir. But we will be mitigating,
25 and we will be purchasing offsets. And I would

1 again tell you we're not going to offer a witness
2 to talk about the cost components of the project.

3 MR. LEDFORD: I --

4 THE WITNESS: I'd like to add, if I
5 could, that in response to that question that
6 actually if offsets were available in the high
7 desert region we would have certainly purchased
8 them here. And so there was actually no
9 requirement to purchase them down in the south
10 coast. In fact, you know, there was some
11 reluctance to that point. But there was no
12 requirement that we address that issue on a
13 regional basis. That we could have solely bought
14 all offsets in this area if they were available.

15 BY MR. LEDFORD:

16 Q And the reason they're not available is
17 because the air quality up here is?

18 A Well, basically people haven't had to --
19 haven't had a -- there hasn't been a market,
20 frankly, until recently for these offsets.

21 Q Okay.

22 MR. LEDFORD: No further questions of
23 this witness.

24 HEARING OFFICER VALKOSKY: Ms. Head,
25 I've got several questions. And, again, if you're

1 not the witness to answer those, please let me
2 know.

3 EXAMINATION

4 HEARING OFFICER VALKOSKY: What's the
5 status of the federal PSD review for the project?

6 THE WITNESS: The EPA has issued the
7 draft PSD permit. It went through a 30-day public
8 comment period. The public comment period has
9 closed. And the EPA could issue the permit at
10 anytime they feel like.

11 HEARING OFFICER VALKOSKY: Okay, were
12 there any significant comments received on the PSD
13 permit?

14 THE WITNESS: The only comments received
15 were some slight clarifications received from High
16 Desert Power Project. No other comments were
17 received from the public.

18 HEARING OFFICER VALKOSKY: Okay, so
19 basically the final PSD permit, in your opinion,
20 then, is imminent, is that a fair way to look at
21 it?

22 THE WITNESS: Yes.

23 HEARING OFFICER VALKOSKY: What is the
24 status of the emission reduction credits for this
25 project? And by that I mean how many or what

1 percentage have actually been transferred to the
2 project, or what percentages are subject to
3 legally enforceable option contracts?

4 THE WITNESS: Actually, I'm not totally
5 certain on the status of a portion of the offsets.
6 And as far as I know, they're fairly well in hand,
7 but I would have to defer on that question.

8 HEARING OFFICER VALKOSKY: Mr. Thompson,
9 do you have a witness to address that?

10 MR. THOMPSON: Yes, Mr. Barnett.

11 HEARING OFFICER VALKOSKY: Okay. We'll
12 wait for that, then.

13 MR. THOMPSON: Okay.

14 HEARING OFFICER VALKOSKY: Ms. Head, do
15 you know if the -- am I correct in understanding
16 that part of the credits for the project involve
17 interbasin inner pollutant trading?

18 THE WITNESS: That's correct.

19 HEARING OFFICER VALKOSKY: Okay. Is the
20 interpollutant interbasin agreement final in the
21 sense that the appropriate local boards have
22 approved the transfer?

23 THE WITNESS: Yes, both the Mojave
24 Desert Air Quality Management District and the
25 South Coast Air Quality Management District Boards

1 have fully approved that transfer.

2 HEARING OFFICER VALKOSKY: Okay, thank
3 you.

4 Are the offsets the project has obtained
5 sufficient for either project configuration
6 proposed?

7 THE WITNESS: Yes, they are.

8 HEARING OFFICER VALKOSKY: And am I
9 correct in understanding that fewer emission
10 offsets would be required where the project to use
11 dry cooling or a hybrid cooling?

12 THE WITNESS: The only emission related
13 to the cooling tower is PM10. PM10 offsets are
14 being obtained by paving a local road, Rancho Road
15 in the City of Adelanto.

16 Currently there is quite a lot more
17 offsets available from that than the project
18 requires, so the cooling tower emissions of PM10
19 are relatively minor compared to other sources.

20 So I don't, you know, the answer to your
21 question is yes, there would be less offsets
22 required, but on the other hand I don't believe
23 that there's any significant issue related to
24 that.

25 HEARING OFFICER VALKOSKY: Okay, thank

1 you. Any redirect of your witness, Mr. Thompson.

2 MR. THOMPSON: Thank you, I just have a
3 couple clarification questions, if I may.

4 REDIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q Ms. Head, am I correct that the offset
7 program is part of a federal program that is
8 designed to clean up the air on a systemwide or
9 gross basis over time? And please correct any of
10 my words or statements.

11 A The offset requirement is part of the
12 federal new source review program that's
13 implemented by the Mojave Desert Air Quality
14 Management District through their rules and
15 regulations.

16 So, you know, they have rules that
17 specify the requirements for offsets that a
18 project must meet. Their rules do allow for
19 inner- basin interpollutant trading, you know,
20 their rules specify the criteria that offsets have
21 to meet.

22 But basically the objective, you are
23 correct that the objective of their program is to
24 meet the federal new source review requirement
25 that new projects be sufficiently mitigated in

1 nonattainment areas.

2 Q Thank you. One final question. With
3 regard to the offsets acquired from the South
4 Coast, are these on a one-to-one basis, one-to-one
5 ratio basis, or something greater?

6 A No, actually as I mentioned, there are
7 various ratios that we're required, but because of
8 the distance and the interpollutant nature, there
9 was a great deal of analysis done.

10 And then in addition to that, PA added
11 some for comfort level, and so the end result
12 ratio will be 2.1-to-1 ratio. So for every one
13 ton of emissions that the project emits here, it
14 will have to reduce 2.1 tons of emissions down in
15 the Los Angeles area.

16 Q For which pollutant or pollutants?

17 A These are for NOx, so when we're
18 mitigating NOx emissions we'll have to do 2.1-to-
19 1. For VOC emissions in the South Coast, when
20 we're using -- we'll also be using VOC offsets in
21 the Los Angeles area for VOC emissions. Those
22 will be offset at 1.3-to-1.

23 HEARING OFFICER VALKOSKY: I'm sorry,
24 Mr. Thompson, --

25 MR. THOMPSON: No, that -- a very good

1 question.

2 THE WITNESS: That was a good
3 clarification, yes.

4 MR. THOMPSON: Thank you, that's all I
5 have.

6 HEARING OFFICER VALKOSKY: Ms. Holmes?

7 MS. HOLMES: No questions.

8 HEARING OFFICER VALKOSKY: Mr. Ledford?

9 MR. LEDFORD: No further questions.

10 FURTHER EXAMINATION

11 VICE CHAIRMAN ROHY: Are you aware
12 enough of the technology that the applicant
13 proposes to use to have confidence that, in fact,
14 the emission levels, as presented by the
15 applicant, will be met for the project?

16 THE WITNESS: I will say that these
17 emission levels that are being required are very
18 stringent, and there aren't operating plants that
19 are currently made to meet these levels.

20 But we do have guarantees from the
21 vendors of this equipment, and we have good
22 information that we feel that these levels can be
23 met.

24 VICE CHAIRMAN ROHY: And are you the
25 proper witness to ask what type of monitoring will

1 be on the plant, itself, for air emissions?

2 THE WITNESS: Maybe.

3 (Laughter.)

4 THE WITNESS: I don't know if John
5 Seidler's potentially better to answer, but I'll
6 attempt to.

7 Basically for two pollutants, for NOx
8 and CO, there will be continuous emission
9 monitoring systems. So there will be monitors
10 which basically will be able to tell you the
11 levels of those two pollutants every minute of
12 every day, unless it has some little blip.

13 But those are systems that are, you
14 know, certified and approved by the Environmental
15 Protection Agency and other agencies, so these are
16 standard equipment.

17 VICE CHAIRMAN ROHY: And where does that
18 information go to once it's measured?

19 THE WITNESS: It's collected and
20 reported both to the Mojave Desert Air Quality
21 Management District and to the EPA and to the CEC
22 in quarterly reports, I believe. There's
23 conditions that require that that information be
24 available.

25 VICE CHAIRMAN ROHY: Is there any

1 requirement to report upset conditions?

2 THE WITNESS: Yes, there's rules that
3 the Mojave Desert has that requires you to do
4 excess emissions reporting.

5 VICE CHAIRMAN ROHY: Thank you.

6 HEARING OFFICER VALKOSKY: Just one
7 final clarification. When you testified in
8 response to Mr. Ledford's question that after
9 operation of the High Desert Project the air in
10 the local area would be worse. What exactly did
11 you mean?

12 THE WITNESS: Well, basically there will
13 be emissions from this plant. There will be
14 emissions that will occur that aren't occurring
15 now. So, I don't think that, you know, we could
16 attempt to say that there won't be, you know, some
17 affect on air quality, because you will have these
18 new emission sources.

19 However, as I said, we have analyzed
20 those emissions just strictly on their face, and
21 we have shown that there would not be any new
22 violations of health standards, that there would
23 not be any significant impacts for health risks,
24 such as increased cancer risk, anything like that.

25 So all of our analyses showed that the

1 emissions, you know, would not cause any
2 significant air quality impacts.

3 In addition to that we're also providing
4 these offsets. So the offsets were not accounted
5 for in this modeling analysis. So it wasn't that
6 we said, oh, well, we have emissions here but
7 we're reducing those so it goes away.

8 It was strictly on the face of the new
9 emissions.

10 HEARING OFFICER VALKOSKY: Okay. And if
11 you factor in the offsets, is the local air still
12 worse, or are the offsets sufficient to offset --

13 THE WITNESS: Offset it. Well, and
14 that's --

15 HEARING OFFICER VALKOSKY: -- for want
16 of a better word.

17 THE WITNESS: -- and that's, you know,
18 definitely the idea. And I would, you know, it
19 varies a little bit on a pollutant to pollutant
20 basis, and there's some spatial variation. But in
21 a general sense, then it would be my opinion that,
22 yes, the air quality would be improved overall.

23 HEARING OFFICER VALKOSKY: Okay, thank
24 you. Any further questions for Ms. Head?

25 Thank you, ma'am.

1 THE WITNESS: Thank you.

2 MR. THOMPSON: Thank you, Mr. Valkosky.

3 Applicant would like to move the following
4 exhibits into the record: 5, 11, 12, 15, 19, 31,
5 32, 33, 51, 52, 55, 57, 63, 67, 74 and 76.

6 HEARING OFFICER VALKOSKY: Is there
7 objection? Staff?

8 MS. HOLMES: No.

9 HEARING OFFICER VALKOSKY: Mr. Ledford?

10 MR. LEDFORD: No.

11 HEARING OFFICER VALKOSKY: No
12 objections. The enumerated exhibits will be
13 admitted into evidence.

14 (The above-referenced documents,
15 previously marked Applicant
16 exhibits 5, 11, 12, 15, 19, 31, 32,
17 33, 51, 52, 55, 57, 63, 67, 74 and
18 76 were received in evidence.)

19 MR. THOMPSON: Thank you. Applicant
20 would like to call Mr. John Seidler to the stand.
21 Whereupon,

22 JOHN SEIDLER
23 was called as a witness herein and after first
24 being duly sworn, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Would you please state your name for the
4 record, and your place of employment.

5 A John Seidler. I'm the President of
6 Spectrum Energy.

7 Q And are you the same John Seidler that
8 submitted prepared testimony currently contained
9 in exhibit 95 to this proceeding?

10 A Yes, I am.

11 Q And if I were to ask you the questions
12 in that prepared testimony would your answers
13 today, under oath, be the same?

14 A Yes, they would.

15 Q Do you have any corrections, additions
16 or deletions to make to that material?

17 A No, I don't.

18 Q Would you briefly summarize your
19 testimony to this Committee?

20 A The testimony has occurred in two areas.
21 One area has been quantifying air emissions from
22 the combustion turbines, the duct burners after
23 taking into account the pollution control
24 equipment being installed in the plant.

25 That was done in a lot of coordination

1 with vendors, General Electric, Siemens,
2 Westinghouse and others.

3 The second area that we've been involved
4 in is the evaluation of wet, wet/dry, and dry
5 cooling technologies.

6 Q Thank you. And am I also correct that
7 exhibit 3-68 is going to be sponsored by you
8 today?

9 A Could you tell me what the title of 3-68
10 is, or --

11 Q It's called water reduction methods.

12 A Could I see a copy of it? It sounds
13 likely, but I don't recall that specific document
14 unfortunately.

15 Q Okay.

16 MR. THOMPSON: Can I hold this off
17 until --

18 BY MR. THOMPSON:

19 Q Disregard my previous question, Mr.
20 Seidler. We'll get you later on that.

21 A Sorry.

22 Q No, that's all right.

23 A It's Tom's fault.

24 MR. THOMPSON: Mr. Seidler is tendered
25 for cross-examination.

1 HEARING OFFICER VALKOSKY: Ms. Holmes.

2 MS. HOLMES: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Ledford.

4 MR. LEDFORD: No questions.

5 HEARING OFFICER VALKOSKY: I just want
6 to make sure, Mr. Thompson, that this is not the
7 appropriate witness for the status of the emission
8 reduction credit?

9 MR. THOMPSON: It is not. My plan was
10 to put up Mr. Barnett at the end of the --

11 HEARING OFFICER VALKOSKY: Okay, that
12 will be --

13 MR. THOMPSON: -- air quality --

14 HEARING OFFICER VALKOSKY: -- at the
15 end, okay.

16 Fine, are there any questions for Mr.
17 Seidler?

18 Okay, thank you, sir.

19 THE WITNESS: You're welcome.

20 MR. THOMPSON: Applicant would like to
21 introduce into the record, move the introduction
22 of the following exhibits: 20, 69 and 70.

23 HEARING OFFICER VALKOSKY: Is there
24 objection? No objection, exhibits 29(sic), 69 and
25 70 will be admitted.

1 (The above-referenced documents,
2 previously marked Applicant
3 exhibits 20, 69 and 70 were
4 received in evidence.)

5 MR. THOMPSON: Applicant would next like
6 to call Mr. Howard Ballentine. Mr. Ballentine has
7 not been sworn.

8 Whereupon,

9 HOWARD BALLENTINE
10 was called as a witness herein and after first
11 being duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q Good morning, sir, would you please
16 state your name and place of business for the
17 record.

18 A Howard Ballentine, and ENSR Corporation.

19 Q And are you the same Howard Ballentine
20 who submitted prepared direct testimony that is a
21 part of exhibit 95 to this proceeding?

22 A Yes, I am.

23 Q And if I were to ask you the questions
24 in exhibit 95 in your prepared testimony, would
25 your answers today, under oath, be the same?

1 A Yes.

2 Q Do you have any corrections, additions
3 or deletions to make to that material?

4 A No.

5 Q Would you please briefly summarize your
6 testimony for the Committee?

7 A I am a meteorologist and registered
8 professional engineer; and my areas of involvement
9 in the study included the air quality impact
10 analyses, visual resource, visibility analyses,
11 and health risk assessments for the project.

12 Q Do you have anything else to add, Mr.
13 Ballentine?

14 A I also did some limited analysis of the
15 wet/dry cooling as part of the air quality
16 analysis.

17 Q Does that complete your direct
18 testimony?

19 A Yes.

20 MR. THOMPSON: Mr. Ballentine is
21 tendered for cross-examination.

22 HEARING OFFICER VALKOSKY: Ms. Holmes.

23 MS. HOLMES: No questions.

24 HEARING OFFICER VALKOSKY: Mr. Ledford.

25 MR. LEDFORD: No questions.

1 EXAMINATION

2 VICE CHAIRMAN ROHY: Mr. Ballentine, I'd
3 like to hear a short summary of your analysis of
4 the air emission impacts of wet/dry cooling.

5 THE WITNESS: It was a limited analysis
6 in terms that I didn't do a complete total
7 analysis. It was a preliminary analysis looking
8 at how the wet/dry cooling analysis would affect
9 air quality.

10 It involved -- let me back up a little
11 bit. In the dispersion model there are several
12 components that are used to introduce, you know,
13 impacts into the analysis.

14 One of those is you account for the
15 wakes of buildings and the influence of the air
16 dynamic wake of a building on the dispersion from
17 a plume.

18 With the wet/dry cooling tower that is a
19 much more substantial tower than you have for the
20 wet cooling, and as a result the aerodynamic
21 influence of that tower is more significant than
22 for the wet cooling tower alone. It's larger, so
23 you have a bigger wake zone downwind of that.

24 As a result of that larger wake zone,
25 the model that we are using called the ISC model,

1 estimates higher ground level impacts near the
2 property line of the facility.

3 And so based upon the initial modeling
4 that I did, it indicated that you would have
5 potential for exceeding air quality standards at
6 the property line. You do not have that same
7 impact level associated with the wet cooling tower
8 because it was a smaller tower and did not
9 influence, to the same extent, influence
10 dispersion from the plumes.

11 I then looked, seeing that the existing
12 130-foot stack would be influenced by the wet/dry
13 cooling tower. I looked, ran the model several
14 times to see what stack height would produce
15 acceptable impacts below the air quality
16 standards.

17 What was needed was a stack height at
18 least 154 feet, which then intruded into -- had
19 FAA concerns associated with it. At that point I
20 stopped the analysis. I had identified that a
21 130-foot stack would produce potential quality
22 impacts that were unacceptable. A 154-foot stack
23 would produce acceptable impacts, but then there
24 were other factors involved, including the FAA
25 requirement for limitation of structures exceeding

1 a certain plane height.

2 VICE CHAIRMAN ROHY: And what impacts
3 would there be with a wet/dry cooling at the
4 property line? All air emissions, some?

5 THE WITNESS: The principal pollutant
6 being emitted from the wet/dry cooling tower is
7 particulate matter, PM10, and so you would have
8 been exceeding the 24-hour standard for PM10 at
9 the property line with the wet/dry cooling tower
10 under the scenario that I was modeling, which was
11 the same scenario that I had modeled for the wet
12 cooling tower alone.

13 VICE CHAIRMAN ROHY: Thank you.

14 HEARING OFFICER VALKOSKY: Could those
15 emissions have been -- theoretically could those
16 emissions be controlled by methods other than
17 increased stack height?

18 THE WITNESS: The stack height is not a
19 control measure. It's a dispersion measure.
20 There is the possibility that other modeling
21 techniques could have shown a differing impact.
22 However, the ISC model is the standard EPA
23 guideline model that is shown to be appropriate
24 for this situation, and so it was the appropriate
25 model to be used for the situation.

1 I am not an expert in the control of
2 particulate coming off a cooling tower, so I could
3 not address that issue.

4 HEARING OFFICER VALKOSKY: Okay, thank
5 you.

6 VICE CHAIRMAN ROHY: I'd like to go back
7 a moment. Mr. Ballentine, I believe that question
8 by Mr. Ledford earlier which was posed to a
9 previous witness, in the modeling what was the
10 distance that you assumed in your models? How far
11 out did you model from the power plant?

12 THE WITNESS: In my initial screening
13 modeling I had a receptor grid extending 15
14 kilometers in the north and slightly lower
15 distances in the other directions. And that was
16 based upon the predominate windflow is from the
17 south to the north in that area.

18 So the answer to the question is the
19 maximum extent was 15 kilometers in the north
20 direction.

21 VICE CHAIRMAN ROHY: I was trained in
22 those units, but for the public who wasn't, could
23 you say how much that was approximately in miles?

24 THE WITNESS: That's approximately nine
25 miles.

1 VICE CHAIRMAN ROHY: Thank you.

2 HEARING OFFICER VALKOSKY: Any redirect,
3 Mr. Thompson?

4 MR. THOMPSON: None, thank you very
5 much.

6 HEARING OFFICER VALKOSKY: Anything else
7 for Mr. Ballentine from anyone?

8 MR. LEDFORD: I have just one question.

9 RECROSS-EXAMINATION

10 BY MR. LEDFORD:

11 Q Mr. Ballentine, if we used dry cooling
12 only then we wouldn't have any air quality issues
13 relative to the cooling towers, is that correct?

14 A There would be no particulate matter
15 emissions from a dry cooling tower.

16 MR. LEDFORD: Thank you very much.

17 HEARING OFFICER VALKOSKY: Anything else
18 for the witness? Thank you, Mr. Ballentine.

19 MR. THOMPSON: Thank you, Mr. Valkosky.
20 Applicant would like to move into the record the
21 following exhibits: 6, 56, 58 and 66, all
22 sponsored by Mr. Ballentine.

23 HEARING OFFICER VALKOSKY: Is there
24 objection? There is no objection, they'll be
25 admitted.

1 (The above-referenced documents,
2 previously marked Applicant
3 exhibits 6, 56, 58 and 66, were
4 received in evidence.)

5 HEARING OFFICER VALKOSKY: Mr. Thompson.

6 MR. THOMPSON: Finally, Mr. Valkosky,
7 applicant would like to call Mr. Tom Barnett. Mr.
8 Barnett has been previously sworn.
9 Whereupon,

10 THOMAS BARNETT
11 was recalled as a witness herein and having been
12 previously duly sworn, was examined and testified
13 further as follows:

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Mr. Barnett, would you please state your
17 name and place of employment for the record.

18 A My name is Thomas Barnett. I'm the
19 Project Manager and the Vice President of High
20 Desert Power Project, LLC.

21 Q And were you in the room when the
22 question was asked regarding the status of
23 offsets?

24 A I was.

25 Q Are you prepared to respond to that

1 question now?

2 A I am.

3 Q Please do so.

4 A We currently intend to purchase the
5 offsets that are necessary to go forward with the
6 project from a variety of sources.

7 And for most of those sources we have in
8 place signed option to purchase agreements. We
9 are purchasing offsets from entities that are in
10 the South Coast Air Quality Management District,
11 including Mobil, GM, Chem Oil, Crown Cork & Seal,
12 all of those have executed option agreements in
13 place.

14 We also intend to purchase some PM10
15 offsets from the City of Adelanto. There is an
16 executed offset agreement in place there.

17 Finally, we intend to purchase some
18 offsets from the Southern California International
19 Airport Authority. The offset agreement with
20 SCIAA, as we call them, has been agreed upon and
21 is in final review. And we expect to execute that
22 next week.

23 EXAMINATION

24 HEARING OFFICER VALKOSKY: So, okay, on
25 a percentage basis can you just approximate what

1 percentage of offsets you have enforceable options
2 for?

3 THE WITNESS: I'd say at this point
4 about 75 to 80 percent.

5 HEARING OFFICER VALKOSKY: Okay, and the
6 remaining 20 to 25 percent are all from the --

7 THE WITNESS: Southern California
8 International Airport Authority.

9 HEARING OFFICER VALKOSKY: Okay.

10 THE WITNESS: I might add that, I mean
11 our offsets, as you know we're considering two
12 different configurations. The amount of offsets
13 we need varies with the two different
14 configurations.

15 We are -- our offset agreements are
16 intended to provide us with the offsets for sort
17 of the worst possible combination of options. In
18 other words, the maximum amount of emissions that
19 we would need to offset.

20 So I just wanted to clarify that.

21 HEARING OFFICER VALKOSKY: I understand
22 that, and you will submit evidence that you've
23 executed the option agreements to the Commission?

24 THE WITNESS: We will.

25 HEARING OFFICER VALKOSKY: And that is

1 expected next week or realistically --

2 THE WITNESS: I would say within the
3 next two weeks.

4 HEARING OFFICER VALKOSKY: Within the
5 next two weeks. Okay, thank you.

6 THE WITNESS: I would just add, I
7 believe all, with the exception of the Southern
8 California International Airport Authority option
9 agreements, I believe the others have all been
10 submitted.

11 HEARING OFFICER VALKOSKY: Yes, I
12 understand that to be the case, too.

13 VICE CHAIRMAN ROHY: I'd like to clarify
14 a comment by a previous witness regarding the City
15 of Adelanto. You referred to an agreement that
16 you have, I believe, almost in place. Is that
17 regarding the road paving --

18 THE WITNESS: Yes.

19 VICE CHAIRMAN ROHY: -- that was
20 referred to earlier?

21 THE WITNESS: That is correct. Actually
22 the agreement with the City of Adelanto is in
23 place.

24 VICE CHAIRMAN ROHY: I apologize for
25 that. It is in place and it regards the

1 reduction -- tell me what it regards, rather than
2 leading you.

3 THE WITNESS: Certainly. It regards
4 PM10 offsets that are derived from the paving by
5 the City of Adelanto of an unpaved road. So the
6 offsets derived from the PM10 reductions that a
7 paving of this stretch of road would produce.

8 VICE CHAIRMAN ROHY: And how far is that
9 road from the proposed power plant site
10 approximately?

11 THE WITNESS: I do not know exactly
12 where it is. I can only say since it's in the
13 City of Adelanto, it has to be within, what, a
14 five-mile radius, perhaps something in that
15 neighborhood.

16 VICE CHAIRMAN ROHY: Thank you.

17 HEARING OFFICER VALKOSKY: Mr. Barnett,
18 do you agree the applicant must produce legally
19 enforceable options to emission reduction credits,
20 or have direct transfer of those prior to the time
21 the Commission could grant the project
22 certification?

23 THE WITNESS: I certainly agree that we
24 will have -- we will provide them to you prior to
25 that time.

1 SPEAKER: That's not my question.

2 THE WITNESS: Yes, we agree, we agree
3 that we need to provide them to you.

4 HEARING OFFICER VALKOSKY: Prior to
5 certification. Thank you.

6 Mr. Thompson, any redirect?

7 MR. THOMPSON: No.

8 HEARING OFFICER VALKOSKY: Any other
9 questions for Mr. Barnett?

10 Thank you, Mr. Barnett.

11 MR. THOMPSON: Mr. Valkosky, that
12 completes applicant's presentation and witnesses
13 in air quality.

14 HEARING OFFICER VALKOSKY: Okay. No
15 further exhibits, Mr. Thompson?

16 MR. THOMPSON: No further exhibits.

17 HEARING OFFICER VALKOSKY: Okay. At
18 this time the Committee would like to take a 15-
19 minute recess, reconvene at 10:25, and we'll begin
20 with staff's presentation.

21 (Brief recess.)

22 HEARING OFFICER VALKOSKY: Reconvene on
23 the topic of air quality. Staff's witnesses, Ms.
24 Holmes.

25 MS. HOLMES: Thank you, Mr. Valkosky.

1 Staff's witness on air quality is Mr. Tuan Ngo.
2 He does need to be sworn.
3 Whereupon,

4 TUAN NGO
5 was called as a witness herein and after first
6 being duly sworn, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. HOLMES:

10 Q Good morning, Mr. Ngo. Would you please
11 state your name for the record.

12 A My name is Tuan Ngo.

13 Q And do you have with you copies of your
14 prepared testimony which consists of portions of
15 exhibit 86, errata and errata in exhibits 103 and
16 131?

17 A I do.

18 PRESIDING MEMBER LAURIE: Tuan, the
19 microphone you have in front of you is for
20 recording purposes only. And so it's not
21 amplifying. So, we'll ask you to speak up.

22 THE WITNESS: Okay.

23 PRESIDING MEMBER LAURIE: Thank you.

24 BY MS. HOLMES:

25 Q And was a copy of your qualifications

1 filed in the staff assessment which has been
2 identified as exhibit 82?

3 A Yes.

4 Q Do you have any corrections to the
5 documents you're sponsoring today?

6 A No.

7 Q Are the facts contained in the documents
8 you're sponsoring true and correct to the best of
9 your knowledge?

10 A Yes.

11 Q And do the opinions contained in the
12 documents you are sponsoring today represent your
13 best professional judgment?

14 A Yes.

15 MS. HOLMES: Mr. Ngo is available for
16 cross-examination.

17 HEARING OFFICER VALKOSKY: Mr. Thompson.

18 MR. THOMPSON: We have no questions,
19 thank you.

20 HEARING OFFICER VALKOSKY: Mr. Ledford.

21 MR. LEDFORD: Which exhibit is this
22 going to be?

23 MS. HOLMES: The testimony was filed on
24 7/15, it's been identified as exhibit 86. And
25 then there were two errata filed, one on the 2nd

1 of September -- excuse me, the testimony was
2 9/15 -- 7/15, not 7/16. And then there were two
3 errata, one was filed on the 2nd of September,
4 that's exhibit 103, and then there was also errata
5 filed on the 30th, just a couple days ago, that's
6 exhibit 131.

7 MR. LEDFORD: Okay, thank you. I have
8 no questions for this witness.

9 EXAMINATION

10 HEARING OFFICER VALKOSKY: Tuan, do you
11 agree that applicant has, as previously testified,
12 identified sufficient number of emission reduction
13 credits for the project?

14 THE WITNESS: I do.

15 HEARING OFFICER VALKOSKY: And is that
16 true for both the 720 megawatt or the 678 megawatt
17 configuration?

18 THE WITNESS: Yes.

19 HEARING OFFICER VALKOSKY: Is it staff's
20 position that legally enforceable options or
21 direct transfer for the required emission
22 reduction credits must be provided prior to the
23 time the Commission may grant certification of the
24 project?

25 THE WITNESS: Yes, it is.

1 HEARING OFFICER VALKOSKY: And do you
2 agree with Ms. Head's earlier testimony that the
3 interbasin interpollutant trades have been
4 approved by the applicable local authorities?

5 THE WITNESS: Yes.

6 HEARING OFFICER VALKOSKY: Thank you.
7 Any redirect, Ms. Holmes?

8 MS. HOLMES: No.

9 HEARING OFFICER VALKOSKY: Anyone here
10 present have any further questions or comments for
11 staff's witness?

12 Thank you.

13 (Laughter.)

14 THE WITNESS: Why do I get nervous for?

15 (Laughter.)

16 MR. THOMPSON: We'll get you next time.

17 THE WITNESS: Okay.

18 MS. HOLMES: Mr. Valkosky, would like us
19 to call the District witnesses?

20 HEARING OFFICER VALKOSKY: I would, I
21 would appreciate that, Ms. Holmes.

22 MS. HOLMES: At this point I believe the
23 District witnesses are Mr. Bob Zeller and Alan De
24 Salvio. Would you like to come to the table,
25 please?

1 MR. DE SALVIO: Both of us?

2 MS. HOLMES: It's up to you.

3 Whereupon,

4 BOB ZELLER and ALAN DeSALVIO
5 were called as witnesses herein and after first
6 being duly sworn, were examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. HOLMES:

10 Q Thank you. Could each of you please
11 state your name and your position with the
12 District?

13 MR. ZELLER: Bob Zeller -- pardon my
14 voice -- Supervising Air Quality Engineer.

15 MR. DeSALVIO: Alan DeSalvio, Air
16 Quality Engineer.

17 MS. HOLMES: And are you gentlemen
18 responsible for the preparation of the final
19 determination of compliance which for purposes of
20 the proceeding has been identified as exhibit 89?

21 MR. DeSALVIO: Yes.

22 MS. HOLMES: Do you have any corrections
23 or changes to make to this document at this time?

24 MR. DeSALVIO: No.

25 MS. HOLMES: And is it your position

1 that the facts contained in that document are true
2 and correct?

3 MR. DeSALVIO: Yes.

4 MS. HOLMES: Would you like to provide a
5 brief summary to the Committee of the DOC?

6 MR. DeSALVIO: The DOC represents
7 demonstration that the project, as proposed, will
8 meet all requirements of the MDAQMD.

9 MS. HOLMES: Does that complete your
10 testimony?

11 MR. DeSALVIO: It does.

12 MS. HOLMES: I guess the witnesses are
13 available for questioning, Mr. Valkosky.

14 HEARING OFFICER VALKOSKY: Mr. Thompson.

15 MR. THOMPSON: No questions, but we want
16 to take the opportunity to thank the District for
17 its work and efforts in this process.

18 HEARING OFFICER VALKOSKY: Mr. Ledford.

19 CROSS-EXAMINATION

20 BY MR. LEDFORD:

21 Q Can you tell me how many air quality
22 offset credits are being purchased?

23 MR. DeSALVIO: A large amount, Mr.
24 Ledford, I don't have the document in front of me.
25 Many hundreds of tons.

1 MR. LEDFORD: And that's how it's
2 designed in the sense of tons? I'm not familiar
3 with how that works.

4 MR. DeSALVIO: Tons per year, yes, sir.

5 MR. LEDFORD: So when somebody goes and
6 purchases credits from somebody else, the person
7 they have bought the credits from is retired an
8 activity that's already existing? Is that how
9 that works?

10 MR. DeSALVIO: They've either shut down
11 a facility or they've modified a facility to
12 generate reductions, yes.

13 MR. LEDFORD: And when we talk about the
14 value of those credits, do you have any idea how
15 that works?

16 MR. DeSALVIO: The value would be
17 determined by a market, and we're not involved in
18 establishing value. That's determined by the
19 owner of the credits and the person purchasing.

20 MR. LEDFORD: Do you see those things
21 being bought and sold, do you have any --

22 MR. DeSALVIO: As a matter of fact, we
23 have yet to have an actual transaction occur in
24 the MDAQMD. There was not an internal
25 transaction. In other words, a transaction where

1 there was money changed hands. So we really can't
2 establish a value for those credits in the
3 District as of today.

4 MR. LEDFORD: All right, thank you.

5 HEARING OFFICER VALKOSKY: Gentlemen,
6 and whoever can best answer the question, please
7 feel free to respond.

8 EXAMINATION

9 HEARING OFFICER VALKOSKY: Does the
10 final DOC allow construction of the project in
11 both the 720- and 678-megawatt configuration?

12 MR. DeSALVIO: No, it's exclusive,
13 they're only allowed to build one.

14 HEARING OFFICER VALKOSKY: Oh, either,
15 yes. But the DOC is sufficient to allow
16 construction of either configuration? In other
17 words, there are sufficient offsets, is that
18 correct?

19 MR. DeSALVIO: Yes, sir.

20 HEARING OFFICER VALKOSKY: Okay. Are
21 the emission reduction credits, in your opinion,
22 real, enforceable, permanent, quantifiable and
23 surplus?

24 MR. DeSALVIO: They are with -- I'll
25 clarify in one sense, that the PM10 offsets from

1 the paving of Rancho Road have been proposed, and
2 as proposed they're real. They meet all five
3 criteria that they're supposed to meet.

4 The reason I'm clarify is because the
5 comment period on that proposed issuance does not
6 conclude until, I believe, the end of this month.

7 HEARING OFFICER VALKOSKY: And after
8 that, how long would it take those offsets to be
9 transferred?

10 MR. DeSALVIO: To be transferred?

11 HEARING OFFICER VALKOSKY: To be real,
12 enforceable, quantifiable, permanent and surplus?

13 MR. DeSALVIO: They will upon final
14 issuance, which would be very shortly thereafter,
15 a matter of days after the conclusion of the
16 comment period.

17 HEARING OFFICER VALKOSKY: Okay, so
18 certainly by the middle of November?

19 MR. DeSALVIO: Absolutely.

20 HEARING OFFICER VALKOSKY: Does the
21 control technology proposed by the project meet
22 all District, state and federal criteria for BACT
23 or LAER, whichever is appropriate?

24 MR. DeSALVIO: To the best of my
25 knowledge, yes.

1 HEARING OFFICER VALKOSKY: Okay. And do
2 you certify the complete emission offsets have
3 been identified and will be obtained by the
4 project prior to the time the Commission would
5 license the project?

6 MR. DeSALVIO: That's a difficult one
7 for me to answer. They've been identified.
8 They're required, by permit condition, to actually
9 purchase them prior to construction, by our permit
10 condition.

11 I'm not sure that answers your question.

12 HEARING OFFICER VALKOSKY: And this is
13 just getting to the difference in our
14 requirements. I understand the District must have
15 these in hand prior to construction according to
16 section 25523(d)(2), I believe, of the Public
17 Resource Code. The Commission must have them in
18 hand prior to that time it can authorize
19 certification of the project.

20 MR. DeSALVIO: I believe that that's
21 feasible, sir, yes.

22 HEARING OFFICER VALKOSKY: And lastly, I
23 believe it's condition AQ10 of staff's proposed
24 conditions, which I interpret to reflect a
25 District condition.

1 It indicates a minimum stack height of
2 130 feet, is that correct?

3 MR. DeSALVIO: We specify a minimum
4 stack height in our conditions. I don't really
5 recall quite what it is. That sounds familiar,
6 yes, sir.

7 HEARING OFFICER VALKOSKY: Okay. What
8 I'm concerned is whether that minimum stack height
9 could be exceeded. Is that possible under your
10 conditions? Under condition AQ10?

11 MR. DeSALVIO: I believe, yeah, they
12 could exceed that and not violate our permit, our
13 proposed authority to construct.

14 HEARING OFFICER VALKOSKY: Is there any
15 quantification of by how far they could exceed
16 that for your permit purposes?

17 MR. DeSALVIO: No, I think it's a
18 minimum, and that's based on the dispersion
19 modeling that was done to establish what their
20 impact would be.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you.

23 (Pause.)

24 HEARING OFFICER VALKOSKY: Do you have
25 any further questions, Ms. Holmes?

1 MS. HOLMES: I do not.

2 HEARING OFFICER VALKOSKY: Mr. Thompson?

3 RECROSS-EXAMINATION

4 BY MR. THOMPSON:

5 Q If the applicant has a restriction
6 placed on it by another entity, such as the FAA,
7 and has volunteered, for example, not to have a
8 stack height in excess of 139, that requirement
9 would not be reflected in your DOC, is that
10 correct?

11 MR. DeSALVIO: That's correct.

12 MR. THOMPSON: Okay, thank you, that's
13 all I have.

14 HEARING OFFICER VALKOSKY: Mr. Ledford?

15 MR. LEDFORD: No questions.

16 HEARING OFFICER VALKOSKY: Are there any
17 other questions for the representatives of the Air
18 District?

19 Gentlemen, thank you.

20 MR. ZELLER: Thank you.

21 MR. DeSALVIO: Thank you.

22 HEARING OFFICER VALKOSKY: Appreciate
23 your efforts.

24 MS. HOLMES: Mr. Valkosky, at this time
25 I'd like to move that exhibit 89, which is the

1 final DOC, and staff's air quality testimony,
2 which is contained in portions of exhibit 82, 86,
3 103 and 131 be entered into evidence.

4 HEARING OFFICER VALKOSKY: Is there
5 objection?

6 Those items will be admitted into the
7 evidential record.

8 (The above-referenced documents,
9 previously marked MDAQMD exhibit 89
10 and CEC Staff exhibits 82, 86, 103
11 and 131, were received in
12 evidence.)

13 HEARING OFFICER VALKOSKY: Does any
14 party have any further witnesses to present on the
15 topic of air quality?

16 Are there any members of the public who
17 wish to comment on this topic area?

18 There are none. Next topic on the
19 agenda is biological resources.

20 MR. THOMPSON: Thank you, Mr. Valkosky.
21 Applicant would like to call Ms. Jane Valerius to
22 the stand.
23 Whereupon,

24 JANE VALERIUS

25 was called as a witness herein and after first

1 being duly sworn, was examined and testified as
2 follows:

3 MR. THOMPSON: Actually if you sit at
4 the end then you can probably be seen and heard by
5 the maximum number.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Good morning, Ms. Valerius. Would you
9 please state your name and place of employment for
10 the record?

11 A My name is Jane Valerius. I am
12 currently self-employed, but I was contracted
13 with -- to do the biological resources for the
14 High Desert Power Project.

15 Q And are you the same Jane Valerius who
16 submitted prepared testimony in what is now
17 contained in exhibit 95 to this proceeding?

18 A Yes, I am.

19 Q And with regard to your prepared
20 testimony am I correct that exhibit 68, which is
21 identified as biological assessment for the --
22 never mind.

23 Am I correct that you are also
24 sponsoring the exhibits which are listed in your
25 prepared testimony?

1 A Yes, I am.

2 Q Do you have any corrections, additions,
3 deletions or other changes to make to your
4 material?

5 A I think we deleted exhibit 81, I just
6 wanted to make sure that that was still --

7 Q My apologies. That was the note, and I
8 wrote 68 instead of 81. So your desire and the
9 desires of applicant would be to delete the
10 reference to exhibit 81 in your testimony, is that
11 correct?

12 A That's correct.

13 Q Would you please summarize your
14 testimony for this Commission?

15 A I'm the botanist and wetlands specialist
16 for the project. I conducted the mechanical
17 surveys for the High Desert Project including the
18 project site and the linears, the transmission
19 line corridor, the water pipeline and the gas
20 pipeline corridors.

21 I also conducted the wetland delineation
22 for the 32-mile gas pipeline. And I am sponsoring
23 the portions of the mechanical surveys for the 32-
24 mile gas pipeline that were conducted by other
25 biologists.

1 Q Does that complete your summation?

2 A Yes.

3 MR. THOMPSON: Ms. Valerius is tendered
4 for cross-examination.

5 HEARING OFFICER VALKOSKY: Ms. Holmes?

6 MS. HOLMES: No questions.

7 HEARING OFFICER VALKOSKY: Mr. Ledford.

8 MR. LEDFORD: No questions.

9 EXAMINATION

10 HEARING OFFICER VALKOSKY: Ms. Valerius,
11 and if you're not the proper --

12 MS. HOLMES: Mr. Valkosky, we have an
13 agency witness here -- an agency representative
14 here.

15 HEARING OFFICER VALKOSKY: I am sorry, I
16 am sorry. Mr. Adams?

17 MR. ADAMS: No questions.

18 (Laughter.)

19 MR. ADAMS: But it's nice to be asked.

20 HEARING OFFICER VALKOSKY: You
21 seamlessly replaced Mr. Buell, so I --

22 (Laughter.)

23 HEARING OFFICER VALKOSKY: Ms. Valerius,
24 if you're not the appropriate witness to answer
25 this, please feel free to so state.

1 Can you explain the status of the
2 federal biological permits required for this
3 project?

4 THE WITNESS: That probably would be
5 better discussed by the wildlife biologist,
6 because there are no federal permits for the
7 plants -- oh, I backtrack on that.

8 The nationwide -- for the wetlands, the
9 applicant will apply for U.S. Army Corps of
10 Engineers permit for the gas pipeline and the High
11 Desert Project where it crosses washes or waters
12 of the United States.

13 HEARING OFFICER VALKOSKY: And when will
14 you apply for that permit?

15 THE WITNESS: We're waiting for
16 construction drawings that will show the precise
17 locations so we can have exact acreages and
18 impacts for those areas.

19 HEARING OFFICER VALKOSKY: Okay, and
20 what kind of conditions or mitigation would the
21 Corps typically require as part of its permitting
22 activities?

23 THE WITNESS: Well, the only activities
24 I'm aware of, at least for the High Desert Project
25 and for the gas pipeline project, would be to

1 cross a wash where it would be trenched, and then
2 backfilled.

3 So, in essence, there would be self-
4 mitigating projects where the riparian or the
5 wetland or the waters of the United States would
6 be replaced so that there would be no net loss of
7 wetlands.

8 If something is identified later on
9 where they have to fill an area and then they
10 can't restore it, then there would have to be some
11 mitigation provided for that, either a restoration
12 of another area, that kind of a -- that would be
13 worked out in a mitigation plan with the Corps of
14 Engineers.

15 HEARING OFFICER VALKOSKY: Okay, and
16 about how long will that process take once you
17 provide the construction drawings?

18 THE WITNESS: The nationwide permit
19 program allows for utility line backfilling, which
20 is what the pipeline would qualify for. It's a
21 30-day application process with the Corps of
22 Engineers, there's also a regional water quality
23 control board permit that would be required, but
24 that's with the state. And that's a 60-day
25 process, and a stream alteration agreement.

1 But for federal permits it's the Corps
2 of Engineers. And they can usually do that in a
3 30-day process.

4 HEARING OFFICER VALKOSKY: And you
5 mentioned the state water resources control board
6 permit. When would you apply for that, or have
7 you?

8 THE WITNESS: At the same time we apply
9 for the Corps of Engineers permit. Because
10 they're required together.

11 HEARING OFFICER VALKOSKY: Okay, so that
12 the --

13 THE WITNESS: Yeah, the two applications
14 would go hand-in-hand.

15 HEARING OFFICER VALKOSKY: Okay, thank
16 you. Redirect, Mr. Thompson?

17 MR. THOMPSON: If I could ask for your
18 indulgence, this is a question not in redirect but
19 in further direct, something I neglected to put
20 in.

21 FURTHER DIRECT EXAMINATION

22 BY MR. THOMPSON:

23 Q Ms. Valerius, am I correct that you are
24 sponsoring parts of two exhibits that were
25 originally going to be sponsored by Ms. Edra?

1 A Yes, that's correct.

2 Q And those would be part of exhibit 29
3 and part of exhibit 68?

4 A That's correct.

5 Q And the parts of those exhibits were
6 prepared by you, under your direction, or in
7 coordination with your office, is that correct?

8 A That's correct.

9 Q And you adopt those as your own?

10 A Yes, I do.

11 MR. THOMPSON: Thank you very much.

12 That is all that I have for Ms.

13 Valerius.

14 HEARING OFFICER VALKOSKY: Are there any
15 further questions for the witness?

16 Thank you, Ms. Valerius.

17 MR. THOMPSON: Applicant would like to
18 move the admission of the following exhibits: 10,
19 18, 41, 42, 46. I think that's it. There are a
20 number of exhibits where part of the materials
21 will be sponsored by Ms. Valerius and part by the
22 second witness. I would move the admission when
23 the final witness completes the testimony.

24 Thank you.

25 HEARING OFFICER VALKOSKY: Is there any

1 objection to the admission of exhibits 10, 18, 41,
2 42 or 46?

3 Staff?

4 MS. HOLMES: No objection.

5 HEARING OFFICER VALKOSKY: Mr. Adams?

6 MR. ADAMS: No.

7 HEARING OFFICER VALKOSKY: Mr. Ledford?

8 MR. LEDFORD: No.

9 HEARING OFFICER VALKOSKY: Okay, those
10 exhibits will be admitted.

11 (The above-referenced documents,
12 previously marked Applicant
13 exhibits 10, 18, 41, 42 and 46,
14 were received in evidence.)

15 MR. THOMPSON: Thank you very much.

16 Applicant would next like to call Mr. William
17 Vanherweg.

18 Whereupon,

19 WILLIAM VANHERWEG

20 was called as a witness herein and after first
21 being duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Would you please state your name and

1 place of employment for the record, please.

2 A My name is William Vanherweg. I'm a
3 self employed biological consultant contracted to
4 RMI to conduct wildlife surveys --

5 Q And are you -- I'm sorry.

6 A -- for the project.

7 Q And are you the same Mr. William
8 Vanherweg who submitted prepared testimony which
9 is now contained in exhibit 95 to this proceeding?

10 A I am.

11 Q If I were to ask you the questions
12 contained in that exhibit would your responses
13 today, under oath, be the same?

14 A Yes.

15 Q Do you have any corrections, additions,
16 deletions to make to that material?

17 A No.

18 Q Would you please summarize your
19 testimony for this Commission?

20 A I was contracted to supervise the
21 wildlife resource surveys and potential impacts to
22 sensitive wildlife resources that might come from
23 the project.

24 This type of analysis included
25 literature review, field surveys and impact

1 analysis; and the subsequent mitigation design.

2 I supervised teams of three to seven
3 biologists during the years of 1997 and 1998.
4 Included surveys at the plant site, transmission
5 line, two natural gas pipelines, water lines, and
6 well site, water well sites.

7 Q Does that complete your testimony?

8 A It does.

9 MR. THOMPSON: Thank you very much. Mr.
10 Vanherweg is tendered for cross-examination.

11 HEARING OFFICER VALKOSKY: Ms. Holmes?

12 MS. HOLMES: No questions.

13 HEARING OFFICER VALKOSKY: Mr. Adams?

14 MR. ADAMS: No questions.

15 HEARING OFFICER VALKOSKY: Mr. Ledford.

16 MR. LEDFORD: No questions.

17 EXAMINATION

18 HEARING OFFICER VALKOSKY: Mr.

19 Vanherweg, are you the witness that can explain
20 the status of the federal permitting activities?

21 THE WITNESS: I think that would be
22 better answered by our -- I think Amy Cuellar
23 would be the best.

24 HEARING OFFICER VALKOSKY: Okay, I'll
25 hold off.

1 THE WITNESS: She's a coordinator for
2 those permits.

3 HEARING OFFICER VALKOSKY: Okay, thank
4 you. Would the use of dry cooling in the project
5 create any new biological impact concerns?

6 THE WITNESS: I have not enough of an
7 understanding of that to -- I don't think that it
8 would, though.

9 HEARING OFFICER VALKOSKY: Okay. Is it
10 a correct statement that the biological resource
11 impacts of the proposed project are related very
12 intimately with the potential decreased flow of
13 the Mojave River?

14 THE WITNESS: I am not -- I don't feel
15 competent to answer those questions. I wasn't
16 asked to analyze that portion.

17 HEARING OFFICER VALKOSKY: Okay. Thank
18 you.

19 VICE CHAIRMAN ROHY: You mentioned that
20 you analyzed the well sites for this project, is
21 that correct?

22 THE WITNESS: Yes, in respect to their
23 impacts upon upland species like desert tortoise
24 and Mojave ground squirrel, listed species.

25 VICE CHAIRMAN ROHY: In your opinion are

1 those sites well identified so that your study is,
2 in fact, relevant to this case?

3 THE WITNESS: Yes. I believe they were.

4 VICE CHAIRMAN ROHY: So that you studied
5 very specific sites?

6 THE WITNESS: Right, yes, pipelines and
7 corridors.

8 VICE CHAIRMAN ROHY: And you also
9 studied the pipelines, both routes that are being
10 proposed by the applicant?

11 THE WITNESS: Yes.

12 VICE CHAIRMAN ROHY: And there are two
13 water routes being proposed by the applicant?

14 THE WITNESS: Um-hum.

15 VICE CHAIRMAN ROHY: And you studied
16 both of those?

17 THE WITNESS: Yes.

18 VICE CHAIRMAN ROHY: So all potential
19 routes were studied in your biological study?

20 THE WITNESS: Yes, I believe so, to the
21 best of my knowledge, yes.

22 VICE CHAIRMAN ROHY: Okay, thank you.

23 HEARING OFFICER VALKOSKY: Are you --
24 last question, are you familiar with the
25 conditions of certification --

1 THE WITNESS: Yes.

2 HEARING OFFICER VALKOSKY: -- proposed y
3 staff?

4 THE WITNESS: Yes.

5 HEARING OFFICER VALKOSKY: Do you agree
6 that the conditions, as proposed by staff, and as
7 amended by the errata in exhibit 103, are
8 appropriate and acceptable for the project?

9 THE WITNESS: Yes.

10 HEARING OFFICER VALKOSKY: Okay, thank
11 you. Any other further questions for the witness.

12 REDIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q And you would recommend that the High
15 Desert Power Project accept those conditions of
16 certification?

17 A I would.

18 MR. THOMPSON: Thank you very much.

19 That's all I have.

20 HEARING OFFICER VALKOSKY: Okay. Thank
21 you, sir.

22 MR. THOMPSON: The applicant would next
23 like to call Mr. Thomas Olsen.

24 //

25 //

1 Whereupon,

2 THOMAS OLSEN

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

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Good morning, Mr. Olsen. Would you
9 please give your name and place of employment for
10 the record.

11 A My name is Tom Olsen. I work for Garcia
12 & Associates as a senior wildlife biologist. And
13 we are under contract to work for RMI on this
14 project.

15 Q Thank you. Are you the same Thomas
16 Olsen who submitted prepared testimony now
17 contained in exhibit 95 to this proceeding?

18 A Yes, I am.

19 Q I don't know if you were present in the
20 room earlier when applicant notified this
21 Committee that it would not be putting into
22 evidence exhibit 81, which is listed as an exhibit
23 that you are partially sponsoring. Were you here
24 for that?

25 A Yes.

1 Q And would you agree to delete the
2 reference to exhibit 81 and your moving that
3 exhibit into the record?

4 A Yes.

5 Q Having deleted that exhibit 81, are
6 there any other changes, corrections or additions
7 you would like to make to your testimony or the
8 material being presented by you?

9 A No.

10 Q Would you please briefly summarize your
11 material for the Commission?

12 A Yes. I was asked to assist in the
13 preparation of the habitat conservation plan for
14 the power plant and for some of the facilities
15 that went with the power plant.

16 In the course of that I prepared
17 sections of the habitat conservation plan or the
18 HCP. Conducted literature review, presented
19 results of surveys that were conducted by Mr.
20 Vanherweg and others, evaluated impacts, and
21 assisted in the development of mitigation.

22 I also assisted in some of the other
23 documents that were prepared, including the
24 biological assessment.

25 Q Thank you very much, does that complete

1 your testimony?

2 A Yes, it does.

3 MR. THOMPSON: Mr. Olsen is tendered for
4 cross-examination.

5 HEARING OFFICER VALKOSKY: Ms. Holmes.

6 MS. HOLMES: No questions.

7 HEARING OFFICER VALKOSKY: Mr. Adams.

8 MR. ADAMS: No questions.

9 HEARING OFFICER VALKOSKY: Mr. Ledford.

10 CROSS-EXAMINATION

11 BY MR. LEDFORD:

12 Q In the habitat mitigation plan, what
13 does that exactly entail?

14 A It includes those portions where there
15 is no federal nexus that will be covered by a
16 section 10A permit for the federal Endangered
17 Species Act, as opposed to the 32-mile long
18 pipeline which will be covered by a section 7
19 permit.

20 Q And is that where the High Desert Power
21 Project contributes funds for that project, is
22 that how that works?

23 A There will be funds associated with both
24 the pipeline and the plant, itself.

25 Q My recollection in the workshops there

1 was a number of \$1.7 million attached to that
2 habitat mitigation plan. Is that a correct
3 number?

4 A For the HCP, itself, or also the section
5 7 portion?

6 Q I'm certain I'm confused, so maybe you
7 can clarify that.

8 A I can check the habitat conservation
9 plan. I don't have the figure for the biological
10 assessment right in front of me.

11 Q And perhaps that's not real important,
12 and I'd like to move this along, but what I'm
13 curious about is the issues that we're addressing
14 here are things like the Mojave ground squirrel,
15 the desert tortoises. Is there others?

16 A No, those are the two species that would
17 be covered by the habitat conservation plan.

18 Q And just exactly how is that determined?
19 How much money is going to be contributed, and is
20 it based on how much property is being disrupted,
21 or?

22 A The basis is how much habitat will be
23 disturbed. That's the base. There are actually
24 three parts to it. There is a part associated
25 with the purchase of land to offset that

1 disturbance. There is a second portion for
2 enhancement or improvements to the land that's
3 purchased, and there's a third portion for
4 endowment that would be set aside to the
5 management of the lands that are set aside.

6 Q And the reason for this plan is because
7 these species are -- there was something that
8 happened prior to the time High Desert Power ever
9 showed up? They didn't create this problem, but
10 they are required to mitigate the problem?

11 A That's correct.

12 MR. LEDFORD: Thank you.

13 HEARING OFFICER VALKOSKY: Redirect, Mr.
14 Thompson?

15 MR. THOMPSON: Nothing, thank you.

16 HEARING OFFICER VALKOSKY: Any other
17 questions for the witness?

18 VICE CHAIRMAN ROHY: Excuse me.

19 EXAMINATION

20 VICE CHAIRMAN ROHY: Related to the
21 previous question, I believe the question was they
22 didn't create this problem and you said that's
23 correct. Does my memory serve me correct?

24 THE WITNESS: The two species involved
25 were not -- they weren't put on endangered species

1 lists because of the project.

2 VICE CHAIRMAN ROHY: That's a
3 clarification, thank you.

4 THE WITNESS: Yes.

5 VICE CHAIRMAN ROHY: But also, a follow-
6 up question. Does the disruption of their current
7 species further endanger them by putting in a
8 pipeline, or could it cause some further danger?

9 THE WITNESS: In this case I think it's
10 fully mitigated by the mitigation plan that's been
11 put together, including off-site preservation of
12 habitat elsewhere.

13 VICE CHAIRMAN ROHY: If there were no
14 mitigation would that possibly cause further
15 damage?

16 THE WITNESS: If we're talking about
17 just the area covered by the habitat conservation
18 plan, I think the impacts to those two species
19 would be detrimental, but very slight.

20 Most of the area covered in the habitat
21 conservation plan is low density and low quality
22 habitat.

23 VICE CHAIRMAN ROHY: But with the
24 mitigation you feel that there would be no
25 significant impact to those species?

1 THE WITNESS: Correct.

2 VICE CHAIRMAN ROHY: Thank you.

3 HEARING OFFICER VALKOSKY: Just for
4 clarification, sir, mitigation to protected
5 species is specifically required by federal and/or
6 state law, is it not?

7 THE WITNESS: Yes.

8 HEARING OFFICER VALKOSKY: Thank you.
9 Anything else?

10 MR. THOMPSON: Not now, Mr. Valkosky.

11 HEARING OFFICER VALKOSKY: Thank you.

12 MR. THOMPSON: Applicant would next like
13 to call Ms. Amy Cuellar. Ms. Cuellar has been
14 previously sworn.
15 Whereupon,

16 AMY CUELLAR
17 was recalled as a witness herein and having been
18 previously duly sworn, was examined and testified
19 further as follows:

20 DIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Would you please state your name and
23 place of employment for the record.

24 A Amy Cuellar, RMI Navigant Consulting.

25 Q And you have previously sponsored your

1 prepared direct testimony which is contained in
2 exhibit 95, is that correct?

3 A Yes.

4 Q And a portion of that prepared
5 testimony, sub D as in dog, concerns biological
6 resources, is that correct?

7 A Yes.

8 Q And that is the section that you are
9 sponsoring today, --

10 A Correct.

11 Q -- more specifically? Do you have any
12 corrections, additions or deletions to make to
13 that material?

14 A No.

15 Q Would you please briefly summarize what
16 is contained in section D of your prepared
17 testimony?

18 A As project manager for RMI Navigant
19 Consulting, one of my responsibilities was to take
20 the survey results and technical analyses that my
21 biology experts completed, and use that
22 information to complete draft permit applications
23 and other documentation required as part of the
24 permitting for other regulatory agencies,
25 including California Department of Fish and Game,

1 the Bureau of Land Management and the U.S. Fish
2 and Wildlife Service.

3 Q Thank you. Were you present today when
4 questions have been raised regarding the status of
5 federal permits?

6 A Yes.

7 Q Are you prepared to answer those
8 questions?

9 A The best I can, yes.

10 Q Please do.

11 A As our previous witness, Mr. Olsen,
12 stated, the biological assessment which covers the
13 32-mile gas pipeline was submitted in final form
14 to the Bureau of Land Management in April of '99.

15 It is their responsibility now to
16 initiate formal consultation with the U.S. Fish
17 and Wildlife Service, the Service being the lead
18 agency on this project.

19 The habitat conservation plan covers the
20 power plant and the rest of the linears on this
21 project as part of the section 10(a)1(B)
22 incidental take permit, with also Fish and
23 Wildlife Service as the lead agency.

24 The Fish and Wildlife Service has
25 decided to write one biological opinion for this

1 project. So the timing with the consultation
2 initiation by the BLM will be approximately the
3 same timing as the draft environmental impact
4 statement and the habitat conservation plan are
5 released for public review next month.

6 The Fish and Wildlife Service will then,
7 during that 45-day public comment period, begin
8 preparing their biological opinion.

9 Q Do you have a guess or an estimate as to
10 the time that would occur? I recognize this is a
11 hard question.

12 A I believe the public comment period will
13 end at the beginning of January. And at that time
14 a final environmental impact statement would be
15 generated based on the public comments received.

16 Q Okay.

17 A I believe the end of all the federal
18 permits is estimated to be probably March of next
19 year.

20 Q Let me, if I may, direct your attention
21 to two exhibits that have been identified.
22 Exhibit 17, which is the revised draft BRMP, the
23 biological resources mitigation plan, and 53, the
24 draft habitat conservation plan.

25 Do you have any statements with regard

1 to the draft or ongoing nature of those documents?

2 A In exhibit 17, which is the biological
3 resources mitigation implementation and monitoring
4 plan, is dated July of '99 on the exhibit list.
5 There was a working draft of that document
6 prepared in August of '99 and a courtesy copy was
7 submitted to CEC's biology staff and to Fish and
8 Game, as well.

9 There's a condition of certification in
10 the biology section which requires the final
11 version of that document to be submitted, I
12 believe, 60 days prior to construction. And at
13 that time that final document will be served on
14 all parties.

15 Q So what you're saying is even though
16 those two documents have a date specified in them,
17 they are ongoing documents in a federal process?

18 A That's correct.

19 Q Do you have anything else to add to the
20 record, Ms. Cuellar?

21 A I might just clarify exhibit 53, which
22 is the draft habitat conservation plan. The last
23 date that document was docketed was October of
24 1998. There have been, I believe, two revisions
25 subsequent to then where that document has been

1 revised to incorporate comments from the Fish and
2 Wildlife Service, and courtesy copies were
3 provided to Fish and Game and CEC Staff, as well.

4 That document will be final'd and go out
5 for public review along with the draft EIS. So
6 that is also in the process of being revised.

7 Q One final question. Exhibit 17 has been
8 identified as the biological resources mitigation
9 implementation plan, and I heard you use the term
10 with monitoring in there. Has the name changed,
11 or did I get it wrong?

12 A And staff biologist might be able to
13 clarify this, but I believe the correct name is
14 biological resources mitigation implementation and
15 monitoring plan.

16 Q Great, thank you very much. Do you have
17 anything else?

18 A No.

19 MR. THOMPSON: Ms. Cuellar is tendered
20 for cross-examination.

21 HEARING OFFICER VALKOSKY: Ms. Holmes.

22 MS. HOLMES: No questions.

23 HEARING OFFICER VALKOSKY: Mr. Adams.

24 MR. ADAMS: Clarification.

25 //

1 CROSS-EXAMINATION

2 BY MR. ADAMS:

3 Q You are working on both the 10A permit
4 and the biological opinion for the project?

5 A The biological assessment for the 32-
6 mile gas pipeline, but not the biological opinion.
7 The Service will write that document.

8 Q Well, I'm trying to clarify what segment
9 of the project will be covered by biological
10 opinion.

11 A Both segments. Both segments being the
12 32-mile gas pipeline and then the rest of the
13 project will be covered under one biological
14 opinion that the Fish and Wildlife Service will
15 prepare.

16 Q Has the Service communicated what the
17 content of that bio opinion is?

18 A No, they will not begin writing that
19 until the draft EIS and the habitat conservation
20 plan are out for public review.

21 Q Okay. And no informal communication
22 about what sort of mitigation requirements they're
23 looking at?

24 A Nothing different than what is in the
25 current biological assessment for the 32-mile gas

1 pipeline and the current draft of the habitat
2 conservation plan, no.

3 Q Okay.

4 MR. ADAMS: Thank you.

5 HEARING OFFICER VALKOSKY: Mr. Ledford.

6 MR. LEDFORD: I guess I'm confused,
7 also.

8 I was of the opinion that the Department
9 of Fish and Game and the federal Wildlife Service
10 were sort of jointly doing this EIS. That's not
11 correct? You sounded like -- sorry, you sounded
12 like you didn't know.

13 MR. ADAMS: No. The EIS is not a
14 Department project.

15 MR. LEDFORD: I understand it isn't a
16 Department project, but I was under the
17 misinformed belief, I guess, that the federal EIS
18 process, they were taking the lead and you were
19 incorporating your comments into it.

20 MR. ADAMS: Well, we can ask the
21 Department witness about the level of
22 coordination.

23 The Department of Fish and Game and the
24 Fish and Wildlife Service attempt to work
25 together, at least coordinate their requirements

1 so we don't end up with contradictory
2 requirements.

3 The EIS would be for compliance with the
4 National Environmental Policy Act. We are
5 complying with CEQA as a responsible agency in
6 issuing our permits. And for that purpose we will
7 rely on the Energy Commission documents as a
8 functional equivalent of an EIR, environmental
9 impact report.

10 HEARING OFFICER VALKOSKY: I think you
11 raise a good point here, Mr. Ledford.

12 EXAMINATION

13 HEARING OFFICER VALKOSKY: Let me ask
14 the witness specifically what measures, if any,
15 will be taken to insure consistency in the
16 mitigation measures imposed as part of the state
17 process, and as part of the federal process? I
18 think that's what we're all looking at here.

19 THE WITNESS: The primary basis of the
20 development of the administrative draft EIS has
21 been existing documentation that has been prepared
22 through the Energy Commission's process and in
23 consultation with Fish and Game.

24 But only the federal agencies have seen
25 the EIS to date, because it's not yet ready for

1 public review.

2 HEARING OFFICER VALKOSKY: Okay. Are
3 you aware of any substantial inconsistencies --

4 THE WITNESS: No.

5 HEARING OFFICER VALKOSKY: -- between --

6 THE WITNESS: No. I can make a firm
7 statement that there are no inconsistencies.
8 We've relied on existing documentation for the EIS
9 document.

10 HEARING OFFICER VALKOSKY: Okay, and
11 then --

12 THE WITNESS: So we won't get to the end
13 point and have inconsistency.

14 HEARING OFFICER VALKOSKY: Right, and
15 you say existing documentation, you've referred to
16 the documentation developed as part of the Energy
17 Commission process?

18 THE WITNESS: Yes, beginning with the
19 application for certification, itself, yes.

20 HEARING OFFICER VALKOSKY: Thank you.
21 Do you have anything further, Mr. Ledford?

22 MR. LEDFORD: No, thank you.

23 HEARING OFFICER VALKOSKY: Any redirect?

24 MR. THOMPSON: No, we do not.

25 HEARING OFFICER VALKOSKY: Ms. Holmes,

1 questions?

2 MS. HOLMES: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Adams?

4 MR. ADAMS: No questions.

5 HEARING OFFICER VALKOSKY: Are there any
6 further questions from anyone for Ms. Cuellar?

7 Thank you.

8 MR. THOMPSON: Mr. Valkosky, we'd like
9 to move exhibit 61 into the record.

10 HEARING OFFICER VALKOSKY: Is there any
11 objection?

12 MS. HOLMES: No.

13 HEARING OFFICER VALKOSKY: Mr. Ledford?

14 MR. LEDFORD: No.

15 HEARING OFFICER VALKOSKY: 61 will be
16 received.

17 (The above-referenced document,
18 previously marked Applicant exhibit
19 61, was received in evidence.)

20 MR. THOMPSON: As our final witness, Mr.
21 Valkosky, applicant would like to call Mr. Tom
22 Barnett.

23 Whereupon,

24 THOMAS BARNETT

25 was recalled as a witness herein and having been

1 previously duly sworn, was examined and testified
2 further as follows:

3 DIRECT EXAMINATION

4 BY MR. THOMPSON:

5 Q Mr. Barnett, you have been previously
6 sworn. Would you please state your name and place
7 of employment for the record.

8 A My name is Thomas Barnett. I'm the
9 Project Manager and a Vice President of High
10 Desert Power Project, LLC.

11 Q Thank you. And the purpose of your
12 testimony in the biological resources section is
13 to sponsor that portion of exhibit 101 that
14 contains your rebuttal testimony, and not that
15 portion of exhibit 101 that contains the cover
16 letter, is that correct?

17 A That is correct.

18 Q Would you please briefly, first of all,
19 do you have any corrections, additions or
20 deletions to make to your rebuttal testimony
21 contained in exhibit 101?

22 A No.

23 Q Would you please briefly summarize your
24 rebuttal testimony for the Committee?

25 A Yes. There are three areas which the

1 applicant disagrees with the proposed conditions
2 of certification in the biological area. And they
3 all relate to BIO7.

4 And that pertains to the requirements
5 for us to purchase offsetting land and the manner
6 in which we put up the evidence that we have
7 financial security for that.

8 To begin with, we feel that the current
9 BIO7 requirement for us to put up the money is
10 quite proper, but there is no requirement or no
11 mechanism stated in BIO7 for us to get any of that
12 money back if it is not used. It is essentially a
13 security deposit, and it is put in place to assure
14 that we have the money to purchase the necessary
15 offsetting land.

16 If, for some reason, we are not required
17 to purchase all of that land, if, for some reason,
18 the land were to cost less, we think it's proper
19 that the conditions of certification should allow
20 that money to be returned to us.

21 So this is sort of a mechanical
22 provision that we think is just hopefully just
23 missing by oversight.

24 Secondly, there's a requirement in BIO7
25 for us to put in place a letter of credit 30 days

1 prior to the start of surface disturbance. And as
2 stated in my rebuttal testimony we feel that the
3 30 days is unnecessarily long. We intend to
4 commence the surface disturbance immediately
5 following financial closing. But we will not have
6 the money in place until the financial closing to
7 put in place a letter of credit.

8 And as stated in my testimony there's no
9 real need for review of the letter of credit, it
10 simply needs to be established it's in place. We
11 think a 48 hour timeframe would be more
12 appropriate.

13 And the final area of my rebuttal
14 testimony is with regard to the actual dollar
15 amount in acreage that's necessary for us to
16 purchase as compensation.

17 And the current version of BIO7 is based
18 on our project linears, including the 32-mile gas
19 pipeline. As I've stated earlier in these
20 hearings, the project currently intends to go
21 forward with the 32-mile pipeline, but we would
22 like to preserve the right to not do so.

23 We will make the final decision on this
24 prior to financial closing and any surface
25 disturbance. But because we would like to

1 preserve that right to not go forward with the 32-
2 mile gas pipeline, we would like to have this
3 requirement to purchase acreage and this dollar
4 requirement for the offsetting habitat to reflect
5 this alternative.

6 So we had proposed -- we are not
7 absolutely adamant about the language that I
8 proposed, but we would like some mechanism in
9 there that reflects our ability to pay one amount
10 if we're going forward with the 32-mile gas
11 pipeline, and another lesser amount if we are not
12 going forward with the 32-mile gas pipeline.

13 And we believe that the information
14 necessary to make the determinations for those two
15 alternatives is available to all the parties. And
16 we have so stated in the rebuttal testimony.

17 Q Thank you. With the exception of these
18 three points that are contained in your rebuttal
19 testimony, do you accept, on behalf of the
20 project, all the rest of the biological conditions
21 of certification and verification thereto?

22 A I do.

23 Q Thank you. Do you have anything else to
24 add?

25 A Not at this time.

1 MR. THOMPSON: Mr. Barnett is tendered
2 for cross-examination in the area of biological
3 resources.

4 HEARING OFFICER VALKOSKY: Before we get
5 to that, just for a point of clarification, Mr.
6 Barnett, when you're talking about the changes
7 you're advocating in condition BIO7, you're
8 referring to BIO7 as it appears in exhibit 103,
9 which is staff's biological resources errata dated
10 September 7th, is that correct?

11 THE WITNESS: I believe so. I am
12 referring to -- what I am looking at here is a
13 September 2nd errata to the testimony of Marc
14 Sazaki with corrections and changes.

15 The September 2nd is what appears in the
16 footer on the page. I'm not sure exactly what the
17 transmittal date of it was.

18 HEARING OFFICER VALKOSKY: Okay, and
19 again, I'd just like to make sure. Ms. Holmes,
20 what's the staff -- correct date of the staff
21 proposal for --

22 MS. HOLMES: I believe it's September
23 2nd.

24 HEARING OFFICER VALKOSKY: September
25 2nd?

1 MS. HOLMES: Exhibit 103?

2 HEARING OFFICER VALKOSKY: Yes. I have
3 it as exhibit 103, but for some reason I had a
4 different date. Okay, thank you.

5 MS. HOLMES: There's a docketed date on
6 it that's different. Is that perhaps causing some
7 of the confusion?

8 HEARING OFFICER VALKOSKY: That could
9 well be. Thank you.

10 MS. HOLMES: The docketed date is the
11 3rd. The actual date on the cover memo is the
12 2nd.

13 HEARING OFFICER VALKOSKY: Okay, we're
14 looking at the second one, as identified on the
15 exhibit list.

16 Okay. Ms. Holmes, cross-examination?

17 MS. HOLMES: No questions.

18 HEARING OFFICER VALKOSKY: Mr. Adams?

19 MR. ADAMS: Just a couple.

20 CROSS-EXAMINATION

21 BY MR. ADAMS:

22 Q In paragraph two of the rebuttal
23 testimony, the timing for providing letter of
24 credit. Do you think 24 hours or 48 hours would
25 provide adequate time for approvals of the form of

1 the security?

2 I believe the conditions of
3 certification requires that both CEC and DFG
4 approve the form of the security.

5 A We do. But I would offer the following
6 amendment, if you will, to my rebuttal testimony
7 if it would be helpful.

8 We would be prepared to submit 30 days
9 prior to the start of surface construction the
10 form of the letter of credit, so that all parties
11 could agree on the form.

12 Then we believe that the 48 hours will
13 be sufficient to just identify that the form has
14 been complied with.

15 Q As for paragraph number three, could you
16 explain the source of those statements? Are they
17 from another exhibit, or were there calculations
18 made?

19 A The calculations were based on work that
20 RMI has done for us to determine the acreage and
21 the dollar amount for the habitat compensation
22 land. I believe that information's available, but
23 I'm not exactly sure where.

24 And it may be that we could get Ms.
25 Cuellar to confirm that.

1 Q Okay. I think that can probably happen
2 later, but we just want to make sure we have
3 accurate figures to reflect, if we go this route,
4 to reflect the impact in mitigation for that
5 segment of the project.

6 A Certainly I understand that, and we have
7 no problem with it being, you know, reviewed.
8 And, again, as I say, this is just our suggested
9 language for doing it. Other language that
10 addresses it would be fine with us as long as the
11 concept is put in place.

12 MR. ADAMS: That's it.

13 HEARING OFFICER VALKOSKY: Mr. Ledford.

14 MR. LEDFORD: No questions for this
15 witness on this document.

16 HEARING OFFICER VALKOSKY: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q Is it possible that the figures in
20 question 3 that you just referred to have come
21 from staff?

22 A Yes, that's certainly possible.

23 (Laughter.)

24 MR. THOMPSON: I'm not going to get any
25 further with this. That's all I have.

1 (Laughter.)

2 MR. ADAMS: Could I just ask a point of
3 clarification?

4 HEARING OFFICER VALKOSKY: Certainly,
5 Mr. Adams.

6 MR. ADAMS: That is whether Mr. Barnett
7 will be a witness during the water portion of the
8 hearing?

9 MR. THOMPSON: We were -- I'm sorry.

10 MR. ADAMS: No, and the reason I'm
11 asking is we may have some questions, as I
12 mentioned during the break, about the water
13 contract with VVWD.

14 MR. THOMPSON: We will, although we have
15 taken him off the witness list for the express
16 purpose of the one small part of exhibit 3, Mr.
17 Barnett will be available. He will be our closing
18 witness on policy matters for the High Desert
19 Project and we will make him available to you if
20 you have questions unanswered.

21 MR. ADAMS: All right, thanks.

22 HEARING OFFICER VALKOSKY: Is there
23 anything further for Mr. Barnett from anyone?

24 Thank you, sir.

25 MR. THOMPSON: I would like to offer

1 into evidence that portion of exhibit 101 that
2 contains the rebuttal testimony of Mr. Thomas
3 Barnett.

4 HEARING OFFICER VALKOSKY: Is there
5 objection?

6 MR. LEDFORD: Objection until such time
7 as we've had a chance to examine on water. 101
8 includes air quality, water resources and
9 biological resources.

10 HEARING OFFICER VALKOSKY: Okay. Mr.
11 Thompson, you have an option, we can either wait
12 or you can move in the part -- attempt to move in
13 the part dealing with biology that Mr. Barnett
14 just testified to.

15 MR. THOMPSON: I believe that the only
16 portion that's left after you take off my cover
17 letter is the rebuttal testimony of Mr. Barnett.
18 So, I think that the heading of air quality and
19 water probably inaccurately referred to --

20 HEARING OFFICER VALKOSKY: Okay. There
21 was --

22 MR. THOMPSON: Oh, there's a table, air
23 quality --

24 HEARING OFFICER VALKOSKY: There was an
25 air quality table, too.

1 MR. THOMPSON: I'm sorry, there's an air
2 quality table. I'll move it in after the air
3 quality table in air.

4 HEARING OFFICER VALKOSKY: Yes, the air
5 quality is --

6 MR. THOMPSON: It's in.

7 HEARING OFFICER VALKOSKY: -- in.

8 MR. THOMPSON: Having trouble here. I
9 would --

10 HEARING OFFICER VALKOSKY: And, Mr.
11 Ledford, if you would examine 101. As I
12 understand it, Mr. Thompson has withdrawn the
13 first, essentially the first two pages, which has
14 a) air quality, b) water resources followed by his
15 signature. That has been withdrawn, is that
16 correct, Mr. Thompson?

17 MR. THOMPSON: That is correct.

18 HEARING OFFICER VALKOSKY: The air
19 quality table, which is attached, has been moved
20 in. And the only thing left that I'm aware of is
21 the single page with three numbered paragraphs
22 entitled, the prepared rebuttal testimony of
23 Thomas Barnett, is that correct, Mr. Thompson?

24 MR. THOMPSON: That's correct.

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. LEDFORD: Mr. Barnett is going to be
2 available for examination relative to water
3 resources, was that your -- what you said to Fish
4 and Game?

5 MR. THOMPSON: We agreed -- Fish and
6 Game asked us the question of a specific contract
7 that Mr. Barnett may be able to answer questions
8 for. And we said we would put him on.

9 Keep in mind that Mr. Barnett is the
10 project's overall policy witness. So, from that
11 standpoint, he will be wrapping up the proceedings
12 from our standpoint.

13 MR. LEDFORD: Is there going to be a
14 different witness?

15 MR. THOMPSON: On?

16 MR. LEDFORD: On those issues, water
17 issues?

18 MR. THOMPSON: We will have a number of
19 witnesses on the water area, yes, we will.

20 MR. LEDFORD: All right, I have no
21 objection to that exhibit then.

22 HEARING OFFICER VALKOSKY: Okay. 101,
23 what's left of it, is admitted.

24 //

25 //

1 (The above-referenced document,
2 previously marked Applicant exhibit
3 101, was received in evidence.)

4 MR. THOMPSON: Thank you. That
5 completes applicant's witnesses in the biological
6 resources area.

7 HEARING OFFICER VALKOSKY: Ms. Holmes.

8 MS. HOLMES: Thank you. Staff's witness
9 for biological resources is Marc Sazaki.
10 Whereupon,

11 MARC SAZAKI
12 was called as a witness herein and after first
13 being duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. HOLMES:

17 Q Good morning, Mr. Sazaki. Could you
18 please state your full name for the record.

19 A Good morning. My name is Marc Sazaki.

20 Q Do you have with you a copy of your
21 testimony in biological resources which consists
22 of testimony filed in exhibit 87 and errata filed
23 in exhibit 103?

24 A Yes, I do.

25 Q And were a copy of your qualifications

1 filed with the staff assessment which has been
2 identified as exhibit 82?

3 A Yes.

4 Q Do you have any corrections to the
5 documents you're sponsoring today?

6 A Yes, I have a few minor corrections on
7 my original testimony.

8 On page 4, the fourth paragraph down,
9 line 5, where I discuss the number of acres of
10 desert habitat that was consumed by two solar
11 projects, I'd like to clarify that.

12 Actually those projects were built on
13 retired agricultural land, so the impacts of the
14 desert tortoise and the Mojave ground squirrel
15 habitat had already occurred. And they were in a
16 state of recovery.

17 But I just wanted to make clear that
18 these weren't 1400 acres of native desert habitat.

19 Also on page 4 I overlooked the change
20 in the airport's name to Southern California
21 Logistics Airport. It's in the first paragraph
22 under site vicinity description. So the acronym
23 would be changed to SCLA.

24 On page 5 -- strike that.

25 Okay, on page 7, it's an awful long

1 paragraph. But the first paragraph, six lines up
2 from the bottom, it's a statement about
3 supplemental injection of water that may be needed
4 to insure that the project can pump, throughout
5 the project life, without creating impacts to base
6 flows.

7 I would like to insert the word
8 "periodically pump", because I don't think the
9 intention is for continual pumping.

10 And that is clarified in the soils and
11 water resources testimony.

12 Those are the corrections I have.

13 Q And with those corrections are the facts
14 contained in the documents you're sponsoring true
15 and correct to the best of your knowledge?

16 A Yes, they are.

17 Q And do the opinions contained in the
18 documents that you're sponsoring represent your
19 beset professional judgment?

20 A Yes, they do.

21 Q Have you read the rebuttal testimony of
22 Thomas Barnett in the document that's been
23 identified as exhibit 101?

24 A Yes, I have.

25 Q Do you have a response to those

1 comments?

2 A Yes, I do.

3 Q Would you provide it, please?

4 A I will try to do that. On item number
5 1, where it discusses the security deposit, the
6 return of any remains. I would suggest some
7 language in condition BIO7 that I think would
8 address this concern, at least to my satisfaction.

9 And it would be insertion on page 3 of
10 my errata, second paragraph, second-to-the-last
11 sentence, before the sentence that starts with,
12 "The amount of the". I would insert, "Any
13 remaining security after satisfaction of this
14 condition as determined by the CEC CPM in
15 consultation with the CDFG, shall be returned to
16 the provider of the security".

17 For the second item in Mr. Barnett's
18 rebuttal testimony regarding the timing of the
19 delivery of the letter of credit, this requirement
20 is a standard provision that we have for habitat
21 compensation, and originally the timing was 90
22 days. But that was in light of the fact that
23 some applicants prefer to provide the habitat, and
24 have the title work completed. So we have a
25 longer period of time for review of that.

1 And in response to the applicant's
2 comments on our earlier assessment, we reduced
3 that to 30 days. And the request to go to 48
4 hours would be hard for us to accomplish in light
5 if we were to get this on a Friday afternoon or
6 something, we wouldn't be able to do any contact
7 of the bank or whoever issued the letter of credit
8 till the following Monday. And then the 48 hours
9 would have passed.

10 So I think we need some longer period of
11 time. And Mr. Barnett's suggestion of I guess
12 submitting the form of the document, or the
13 vehicle 30 days in advance would be acceptable.
14 So then we could work with Fish and Game to make
15 sure that it was all right with them.

16 Now, I didn't work on any specific
17 language to accomplish that, but I agree with the
18 concept.

19 And item number 3 of Mr. Barnett's
20 rebuttal testimony regarding the adjustment of the
21 acreage and the dollar figures for the habitat
22 compensation are acceptable to me if the following
23 changes are made, or the form for this is in the
24 following way:

25 Where he has parentheticals following

1 the recommended acreage or dollars, I've gone
2 through each one and tried to address his
3 individual comments. And I think the best way to
4 do it would be to start on page 3 of my errata in
5 the first paragraph where the first dollar value
6 comes up of \$367,256. And then in parentheses
7 after that I would put \$49,586 with the statement,
8 "If the pipeline to Kramer Junction is not built."

9 That would specifically identify for
10 certain the northern 32-mile pipeline.

11 The next change would be in the second
12 paragraph on the same page, number 3. The
13 \$1,553,819, after that parenthetically insert
14 \$209,793, if the pipeline to Kramer Junction is
15 not built.

16 Now, I could go through each one of
17 these, would you prefer that, or just that's the
18 way I would do it. To have the parenthetical with
19 the dollar or acreage amount that's in his
20 testimony, with the language "if the pipeline to
21 Kramer Junction is not built."

22 HEARING OFFICER VALKOSKY: Mr. Sazaki, I
23 think it would be beneficial, because then we will
24 then have a common --

25 THE WITNESS: Okay.

1 HEARING OFFICER VALKOSKY: --
2 understanding as to the amount attributable to the
3 plant and that attributable, by inference, to the
4 pipeline.

5 THE WITNESS: Okay.

6 HEARING OFFICER VALKOSKY: So, if you
7 could continue?

8 THE WITNESS: All right, then. The next
9 change in my errata then in response to Mr.
10 Barnett's rebuttal testimony, would be item number
11 1, after 1242.8 acres of habitat, \$873,485,
12 parenthetical 167.8 acres and \$117,936
13 respectively, if the pipeline to Kramer Junction
14 is not built.

15 Item 2, after the \$313,078 the
16 parenthetical would be \$42,271 if the pipeline to
17 Kramer Junction is not built.

18 Item 3, \$367,256 would have a
19 parenthetical after it of \$49,586 if the pipeline
20 to Kramer Junction is not built.

21 And with that, that's my response to Mr.
22 Barnett's rebuttal testimony.

23 BY MS. HOLMES:

24 Q Mr. Sasaki, do you know where both the
25 acreage figures and the dollar figures in

1 paragraph three come from?

2 A Yes. They come from a program developed
3 by the Center for Natural Land Management called
4 property analysis report. They factor in
5 innumerable costs of acquiring, setting aside, and
6 managing habitat for the compensation of habitat
7 lost of endangered species.

8 MS. HOLMES: Thank you. Mr. Sazaki's
9 available for cross-examination.

10 HEARING OFFICER VALKOSKY: Mr. Thompson.

11 CROSS-EXAMINATION

12 BY MR. THOMPSON:

13 Q Mr. Sazaki, first of all I want to thank
14 you for your comments with regard to Mr. Barnett's
15 recommendations in exhibit 101.

16 And I really only have one question
17 there. If we change the requirement from 48 hours
18 to two business days, would that be acceptable to
19 staff with regard to --

20 MS. HOLMES: Excuse me for just a
21 moment. And that's in combination with the 30
22 days?

23 MR. THOMPSON: Yes, yes, there would be
24 the submission of the form of agreement 30 days
25 prior. If the form of agreement is acceptable,

1 the actual transfer, the LC, would be made two
2 business days prior.

3 BY MR. THOMPSON:

4 Q In our testimony we had 48 hours,
5 recognizing your concern for the weekend time,
6 would two business days instead of 48 hours
7 correct that concern or alleviate that concern?

8 A Somewhat.

9 (Laughter.)

10 THE WITNESS: How about three business
11 days?

12 MR. THOMPSON: You're a tough
13 negotiator, Mr. Sasaki.

14 (Laughter.)

15 THE WITNESS: I'm just figuring we get
16 it, get it to them, and then it gets back to you,
17 and we'll have to -- is that okay?

18 MR. THOMPSON: We accept that.

19 THE WITNESS: We'll do our best. We'll
20 try to do it sooner than that, but --

21 MR. THOMPSON: That's fine, and I think
22 with applicant accepting three, I think that the
23 Committee should have an agreement upon those
24 changes to the conditions of certification. I
25 appreciate that.

1 BY MR. THOMPSON:

2 Q Mr. Sazaki, in condition of
3 certification BIO7, there are some dollar figures
4 and acreage figures for land. Are those the -- is
5 this the derivation, or would you guess that this
6 would be the derivation of the dollars and
7 acreages used by Mr. Barnett?

8 A Yes.

9 MR. THOMPSON: Thank you very much,
10 that's all we have.

11 HEARING OFFICER VALKOSKY: Mr. Adams.

12 MR. ADAMS: No questions.

13 HEARING OFFICER VALKOSKY: Mr. Ledford.

14 MR. LEDFORD: Yes, thank you.

15 CROSS-EXAMINATION

16 BY MR. LEDFORD:

17 Q Referring you to page 342 of your -- the
18 primary testimony I have, April 9th, is that where
19 the bulk of your testimony --

20 MS. HOLMES: No, his testimony was filed
21 on August 16th.

22 MR. LEDFORD: The April 9th testimony is
23 out of date? Is it completely revised, or is it
24 errata?

25 MS. HOLMES: The replacement -- the

1 document that was filed on the 16th of August is a
2 complete replacement of what was filed in April.
3 That's to say that we're not sponsoring the April
4 testimony, but there's a lot of the same text in
5 it.

6 MR. LEDFORD: Okay, well, I'm not
7 looking at everything, so this just may not be on
8 the right page.

9 BY MR. LEDFORD:

10 Q There's a section in your testimony
11 where you are testifying about the applicant
12 banking 12,000 acrefeet of water. Is that still a
13 part of your testimony, the water banking?

14 A No, I think it's not.

15 MS. HOLMES: No, that's one of the
16 things that changed from April as the banking
17 proposal developed, so that's --

18 MR. LEDFORD: So he is not a witness to
19 talk about water banking at all, or its effect on
20 riparian habitat?

21 MS. HOLMES: You're certainly available
22 to ask Mr. Sasaki --

23 MR. LEDFORD: Okay, that's --

24 MS. HOLMES: -- what he knows about its
25 effect on riparian habitat.

1 MR. LEDFORD: Fine.

2 BY MR. LEDFORD:

3 Q At least in your April testimony you had
4 testified about the water banking of 12,000
5 acrefeet prior to any pumping, and of course, the
6 conditions have changed some since then.

7 However, my question to you, sir, is are
8 you aware that this High Desert Power Project is
9 part of a large project called the Victor Valley
10 Economic Development Authority?

11 MS. HOLMES: Objection. I think that
12 mischaracterizes his testimony.

13 MR. LEDFORD: I'm just asking him if he
14 is aware.

15 MS. HOLMES: Okay.

16 THE WITNESS: No, I'm not.

17 BY MR. LEDFORD:

18 Q You're not aware that it's part of a
19 larger project?

20 A No, I'm not.

21 Q Your study area for the project is more
22 than just the 25 acres, however, is that correct?

23 MS. HOLMES: Again, could you please
24 clarify what you mean by study area?

25 //

1 BY MR. LEDFORD:

2 Q The area that you have studied as a part
3 of your testimony for biological resources is not
4 just the 25 acres that encompasses the High Desert
5 Power Project, is that correct?

6 A That's correct.

7 Q And what area did you study in addition
8 to that?

9 A I examined the proposal of the applicant
10 that included the power plant site, plus the
11 linear facilities and the second natural gas
12 pipeline.

13 I visited the site, I toured the linear
14 facilities and the second natural gas pipeline.
15 So that's the extent of my review.

16 Q So your area does not include the review
17 of the riparian habitat and the Mojave River
18 that's adjacent?

19 A I've been to the riparian area, and I
20 considered that in my analysis.

21 Q Okay. The project site is part of the
22 redevelopment of George Air Force Base, are you
23 aware of that?

24 A I know it's on George Air Force Base. I
25 don't know the scope of this larger project or

1 plan.

2 Q If there was a larger project or plan
3 that over the next 30 years required substantially
4 more water than what is being proposed by this
5 project, and that it was to be extracted from the
6 water basin in this area, would that affect your
7 consideration as to whether or not this 12,000
8 acrefeet of banked water was going to do what you
9 said -- I guess you're not saying it anymore --
10 would it potentially affect the riparian habitat
11 zone?

12 MS. HOLMES: I'm going to have to ask
13 another question of clarification. Mr. Ledford,
14 are you asking the witness to identify whether or
15 not Mr. Sazaki has analyzed the effects of other
16 projects on riparian habitat? Because that's what
17 it sounds like to me.

18 MR. LEDFORD: Similar. Let me try and
19 clarify.

20 BY MR. LEDFORD:

21 Q My question is if the cumulative impacts
22 of other projects provided for reduced well levels
23 in the area, would that provide a negative impact
24 on the riparian habitat?

25 A I think it's possible that cumulative

1 groundwater production could cause a negative
2 impact on the riparian habitat, unless they are
3 mitigated, those projects.

4 Q And as far as your review goes, your
5 review does not include any of those other
6 projects?

7 A No, not specifically.

8 Q Because your testimony back in April was
9 that if groundwater levels decline in the Mojave
10 River riparian area further exacerbate an already
11 existing problem, loss of riparian vegetation and
12 what is stream channel important to listed
13 species. The applicant should meet with the CEC,
14 CPM, the California Department of Fish and Game
15 and the U.S. Fish and Wildlife Service to
16 determine what action should be taken to stop
17 and/or reverse the loss.

18 And the reason I ask that question is
19 assuming that somebody else reduces the
20 groundwater levels out there, I mean this
21 mitigation is supposed to stabilize the
22 groundwater levels.

23 However, if you have a whole lot of
24 wells out there, they're continuing to reduce
25 those groundwater levels, how can this mitigation,

1 how can you hold High Desert Power, I guess, if
2 you will, responsible for further deterioration in
3 this habitat environment?

4 MS. HOLMES: Again, I'm going to object.
5 This is misstating the witness' testimony.

6 HEARING OFFICER VALKOSKY: Yeah, Mr. --

7 MR. LEDFORD: I think it was a direct
8 quote out of April's, I don't know what the
9 current testimony is.

10 MS. HOLMES: No, it was your last
11 statement that you posited to him as a question
12 that was --

13 HEARING OFFICER VALKOSKY: Yeah, I
14 agree. Mr. Sazaki, does the High Desert Power
15 Project, in your opinion, contribute to any
16 adverse cumulative impacts so far as biological
17 resources are concerned?

18 THE WITNESS: Not with the mitigation
19 that's proposed in the water and soil section.

20 HEARING OFFICER VALKOSKY: Okay, thank
21 you. Continue, Mr. Ledford.

22 BY MR. LEDFORD:

23 Q I understand Mr. Valkosky's question to
24 you, but I think that the point that I'm trying to
25 get, and perhaps I'm being awkward, is that we

1 have an overdrafted situation which you recognized
2 in your testimony.

3 And while what is proposed would seem to
4 make some kind of sense, if the underlying problem
5 isn't fixed then I don't see how that this
6 particular mitigation measure -- this project is a
7 smaller part of a larger project, I'm really
8 addressing this to the Commission at this point.

9 MR. LEDFORD: If this project is a
10 smaller piece of a big project, and the big
11 project has not mitigated the problem over the
12 next 30 years, which is something that is
13 required, then you could put all these mitigation
14 measures that you want in place, and it's not
15 going to provide the solution to riparian habitat,
16 to groundwater subsidence.

17 And so while we may look at these pieces
18 piecemeal, and you put these mitigation measures
19 in that say if in this particular -- his statement
20 here says, you know, if these -- we have a problem
21 over in the river, and the vegetation starts dying
22 and the water levels go down, you're going to go
23 to High Desert Power Project and say, you got to
24 do something about it. And they're going to say,
25 we put the 12,000 acrefeet of water in the ground,

1 and it's really too bad because everybody's using
2 our water. And we'll find that out later.

3 So my question, very specifically, is
4 how does it work?

5 HEARING OFFICER VALKOSKY: Mr. Sazaki,
6 in your opinion, does the applicant have the
7 responsibility to mitigate impacts other than
8 those caused directly or indirectly by the
9 proposed project?

10 THE WITNESS: They have the
11 responsibility for mitigating impacts created by
12 their project.

13 Now, if it's a part of a larger project,
14 it appears to me that they've mitigated their
15 share of the impact, that's what we expect. Now
16 the other parts of this project should be doing
17 likewise. And there are probably other avenues
18 for accomplishing that, or promoting that, which
19 is a need, I think, that exists in the area.

20 But, again, the water is outside of my
21 area of expertise. But I do recognize that there
22 are problems in the Mojave River riparian area.

23 HEARING OFFICER VALKOSKY: Right. And
24 are any of these existing problems either caused
25 or exacerbated by the proposed project as

1 mitigated?

2 THE WITNESS: No. Not if they're
3 mitigated as proposed.

4 HEARING OFFICER VALKOSKY: Thank you.

5 THE WITNESS: That's my opinion.

6 HEARING OFFICER VALKOSKY: Mr. Ledford.

7 PRESIDING MEMBER LAURIE: Question --
8 I'm sorry, Mr. Ledford, were you done?

9 HEARING OFFICER VALKOSKY: No.

10 PRESIDING MEMBER LAURIE: Go ahead.

11 MR. LEDFORD: Can I defer and let you
12 ask some questions? Maybe I'll have a follow-on
13 or two.

14 HEARING OFFICER VALKOSKY: Certainly.

15 EXAMINATION

16 PRESIDING MEMBER LAURIE: Mr. Sasaki,
17 are you aware of any other rule, regulation,
18 mitigation measure attached to any other project
19 that is applicable to this project that would
20 impose requirements different than are proposed in
21 this project?

22 THE WITNESS: Personally, no.

23 PRESIDING MEMBER LAURIE: That's all I
24 have.

25 HEARING OFFICER VALKOSKY: Okay, Mr.

1 Sazaki, I believe it's condition BIO7, you refer
2 to a quote "nonwasting endowment", is that
3 correct?

4 THE WITNESS: Yes.

5 HEARING OFFICER VALKOSKY: It's on page
6 3 of your errata. Could you explain to me what a
7 nonwasting endowment is?

8 THE WITNESS: I really would have to
9 defer to Fish and Game. They -- in my discussions
10 with them about the best way to present this, this
11 term of nonwasting endowment came up.

12 In my understanding of it, in my
13 discussions with them, is that it would be a
14 perpetual endowment. In other words, it would not
15 be consumed. So that you'd have perpetual care.

16 HEARING OFFICER VALKOSKY: Okay, and --

17 THE WITNESS: That's my understanding,
18 and the terminology I understood was maybe a
19 standard terminology they would use in their 2081
20 permit.

21 HEARING OFFICER VALKOSKY: Okay, well,
22 I'll defer that to -- trust Mr. Adams to bring
23 that out with his witness.

24 MR. ADAMS: Okay, or I can just answer
25 it now, if you'd prefer.

1 HEARING OFFICER VALKOSKY: Okay, if you
2 can answer it directly --

3 MR. ADAMS: Go for the informality.

4 Yeah, it would refer to the fact that
5 the principal, the endowment funds provided by the
6 applicant would become a permanent endowment that
7 would not be spent. And income earned on that
8 would then fund long-term management of the
9 habitat.

10 So the term nonwasting refers to the
11 fact that the principal, the amount paid by the
12 applicant, would not be spent, but would be
13 invested.

14 HEARING OFFICER VALKOSKY: Okay, and am
15 I to understand that this is a typical mechanism
16 that the Department uses in establishing
17 endowments?

18 MR. ADAMS: Yes.

19 HEARING OFFICER VALKOSKY: Thank you.
20 Mr. Sasaki, several of your conditions specify
21 joint approvals and reviews of various things by
22 both the Energy Commission and the Department of
23 Fish and Game.

24 Could you expand a little bit upon how
25 or if, what mechanisms are in place to insure that

1 this coordination will occur, and occur in a
2 timely manner?

3 THE WITNESS: The first few parts I can
4 explain; the timely manner, we're all striving to
5 do things in a timely manner. Our compliance
6 program would receive any submittal or whatever
7 document or transfer of funds or letter of credit,
8 and we would review it, consult with Fish and
9 Game, or insure that they get the documents and
10 understand them. And they are in agreement that
11 they meet the terms of the condition.

12 And then we would respond with approval.

13 HEARING OFFICER VALKOSKY: Right, and
14 specifically we're talking about a three-business-
15 day turnaround time. And again I'm not sure that
16 Fish and Game is involved in that particular
17 verification.

18 But in any -- let's just talk about any
19 verification that has a specific turnaround time
20 for staff to take its action.

21 A lot of these also include Fish and
22 Game as part of the review loop. And I guess what
23 I'm trying to determine is what sort of agreement
24 or procedures has staff put in effect, or intends
25 to put into effect that insures that this dual

1 agency review happens quickly, rather than having
2 someone drop the ball and leading to a compliance
3 problem in the future?

4 THE WITNESS: We've been working with
5 the Department on an MOU in order to coordinate
6 our responsibilities and our certification process
7 and their responsibilities in terms of
8 implementation of California Endangered Species
9 Act requirements.

10 That hasn't been completed yet. But the
11 intent is to address some of these issues of
12 timing and response. Assignment of personnel to
13 address these needs.

14 HEARING OFFICER VALKOSKY: What is the
15 target date for the completion of the MOU?

16 THE WITNESS: I'm afraid I can't answer
17 that right now. We've had a few targets that we
18 unfortunately haven't met. But Mr. Adams might be
19 able to, you know, shed more light on that.

20 HEARING OFFICER VALKOSKY: Okay, thank
21 you. Is it correct that the acceptability of the
22 biological resources mitigation proposed by staff
23 is directly dependent upon the acceptability of
24 the water supply mitigation contained in the
25 conditions? The water resources mitigation, let

1 me rephrase that.

2 THE WITNESS: I'm not sure I understand
3 your question. You're talking about the
4 biological resources mitigation implementation and
5 monitoring plan, would have an element in it that
6 would identify any mitigation that pertained to
7 biological resources.

8 And if the water condition, water
9 resources condition may just be referenced as one
10 of the existing conditions, as opposed to being a
11 part of the plant, itself. And the compliance
12 with that would be through compliance with the
13 condition under water resources.

14 Is that what you had in mind?

15 HEARING OFFICER VALKOSKY: Sort of.
16 I'll think about it for the time being.

17 VICE CHAIRMAN ROHY: Mr. Sazaki, I'd
18 like to go back to the rebuttal testimony and the
19 language that was worked out just a few moments
20 ago with regard to the 32-mile pipeline.

21 The question I have is should the
22 Committee recommend and should the Commission
23 accept this project, the 32-mile pipeline would be
24 approved as part of that project, that's my
25 understanding of what the applicant's asking for.

1 When would we know that the 32-mile
2 pipeline was not going to be constructed? Because
3 one we give them authority to construct, they
4 could construct it in five years, ten years, even
5 15 years down the road. Would you expect some
6 kind of declaration from the applicant saying we
7 would forever give up the right to build that 32-
8 mile pipeline, and then only pay the smaller
9 amounts that were specified in the language that
10 you proposed?

11 THE WITNESS: That's a good question. I
12 would say that unless we get something from them
13 saying that they're not going to build a pipeline,
14 then we have to assume they were.

15 We didn't build in any mechanism for
16 them to provide that sort of statement. This came
17 up recently and I hadn't really thought about that
18 potential.

19 VICE CHAIRMAN ROHY: I'd be interested
20 in proposed language from someone on this topic,
21 because to me it's a concern, as I said, should it
22 be approved, at what point would we know that the
23 applicant has decided to build or not to build
24 that pipeline.

25 THE WITNESS: Is that something we

1 should do this afternoon?

2 VICE CHAIRMAN ROHY: I'll defer to Mr.
3 Valkosky on the procedural matter of that.

4 HEARING OFFICER VALKOSKY: If it could
5 be done by this afternoon, that would be greatly
6 appreciated. Otherwise, it can certainly be
7 addressed in post-hearing submittals.

8 So then I suggest you discuss it with
9 your project manager and attorney during --

10 THE WITNESS: Okay.

11 HEARING OFFICER VALKOSKY: -- the
12 luncheon recess.

13 Ms. Holmes, do you have any redirect?

14 MS. HOLMES: Yes, I do. I have one
15 hypothetical question going to an issue that you
16 just raised, Mr. Valkosky.

17 REDIRECT EXAMINATION

18 BY MS. HOLMES:

19 Q Mr. Sasaki, if staff were to conclude,
20 which it has not, but as a hypothetical, if staff
21 were to conclude in the area of water resources
22 that the applicant's banking proposal causes
23 significant adverse impact in the area of the
24 Mojave River, would that affect your conclusion in
25 the biological resources testimony?

1 A Yes, it would.

2 Q How so?

3 A I would have to conclude that there
4 would be a potential for significant impacts on
5 endangered species. And furthermore, there would
6 have to be a consultation with the Fish and
7 Wildlife Service, reinitiation of consultation.

8 MS. HOLMES: Thank you very much. I
9 have no further questions.

10 HEARING OFFICER VALKOSKY: Mr. Adams.

11 MR. ADAMS: No questions.

12 HEARING OFFICER VALKOSKY: Mr. Thompson.

13 MR. THOMPSON: No questions.

14 HEARING OFFICER VALKOSKY: Mr. Ledford.

15 MR. LEDFORD: Prompted one final
16 question.

17 RE CROSS-EXAMINATION

18 BY MR. LEDFORD:

19 Q If dry cooling were implemented would
20 that eliminate any of the concerns relative to
21 water and biological resources?

22 A With my understanding of dry cooling it
23 would eliminate the need for the injection well
24 field, which would reduce the biological impacts
25 of that particular area.

1 It would totally eliminate any concern
2 for the potential impacts on the riparian habitat
3 in the Mojave River.

4 But those have been shown, in my mind,
5 to be mitigable at this time.

6 HEARING OFFICER VALKOSKY: Thank you.
7 Any further questions --

8 MS. HOLMES: No.

9 HEARING OFFICER VALKOSKY: -- for Mr.
10 Sazaki?

11 Thank you.

12 HEARING OFFICER VALKOSKY: Mr. Adams.

13 MS. HOLMES: Could I please move those
14 portions of --

15 HEARING OFFICER VALKOSKY: I'm sorry, of
16 course.

17 MS. HOLMES: -- exhibit 82, 87 and 103
18 that pertain to biological resources into the
19 record.

20 HEARING OFFICER VALKOSKY: Is there
21 objection?

22 MR. LEDFORD: No objection here.

23 HEARING OFFICER VALKOSKY: I'm sorry,
24 Mr. Ledford, I --

25 MR. LEDFORD: No objection here.

1 HEARING OFFICER VALKOSKY: No objection.
2 Hearing no objection, the designated items will be
3 moved into the record.

4 (The above-referenced documents,
5 previously marked CEC Staff
6 exhibits 82, 87 and 103, were
7 received in evidence.)

8 HEARING OFFICER VALKOSKY: We'll go off
9 the record for a second.

10 (Off the record.)

11 HEARING OFFICER VALKOSKY: We'll now
12 take a 15-minute recess and reconvene at -- okay,
13 ten-minute recess right now.

14 (Laughter.)

15 (Brief recess.)

16 HEARING OFFICER VALKOSKY: All right, we
17 will reconvene on biology. Ms. Holmes, did you
18 have --

19 MS. HOLMES: Yes, Mr. Valkosky, staff
20 would like to recall Mr. Sazaki for one question
21 of clarification.

22 HEARING OFFICER VALKOSKY: Mr. Sazaki.
23 Whereupon,

24 MARC SAZAKI
25 was recalled as a witness herein and having been

1 previously duly sworn, was examined and testified
2 further as follows:

3 DIRECT EXAMINATION

4 BY MS. HOLMES:

5 Q Mr. Sazaki, just before we took a break
6 you provided an answer in response to a question
7 from Mr. Ledford about dry cooling eliminating
8 potential concerns for certain kinds of biological
9 resources impacts. Do you recollect that
10 testimony?

11 A Yes.

12 Q When you gave that response were you
13 referring solely to the biological resources
14 impacts on the riparian habitat of the Mojave
15 River?

16 A Yes.

17 MS. HOLMES: Thank you.

18 HEARING OFFICER VALKOSKY: Thank you.

19 Anything further, Mr. Ledford?

20 MR. LEDFORD: Nothing further.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you, Mr. Sazaki and Ms. Holmes.

23 Mr. Adams.

24 MR. ADAMS: The Department of Fish and
25 Game would call Becky Jones as a witness.

1 preproject consultations, Mojave River, habitat
2 restoration task force, desert tortoise management
3 oversight group, Mojave ground squirrel steering
4 committee, and several other desert restoration
5 groups.

6 I've been working with the High Desert
7 Power Project for over two years now.

8 Q Thank you. Did you prepare testimony in
9 exhibit 93 that appears under your name?

10 A Yes.

11 Q And that testimony addresses impacts in
12 biological resources, is that right?

13 A Yes.

14 Q Would you like to make any changes in
15 that testimony?

16 A No.

17 Q Could you summarize it briefly?

18 A It basically goes over the biological
19 issues. It has a list of the species that could
20 be impacted by the project, both riparian and the
21 desert species.

22 And it has the proposed mitigation that
23 has been proposed for the project. And it refers
24 to conditions in our streambed alteration
25 agreement that could reduce impacts to the listed

1 species.

2 Q Thank you. And is it in your testimony
3 that what impact reduction and bank discharge and
4 baseflows might have on biological resources?

5 A Yes, it does.

6 Q Could you real briefly describe those?

7 A Basically it could decrease the amount
8 of habitat. In decreasing the amount of flow, you
9 decrease the amount of habitat that's out there
10 for the species that use the wetted areas.

11 It could also have an impact on the
12 riparian vegetation that's not necessarily right
13 connected to, but the larger vegetation, the
14 cottonwoods.

15 Q Does your testimony reflect your best
16 professional judgment?

17 A Yes, it does.

18 Q Is it true and correct to the best of
19 your knowledge?

20 A Yes.

21 Q Are you authorized by the Department of
22 Fish and Game to testify as to the proposed
23 conditions of certification that the Department
24 supports?

25 A Yes.

1 Q Have you reviewed staff's final
2 testimony, three items of staff's final testimony
3 on biological resources dated August 16, which is
4 part of exhibit 87, errata to staff's testimony on
5 biological resources which is in exhibit 103, and
6 staff's revised testimony for soil and water
7 resources, exhibit 131, or a portion of 131?

8 A Yes.

9 Q You've reviewed each of those?

10 A Um-hum.

11 Q Does the Department of Fish and Game
12 support the proposed conditions of certification
13 in these exhibits as modified by staff's testimony
14 today?

15 A Yes.

16 MR. ADAMS: Ms. Jones is available for
17 cross-examination.

18 HEARING OFFICER VALKOSKY: Mr. Thompson.

19 MR. THOMPSON: Thank you.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Good afternoon, Ms. Jones. I only have
23 two questions.

24 First, the project, as you're well
25 aware, initially intended to use reclaimed water

1 from the Victor Valley Wastewater Reclamation
2 Authority as its primary water source.

3 Is it true that the California
4 Department of Fish and Game told High Desert Power
5 Project that they would be opposed to the project
6 using reclaimed water from the Victor Valley
7 Wastewater Reclamation Authority?

8 A Yes.

9 Q Secondly, it has been suggested that it
10 would be preferable for the project to acquire
11 free production allowance for its primary water
12 sources. Is it true, again, that the California
13 Department of Fish and Game told the High Desert
14 Power Project that they would be opposed to the
15 project using acquired free production allowance?

16 A Yes.

17 MR. THOMPSON: That's all I have, thank
18 you very much.

19 HEARING OFFICER VALKOSKY: Ms. Holmes?

20 MS. HOLMES: I have no questions.

21 HEARING OFFICER VALKOSKY: Mr Ledford.

22 CROSS-EXAMINATION

23 BY MR. LEDFORD:

24 Q I believe that this graphic is a part of
25 your exhibit 93?

1 A Yes.

2 Q And if I could just point out the
3 riparian zone that the Department of Fish and Game
4 is interested in primarily in the high desert
5 starts about this location here, which would be
6 actually it's right about where the Department of
7 Fish and Game has their fish hatchery, is that
8 correct?

9 A Correct.

10 Q And then it goes to, I believe you
11 explained, Bryman Road, which is probably just off
12 the top of this --

13 A A little bit past that, yes.

14 Q -- top of this map. And if you're
15 looking at this graphic in the areas that are in
16 the red actually are the irrigated zones, or the
17 wet zones, would that be correct, along the river?

18 A Yes.

19 Q And as High Desert Power just pointed
20 out, when they first started they talked about
21 utilizing the Victor Valley Wastewater discharge
22 water which is in this location, which is -- I'm
23 thinking it's about two miles north of the
24 proposed project site, is that correct?

25 A I haven't measured the distance.

1 Q As far as distance, but it's north of
2 the project site?

3 A Correct.

4 Q And your objection to them using that
5 water was what?

6 A That water is the only water at that
7 stage going northward that supports habitat for a
8 lot of the species that live along the river
9 corridor.

10 Q And that species is dependent upon that
11 water since the VVWR has been in existence, is
12 that correct?

13 A Correct.

14 Q And can you explain to me, is there a
15 project that's being proposed by VEDA for a
16 pipeline project to bring water out of there in
17 spite of the objections to this particular
18 project?

19 Are you aware of a large pipeline that's
20 being proposed to bring water from VEDA to George
21 Air Force Base?

22 A You mean VVWRA?

23 Q I'm sorry -- well, VEDA's proposing the
24 project. VVWRA is the source of the water.

25 A Yes, there is one.

1 Q And is Fish and Game opposed to that
2 project?

3 A Yes, we are.

4 Q And what is the status of that project?

5 A Currently on hold as far as I know.

6 Q And from the standpoint of the design
7 criteria of the pipeline that is currently being
8 proposed, is that pipeline large enough to provide
9 water to the High Desert Power Project for cooling
10 to the best of your knowledge?

11 A I really don't know.

12 Q You don't know. If it were large enough
13 to provide water for High Desert Power Project's
14 cooling, and it was something that these folks had
15 in their minds that was going to happen sometime
16 in the future, you would still be opposed to it?

17 A We're opposed to any water currently
18 wanting to be transferred from the Victor Valley
19 Wastewater Reclamation Authority.

20 Q Okay. Now, the Department of Fish and
21 Game is a stipulating party to the judgment, is
22 that correct?

23 A Yes.

24 Q And so my question to you is why would
25 you oppose High Desert Power Project buying free

1 production allowance?

2 A Basically anything that takes additional
3 water from the basin at this point in time we are
4 opposed to. And that's water that's still in the
5 ground.

6 Q But there's a judgment that says the
7 High Desert Power Project, even outside of --
8 let's look at this slightly different, you can
9 still be opposed -- the judgment says that they
10 can -- this is their project site, you've got 25
11 acres that you go drill four wells there and start
12 producing water. Is that what the judgment says?

13 They're brand new kids in town --

14 A I really don't know, I'm not that
15 familiar exactly with the cases of the judgment.
16 That is Tom Bilhorn's area. I don't know what the
17 judgment says in relation to that.

18 Q So the Department's objection to either
19 drilling new wells or using preproduction
20 allowances is just that it's a use of water within
21 the basin?

22 A That could have biological impacts.

23 Q Let me ask you this, are you familiar
24 with the Mojave River pipeline?

25 A Yes.

1 Q Are you familiar with the deep creek
2 discharge?

3 A I'm familiar with the Rock Springs.

4 Q Rock Springs, I'm sorry. And are you
5 familiar with the design criteria? Do you know
6 how much water can be put -- can be spread there?

7 A No.

8 Q If I told you it was 36,000 acrefeet a
9 year would you think that might be the right
10 amount?

11 A I really have no idea.

12 Q If 36,000 acrefeet of water were
13 discharged at Rock Springs and put into the upper
14 aquifer on an annual basis, would it be your
15 opinion that that would be a benefit to the
16 riparian habitat area?

17 A I don't know, I can't answer that.

18 Q That would be a Tom Bilhorn answer,
19 also?

20 MR. LEDFORD: And for the Commission's
21 benefit, I'm trying to see if I can get some
22 answers so I can not have to have Tom Bilhorn at
23 some time. And you can see where I'm going. And
24 she's been gracious enough to say I'll see if I
25 can tell you, and if I can't, I won't.

1 BY MR. LEDFORD:

2 Q Are you familiar with the 50 percent
3 consumptive use portion of the judgment?

4 A I've read briefly about it, but I'm not
5 really familiar with it. I couldn't -- I really
6 couldn't -- it's something I couldn't testify on.

7 Q Are you familiar with the base reuse
8 plan, the Victor Valley Development Authority,
9 what the plans are for George Air Force Base?

10 A There again, I've briefly read over it,
11 but I'm not all that familiar. I know some of the
12 redevelopment in dealing with the prison aspects.

13 Q Are you familiar with the wells at the
14 prison?

15 A I'm currently learning about them.

16 Q Are you familiar with the water quality
17 issues in regards to those wells?

18 A I have heard that there are problems
19 with them.

20 Q Are you familiar with the fact that
21 there's another new project being proposed? That
22 the prison's talking about expanding --

23 A Yes.

24 Q -- portions of it? Doubling in
25 capacity? Do you see those kinds of cumulative

1 impacts as affecting the riparian habitat?

2 A There certainly could be an impact to
3 those if they aren't mitigated.

4 Q The question that I had asked staff's
5 witness was assume for the moment that 12,000
6 acrefeet of water is effectively -- is banked out
7 here. But in the process of banking this water,
8 this particular map, for the Commission's benefit,
9 doesn't have the wells on it, but the exhibit
10 actually -- exhibit 93 has this map and it does
11 have the well locations.

12 And this area in pressure zone 2 is the
13 most undeveloped area of the City of Victorville,
14 and probably the most growth-prone area.

15 So, over the next 30 years, which is
16 what generally we're talking about here, the City
17 of Victorville is forecasting about 500 houses a
18 year on an average. That's 15,000 houses.

19 If they needed 15,000 acrefeet of water,
20 and they produced it out of this area, would that
21 not cause a significant environmental affect to
22 your riparian habitat area? Even with the 12,000
23 acrefeet?

24 MR. ADAMS: Could I jump in here? I've
25 tried to avoid objecting, but the witness really

1 is not an expert or able to talk about aquifer
2 dynamics, the connectivity of certain aquifers to
3 the riparian system.

4 MR. LEDFORD: And I apologize --

5 MR. ADAMS: Yeah, --

6 MR. LEDFORD: -- again, I was trying to
7 see if I could get some help so that we wouldn't
8 have to have Tom here at some point. Because he
9 is the expert, and Tom and Becky serve Fish and
10 Game on the advisory committee for the
11 watermaster. And have lots of -- have good input.
12 And Tom is very familiar with the hydrology, so.

13 I'm sorry, I think I have no further
14 questions.

15 EXAMINATION

16 HEARING OFFICER VALKOSKY: Ms. Jones, in
17 your opinion does the water banking program
18 contained in the conditions of certification
19 adequately mitigate all biological, direct and
20 indirect biological resource impacts associated
21 with the power plant?

22 THE WITNESS: In conference with Tom
23 Bilhorn we have basically agreed that the
24 conditions as currently proposed do mitigate the
25 impacts.

1 HEARING OFFICER VALKOSKY: Okay, thank
2 you. Any redirect, Mr. Adams?

3 MR. ADAMS: No questions.

4 HEARING OFFICER VALKOSKY: Is there
5 anything else from anyone here present for Ms.
6 Jones?

7 One final question. Ms. Jones, will the
8 Department be issuing an incidental take or other
9 permit for this project?

10 THE WITNESS: Yes, we will.

11 HEARING OFFICER VALKOSKY: What is the
12 status of that?

13 THE WITNESS: It's currently in the
14 process. We have been waiting to make the
15 determination that there will not be an impact on
16 the riparian habitat. Otherwise, those species,
17 an additional mitigation would be needed to be
18 incorporated into the incidental take permit.

19 And now that that's been determined, we
20 should be able to have a draft agreement, or a
21 draft permit out within two to three weeks.

22 HEARING OFFICER VALKOSKY: Okay, and how
23 far after the issuance of an draft permit would a
24 final permit be expected?

25 THE WITNESS: We have to wait until your

1 process is completed. We need a completed CEQA
2 document prior to issuing either the streambed
3 alteration agreements, and the incidental take
4 permit.

5 HEARING OFFICER VALKOSKY: Okay, but the
6 draft ones will be -- the draft ones are the ones
7 we are considering in this process?

8 THE WITNESS: Correct.

9 HEARING OFFICER VALKOSKY: Okay, thank
10 you.

11 MR. LEDFORD: I have one follow-up
12 question.

13 HEARING OFFICER VALKOSKY: Certainly,
14 Mr. Ledford.

15 RECROSS-EXAMINATION

16 BY MR. LEDFORD:

17 Q On the seven wells that are being
18 proposed to be drilled and be used by High Desert
19 Power for injection of water and then extraction
20 of water, if those wells were to be used for any
21 other purposes other than the power project, by
22 way of example for further development of projects
23 at George Air Force Base, would the Department
24 potentially have an objection to that?

25 A Yes.

1 Q Thank you.

2 HEARING OFFICER VALKOSKY: Ms. Jones,
3 and this, I promise, is my last question.

4 EXAMINATION

5 HEARING OFFICER VALKOSKY: You heard Mr.
6 Adams' explanation of a nonwasting endowment
7 previously. Do you agree that that's an accurate
8 characterization?

9 THE WITNESS: Yes.

10 HEARING OFFICER VALKOSKY: Okay, thank
11 you.

12 Is there anything else for the witness?
13 Thank you.

14 Mr. Adams.

15 MR. ADAMS: I would move that exhibit
16 93, that portion of exhibit 93 offered by Ms.
17 Jones on the subject of biological resources be
18 entered into evidence.

19 HEARING OFFICER VALKOSKY: Is there
20 objection?

21 MR. LEDFORD: No objection.

22 HEARING OFFICER VALKOSKY: Then it will
23 be admitted.

24 //

25 //

1 (The above-referenced document,
2 previously marked CDF&G exhibit 93,
3 was received in evidence.)

4 MR. ADAMS: I would also withdraw
5 exhibit 106, which is -- that exhibit constituted
6 testimony, prepared testimony by Ms. Jones and Tom
7 Bilhorn concurring with the recommended conditions
8 of certification as of early September.

9 And I think, I just think it's better to
10 withdraw that, because those documents prepared by
11 staff have since been replaced. And I think Ms.
12 Jones' testimony this morning showed Fish and
13 Game's concurrence with the latest conditions of
14 certification.

15 HEARING OFFICER VALKOSKY: Okay, fine,
16 106 will be noted as withdrawn.

17 (The above-referenced document,
18 previously marked CDF&G exhibit
19 106, was withdrawn.)

20 HEARING OFFICER VALKOSKY: Is there
21 anything further?

22 MR. ADAMS: That's it, thank you.

23 HEARING OFFICER VALKOSKY: Okay. Is
24 there any further discussion on the area of
25 biological resources?

1 Any comments from anyone here present on
2 that topic? Okay.

3 MR. LEDFORD: What are we doing about
4 Tom Bilhorn's testimony?

5 HEARING OFFICER VALKOSKY: It's not been
6 offered into evidence, Mr. Ledford.

7 MR. LEDFORD: Okay. All right, thank
8 you.

9 HEARING OFFICER VALKOSKY: That is your
10 intention, is that correct?

11 MR. ADAMS: Well, I --

12 HEARING OFFICER VALKOSKY: Or do you
13 wish to hold that for water?

14 MR. ADAMS: I assumed we'd get into that
15 in water.

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. ADAMS: But I might have a
18 discussion with --

19 HEARING OFFICER VALKOSKY: That's fine.

20 MR. ADAMS: -- Mr. Ledford during the
21 break.

22 HEARING OFFICER VALKOSKY: Okay. That's
23 the status, Mr. Ledford.

24 MR. LEDFORD: Thank you.

25 HEARING OFFICER VALKOSKY: Okay.

1 All right, at this point we'll recess
2 for lunch and we'll reconvene here at 2:00.

3 (Whereupon, at 12:45 p.m., the hearing
4 was adjourned, to reconvene at 2:00
5 p.m., this same day.)

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AFTERNOON SESSION

2:05 p.m.

HEARING OFFICER VALKOSKY: Thank you, Commissioner. I'm aware that we have several minor procedural items to deal with. But before that I'm also informed that the Mayor of Victorville is here today, and would like to make a presentation. We'd like to accommodate him at this time. Sir.

MAYOR CALDWELL: Thank you. I want to first apologize for the squeaky voice. I've got a cold and some kind of laryngitis, so I hope it doesn't pain your ears too much.

My name's Terry Caldwell. I am the Mayor of the City of Victorville. I'm also the Chairman of the Southern California International Airport Authority which is responsible for the development of George Air Force Base.

I'm also the Vice Chairman of the Victor Valley Economic Development Authority, which is the Joint Powers Authority of the Cities of Adelanto, Apple Valley, Hesperia, Victorville and the San Bernardino County First District.

My comments today are to be construed as representative of all three of those agencies

1 which I represent.

2 I've been asked numerous times why is it
3 that the City of Victorville and all the other
4 cities at the high desert have so totally embraced
5 this project. And I could tell you for hours lots
6 of reasons. And I know you've got a limited time.

7 So I'm going to try and be as brief and
8 succinct as I can. Probably the biggest reason is
9 that it is a project that is closely tied to the
10 destiny of the rehabilitation of the 5000 acres
11 that was once George Air Force Base.

12 And the reason I say that is that that
13 base was built prior to World War II. The
14 infrastructure at that base, for the most part, is
15 old and worn out, dilapidated.

16 And this project, with all of its
17 positive benefits, which I'll mention in a minute,
18 does something that no other project could do for
19 this valley. And that is to provide tax revenues
20 through our redevelopment agency at George in
21 excess of \$100 million.

22 And what that translates to us is the
23 ability to bond, to raise the money to make the
24 major infrastructure improvements and enhancements
25 that need to be made at George Air Force Base for

1 us to generate the 15,000 jobs that's projected to
2 be the result of our mission statement to convert
3 George Air Force Base into the premiere air cargo/
4 air freight operation in the western United
5 States.

6 Now, one might say, well, what does that
7 have to do with this project. Well, first if
8 you've ever looked at the site of the project in
9 terms of the runways and the geography and the
10 Mojave River, you'll find that this site is
11 basically unusable for most any purpose other than
12 a site for a power partners project like this.

13 From a real estate perspective it
14 probably is the highest and best use for a piece
15 of ground that otherwise could not be used for any
16 other purpose because of the acous -- noise
17 contours from the airport that would impact on
18 anything else that might be considered there.

19 So, for us it's a chance to use a piece
20 of land that otherwise would not be put to
21 productive use, and raise \$100 million worth of
22 revenue that goes back into the lifeblood of this
23 community.

24 Secondly, we are attracting the types of
25 business and industry at George Air Force Base,

1 many of which will be rather intense energy users.
2 And our ability to market this base worldwide, and
3 have as a component of that marketing plan, the
4 ability to purchase less expensive power for
5 intense power users is a tremendous plus for us.

6 Thirdly, when you consider that this
7 project, from our perspective, as a community, is
8 very very friendly to our environment. When you
9 consider that this project, as designed, the water
10 component of this project is designed to take the
11 water from the state water project, the aqueduct,
12 and never take water out of our aquifer, never to
13 bleed the resource that is here for domestic
14 supply.

15 And go one step beyond that and be
16 environmentally friendly through the injection
17 wells that have been proposed and agreed to, and
18 actually take additional water, treat it, and put
19 it into the aquifer, then from our perspective, as
20 those who live here and those who have to make the
21 land use decisions and the environmental
22 decisions, we find this a project without parallel
23 in the context of the private sector being willing
24 to invest money in infrastructure that will
25 enhance the environment. And in the sense of the

1 facility for treating the water before it goes
2 into the ground, creating a water treatment
3 facility that will ultimately become available to
4 the general public for use as we build and grow at
5 George Air Force Base and beyond.

6 So those are just a few of the reasons
7 why the four incorporated cities and the County of
8 San Bernardino representing the unincorporated
9 portion of this desert, have so totally and
10 completely embraced this project.

11 I can tell you that the agencies I
12 represent have had unanimous votes every time this
13 issue has been before them. I can tell you, as
14 the Mayor of this City of Victorville, and I have
15 been here as an elected public official sitting
16 right there, for 27 years, this project has more
17 excitement, this project has more grassroots
18 support than any project that I have witnessed in
19 the history of the Victor Valley in terms of
20 growth, in terms of importance, in terms of job
21 creation to replace what we lost when George Air
22 Force Base was closed in the first round of base
23 closures.

24 Without the economic stimulus of the
25 \$100 million in tax revenue, the burden on the

1 financial structure of the Victor Valley to raise
2 the money, to convert 5000 acres into the world's
3 best and finest air cargo facility, and to
4 generate the replacement jobs from the closure of
5 George, and to move us into the future in terms of
6 our economic growth, and our responsibilities to
7 convert that base in the most productive way, we
8 would be hard pressed to do it without this
9 project.

10 I would be glad to answer any questions
11 if you have any. I encourage you to be supportive
12 of this project. It's what the community wants.

13 HEARING OFFICER VALKOSKY: Thank you,
14 sir.

15 MAYOR CALDWELL: I was remiss as the
16 Mayor in not welcoming you to City Hall. Thanks
17 for coming to our community. It's not often that
18 we have folks of your stature here. I hope you
19 find your stay in Victorville a pleasant one. If
20 there's anything I, as the Mayor, can do to make
21 it easier or more friendly, just call on me.

22 PRESIDING MEMBER LAURIE: Thank you, Mr.
23 Mayor. Your folks have been very accommodating.
24 We appreciate it very much.

25 MAYOR CALDWELL: Thank you.

1 VICE CHAIRMAN ROHY: Thank you for
2 coming before us today.

3 MAYOR CALDWELL: Glad to be here.

4 HEARING OFFICER VALKOSKY: Thank you,
5 sir.

6 Turning to procedural matters, Mr.
7 Thompson, I believe you have an exhibit?

8 MR. THOMPSON: Thank you, I would like
9 to move into evidence exhibit 59. I had it
10 incorrectly labeled as exhibit 61 in the testimony
11 of Amy Cuellar, and so forgot to put it in at that
12 time.

13 Exhibit 61 is correctly identified as
14 the preliminary application for the 2081
15 incidental take permit.

16 HEARING OFFICER VALKOSKY: Okay, is
17 there objection to the admission of exhibit 59?

18 Hearing none, we admit it into evidence.

19 (The above-referenced document,
20 previously marked Applicant exhibit
21 59, was received in evidence.)

22 MR. THOMPSON: Thank you, that's all I
23 have.

24 HEARING OFFICER VALKOSKY: Ms. Holmes?

25 MS. HOLMES: No, I have nothing at this

1 time.

2 MR. ADAMS: I'm fine, no questions, --

3 HEARING OFFICER VALKOSKY: Okay.

4 (Laughter.)

5 MR. ADAMS: -- or procedural matters.

6 HEARING OFFICER VALKOSKY: All right,
7 fine. Mr. Ledford, any procedural matters?

8 MR. LEDFORD: Not at this time.

9 HEARING OFFICER VALKOSKY: Thank you.

10 Turning to the topic of soil and water resources,
11 including water supply and water quality issues.

12 Mr. Thompson.

13 MR. THOMPSON: Mr. Valkosky, I believe
14 tat staff may want to put on Mr. Hill, is that
15 correct?

16 MS. HOLMES: My understanding is that
17 Mr. Hill would prefer to come before the Committee
18 and talk about the agreement, at this point, if
19 it's acceptable to the applicant.

20 MR. THOMPSON: Yes, that's fine.

21 HEARING OFFICER VALKOSKY: Mr. Thompson,
22 after discussing this, I think it would be
23 clearer, certainly to the Committee, and
24 potentially to anyone else, if you could first
25 produce one of your witnesses and let that witness

1 testify to the overall water supply arrangements,
2 the contracts that are required. And at that time
3 we could then have Mr. Hill talk about one of the
4 specific contracts. You could then recall that
5 witness for any other matters that you'd want.

6 I think that would be the best way for
7 us all to understand.

8 PRESIDING MEMBER LAURIE: What I'm
9 looking for, Mr. Thompson, is a stick-figure
10 explanation of where your water supply is going to
11 come from, what role the various agencies play,
12 and what kinds of agreements are required pursuant
13 to that.

14 MR. THOMPSON: Thirty seconds.

15 (Pause.)

16 MR. THOMPSON: If you'll give us a
17 minute to let Mr. Barnett get settled and get the
18 right papers in front of him.

19 (Pause.)

20 MR. THOMPSON: Mr. Valkosky, seniority
21 prevails again, and our witness will be Mr. Welch.

22 (Laughter.)

23 Whereupon,

24 ANDREW WELCH

25 was called as a witness herein and after first

1 being duly sworn, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. THOMPSON:

5 Q Would you please state your name for the
6 record and your place of employment.

7 A Andrew Welch, and I'm employed by
8 Constellation Power.

9 Q And what is your job title and/or duties
10 and responsibilities at Constellation Power?

11 A At Constellation Power I'm Vice
12 President of Business Development, and am assigned
13 as the Project Director to the High Desert Power
14 Project.

15 Q And personally, how long have you been
16 working on this project?

17 A I have been working on this project for
18 four and a half years, although three different
19 employers.

20 Q Have you been involved in the
21 development of a water plan and the negotiation of
22 water agreements?

23 A Yes, I have.

24 Q And you feel competent to testify to
25 that water plan, the agreements and other related

1 subjects regarding --

2 A Yes, I do.

3 Q -- the acquisition of water? Thank you.

4 Mr. Welch, would you please describe the
5 water plan, agreements that are necessary and any
6 other information you may have on the agreements,
7 such as where they are, whether they are signed or
8 the status of those agreements, and anything else
9 that you think would be pertinent to the
10 Committee's understanding of the applicant's
11 current water plan?

12 A Okay. The basic water plan is that the
13 project will use direct use water off of the state
14 water project to be delivered from the aqueduct
15 through the Mojave River pipeline, and then from a
16 connection to the Mojave River pipeline about two
17 miles away from the project site to be delivered
18 into the site, to allow for times when water is
19 not available from the aqueduct would be
20 considered, those are typically times for a one-
21 month a year outage, regularly scheduled for
22 maintenance or to allow for times when there may
23 be an interruption due to decreased flows
24 typically to droughts in the northern California
25 area.

1 The other use of water is to have
2 prestored aqueduct water that was purchased when
3 it was available. And then to take it from
4 storage in the ground in the aquifer up to
5 treating it to background water levels.

6 Then delivering it when needed, to the
7 project, through a series of what's anticipated to
8 be seven wells located about six miles away from
9 the project.

10 The basics, there are several
11 organizations involved in that process. The
12 delivery of water to the project from the state
13 water project -- or from the aqueduct water will
14 be done, an agreement or application under
15 ordinance 9 of the Mojave Water Agency will be
16 done by the City of Victorville.

17 Victorville will take that water and
18 then provide it to the project along that two-mile
19 pipeline to be constructed from the Mojave River
20 pipeline to the project. So there will be also an
21 agreement between the project and the City of
22 Victorville to provide that water.

23 Then for the aquifer storage and
24 recovery there is an aquifer storage and recovery
25 agreement that will allow for the Victor Valley

1 Water District, which is a local water purveyor,
2 whose territory encompasses the project and more
3 specifically will be building the wells that will
4 be used for both injection and withdraw of the
5 stored water and the pipeline.

6 There's been an agreement that -- a
7 signed agreement to do such between the project
8 and the Victor Valley Water District.

9 And then there will also be, it is
10 necessary, that between the water district and the
11 Mojave Water Agency, or actually the Mojave River
12 basin watermaster or something close to that, the
13 watermaster for the region, a water storage
14 agreement that is in process of being.

15 So basically of those four agreements
16 that I laid out there is a -- the ordinance 9
17 application between City of Victorville and the
18 Mojave Water Agency as an annual application. It
19 was first supplied for last year, and approved
20 November 10th of last year by the unanimous vote
21 of the Mojave Water Agency Board.

22 There will each year following another
23 application required as it stands. The agreement
24 between the City of Victorville and the project
25 for delivery of that water is in process. The

1 final agreement hasn't been executed, but the
2 concept and the intents of both parties have been
3 identified and in agreement on that.

4 As I stated, the aquifer storage and
5 recovery agreement is complete. And the water
6 storage agreement is in development, the drafts
7 being developed on that.

8 As far as the conditions of
9 certification go, all those agreements are meant
10 to be consistent with that. There is a specific
11 provision in the conditions that state that the
12 two sources of water, being either the stored and
13 recovered water from the aqueduct, or direct use
14 of aqueduct are the only two sources of water
15 available to the project.

16 Typically you could only call that one
17 source of water, since it's just all aqueduct
18 imported water being stored and provided to the
19 project.

20 And so there are no agreements to
21 provide anything else. There is a mention in the
22 agreement that I believe Mr. Hill will discuss in
23 further detail about, you know, the other
24 provisions of water may be used only upon the
25 written consent of the project.

1 The concept behind that was that the,
2 and again Mr. Hill should elaborate on this, the
3 water district would be given flexibility to do
4 things without requiring board approval for every
5 one, if it was considered to be within the
6 discretion of their staff, while at the same time
7 the project viewed that the requirement that our
8 sole discretion and written approval was necessary
9 would mean that we would -- it would keep the
10 conditions placed upon the project by the Energy
11 Commission to be the -- which are more restrictive
12 than the agreement to be in place, and that that
13 there be no ability to violate that condition as
14 long as it was in place.

15 So, for that specific provision, which I
16 know had raised some questions, there is no
17 ability in the project's mind, and the project is
18 the one who has the sole discretion to allow it to
19 take substitute water without an amendment to the
20 conditions as would be approved, as we see them.

21 Q Mr. Welch, one final question. Given
22 your grasp of the water plan that is proposed by
23 the High Desert Project and your knowledge of the
24 conditions of certification as appear in the staff
25 testimony, do you believe that they are

1 consistent, i.e., that the applicant can effect
2 its water plan under the conditions of
3 certification as proposed?

4 A Yes.

5 MR. THOMPSON: Mr. Welch is tendered for
6 cross-examination, thank you.

7 HEARING OFFICER VALKOSKY: Before you
8 get to that, just a couple of verifying questions.

9 EXAMINATION

10 HEARING OFFICER VALKOSKY: When you said
11 the applicant could not take water from a
12 difference source without an amendment of the
13 condition, you were referring to the conditions
14 that are proposed by the Energy Commission or
15 the --

16 THE WITNESS: Yes, conditions proposed
17 by the Energy Commission. I'm saying that on the
18 assumption that the conditions as they stand now
19 would become the final decision.

20 HEARING OFFICER VALKOSKY: Right, yeah,
21 that's understood. And again, just go over again
22 where the project would obtain water during those
23 periods in which state water project water is not
24 available?

25 THE WITNESS: Would obtain previously

1 stored water. We will have, during times when
2 state water project water is available, we will
3 have taken water, stored it into the aquifer after
4 treating it, with direct injection into the
5 aquifer from the well field that would be built by
6 Victor Valley Water District.

7 And when the aqueduct was interrupted we
8 would then recover that water from that well
9 field.

10 HEARING OFFICER VALKOSKY: So then your
11 maximum recovery would be limited by the amount of
12 water that you had pre-injected?

13 THE WITNESS: Actually it would be --

14 HEARING OFFICER VALKOSKY: Or a fraction
15 thereof, actually, yeah.

16 THE WITNESS: -- the amount we had --
17 right. The amount we previously injected less,
18 after the first year, 1000 acrefoot buffer; less
19 the amount that would be calculated to be
20 dissipated or lost, not able to recover.

21 HEARING OFFICER VALKOSKY: Okay.

22 PRESIDING MEMBER LAURIE: Mr. Welch,
23 regarding the state water project system, my
24 understanding is that each district, in this case
25 Mojave, has a certain allocation authorized by the

1 state. Is that your understanding?

2 THE WITNESS: Yeah, I believe I've heard
3 it referred to as the entitlement.

4 PRESIDING MEMBER LAURIE: And do you
5 know the extent to which your project impacts that
6 allocation, that is percentagewise, total
7 allocation versus current use versus current use
8 plus your project?

9 THE WITNESS: My understanding is that
10 while it's the entitlement of the Mojave Water
11 Agency is 75,800 acrefeet a year. It is my
12 understanding, and I believe this is consistent
13 with what is included in staff's -- the staff
14 assessment is that they have never taken over
15 17,000 acrefoot in any single year.

16 So they have a great deal of difference
17 between the entitlement that they have and the
18 actual deliveries they've seen.

19 PRESIDING MEMBER LAURIE: Thank you.
20 Has Victor Valley requested that you inject at a
21 ratio of greater than one-to-one? That is, do you
22 use x number of acrefeet, has Victor Valley
23 requested that you inject as replacement greater
24 than one-to-one?

25 THE WITNESS: No, Victor Valley has not.

1 PRESIDING MEMBER LAURIE: Thank you, I
2 have no more questions.

3 Well, finally.

4 Again, then, our understanding of your
5 testimony is that only state water will be used.
6 Now certainly when water is injected we don't know
7 which water molecule came from where, but as far
8 as acrefoot usage you will not be relying on any
9 local water supply, is that correct?

10 THE WITNESS: That is exactly correct.

11 PRESIDING MEMBER LAURIE: That's all I
12 got.

13 HEARING OFFICER VALKOSKY: Okay, at this
14 time I'd like the parties to, to the extent that
15 you want to cross-examine, I realize we're just
16 opening this issue in the Committee's mind to
17 provide a bit of a foundation for Mr. Hill. But,
18 to the extent that there are any initial
19 clarifying questions of Mr. Welch on the project's
20 basic water supply plan, I think those would be
21 appropriate at this time.

22 MS. HOLMES: I have questions about the
23 contract, Mr. Valkosky, and I don't know whether
24 you want me to ask them of Mr. Welch or of Mr.
25 Hill, or of both.

1 HEARING OFFICER VALKOSKY: Seems like it
2 would be more appropriate of Mr. Hill, since he's
3 representing the -- is signatory to the contract,
4 isn't that correct?

5 MS. HOLMES: High Desert is also a
6 signatory to the contract, as well. And I have --
7 some of the questions go to the issue that Mr.
8 Welch raised about conditions in the contract that
9 may or may not be superseded by Commission
10 conditions of certification.

11 HEARING OFFICER VALKOSKY: Okay, well,
12 ask them of Mr. Welch. To the extent he's
13 uncomfortable with answering them, he can defer to
14 Mr. Hill.

15 CROSS-EXAMINATION

16 BY MS. HOLMES:

17 Q Good afternoon, Mr. Welch. I will
18 apologize in advance if my questions are not very
19 articulately worded, I haven't had much of a
20 chance to think about this yet.

21 First of all, could you turn to section
22 2, please, of the contract that's entitled
23 location of project facilities. Do you see that?

24 HEARING OFFICER VALKOSKY: Excuse me,
25 Ms. Holmes, you know, we --

1 MS. HOLMES: Haven't identified it as an
2 exhibit.

3 HEARING OFFICER VALKOSKY: -- haven't
4 identified that as an exhibit. We don't have
5 copies of it.

6 MS. HOLMES: It was my understanding
7 that the applicant was going to be providing
8 copies.

9 HEARING OFFICER VALKOSKY: Of the --

10 MS. HOLMES: I have one copy that they
11 provided --

12 HEARING OFFICER VALKOSKY: -- revised
13 version?

14 MS. HOLMES: -- for me before lunch.

15 MR. THOMPSON: It was docketed on the
16 29.

17 MR. ADAMS: That's a draft version.

18 HEARING OFFICER VALKOSKY: That's a
19 draft. I understand that there have been
20 revisions.

21 MS. HOLMES: That's correct.

22 HEARING OFFICER VALKOSKY: And at least
23 I don't have a copy.

24 MR. LEDFORD: I don't have a copy,
25 either.

1 MR. THOMPSON: My understanding is that
2 there is no final completely signed copy. That
3 has not been done, is that right?

4 MS. HOLMES: The copy that I'm working
5 off of has been changed -- is changed from the
6 copy that was docketed. I apologize. I had
7 thought that the applicant was going to be
8 providing copies. I have marked mine and cannot
9 offer to make copies of it to you and provide it
10 to you.

11 HEARING OFFICER VALKOSKY: Is it
12 possible to get some copies? I see a hand in the
13 audience.

14 Go off the record for a second.

15 (Off the record.)

16 HEARING OFFICER VALKOSKY: Okay, Mr.
17 Thompson.

18 MR. THOMPSON: Do you still need Mr.
19 Beeby, who is more of our policy witness, to go
20 first, or does it matter to you now?

21 HEARING OFFICER VALKOSKY: No, I don't
22 think it matters at this point.

23 MR. THOMPSON: Okay.

24 HEARING OFFICER VALKOSKY: We've got the
25 basic understanding that we were searching for.

1 MR. THOMPSON: Great. Applicant would
2 like to start its soil and water resources
3 witnesses starting with the calling Mr. Regan, and
4 then we will go through the technical basis for
5 the conclusions, Mr. Regan, ending up with Mr.
6 Beeby, who is more of a policy and the witness who
7 sponsored the last rebuttal testimony to Mr.
8 Ledford.

9 (Pause.)

10 HEARING OFFICER VALKOSKY: Proceed, Mr.
11 Thompson.

12 MR. THOMPSON: Thank you.
13 Whereupon,

14 THOMAS REGAN
15 was called as a witness herein and after first
16 being duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Would you please give your name and
21 employer for the record.

22 A My name's Tom Regan and I'm a
23 Supervising Hydrogeologist for Navigant
24 Consulting, formerly Bookman and Evanston
25 Engineering.

1 Q And are you the same Thomas Regan that
2 submitted prepared testimony that is now included
3 in exhibit 95 to this proceeding?

4 A Yes.

5 Q And within that prepared testimony there
6 is a reference to exhibit 80, compliance operation
7 and monitoring plan. You are listed here as
8 testifying to part of that. Were you here when we
9 informed the Committee that we were not going to
10 sponsor that exhibit?

11 A Yes.

12 Q And it is acceptable to you to take that
13 off your list?

14 A Yes.

15 Q Likewise, were you here when we
16 discussed, or are you aware of our discussion
17 regarding taking out the cover letter and not
18 sponsoring the cover letter to exhibit 65, which
19 is also on your list?

20 A Yes.

21 Q And is it acceptable to you to sponsor
22 the material behind the cover letter and not the
23 cover letter to exhibit 65?

24 A Yes, it is.

25 Q Do you have any other changes,

1 corrections or additions to your material?

2 A At this time, no.

3 Q Would you please give the Committee an
4 overview of your testimony in this proceeding?

5 A Yes. I am part of a group or a team of
6 people working on the water supply plant for the
7 project. I co-authored the initial water supply
8 plant. Have worked on the design of the injection
9 extraction wells, the concept and the design of
10 them. Reviewed the geologic data in the vicinity
11 of the site, and the locations of the wells.

12 I've been involved in the planning and
13 the design of the conceptual water treatment
14 facility; and in the data, the review of the data
15 to prepare for that design.

16 And I believe that's -- and then I've
17 also worked on the AFC and other documents in
18 support of this project for the water supply
19 portion and the geology and soils portions.

20 Q Mr. Regan, would it be fair to say that
21 the applicant used some different assumptions in
22 its water calculations than the staff?

23 A Initially, the initial well interference
24 analysis was different than --

25 Q So if the Committee were going to try

1 and work backward from the conditions of
2 certification and attempt to find consistency
3 between our presentation and the presentation of
4 staff, it could be very difficult to do?

5 A Yes.

6 Q But you've reviewed the conditions of
7 certification?

8 A Yes.

9 Q And you believe that they are acceptable
10 to the applicant, and that applicant can effect
11 its water plan under those conditions of
12 certification?

13 A Yes, I do.

14 Q And you recommend to the High Desert
15 Power Project that they accept those conditions of
16 certification?

17 A Yes.

18 MR. THOMPSON: That is all I have. Mr.
19 Regan is tendered for cross-examination.

20 HEARING OFFICER VALKOSKY: Ms. Holmes.

21 MS. HOLMES: I believe I have one
22 question of Mr. Regan. I'm not quite sure who's
23 responsible for which portions of exhibit 65.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MS. HOLMES:

3 Q But I'm looking specifically at the
4 discussion at the end on page 5-1, it's entitled
5 5.1 monitoring, if that's within the scope of Mr.
6 Regan's testimony I have just one question.

7 A I can discuss that, yes.

8 Q Are you familiar with the conditions of
9 certification that have been proposed by the
10 staff?

11 A Yes.

12 Q And so that your discussion in here
13 about the protocol that's included in your
14 appendix B, that testimony has been superseded,
15 has it not?

16 Let me ask the question another way.
17 Are you now recommending that High Desert perform
18 the protocol that contains not only the
19 requirements in appendix B, but also in the
20 staff's conditions of certification?

21 A Oh, yes. Yes, absolutely.

22 Q Thank you.

23 MS. HOLMES: That's my only question.

24 HEARING OFFICER VALKOSKY: Mr. Adams.

25 MR. ADAMS: No questions.

1 HEARING OFFICER VALKOSKY: Mr. Ledford.

2 MR. LEDFORD: Thank you. Mr. Regan, I'm
3 right behind you.

4 MR. THOMPSON: Mr. Ledford, if you'll
5 hold on 30 seconds we're going to reposition the
6 witness.

7 MS. HOLMES: Could I ask one more
8 question. I'm just making sure I haven't missed
9 my chance.

10 I'm assuming that the bulk of the
11 testimony is, in fact, being sponsored by Mr.
12 Lefkoff, is that correct?

13 THE WITNESS: I'm sorry?

14 MS. HOLMES: I'm assuming that the bulk
15 of 65 is being sponsored by Mr. Lefkoff, and the
16 questions that I have about the modeling that was
17 done should be directed to him, and not to Mr. --

18 THE WITNESS: Yes, that is correct.

19 MS. HOLMES: Thank you. Sorry for the
20 interruption.

21 MR. THOMPSON: Okay, Gary, we're ready.

22 MR. LEDFORD: Ready to go?

23 CROSS-EXAMINATION

24 BY MR. LEDFORD:

25 Q I'm looking at the AFC and you said you

1 co-authored this?

2 A Yes.

3 Q You co-authored it with?

4 A Well, I assisted on that with RMI --
5 with other staff people.

6 Q But you've reviewed it and the testimony
7 would be as your own testimony, then?

8 A Portions of it would be, yes.

9 Q Is there anything in this testimony that
10 you would change at this point?

11 A Not that I'm immediately aware of.
12 There have been a number of changes throughout
13 this process, from the initial AFC that we've
14 reached to this point.

15 Q Right. Are you familiar with the
16 stipulated judgment?

17 A No, I'm not. I'm not an expert on that.

18 Q The AFC refers to the stipulated
19 judgment in more than one location. And it
20 relates different facts about the stipulated
21 judgment. Would you be the person to ask those
22 questions to?

23 A No, I would not.

24 Q All right. Did you work on the water
25 management plan?

1 A No, I did not.

2 Q Are you familiar with the Mojave River
3 pipeline?

4 A In what context?

5 Q In relation to what the Mojave River
6 pipeline's primary responsibility is. I could
7 refer you to the AFC. It's section 5.11-12, third
8 paragraph.

9 MR. THOMPSON: The AFC was put together
10 some time ago, and maybe if you could help him on
11 what specific part of that pipeline, it may help
12 him.

13 BY MR. LEDFORD:

14 Q Well, the statement in the AFC says the
15 Mojave River pipeline is a 72-mile pipeline that
16 will convey imported water from California
17 aqueduct to four groundwater recharge sites along
18 the Mojave River.

19 And my question is is that the principal
20 design criteria for that pipeline? Is that what
21 it was designed to do as far as your understanding
22 of it?

23 A It is to supply water for groundwater
24 recharge.

25 Q Right. And are you familiar with the

1 Morango Basin pipeline?

2 A No, I'm not.

3 Q On page 5.11-13 you state that imported
4 SWP water is considered to be suitable for
5 domestic and industrial purposes. Is that a true
6 statement, without treatment?

7 A Well, not without treatment, that's
8 correct. Although for some industrial uses you
9 could use it as is.

10 And for agricultural uses you could use
11 it as is many times. Depends on the use.

12 Q That's not what this very first sentence
13 says, and it kind of goes through how hard it is,
14 but it doesn't say anything about whether or not
15 it needs to be treated.

16 Okay, on page 5.11-15, have estimated
17 project water demands. And here you are
18 averaging, total estimated average project demand
19 is 5300 acrefeet. Have the project water demands
20 changed significantly since you created the AFC?

21 MR. THOMPSON: Pardon me for
22 interrupting, and I guess I'm objecting. This was
23 a topic that Mr. Seidler testified to, which is
24 the change in the water demand figure. I have no
25 objection if you ask this witness what he used for

1 his calculation, or what he's aware of, but
2 another witness actually prepared that water
3 requirements.

4 MR. LEDFORD: With all due respect to
5 you, I really think the witness could say he
6 doesn't know without you testifying for him.

7 HEARING OFFICER VALKOSKY: I think
8 that's appropriate. Sir, you can answer it to the
9 extent that you have knowledge of.

10 THE WITNESS: I guess -- re-ask the
11 question, please so I can understand what you're
12 asking.

13 BY MR. LEDFORD:

14 Q In section 5.11.5.1, it provides an
15 estimated project water demand. And here you
16 have -- here the AFC states that the average water
17 demand will be 5300 acrefeet on average.

18 A That's correct.

19 Q Is that currently --

20 A That is not the current.

21 Q Okay. And what would be the current
22 number that this project would require?

23 A Well, I think currently it's 4000
24 acrefeet a year as the demand.

25 Q And is that a maximum demand?

1 A That's the demand that I'm familiar with
2 at this point.

3 Q Can you explain that to me?

4 A Well, that's going to be the annual
5 usage, 4000 acrefeet a year. And in fact, it will
6 probably be less than that, slightly less than
7 that.

8 Q Are you in a position to explain how the
9 water banking and the water use program work and
10 dovetail together, because during the first five
11 years of the project it's going to take more
12 water, it doesn't take 4000 acrefeet, it's going
13 to take more water.

14 Can you explain that, and have you done
15 some kind of an estimate of that?

16 MR. THOMPSON: Are you putting in
17 testimony that the water demand is something
18 greater than what Mr. Regan testified to?

19 MR. LEDFORD: No, I'm asking him.

20 THE WITNESS: Okay. Initially, while
21 the plant is under construction we will be
22 treating and injecting water to develop the bank.

23 BY MR. LEDFORD:

24 Q Correct, and so if we just took that as
25 the -- my understanding from being in different

1 workshops is six months before you get started
2 you're going to start injecting water?

3 A That's correct.

4 Q These don't have to be meticulous. So,
5 during the first six months you hope to inject
6 2000 acrefeet of water?

7 A That's correct.

8 Q All right. And then during the
9 following 12 months after that, if the plant
10 operates at full capacity, the plant would use
11 4000 acrefeet, is that correct?

12 A That's correct.

13 Q And at the same time, during that same
14 12-month period, you would hope to inject 4000
15 additional acrefeet, is that correct?

16 A That's correct.

17 Q All right. So that takes care of the
18 first year, plus the six months. Then the second
19 year you'll need 8000 acrefeet, 4000 to operate
20 the plant, and 4000 to inject, is that correct?

21 A I believe that's correct.

22 Q Someplace along the line the pipeline's
23 going to be down for a month and that's going to
24 take 300 acrefeet, is that correct?

25 A That's correct.

1 Q And so you'd have to, in addition to the
2 4000 acrefeet, you would have to inject 4300
3 acrefeet the next year to build the bank back up,
4 or would you be deferring that to sometime down
5 the road?

6 A Well, under the proposed conditions of
7 certification we could defray the 300 for up to
8 three years till we get a balance of 1000
9 acrefeet. And then inject that. But that's
10 correct, instead of injecting every year that
11 amount, if we're down 300 acrefeet that would
12 be -- as long as the amount in the bank, minus the
13 dissipated amount, is sufficient to carry us over.

14 Q Now, once you get 13,000 acrefeet in the
15 bank, then you have to maintain that bank, is that
16 correct?

17 A I don't believe so.

18 Q You don't believe so. So, once you get
19 13,000 acrefeet in the bank, and let's say that
20 we're at five years, and it takes say four years,
21 optimistically we get all those 13,000 acrefeet in
22 the bank.

23 And you use 300 acrefeet during that
24 fourth year, and there's a dissipation in the bank
25 of, for lack of a better -- 5 percent, that's 500

1 acrefeet, right.

2 So there's 800 acrefeet, you don't have
3 to replace 800 acrefeet in the fifth year? You
4 don't have to maintain the water bank?

5 A We -- at that point we don't necessarily
6 have to do that, but we will ultimately offset
7 that, the amount that we pump.

8 Q I'm sorry, my understanding was that you
9 would maintain the water bank, if you use water
10 out of the water bank that you would replace it.

11 A Right, it may not occur that immediate
12 following year. It may occur -- it could occur a
13 year following that, once we get to about 1000
14 acrefeet we'd go ahead and put in that extra
15 amount. Put in the amount that dissipated, plus
16 that amount. So if it comes to about 1000 we
17 would do that.

18 Q I think what you're saying is something
19 entirely different than what I'm saying. What you
20 said, I think, is that when the water bank
21 dissipates all the way down to 1000 acrefeet then
22 you would have to replace water?

23 A No, no, no, no. No.

24 Q I don't know where the 1000 --

25 A I'm talking about the usage of 1000 --

1 Q -- acrefeet comes --

2 A I'm talking about the usage of when it
3 depletes, when it has declined by 1000 acrefeet,
4 then we would put more water in to bring the
5 balance back up.

6 Q You would wait till the water bank
7 declines to 1000 acrefeet?

8 A No. If you start off with 13,000, --

9 Q Right.

10 A -- it drops 1000. Then the conditions
11 of certification we talked about, we would put in
12 1000 to bring it back up.

13 Q So you'd wait until it was -- 1000 at a
14 time?

15 A Right.

16 Q Okay, --

17 A Instead of injecting every year the 300
18 for the downtime, we would wait -- we can wait as
19 long as three years, that's one of the conditions
20 that we talked about.

21 Q Okay, then that works for me. I mean I
22 understand that. But what I'm saying to then sort
23 of is, in addition to -- even when you get the
24 water in the bank, in addition to 4000 acrefeet,
25 when you're talking about the dissipated water,

1 and you're talking about the water from downtime,
2 you're probably talking about every year or 16
3 months having an additional 1000 acrefeet that has
4 to be bought from MWA, is that correct?

5 A I don't know what scenario you're
6 developing. It just depends on what actually
7 happens. And we're going to know that annually
8 from doing the model, from the monitoring we're
9 going to be doing and the update to that model.
10 We'll know how much water is dissipating and how
11 much we actually have to pump in that interim.

12 So that's -- I can't tell you what that
13 fixed amount is going to be.

14 Q The number's going to be more than 4000
15 acrefeet? Assuming that the plant uses 4000
16 acrefeet, your number to maintain the plant and
17 the water bank will be more than 4000 acrefeet?
18 And it could be as much as 1000 acrefeet a year?
19 Depending on the dissipation --

20 A If we pump 4000 acrefeet out we'll be
21 putting 4000 acrefeet back in.

22 Q If you pump 300 acrefeet out and you
23 have 10 percent dissipation, and that turned out
24 to be 1000 acrefeet, just for a number, you'd have
25 to put that 1000 acrefeet back in?

1 A That's correct.

2 Q And so in addition to the 4000 acrefeet
3 that you're going to be 100 percent consumptively
4 using and putting through these cooling towers,
5 you're going to have to -- that's 4000 acrefeet --
6 you're going to have to buy another 1000 acrefeet,
7 which makes it 5000 acrefeet, to replace the water
8 back in?

9 PRESIDING MEMBER LAURIE: Question of
10 clarification, Mr. Ledford. When you're talking
11 about the 4000 feet, are you suggesting that the
12 4000 feet is coming from the well system?

13 MR. LEDFORD: No. Well, I'm saying --
14 no. The 4000 acrefeet, as they're currently
15 proposing, assuming that there was state water
16 project water available, would be coming --

17 PRESIDING MEMBER LAURIE: Coming
18 directly out of the water system.

19 MR. LEDFORD: -- directly out of the
20 pipeline. And what I'm saying is that if they
21 shut the plant down, or if they shut the pipeline
22 down for a month, they would take 350 acrefeet
23 more or less out of the banked water.

24 And then one of the other requirements,
25 the way it's set up right now, is they also have

1 to replace any dissipation, so if the water bank
2 dissipates, they have to replace that water, as
3 well.

4 So, in addition to the 4000 acrefeet
5 that's coming into the plant, even after the bank
6 is built, they're going to have an additional, my
7 estimate is somewhere between 500 and 1000
8 acrefeet a year just to maintain the plant, that
9 has not been previously discussed, as best I can
10 tell.

11 I mean it looks like when they started
12 this out a year and a half ago they thought it was
13 going to be 5300 acrefeet, that might have been a
14 pretty good number.

15 MR. THOMPSON: We do not agree with your
16 characterization of how the conditions of
17 certification work, for the record.

18 MR. LEDFORD: Well, maybe I don't know
19 how they work. I'm sure that somebody's going to
20 clear all this stuff up.

21 HEARING OFFICER VALKOSKY: Well, I
22 guess, Mr. Regan, is it correct that on an annual
23 basis the project will purchase for replacement
24 into the water bank an amount of water equivalent
25 to what it's used and also considering what's been

1 dissipated?

2 THE WITNESS: Yes, it could.

3 HEARING OFFICER VALKOSKY: Okay. So
4 that the balance is re-evaluated annually to
5 maintain a 13,000 foot bank, essentially, 13,000
6 acrefeet?

7 THE WITNESS: That's the starting point,
8 but it can lower. Because the 13,000 is the
9 starting point in the bank, and it can be lowered,
10 as long as leave in, at the end, at least 1000
11 acrefeet.

12 HEARING OFFICER VALKOSKY: At the end
13 you're talking --

14 THE WITNESS: At the very end, yes.

15 HEARING OFFICER VALKOSKY: At the end of
16 the project life?

17 THE WITNESS: Right.

18 HEARING OFFICER VALKOSKY: Right.

19 THE WITNESS: You know, plus whatever
20 has dissipated.

21 HEARING OFFICER VALKOSKY: Right. So
22 that there's basically over the 30-year operating
23 life numerous times when the applicant will be
24 required to purchase water and inject it into the
25 bank, depending upon the usage and the dissipation

1 factor and things like that?

2 THE WITNESS: That's correct.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. THOMPSON: Okay, may I -- my
5 apologies, Mr. Ledford. Mr. Regan is extremely
6 knowledgeable in this, but may not be our best
7 witness on the workings of these conditions. And
8 I fear that the record will not be crystal clear.
9 If I could ask Mr. Welch to respond to that same
10 set of questions, I'd at least feel better. If I
11 could ask your indulgence?

12 HEARING OFFICER VALKOSKY: Sure, all
13 we're looking for is as clear information as we
14 can get.

15 MR. WELCH: I'm supposed to remember the
16 questions now? My understanding of the conditions
17 of certification are that it is -- the project is
18 calculated on an annual basis what the water
19 available to the project is.

20 That's starting with an obligation to
21 put 13,000 acrefeet in by the end of the fifth
22 year. And then to calculate, based on the
23 pumping, the further injection that may have taken
24 place, and the dissipation factor, will change the
25 amount of water that is available.

1 It is not an obligation to keep the
2 initial 13,000 and to replenish that on an annual
3 basis, or on any basis. It's rather than
4 replenishing back to the original level, it's
5 calculating how much less water is available to
6 the project.

7 That difference is that during the
8 operating life of the project we may determine
9 that the project runs, gets dispatched 50 percent
10 of the year, and then we only have a 2000 acrefoot
11 per year annual, and that would allow an economic
12 decision to be made by the project to see if we
13 had been, as we consider a very real possibility,
14 overly conservative on establishing the initial
15 bank amount.

16 But that the protection is made that we
17 cannot draw down below that 1000, the initial 1000
18 acrefoot border that was created.

19 And that's just a protection to make
20 sure that we don't go beyond -- we go to a point
21 where there are any negative impacts, so we
22 protect it. But there isn't a requirement to
23 replenish.

24 VICE CHAIRMAN ROHY: I'd like to ask a
25 clarifying question on that 1000. You say you

1 cannot go below the 1000, which now is an absolute
2 level, it's not a difference that we're talking
3 about? We're going from 13,000 --

4 MR. WELCH: Correct, yes.

5 VICE CHAIRMAN ROHY: -- down to 1000?

6 MR. WELCH: Yes. That's what they've
7 established, instead of going to zero, we go to
8 1000 to set a buffer.

9 VICE CHAIRMAN ROHY: Does that
10 calculation include dissipation?

11 MR. WELCH: Yes, it does.

12 VICE CHAIRMAN ROHY: So there will be a
13 net 1000 in there after dissipation, after
14 drawing, it will be 1000 acrefeet left?

15 MR. WELCH: Yes.

16 VICE CHAIRMAN ROHY: Thank you.

17 HEARING OFFICER VALKOSKY: Mr. Ledford.

18 MR. LEDFORD: Is the witness back to me?

19 HEARING OFFICER VALKOSKY: Back to you.

20 Sorry for the interruption.

21 MR. THOMPSON: Thanks for your
22 indulgence, Mr. Ledford.

23 MR. LEDFORD: I'm not sure that
24 everybody around understands that that way, but
25 that's okay for the moment, I guess.

1 BY MR. LEDFORD:

2 Q On page 5.11-16, at the bottom of the
3 page, this was back when you first got started,
4 but I think it's somewhat pertinent.

5 It says by purchasing ground water from
6 the Victor Valley Water District, groundwater
7 production from their existing system would
8 increase. The Victor Valley Water District has
9 evaluated the impacts of increased water demands
10 to their existing system in the Victor Valley
11 Water District master plan.

12 Based on forecast water demands the
13 Victor Valley Water District estimates that within
14 the planning period a maximum of 28 new wells,
15 nine storage wells, and varying new water
16 distribution systems will be needed to adequately
17 provide the increased water demands.

18 Sir, my question to you is in the
19 staff's report, and in what is being looked
20 towards as a CEQA-equivalent document, are those
21 issues addressed?

22 A We're not looking at the cumulative
23 impact; we're focusing on this project relative to
24 the supply of the project. Those wells will be
25 turned over to Victor Valley Water District.

1 Q I understand, but in Victor Valley Water
2 District's master plan they anticipate 28 new
3 wells, perhaps seven of those are going to be your
4 wells.

5 Out of those 28 new wells there's going
6 to be 21 new wells that are going to be pumping
7 water out of the aquifer that are going to be
8 drawing on your waterbank, sir.

9 A That's an assumption that is not
10 necessarily true, that they will be pumping from
11 the water bank, that's not true. Depends on where
12 they're located.

13 Q Is there anything to prevent them from
14 pumping from the water bank?

15 A The hydraulic characteristics of the
16 aquifer could prevent it, if they're far enough
17 away.

18 Q What about utilizing the seven wells for
19 their own system?

20 A They'll have access to those wells to
21 use them for their system.

22 Q So if they pumped water out of those
23 wells, they would be pumping water out of your
24 water bank?

25 A And that water would be replaced.

1 Q Is there anything to assure you that
2 that water would be replaced?

3 A I think that gets into the adjudication
4 and I can't respond to that.

5 Q Is there anything that would prevent me,
6 as a property owner, that would buy property say
7 right next to one of these new wells, from
8 drilling a well and extracting water out of that
9 well?

10 A Excuse me?

11 Q All right. There's seven well sites
12 proposed, is that correct?

13 A That's correct.

14 Q And those well sites are where you're
15 going to inject the water. Assume for the moment
16 that I bought 100 acres right next to one of those
17 well sites. And I drilled my own well. Is there
18 anything that would prevent me from drilling that
19 well and producing water from it?

20 A I can't tell you if there is or isn't.

21 Q Thank you. On page 5.11-17 in your AFC
22 it states, although water production is discussed
23 in the Victor Valley Water District's master plan,
24 above the established FPA would contribute to
25 overdraft conditions in the area measured by

1 specific flows at the lower narrows, the Victor
2 Valley Water District shall offset annual water
3 consumption in the alto subarea with water
4 transfers, SWP water and any other alternative
5 consistent with the stipulated judgment that will
6 maintain surface flows at the lower narrows.

7 Additionally, by insuring recharge to
8 the alto subarea, unavoidable impacts to water
9 quality will result due to the increased TDS of
10 water recharge alternatives, such as SWP water.

11 Can you explain what that means?

12 A At the time we prepared this AFC the
13 plan was to pump groundwater and to discharge
14 water at the Rock Springs outlet. So, this is not
15 the same issue anymore. The current issue is to
16 inject treated state water project water into the
17 regional aquifer that is essentially identical in
18 quality. So this doesn't apply.

19 Q All right, on page 5.11-18, ordinance,
20 at the top of the page it says ordinance 9
21 includes environmental provisions, as well as
22 provisions and responsibilities of the purchaser.
23 One such provision is that the purchaser must be
24 able to provide proof of backup water supply
25 sources due to the stated conditions of SWP water

1 being an interruptible water supply.

2 Are you familiar with the ordinance
3 number 9?

4 A I wouldn't consider myself an expert on
5 that. I think there is someone else who can
6 handle that.

7 Q You're not familiar with it. All right,
8 on page 5.11-21, it says under water supply, that
9 the project would not use water in a wasteful
10 manner. Are you familiar with what a wasteful use
11 of water is?

12 A I've read the basin plan, and industrial
13 use is a beneficial use.

14 Q Is there any specific mention in the
15 basin plan for power plants using cooling towers?

16 A In the basin plan?

17 Q Yes, sir.

18 A Yes.

19 Q Can you point that out to me, please?

20 A Point --

21 Q In the basin plan.

22 A I don't have a copy with me.

23 Q Are we talking about the water
24 management plan?

25 A No, we're talking about the Lahontan

1 Basin plan.

2 Q In the Lahontan Basin plan.

3 A That's correct.

4 Q I'm sorry, I don't have that --

5 A It falls under industrial use.

6 Q Are you familiar with the state water
7 resources control board policy, I believe it's
8 7558?

9 A I'm familiar with it.

10 Q What does that policy tell us?

11 A It can't tell you the details.

12 Essentially it is to -- the overall gist is to use
13 wastewater, other sources of water.

14 Q Or dry cooling?

15 A No, it doesn't say or dry cooling.

16 Q It doesn't? You're sure about that?
17 All right, on the same page, 5.11-21, in the
18 center of the page, it says, however, increasing
19 the amounts of imported water delivered to the
20 also subarea for groundwater recharge will offset
21 the increased demands.

22 Revenues to pay for the additional
23 imported water would be generated through the
24 collection of assessments from the HDPP under the
25 conditions of the adjudication.

1 part of the downstream obligation from the alta to
2 the central subarea.

3 HEARING OFFICER VALKOSKY: Okay, and
4 basically that leads to your conclusion that
5 you've attempted to comply with the policy, but
6 compliance is not feasible? Is that the water
7 resources control board policy, is that correct?

8 THE WITNESS: I won't say we're in
9 noncompliance, we have attempted to comply with
10 the local water -- local resources, yes.

11 HEARING OFFICER VALKOSKY: Okay. Has
12 the water resources control board, to your
13 knowledge, either confirmed or denied or I guess
14 denied the project's compliance with that policy?

15 THE WITNESS: I don't know.

16 HEARING OFFICER VALKOSKY: Thank you.
17 Any redirect, Mr. Thompson?

18 MR. THOMPSON: Just one or two
19 questions.

20 REDIRECT EXAMINATION

21 BY MR. THOMPSON:

22 Q Let me quote from staff's water
23 resources rebuttal testimony, and then ask for a
24 comment from you.

25 State water resources control board

1 resolution 75-58 discourages the use of fresh
2 inland water for power plant cooling. And
3 encourages the use of wastewater or other
4 alternative nonpotable water sources.

5 Do you agree with that statement
6 contained in the staff testimony?

7 A Yes.

8 Q And when you mentioned the use of
9 reclaimed water, that's the same as wastewater as
10 used in this context?

11 A Yes.

12 Q With regard to potable water sources, is
13 water pumped out of the wells in this area, would
14 that be considered potable?

15 A Yes.

16 Q Water taken right out of the state water
17 project without treatment, is that considered
18 potable?

19 A No, it is not.

20 MR. THOMPSON: That's all I have, thank
21 you.

22 HEARING OFFICER VALKOSKY: Thank you.

23 Ms. Holmes.

24 MS. HOLMES: No questions.

25 HEARING OFFICER VALKOSKY: Mr. Adams?

1 MR. ADAMS: No questions.

2 HEARING OFFICER VALKOSKY: Mr. Ledford.

3 MR. LEDFORD: Leads me to a follow-on
4 question.

5 RE-CROSS-EXAMINATION

6 BY MR. LEDFORD:

7 Q Are you familiar with the two new wells
8 that were drilled for the new prison project?

9 A Only in rumor. I know that they were
10 constructed, that's all I know. And everything
11 else I don't have any documentation on those
12 wells.

13 Q Do you know if all of the wells that are
14 within a five-mile radius of the project -- make
15 it an eight-mile radius of the project site
16 produce potable water?

17 A I can only answer that question to the
18 south and to the east. That the wells to the
19 south and east produce potable water. Only
20 because I haven't investigated the water quality
21 to the north and west. There may be another
22 witness.

23 Q Thank you.

24 HEARING OFFICER VALKOSKY: Thank you,
25 Mr. Regan.

1 MR. THOMPSON: Mr. Valkosky, applicant
2 would like to move the following exhibits into the
3 record, 14, 43, 54, 60, the material behind the
4 cover letter of 65.

5 MS. HOLMES: Excuse me, I thought we
6 were going to have a chance to cross-examine Mr.
7 Lefkoff on exhibit 65, on the model? There's also
8 additional testimony that I don't think you're
9 sponsoring, but I want to make sure about that,
10 having to do with the riparian habitat in 65.

11 MR. THOMPSON: Okay.

12 HEARING OFFICER VALKOSKY: Okay, so, Mr.
13 Thompson, I take it that means you're --

14 MR. THOMPSON: I will move, it would be
15 14, 43, 54 and 60. I'll move 65 after Mr.
16 Lefkoff.

17 HEARING OFFICER VALKOSKY: Is there
18 objection to the admission of those four exhibits?

19 Ms. Holmes?

20 MS. HOLMES: No.

21 HEARING OFFICER VALKOSKY: Mr. Adams?

22 MR. ADAMS: No.

23 HEARING OFFICER VALKOSKY: Mr. Ledford?

24 MR. LEDFORD: No.

25 HEARING OFFICER VALKOSKY: Okay, they're

1 admitted.

2 (The above-referenced documents,
3 previously marked Applicant exhibit
4 14, 43, 54 and 60, were received in
5 evidence.)

6 MR. THOMPSON: Thank you. Applicant
7 would next like to call Mr. Jeffrey Lefkoff.

8 AUDIENCE SPEAKER: Excuse me, please. I
9 wonder if you could for just them to speak up.
10 It's a little bit light out here, especially when
11 voices are directed that direction.

12 HEARING OFFICER VALKOSKY: Certainly, in
13 fact to the extent that we only have a single
14 witness I think it would probably be better if the
15 witness were either on the end of the table or
16 even just facing the audience, rather than having
17 their back toward the audience. Okay.

18 MR. THOMPSON: Would you pull that
19 around.

20 Whereupon,

21 JEFFREY LEFKOFF
22 was called as a witness herein and after first
23 being duly sworn, was examined and testified as
24 follows:

25 //

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Would you please state your name for the
4 record and your place of employment?

5 A My name is Jeffrey Lefkoff. I am
6 employed at Navigant Consulting, formerly known as
7 Bookman and Evanston.

8 Q And are you the same Jeffrey Lefkoff
9 that submitted prepared testimony which is now
10 contained in exhibit 95 in this proceeding?

11 A Could you repeat the exhibit number,
12 please?

13 Q 95.

14 A Yes.

15 Q Thank you. And are you aware that
16 applicant requested that exhibits 80 and 81 either
17 be stricken or not be admitted to the record in
18 this proceeding?

19 A Yes.

20 Q And to the extent that they are
21 referenced in your direct testimony, am I correct
22 that you would want to have the Commission
23 disregard reference to those two exhibits?

24 A That's correct.

25 Q And similarly, exhibits 65 and 71 have

1 cover letters that we are not going to place into
2 the record, would you similarly want the
3 Commission to disregard those cover letters?

4 A Yes.

5 Q With those changes, do you have any
6 other changes, corrections or additions to your
7 material?

8 A I should point out in exhibit 65 there's
9 a presentation of the impacts to the groundwater
10 system and to the riparian corridor in response to
11 an earlier version of the water plan that was
12 being discussed with staff during the workshop
13 process.

14 That plan, of course, has been
15 superseded by the conditions of certification that
16 are now being proposed. So to the extent that
17 there is material in exhibit 65 which is specific
18 to the analysis of the previously proposed water
19 plan, that should be disregarded.

20 Q Thank you very much. Do you have
21 anything else to add?

22 A One other --

23 Q Who would you -- I'm sorry. Anything
24 else to add?

25 A Yes. One other thing. There had been a

1 previous value of hydraulic conductivity, it's a
2 parameter value used in our computer model that
3 was in exhibit 65. That has since been, through
4 the discussions and the workshop process between
5 staff and the parties, that's now been revised to
6 a different figure.

7 Q Thank you. With the recognition that
8 we've nearly gutted your testimony, would you
9 please give a brief overview of your material to
10 this Commission?

11 A Yes, thank you. My assignment in this
12 project was to develop a computer model which
13 would be used to evaluate the hydraulic response
14 of the groundwater system to the project's water
15 supply operations in the basin.

16 I developed the original computer model
17 in consultation with CEC Staff and other parties
18 who participated in the workshop process, and
19 that's the model that initially described in
20 exhibit 65.

21 That model was since provided to staff
22 and to other parties and that, with modifications
23 that have been made by the staff, that model is
24 now the basis for the soil and water 5, condition
25 soil and water 5.

1 To the extent that that would be the
2 model used, on an ongoing basis, to evaluate the
3 amount of water that is available to be extracted.

4 Q Thank you very much.

5 MR. THOMPSON: Mr. Lefkoff is tendered
6 for cross-examination.

7 HEARING OFFICER VALKOSKY: Ms. Holmes.

8 MS. HOLMES: Thank you. I'm at a little
9 bit of a loss to know what to do. Mr. Lefkoff
10 said that we should disregard certain portions of
11 his testimony, and I'm not quite certain what
12 portions those would be.

13 HEARING OFFICER VALKOSKY: Is it
14 possible to specify those? I mean are they
15 susceptible to specifying by page, section?

16 MR. THOMPSON: Let me ask Mr. Lefkoff
17 that question. It may have been just a general
18 recognition that the conditions of certification
19 are based upon concepts, or at least refinements
20 that are not reflected in exhibit 65.

21 But, Mr. Lefkoff, is it possible to look
22 at words, sentences, phrases, paragraphs to
23 disregard? Or is there more of a general
24 statement that you could make about how to view
25 your testimony that could help staff counsel?

1 computed results, would that include your
2 characterization of those results? For example,
3 there are a number of discussions in there that I
4 had planned to ask questions about that go to the
5 question of whether those results are significant
6 or not. Whether the impacts that are identified
7 are significant or not. Is that something we
8 should be disregarding?

9 A Yes, since those have been -- those
10 impacts would now be essentially superseded by
11 soil and water 5.

12 MS. HOLMES: Mr. Valkosky, if I could
13 ask for just a two- or three-minute break to
14 discuss this with the water witnesses we have
15 here?

16 HEARING OFFICER VALKOSKY: Okay, it will
17 turn into about a 12-minute break.

18 MS. HOLMES: Even better.

19 HEARING OFFICER VALKOSKY: Be back at 20
20 to the hour.

21 MS. HOLMES: Thank you very much.

22 (Brief recess.)

23 HEARING OFFICER VALKOSKY: We'll
24 convene. We were discussing exhibit 65. Ms.
25 Holmes.

1 MS. HOLMES: Thank you, Mr. Valkosky.

2 BY MS. HOLMES:

3 Q Good afternoon, Mr. Lefkoff. Because
4 you have the privilege of being the first of the
5 modelers to testify, I'm going to start out by
6 asking you to very briefly summarize the modeling
7 approach that you used, as well as the CEC witness
8 on water, to evaluate the project impacts.

9 I believe you described it as an
10 incremental modeling approach. Could you please
11 discuss what that means?

12 A Well, let me begin by describing briefly
13 what the computer model does. The model is
14 constructed to represent the major hydrogeologic
15 properties of the groundwater system, as well as
16 the hydraulics of the interaction with the Mojave
17 River.

18 The model accounts for the pumping and
19 injection activities of the project. That's
20 provided as model input. And the results of the
21 model describe the change in the groundwater and
22 surface water system attributable to those
23 operations.

24 There's two types of change we look at.
25 One is the change in groundwater level, and the

1 second is the change in stream flow in the Mojave
2 River.

3 The incremental approach refers to the
4 fact that what we're interested in here is the
5 effects of the project operations on the
6 hydrologic system. That is, whatever impact the
7 presence of the project has, ultimately becomes a
8 change in conditions relative to what would
9 otherwise occur in the absence of the project.

10 Q This is an area where there's a lot of,
11 if you will, groundwater activity going on, isn't
12 it pumping, and there's also activity going on in
13 the Mojave River area as well that affect both
14 streamflow and groundwater levels?

15 A That's right.

16 Q And is it possible by looking at
17 streamflow or groundwater levels by themselves to
18 determine what the effect of a single project is?

19 A Yes, it is. This is commonly done in
20 evaluations of proposed projects throughout the
21 state. And the reason for that is that it's not
22 necessary when looking at the impact of a
23 particular project it's not necessary to account
24 for water supply operations of others.

25 And, again, that's because we're

1 interested in the effects of this project.

2 Q So if I could sum up what this modeling
3 approach does is let you tell what the effect of
4 this project is on a background that varies from
5 day to day, week to week, month to month?

6 A Yes, that's right.

7 Q I'd like to turn to a section in your
8 testimony in exhibit 65 on both page ES-1 and page
9 1-3. You talk about model parameters, and on page
10 ES-1 you refer to a worst case estimate of
11 impacts, do you see that?

12 A Yes.

13 Q Is it your testimony that what's been
14 referred to as the baseline modeling results
15 represent worst case results?

16 A When you say what's been referred to as
17 the baseline results, you mean in the CEC Staff
18 report?

19 Q You could use either the results that
20 you provided in exhibit 71, or the CEC Staff
21 results. They're comparable.

22 My question is do you believe that those
23 represent worst case results?

24 A We made several assumptions in
25 representing the project operations in the future

1 when we implemented the computer model. Many of
2 those pertained to the operational scheduling of
3 the project, when water would be pre-injected, and
4 when it would be extracted, and at what rates.
5 And how -- what the availability of the state
6 water project would be and so forth.

7 In those cases we made what we call
8 worst case assumptions. We developed these in
9 consultation with the CEC Staff and other parties.
10 And by worst case, what we meant was that the --
11 since there was some uncertainty about what
12 actually will occur in the future, we would
13 construct scenarios that would lead to results
14 which would maximize the computed impacts on the
15 hydrological system.

16 So that if we were -- if, in the future,
17 the actual operations turned out to be
18 differently, we would have erred on the side of
19 caution in terms of protecting the groundwater and
20 surface water resources.

21 Now there's, in the NES-1 here there's a
22 reference both to parameters and assumptions. And
23 in terms of parameters those are numerical values
24 used in the model to characterize the hydraulic
25 properties of the groundwater system.

1 In the base runs that you refer to, the
2 most important value is that these were hydraulic
3 conductivity, and that is a -- I would not
4 characterize that as a worst case value. That is
5 really the best case, or a most accurate estimate
6 that we have available from the U.S. Geological
7 Survey.

8 Q I'd like to step back for a moment to
9 the discussion of operational assumptions. Since
10 you mentioned the staff testimony, I'd like to ask
11 you whether or not you're familiar with the
12 portion of the testimony that evaluated less
13 conservative operational modes?

14 A Yes, I've read that.

15 Q And are you aware of whether or not that
16 testimony or that analysis indicated that there
17 would be impacts, albeit potentially smaller
18 impacts under less conservative operating
19 assumptions?

20 A Yes.

21 Q I wanted to also ask you some questions
22 about the hydrogeologic features of the model. Is
23 that what you were referring to in your most
24 recent discussion, or were you referring to the
25 aquifer parameters?

1 A Could you repeat the question, please?

2 Q Well, perhaps we can just go directly to
3 page 2.7 of exhibit 65. There's a discussion
4 there of the hydrogeologic features that were used
5 in the modeling analysis.

6 Do you see that?

7 A Something specific on page 2-7?

8 Q There's a discussion, the sentence at
9 the beginning of the page that talks about the
10 representation of major hydrogeologic features of
11 the basin. I wanted to ask you a couple questions
12 about that.

13 A Yes.

14 Q Did you use information from USGS to
15 incorporate the hydrogeologic features in your
16 analysis?

17 A Yes.

18 Q So it wouldn't be fair to call those
19 worst case assumptions, those are USGS' best guess
20 of what's actually happening out there?

21 A Yes, that's right.

22 Q Okay, and finally I'd like to turn to
23 your discussion about the aquifer parameters.
24 Specifically on page 3-8 of your testimony there's
25 a table, entitled table 3 summary, results of

1 sensitivity analyses, do you see that?

2 A Yes.

3 Q You conducted approximately 16 different
4 sensitivity analyses, do you see that?

5 A Yes.

6 Q And with respect to the maximum negative
7 impact, is it a correct reading of that column
8 that 11 of the 16 results were equivalent to or
9 worse than the one that you've labeled in the
10 first row worst case?

11 A I'm not sure how you're counting 11.

12 Q I was looking at -- perhaps you can just
13 tell me whether or not I'm correct in saying that
14 more than half of the results that you provide in
15 this column, maximum negative impact, are
16 equivalent to or greater than the impact that
17 you've identified in the row worst case?

18 A Which column, there's two columns
19 labeled maximum negative impact?

20 Q In feet.

21 A Pardon?

22 Q I'm looking at the one that measures the
23 difference in feet, or the impact in feet.

24 A And there's two columns like that, one
25 pertains to the impact in the alluvial aquifer,

1 the other in Victor Valley well 27.

2 Q I'm focused on the alluvial aquifer, I'm
3 sorry for the confusion.

4 A Okay. I see two cases where the maximum
5 negative impact exceeds the basecase.

6 Q And how many where it's equivalent?

7 A Nine.

8 Q Thank you. Next I'd like to turn to the
9 discussion in your testimony -- let me clarify
10 one, get one thing out of the way. On page ES-2
11 of exhibit 65, you have a statement in the
12 sentence that's at the bottom of the page that
13 refers to impacts on riparian vegetation.

14 You're not testifying as an expert in
15 riparian vegetation today, are you?

16 A No, I'm not.

17 Q Thank you. I'd like to turn to exhibit
18 71 at this point. There's a discussion in both
19 exhibit 71 and exhibit 75 about cumulative change
20 in streamflow. Are you familiar with that
21 testimony?

22 A Could you help me identify exhibit 75,
23 please?

24 Q Exhibit 71 is the memorandum from
25 yourself to Andy Welch. There's discussions about

1 it in several places, both in 65 and 71. Maybe I
2 can ask some general questions so we don't have to
3 go through each page.

4 Basically you had a discussion in both
5 documents in which you referenced cumulative
6 change in streamflow. Do you recollect engaging
7 in those kinds of discussions in your testimony?

8 A Yes.

9 Q Okay. And you've also referenced the
10 Mojave River Basin adjudication and the fact that
11 there is a base flow number that's specified in
12 that adjudication, do you recollect that portion
13 of your testimony?

14 A Yes.

15 Q Do you know what the base flow is in the
16 adjudication?

17 A I don't have the number offhand. I
18 could look, I could find it in one of these
19 exhibits.

20 Q Let me ask an easier question. Is it
21 expressed in terms of an annual average?

22 A I believe it is. I'll need to defer to
23 Mr. Beeby, whose expertise is far greater than
24 mine regarding the adjudication.

25 Q If it were to be expressed in an annual

1 terms, wouldn't that mean that the cumulative
2 change in streamflow would not answer the question
3 as to whether or not the baseflow had been
4 achieved?

5 A Well, I think that depends on how this
6 annual average is expressed. If it was an average
7 flow over some period of time then the cumulative
8 change over that period of time would be an
9 appropriate, an appropriate measure.

10 If, however, the annual average is
11 intended to mean a particular or a minimum flow to
12 be achieved every year, then looking at cumulative
13 changes over time would not be appropriate.

14 Q Thank you. The last couple of questions
15 I have go to your statement earlier about
16 disregarding your testimony. I just want to make
17 sure that -- I don't want to beat a dead horse,
18 but I want to make sure I understand exactly what
19 you're saying.

20 I understand that High Desert is no
21 longer proposing any mitigation other than what is
22 contained in the CEC Staff's proposed conditions
23 of certification, is that your understanding?

24 A It is my understanding.

25 Q So that means that we should disregard

1 any testimony that addresses any other mitigation
2 proposals that the applicants or other parties may
3 have made, or the significance of any impacts that
4 are identified under those proposals?

5 A Yes, as far as my testimony is
6 concerned.

7 Q Thank you.

8 MS. HOLMES: That concludes my
9 questions.

10 HEARING OFFICER VALKOSKY: Mr. Adams.

11 MR. ADAMS: Just a couple of questions.

12 CROSS-EXAMINATION

13 BY MR. ADAMS:

14 Q Have you formed an opinion on whether
15 the conditions of certification now proposed by
16 staff are sufficient to avoid declines in
17 riverbank discharges and baseflows?

18 A Yes, I think they are sufficient.
19 They're quite protective of the groundwater and
20 surface water system.

21 Q So that there will be no decline, in
22 your view, in riverbank discharges or baseflows as
23 a result of the project?

24 A That's right.

25 Q Could you estimate for me the change in

1 water table elevation, probably not wording this
2 properly, but as a result of the injection of
3 water, creation of the water bank, in other words
4 how far will the water table rise in this area?

5 A Well, the answer to that depends on the
6 location in the basin that you're considering.
7 The closer you are to the injection wells, the
8 larger will be the rise in the water table. The
9 water table will rise everywhere, but as you get
10 further away from the wells that rise will be
11 smaller.

12 Q And I intended to ask just in the
13 immediate vicinity of these wells, of the
14 injection wells.

15 A Our calculations showed a change of on
16 the order of five to ten feet.

17 Q Okay, thank you.

18 A I should just elaborate on that a little
19 bit. The change, even a specific location, the
20 change depends on some other factors, just the
21 time since injection, and of course, the rates of
22 injection.

23 Q So the five to ten feet would represent
24 more than just a very temporal change? In other
25 words, not interested so much in what it is the

1 day after water is placed in these wells, but
2 generally you would expect five to ten feet higher
3 water table in the immediate vicinity of the
4 injection wells?

5 A Yes.

6 Q Thanks.

7 MR. ADAMS: That's it.

8 EXAMINATION

9 HEARING OFFICER VALKOSKY: Mr. Lefkoff,
10 how do you define immediate vicinity of the wells?
11 A radius of approximately what distance?

12 THE WITNESS: Within approximately one
13 mile.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you.

16 Mr. Ledford.

17 MR. LEDFORD: Thank you.

18 CROSS-EXAMINATION

19 BY MR. LEDFORD:

20 Q Mr. Lefkoff, you want to --

21 A Turn that way, okay.

22 Q Prior to the time that you started your
23 modeling, did you drill any test wells?

24 A No.

25 Q And in the area, I believe, that's being

1 considered for the wells, which is approximately
2 in this alignment here, are there any wells within
3 a mile that you compared for transmissivity
4 purposes?

5 A Our transmissivity estimates were based
6 on some previous work that had been done by the
7 U.S. Geological Survey. We did use some estimates
8 that had been developed from specific wells, also,
9 but I don't think those were within a one-mile
10 distance.

11 Q Are you aware of any wells within this
12 one mile in either direction of the proposed well
13 fields that were studied for the purpose of your
14 model?

15 A I believe we had data from some of the
16 Victor Valley wells which are within one mile of
17 the locations for the proposed project wells.

18 Q Can you locate those more or less on
19 this map? Actually I have a smaller map. If you
20 locate them I can locate it for everybody else.

21 HEARING OFFICER VALKOSKY: The map
22 you're using is attached --

23 MR. LEDFORD: I believe that's exhibit
24 63. It's the exhibit from Fish and Game.

25 MS. HOLMES: 93.

1 MR. LEDFORD: 93.

2 HEARING OFFICER VALKOSKY: 93, thank
3 you.

4 MR. THOMPSON: Mr. Lefkoff, if you point
5 to maps and show things, would you describe what
6 you're doing so that the reporter -- the record
7 will have a sense of where you're describing.

8 THE WITNESS: Yes.

9 MR. THOMPSON: Great, thanks.

10 THE WITNESS: In appendix A of exhibit
11 65 there's a list of wells that were used to --
12 that were used in aquifer testing.

13 BY MR. LEDFORD:

14 Q What page?

15 A Page A-7. The list includes six Victor
16 Valley wells, and one Apple Valley RWC well.

17 Q But my question is are any of those
18 wells within one mile of the proposed well field?

19 A Yes. Victor Valley well 21 is within one
20 mile. A couple of the others are within two
21 miles.

22 Q Can you help me locate that on this map?
23 If you locate it on that map I can -- that's
24 probably one of the blue wells.

25 A Okay, on the map that you handed me,

1 exhibit 93, Victor Valley well 21 would be located
2 at one of these section corners that appear on the
3 exhibit. It would be immediately to the east a
4 distance of one mile from project well 6, and it
5 would be at the section corner, the southeast
6 corner of section 6.

7 Oh, I believe it's marked on here.

8 Q This location right here?

9 A Yes.

10 Q Now, my understanding is that five of
11 the wells are on the section line here, and two of
12 the wells are on this section line here, which
13 would be the next section over, is that also
14 correct?

15 A Could you point to those two section
16 lines again?

17 Q Yes, I can. This is between section 1
18 and 6 in the vacant area, so five of the wells
19 would be on this section line, and two of the
20 wells would be on the next section line to the
21 west.

22 A Yes, that's right. And by the way,
23 these locations appear in figure 1 of exhibit 65.

24 Q Okay. And the only producing well
25 that's within one mile then is well 21? Victor

1 Valley Water District well 21?

2 A No, that's the well that we conducted an
3 aquifer test on. I did not say that that's the
4 only producing well.

5 Q Are there other producing wells within
6 one mile? I see one other one that's close.

7 A Yes, Victor Valley well 27 is within one
8 mile. And there may be other wells which are now
9 owned by the District that do not appear on this
10 map, I can't say.

11 Q On this map can you locate for us where
12 the new prison is, the new federal prison? Are
13 you familiar with that project?

14 A That appears on figure 1, also. It
15 begins just north of section 1.

16 Q This location here?

17 A Well, approximately.

18 Q And two of the new wells are in this
19 area here? Are you familiar with the two new
20 wells that were drilled for the federal prison?

21 A No.

22 Q And so you didn't do any aquifer testing
23 on those wells. Are you familiar with any wells
24 that have been drilled in this area that are dry
25 wells?

1 A No, I'm not.

2 Q If you were to drill dry wells in this
3 area what would that indicate to us?

4 A In which area?

5 Q In the area where you're proposing to
6 have this well field.

7 A Well, it could mean a number of things.
8 It may mean that the well was improperly drilled,
9 or improperly constructed.

10 Q If you were to drill dry wells out here
11 could you still do a water injection program in
12 those wells?

13 A Well, that's a bit of a hypothetical,
14 but just because a well is dry would not mean that
15 it could not be used for injection.

16 Q So it's possible, but you don't know?

17 A I'm sorry, could you repeat the
18 question, please.

19 Q It's possible to do injection, but at
20 this point you don't know?

21 A In a dry well?

22 Q In a dry well.

23 A As I said, just because a well is dry
24 that's no reason to think that injection can't be
25 done.

1 Q But you don't know? Until you go out
2 and drill test wells, you're really not going to
3 know how this well field's going to work. I mean,
4 is that a fair statement?

5 A Well, you asked me a general question
6 about dry wells, and their ability to be used for
7 injection wells. And my reply was that just
8 because a well is dry is not -- really, I would
9 need more information to say whether or not a
10 particular well could be used for injection
11 purposes.

12 Q Right. Until you drill the wells you're
13 really not going to know how they're going to
14 work, is that a fair statement?

15 A Well, I think that statement would need
16 to be qualified before I would agree with it.
17 There is some variability in every groundwater
18 system so that there is some variation from one
19 well to the next.

20 And you don't know how a particular well
21 is going to respond to injection or extraction
22 with precision until that well's installed.
23 However, you can use evidence from other wells and
24 even with the recognition that there's some
25 variability the information you have about the

1 groundwater system as a whole from the other
2 wells, it's very strong evidence that the new well
3 is going to perform in a way that's generally
4 consistent with the other wells in the basin.

5 Q Are you familiar with the perched water
6 aquetard in the vicinity of George Air Force Base?

7 A No, I'm not.

8 Q Are you familiar with the wells in the
9 area generally well enough to know that most of
10 them have a lot of clay stratas that run through
11 them?

12 A From examining some of the well logs in
13 the area, as well as some of the reports
14 characterizing the regional hydrogeology, I am
15 aware that there are clay strata in the aquifer.

16 Q And would that be similar for most of
17 the well logs that you reviewed?

18 A There is clay, yes.

19 Q And how do those clay stratas operate in
20 the aquifer?

21 A Well, like most sedimentary basins, that
22 is aquifers that are formed from sedimentary
23 processes, this part of the Mojave Basin is filled
24 with granular material, sands, gravels, sands,
25 silts and clays.

1 The coarse materials such as the sands,
2 yield the most water. The fine grain materials
3 such as the clays that you're asking about yield
4 relatively small amounts of water.

5 When a well is drilled into a system
6 like this, it will -- it may -- the well screen,
7 the portion of the well that's open to the aquifer
8 is likely to be -- certainly will be exposed to
9 both coarse grain and fine grain materials.

10 When the well is pumped the water coming
11 out of the aquifer into the well will actually --
12 will primarily flow from the coarse grain
13 materials. And those clays that you're asking
14 about would not yield, would yield very little
15 water into the well.

16 Q More than likely they wouldn't yield any
17 water, would that be a fairer statement?

18 A No, they would yield some amounts of
19 water, but they would be low, far lower than what
20 the sands and gravels would yield.

21 Q Isn't it true that when you have a clay
22 strata and you have a sand or a granular strata
23 and you would inject water into that, that you
24 wouldn't necessarily be able to mound the water,
25 it would travel laterally out into the stratas?

1 A Well, not necessarily. It really
2 depends on the way that those strata interact to
3 form a single aquifer system.

4 For instance, injecting into a sand
5 that's overlaid by a clay, if the clay was very
6 extensive and of considerable thickness there may
7 be confined conditions created in the aquifer.
8 And so the mounding would be through a pressure
9 effect. The water would be stored in the coarse
10 grain material, primarily -- well, yeah, in the
11 coarse grain material, to some extent in the fine
12 grain material. But you would build a mound of
13 pressurized water beneath those clay layers.

14 Q It wouldn't be in a vertical mound, but
15 it would be in a horizontal mound, but because you
16 had forced the water out into it, it would still
17 be under pressure so it would come back quickly,
18 is that what you're -- is that fair to assume?

19 A No, I'm just saying the distribution of
20 the mound under the conditions you described would
21 be -- there would likely be some movement
22 outwards, there would like be some movement
23 upwards, as well, in terms of building a pressure,
24 a pressurized system.

25 Q If you inject 13,000 acrefeet of this

1 water into those wells, can you extract 13,000
2 acrefeet of this water out of those wells?

3 A I'm not sure what you mean by this
4 water. You mean water that's in a --

5 Q I'm using this as an example. Assuming
6 that this is --

7 (Laughter.)

8 BY MR. LEDFORD:

9 Q -- that I just went out and I dipped
10 this out of the aqueduct, and this was aqueduct
11 water, and we were injecting 13,000 acrefeet of
12 aqueduct water into your injection wells, is the
13 water that's going to come back out of those wells
14 all going to be aqueduct water?

15 A No, it almost certainly would not be.
16 The water that's injected would essentially mix,
17 if you tried to look at the water in a molecular
18 basis, the water would mix with the native
19 groundwater, and during the extraction phase some
20 combination of that blended water would be pulled
21 out of the aquifer into the wells.

22 Q Thank you, sir.

23 HEARING OFFICER VALKOSKY: Is that it,
24 Mr. Ledford?

25 MR. LEDFORD: That's all my questions

1 for now.

2 MR. THOMPSON: We have no redirect.

3 HEARING OFFICER VALKOSKY: Anything
4 further for Mr. Lefkoff?

5 Thank you, sir.

6 MR. THOMPSON: Mr. Valkosky, now I'm
7 going to try again. We'd like to move exhibits 65
8 without the cover letter, 71 without the cover
9 letter, and 73 into the record.

10 HEARING OFFICER VALKOSKY: Is there
11 objection?

12 MS. HOLMES: I have a question of
13 clarification. And that's that there was a
14 discussion in 65 on biological significance of
15 impacts on riparian habitat on page 4-2, as well
16 as appendix E, a letter regarding impacts on
17 riparian habitats.

18 It's my understanding that that
19 testimony was not going to be entered. And if
20 that's the case, then I have no -- if that's not
21 going to be part of exhibit 65, I have no
22 objection.

23 MR. THOMPSON: That is correct. I stand
24 corrected, section 4.1.5 and the letter in
25 appendix E will not be submitted as part of that.

1 HEARING OFFICER VALKOSKY: Okay, so
2 we'll basically just strike those portions of
3 exhibit 65.

4 MR. THOMPSON: Please.

5 HEARING OFFICER VALKOSKY: Okay, as
6 corrected, any objections to the admission of
7 exhibits 65, 71 and 73?

8 MS. HOLMES: No objection.

9 HEARING OFFICER VALKOSKY: Mr. Adams?

10 MR. ADAMS: No.

11 HEARING OFFICER VALKOSKY: Mr. Lefkoff -
12 - or I'm sorry --

13 (Laughter.)

14 HEARING OFFICER VALKOSKY: Sorry --

15 MR. LEDFORD: Will you spell that,
16 please?

17 MR. THOMPSON: I trust that Mr. Lefkoff
18 would not have any objection.

19 HEARING OFFICER VALKOSKY: I just wanted
20 to see if anyone is awake. Mr. Ledford.

21 MR. LEDFORD: I don't think so.

22 (Laughter.)

23 HEARING OFFICER VALKOSKY: Fine, those
24 will be admitted.

25 //

1 (The above-referenced documents,
2 previously marked Applicant
3 exhibits 65, 71 and 73, were
4 received in evidence.)

5 PRESIDING MEMBER LAURIE: Mr. Valkosky,
6 at this time I would request the parties to
7 identify, at this point, all of their witnesses
8 that they're going to call on the water issue, and
9 the basic elements of what they're going to
10 testify to so I can get a handle upon our
11 timeframes.

12 MR. THOMPSON: Applicant has one more
13 witness, Mr. Bob Beeby, who will testify to the
14 adjudication, the workings of the MWA. His
15 testimony is mostly falls into two categories,
16 responses to the data requests and the rebuttal
17 testimony to what we perceive to be Mr. Ledford's
18 issues that was recently put in --

19 PRESIDING MEMBER LAURIE: Estimate time?

20 MR. THOMPSON: 1-30.

21 PRESIDING MEMBER LAURIE: Estimated
22 time?

23 MR. THOMPSON: For direct, five minutes.

24 PRESIDING MEMBER LAURIE: Thank you.

25 Ms. Holmes?

1 MS. HOLMES: Staff has two witnesses on
2 water. We were hoping that they would testify as
3 a panel because the staff analysis is the basis
4 for the conditions of certification that staff is
5 recommending, and that the applicant has agreed
6 to. I would think it would be important to do
7 some additional direct to establish the basis of
8 their analysis and the rationale for their
9 conclusions. I would estimate that that would
10 take 15 or 20 minutes.

11 PRESIDING MEMBER LAURIE: Thank you.
12 Mr. Adams?

13 MR. ADAMS: No witnesses. I expect to
14 ask about having Mr. Bilhorn's prepared testimony
15 entered, and I have some cross-examination on the
16 subject of the agreement between Victor Valley
17 Water District and High Desert.

18 A fair number of questions which
19 probably would be directed toward both High Desert
20 witness and Mr. Hill.

21 PRESIDING MEMBER LAURIE: Okay, thank
22 you.

23 MS. HOLMES: I'm sorry, were you also
24 asking for our estimates on cross? I have a
25 couple of questions of Mr. Beeby, and I also have

1 some questions to ask about the agreement.

2 PRESIDING MEMBER LAURIE: Mr. Ledford.

3 MR. LEDFORD: Are we talking about
4 cross?

5 PRESIDING MEMBER LAURIE: About both
6 cross and direct. What witnesses do you intend to
7 call on the water issue?

8 MR. LEDFORD: I have listed some
9 witnesses that I'm waiting to get through all of
10 staff's witnesses and one -- I see where we're at
11 there. I've got two or three witnesses that I
12 would call, depending on how the testimony goes.

13 PRESIDING MEMBER LAURIE: Madam
14 Reporter, do you have time constraints that you're
15 working under today?

16 (Laughter.)

17 PRESIDING MEMBER LAURIE: Is there some
18 point where you should not work beyond? For
19 example, 6:00 or so?

20 MS. HOLMES: Commissioner Laurie, I'm
21 sorry, I neglected our dry cooling witness who's
22 been here all day. And also I believe Mr.
23 Valkosky had directed staff to make Mr. Buell
24 available for questions about workshop processes.
25 And he's available for those kinds of questions.

1 I think Mr. Ledford had some issues that he wanted
2 to raise. It's not really testimony, but Mr.
3 Valkosky directed Mr. Buell to be available for
4 that.

5 HEARING OFFICER VALKOSKY: And where
6 does Mr. Hill fit in on this?

7 MR. THOMPSON: I neglected, when I
8 responded to the Commissioner, to discuss Mr.
9 Hill. And I think it's hard to say. We'd be
10 willing to put up a witness to talk about our side
11 of that agreement if need be. I would hope that
12 the direct could be five or ten minutes on that
13 agreement. I understand that there may be cross.

14 From our standpoint, let me add that we
15 do not see having cross of staff witnesses, Mr.
16 Ledford, and would urge that Mr. Bilhorn's
17 testimony be put in by attestation.

18 HEARING OFFICER VALKOSKY: And I'd also
19 notice that Mr. Caouette from the Mojave Water
20 Agency has indicated his availability to update
21 water issues.

22 PRESIDING MEMBER LAURIE: One thing I'm
23 going to ask for probably before the end of the
24 day today is a statement from the parties,
25 nontestimonial statement, regarding their

1 positions on the water issues.

2 In that manner we can determine what is
3 relevant and what is not relevant. It's certainly
4 our desire to allow maximum testimony. But there
5 may be some testimony that we may not deem
6 relevant.

7 And I need a full and complete
8 understanding of the positions of the parties as
9 to the issues. So, please be prepared to discuss
10 that before the day is over today.

11 Commissioner Rohy, would you like to see
12 how far we could get today with at least the next
13 witness? We haven't had a chance to talk about
14 your time constraints.

15 VICE CHAIRMAN ROHY: That's fine, let's
16 do that.

17 PRESIDING MEMBER LAURIE: Okay, Mr.
18 Valkosky.

19 HEARING OFFICER VALKOSKY: Thank you.
20 Mr. Thompson.

21 MR. THOMPSON: My understanding is that
22 copies of the agreement between -- draft agreement
23 signed by one party between the High Desert
24 Project and the Victor Valley Water District have
25 been distributed.

1 HEARING OFFICER VALKOSKY: That is my
2 understanding.

3 MR. THOMPSON: We would offer up Mr.
4 Welch to give -- to respond to questions regarding
5 the High Desert position, or at least our
6 interpretation of what is contained in that
7 document.

8 HEARING OFFICER VALKOSKY: Okay, first
9 I'd like to identify this as an exhibit, which I
10 believe would be exhibit 133.

11 I'm referring to the document entitled,
12 aquifer storage and recovery agreement for the
13 High Desert Power Project, dated September 28,
14 1999, and executed by and on behalf of the
15 applicant by Mr. Barnett, is that correct?

16 MR. THOMPSON: That's correct.

17 (The above-referenced document was
18 marked Applicant exhibit 133 for
19 identification.)

20 HEARING OFFICER VALKOSKY: Okay. If you
21 could have the witness start off by summarizing
22 the intents of the agreement.

23 MR. THOMPSON: Do you have a preference
24 with how, is the staff going to put on Mr. Hill,
25 do you want them on together?

1 HEARING OFFICER VALKOSKY: That --

2 MS. HOLMES: I think it makes sense to
3 put them on together.

4 HEARING OFFICER VALKOSKY: I agree. I
5 agree, it does.

6 MS. HOLMES: I'm happy to ask questions,
7 or you can ask questions to authenticate the
8 agreement. I have no problem with that.

9 MR. THOMPSON: All right, let me. The
10 applicant would like to call Mr. Andy Welch and
11 Mr. Randy Hill.
12 Whereupon,

13 ANDREW WELCH
14 was recalled as a witness herein and having been
15 previously duly sworn, was examined and testified
16 further as follows:
17 Whereupon,

18 RANDY HILL
19 was called as a witness herein and after first
20 being duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. THOMPSON:

24 Q Mr. Welch, turning to you first, are you
25 the same Andy Welch today testifying under

1 previously administered oath that has been
2 involved in the negotiation and deal points of the
3 agreement most recently marked as exhibit 133?

4 MR. WELCH: Yes.

5 MR. THOMPSON: And in those negotiations
6 you represented the High Desert Power Project, is
7 that correct?

8 MR. WELCH: That is correct.

9 MR. THOMPSON: And exhibit 133
10 represents a true and correct copy of this
11 agreement as it stands right now, is that correct?

12 MR. WELCH: That is correct.

13 MR. THOMPSON: Mr. Hill, would you
14 please introduce yourself for the benefit of the
15 Commission and the public?

16 MR. HILL: My name is Randy Hill. I'm
17 the General Manager with the Victor Valley Water
18 District.

19 MR. THOMPSON: And as general manager of
20 the Victor Valley Water District, you had primary
21 responsibility for the negotiation of this
22 agreement, is that correct?

23 MR. HILL: That is correct.

24 MR. THOMPSON: And I will ask the same
25 question, exhibit 133, which is the draft

1 agreement, represents a true and correct copy of
2 the agreement as it stands right now?

3 MR. HILL: That is correct.

4 MR. THOMPSON: Mr. Hill, I would like
5 for you, please, to go first and summarize the
6 agreement in your words as you envision it right
7 now.

8 MR. HILL: Okay, very good. It's
9 basically an aquifer storage and recovery
10 agreement which includes facilities that would
11 enable water to be prestored in the ground and
12 removed at a later time for subsequent use by the
13 power project.

14 Basically the facilities that are
15 envisioned and included in the agreement are seven
16 wells, six miles of pipeline, a booster pumping
17 station and a -- system.

18 In addition, the agreement includes
19 water level monitoring for some 20 wells in the
20 Victor Valley Water District. The agreement
21 includes that the High Desert Power Project pays
22 all substantial costs for the design and
23 construction and ongoing operations and
24 maintenance of those facilities, working in
25 conjunction with the Victor Valley Water District

1 using our water expertise, we would be responsible
2 for designing, constructing and maintaining those
3 facilities.

4 That basically includes a prestorage of
5 state water project water; the agreement includes
6 provisions that do not permit more water to be
7 taken than is stored or has been lost.

8 And that's the basic components of the
9 agreement.

10 MR. THOMPSON: Thank you very much.

11 Mr. Welch, from the standpoint of High
12 Desert do you believe that there are other
13 components or features of the agreement that you
14 would like to call to the attention of the
15 Commission or the public?

16 MR. WELCH: Yes, to the extent, as I had
17 mentioned in my earlier testimony, there's one
18 issue in particular, there's a clause about the
19 substitution of water.

20 This is a clause put in at the request
21 of the Victor Valley Water District. That allows
22 flexibility on the part of the District while
23 putting a strict requirement that it must have
24 prior written approval of the High Desert Project
25 to provide any water other than contemplated, or

1 other than stated in this agreement, which is
2 consistent with the same stored water provided
3 from the state water project that is in the
4 conditions of certification.

5 And that would make the ability to
6 accept that water limited to the permitted rights
7 of the project.

8 MR. THOMPSON: And is it correct to say
9 that in negotiating this agreement you also kept
10 in mind the conditions of certification as put
11 forth by the staff of the Commission?

12 MR. WELCH: Yes, it was our goal to be
13 consistent with those.

14 MR. THOMPSON: And it is your intent and
15 the intent of the High Desert Power Project that
16 the conditions of certification issued by this
17 Commission would be controlling where there is any
18 difference of opinion or where the contract may
19 have greater latitude than the conditions, is that
20 correct?

21 MR. WELCH: That is correct.

22 MR. THOMPSON: Is there anything either
23 of you gentlemen would like to add?

24 MR. WELCH: No.

25 MR. THOMPSON: Thank you very much.

1 Mr. Welch and Mr. Hill are tendered for
2 cross-examination.

3 MS. HOLMES: Thank you, Mr. Valkosky.

4 CROSS-EXAMINATION

5 BY MS. HOLMES:

6 Q Good afternoon. I'd like to turn first
7 to the recitals, the last one states that the
8 District and HDPP desire the terms and conditions
9 to be made part of the Energy Commission's
10 approval of the project. Do you see that?

11 MR. WELCH: Yes.

12 MS. HOLMES: Is it your request that the
13 Energy Commission incorporate all the terms and
14 conditions of this agreement as Commission terms?

15 MR. WELCH: No, it's the intent of the
16 concept, really. And my interpretation. I'll let
17 Mr. Hill say that. The conditions, as recommended
18 by staff, would not require any change to be
19 consistent with this agreement.

20 MS. HOLMES: So would the other terms
21 and conditions that are set forth in this
22 agreement, then, in your opinion, should they be
23 included in the Commission's final decision?

24 MR. WELCH: I don't believe that is
25 necessary.

1 MS. HOLMES: Okay. So what you're
2 requesting here is that the Commission acknowledge
3 that there is this contract that has been entered
4 into between the two parties?

5 MR. WELCH: Yes.

6 MS. HOLMES: Next, on item 2 on page 3,
7 there's a discussion about location of the project
8 facilities.

9 Mr. Welch, you're probably aware of the
10 fact that there's a location for the project wells
11 that's contained in the staff's proposed
12 conditions of certification?

13 MR. WELCH: Yes.

14 MS. HOLMES: And this section here
15 states that the District shall approve the final
16 locations of project facilities. What do you
17 intend to do in the event that there is a conflict
18 between the staff's condition of certification and
19 the where the District would like the wells to be?

20 MR. WELCH: There was anticipated, I
21 believe, in staff's conditions, a small amount of
22 flexibility as to the final site. I forget at the
23 moment if we agreed on a quarter of a mile or
24 something to those extent.

25 The idea was that the location within

1 that flexibility would be what we were talking
2 about here. And that anything far outside the
3 lines would required the project to go back to the
4 Commission.

5 MS. HOLMES: So if the District were to
6 pick wells that were a mile away -- I'm making
7 these numbers up because I also cannot remember
8 the exact limitation on the condition -- but some
9 distance outside the distance specified, then it's
10 your belief that notwithstanding this provision,
11 the applicant, High Desert, would need to come
12 back to the Commission for an amendment?

13 MR. WELCH: That's correct.

14 MS. HOLMES: Next I'd like to turn to
15 section 7 which is on page 4, and this may be
16 related to the discussion that we've already
17 started about item 14, substitution of water.

18 What's the purpose of section 7,
19 verification of District capacity that allows the
20 District -- that allows High Desert to require the
21 District to provide verification that the
22 District's maximum demand can be met without the
23 need to rely on the project facilities?

24 MR. HILL: Basically there was an option
25 that our agency wanted out of the agreement, and

1 that option was the ability to use the proposed
2 facilities in the event of an emergency. And what
3 that would enable us to do is to use those project
4 wells to meet our own water demand if there was a
5 need to.

6 But we wanted it clear that in no way
7 would we be normally producing from those wells,
8 and that we would need to be able to demonstrate
9 that we can provide for our own maximum day demand
10 from our existing and our own facilities.

11 MS. HOLMES: So does existing day demand
12 include the demand from the High Desert Project?

13 MR. HILL: No, the High Desert Project
14 is a completely separate demand from our system.

15 MS. HOLMES: Thank you.

16 MR. WELCH: I think if I could add, the
17 concept was to make sure that if they were using
18 water out of these wells, essentially it would
19 mean that the other wells that they would normally
20 be using wouldn't be pumping.

21 MS. HOLMES: I understand. Thank you.

22 Next, in section 8, in section 8.1 to be
23 precise, there's reference to a schedule set forth
24 in exhibit B. I could not find a schedule set
25 forth in exhibit B.

1 MR. WELCH: I believe, looking for it --
2 okay. That is an error. That we had contemplated
3 making a schedule, but in order to finish the
4 agreement we decided to provide agreement on that.
5 And I believe elsewhere we had removed the
6 initial -- that initially had been referenced at
7 3.2 of an earlier draft. That was replaced by the
8 language according to a schedule to be jointly
9 developed by HDPP and the District.

10 This reference is in error.

11 MR. HILL: Is there a schedule?

12 MR. WELCH: No.

13 MR. HILL: There's no schedule.

14 MS. HOLMES: I presume that the Victor
15 Valley Water District is aware of the requirements
16 that are being proposed by the Commission Staff to
17 conduct testing on the wells, is that correct?

18 MR. HILL: Yes.

19 MS. HOLMES: And you anticipate that
20 that will be able to be accommodated within any
21 schedule that the two parties ultimately develop?

22 MR. HILL: Yeah, it would be required
23 to.

24 MS. HOLMES: I'd next like to turn to
25 the discussion of deliveries of stored water,

1 which is item 11 on page 5. There's a discussion
2 there of both stored water and a mention of
3 positive water storage balance. But there's no
4 discussion of how that positive water storage
5 balance is to be calculated.

6 Could you please explain how that will
7 happen?

8 MR. HILL: The jurisdiction for storage
9 in the Mojave Water -- in this region up here is
10 the watermaster. In order for water to be stored
11 in an account there has to be an agreement with
12 the watermaster.

13 This agreement has a provision that
14 requires a storage agreement be entered between
15 the Victor Valley Water District and the
16 watermaster that has the ability to grant that
17 storage agreement.

18 Watermaster has requirements of what has
19 to be in that storage agreement that are quite
20 extensive, and among those requirements if a full
21 detail of the operation plan and monitoring and
22 accounting for the stored water.

23 And so that is the provision that would
24 account for the stored water. And that would
25 include calculations on an annual basis at least

1 of lost water.

2 MS. HOLMES: Mr. Welch, do you know
3 whether or not the Mojave Water Agency plans to
4 use the calculations that the CEC Staff has
5 proposed in its conditions of certification to
6 ascertain the amount of stored water available?

7 MR. WELCH: At this time I do not know
8 what the intent is of that, but we clearly would
9 know that in the event they determine to use a
10 lesser dissipation factor, then we would still be
11 bound by that, of the Energy Commission
12 conditions.

13 MS. HOLMES: Next I'd like to turn to
14 section 11.3 on the next page, page 6. The first
15 sentence refers to losses in baseflow. My first
16 question is does that mean baseflow of the Mojave
17 River?

18 MR. HILL: It does.

19 MS. HOLMES: How does Victor Valley
20 Water District propose to determine whether or not
21 there are losses in baseflow as a result of the
22 project?

23 MR. HILL: We don't actually anticipate,
24 based on the analysis that's been done now,
25 significant decrease in baseflow. This provision

1 in the agreement protects the Victor Valley Water
2 District and its customers against any possibility
3 of being charged for additional baseflow as a
4 result of the project.

5 So it makes any future obligations
6 related to baseflow the responsibility of the
7 power project.

8 MS. HOLMES: So what you're saying, if I
9 could paraphrase, is that you're confident that
10 the proposed mitigation will effectively prevent
11 reductions in baseflow. But in the event that you
12 are assessed for them anyway, with a power --

13 MR. HILL: That's right.

14 MS. HOLMES: -- that might disagree with
15 you, it would be the responsibility of High Desert
16 to pay for them?

17 MR. HILL: You said it better than I
18 did.

19 MR. WELCH: I think it should also be
20 noted I believe, we were supposed to strike that
21 last sentence.

22 MR. HILL: Yeah.

23 MR. WELCH: But that last sentence of
24 1.3 was supposed to be struck. That was based
25 on --

1 MS. HOLMES: That was my next question.

2 MR. WELCH: -- earlier information. Not
3 based on the current conditions.

4 MS. HOLMES: Thank you. And, again,
5 there's a discussion in section 11.4 about the
6 District providing other available water in the
7 event of an interruption. Are you saying, Mr.
8 Welch, that it's HDPP's commitment to not use
9 other water, even if it should be offered by VVWD
10 for your use?

11 MR. WELCH: That is correct, without --
12 as the conditions of certification state now, we
13 would not be able to accept other water.

14 MS. HOLMES: On item 12, which is also
15 on page 6, there's a reference to stored water
16 being made available for uses other than those
17 allowed in this agreement if the District permits
18 it in writing.

19 Could you explain that provision,
20 please?

21 MR. HILL: Can you repeat the question?

22 MS. HOLMES: The sentence implies, and
23 perhaps I'm misreading it, but the way I read it
24 is the sentence implies that stored water could be
25 made available for other uses outside the scope of

1 this agreement if the District permits in writing.

2 And I'm very concerned about how that
3 affects staff's proposed conditions of
4 certification, since our analysis was based only
5 on the assumption that High Desert would be using
6 the water that was banked, not that anybody else
7 would be drawing on the bank.

8 MR. WELCH: Okay. This concept was a
9 requirement requested again by the District so as
10 to have control over that water, and not to allow
11 us to become a secondary purveyor, if you will.
12 That is not in any way the intent of the project
13 to do, but the stored water would clearly be
14 intended to be used only for the project and the
15 limitations again placed by the staff's proposed
16 conditions of certification, if adopted, would
17 prevent us from doing anything other than using
18 this water in our plant.

19 MS. HOLMES: But it appears to me that
20 it doesn't required High Desert's permission, it
21 requires the District's permission over whom we
22 have no jurisdiction.

23 Under this condition how would we
24 prevent High Desert from allowing the District to
25 do something that they're entitled to do under

1 this provision?

2 MR. WELCH: High Desert has a right to
3 use the stored water, and therefore the District
4 wouldn't be allowed, on their own, to give it to
5 anyone else.

6 So what this is contemplating is their
7 control over us to make sure that we can't give it
8 to anyone else.

9 MS. HOLMES: So it's your belief that
10 this agreement prohibits Victor Valley Water
11 District from making that water available for any
12 other use without your agreement?

13 MR. WELCH: Actually I don't believe
14 there are any provisions under this that we may
15 even -- that even contemplate us consenting to
16 them giving it to anyone else.

17 But as it stands now, this water is for
18 use for the power project, and they may not give
19 it to anyone else.

20 MS. HOLMES: I realize this is probably
21 procedurally improper, but this is an issue of
22 concern to the staff and we will want to be
23 discussing this in our closing statements that
24 Commissioner Laurie asked for earlier today.

25 I hope we can resolve it before these

1 hearings are concluded.

2 MR. WELCH: Yes.

3 MS. HOLMES: On the next page, page 7,
4 there is article 14 or item 14, which discusses
5 the substitution of water. And I believe you've
6 already answered, Mr. Welch, that you believe that
7 the Commission's conditions of certification would
8 be binding on you in this regard, would --

9 MR. WELCH: Yes.

10 MS. HOLMES: -- prevent you from using
11 other water?

12 MR. WELCH: Yes.

13 MS. HOLMES: I believe my last question
14 has to do with item 15, which would allow the
15 District use of project wells for the benefit of
16 other customers. Do you see that section?

17 MR. WELCH: Yes.

18 MS. HOLMES: Does that mean that the
19 District could use the project wells when the
20 project wasn't using them, for example, to pump
21 groundwater for residential customers?

22 MR. WELCH: Consistent with the terms of
23 section 7 that require that they may not use the
24 capacity of the well, but may only physically use
25 the well essentially to offset other well uses.

1 The concept to add reliability to their
2 system in the event that they have well failures.
3 But they still won't be able to deliver it to
4 their customers, taking advantage of having these
5 facilities --

6 MS. HOLMES: Are you saying --

7 MR. WELCH: -- in place.

8 MS. HOLMES: I'm sorry. Are you saying
9 that the District use under section 15 of this
10 agreement would only be replacement use? It would
11 never be additional use?

12 MR. WELCH: That's correct. When 15 and
13 7 are taken together, that's the case.

14 MR. HILL: It's for the use of the wells
15 in the event of an emergency. It adds reliability
16 to water supply for the District.

17 MS. HOLMES: Can you point to me which
18 terms in these provisions state that High Desert
19 can only use -- excuse me -- that the District may
20 only use project wells in the event of an
21 emergency, and may only use it to temporarily
22 replace pumping capacity that's been lost
23 somewhere else? I just don't see it in there.
24 Maybe I'm missing it.

25 MR. WELCH: Well, I guess the -- yeah, I

1 guess my reading of the section 7 puts that
2 limitation upon it.

3 I believe that was also Mr. Hill's
4 understanding of what those terms meant together.

5 MR. HILL: Yeah, that was the intent.

6 MS. HOLMES: Would this include
7 substitution of -- and I don't know if I'm using
8 the right words -- a pumping capacity as a result
9 of a well somewhere else in the District ceasing
10 to function because of age or mechanical problems?

11 MR. HILL: The District's intent has
12 always been to have its own well capacity to be
13 more than able to meet max day demand. We have
14 engineering safety factors and really the
15 provision here is for one of reliability if we had
16 a catastrophe. You know, we do have a large
17 number of older wells. In a seismic event it's
18 possible that those wells could have casing
19 failures. We want the ability to be able to use
20 these wells to meet our supply while we could, on
21 an emergency basis, construct new wells.

22 That's the intent of the provisions in
23 the agreement.

24 MS. HOLMES: Thank you. I don't think I
25 have any more questions on this agreement.

1 MR. ADAMS: I'll apologize in advance if
2 it seems like I'm retreading some of the same
3 ground, but I frankly do not understand some of
4 the issues that were raised in the cross-X and the
5 answers, and need to clarify them further.

6 CROSS-EXAMINATION

7 BY MR. ADAMS:

8 Q To start with, it's both of your
9 positions that section 7 of this agreement is a
10 limitation on the use of District wells that is
11 expressly authorized in section 15?

12 MR. HILL: Can you repeat your question,
13 please?

14 MR. ADAMS: Yeah. Section 15 says the
15 District may use project wells and pipelines for
16 benefit of customers other than HDPP. And without
17 limitation, frankly, the only limitation is
18 financial, the District will pay a proportional
19 share of operation and maintenance from such use.

20 I thought you said in response to Ms.
21 Holmes' questions that section 7 acted as a
22 limitation on the District's use of project
23 facilities.

24 MR. WELCH: Project wells. Yes.

25 MR. ADAMS: Could you point to the

1 language there? I just am not seeing it, I'm
2 sorry. Could you just elaborate and tell me how
3 that limitation --

4 MR. HILL: I'll give it a shot one more
5 time.

6 MR. ADAMS: Sure, proceed.

7 MR. HILL: The District has its own
8 facilities. Our facilities have to be able to
9 meet all of our consumers' demand. And we do that
10 and we keep a safety factor.

11 And what we're basically saying is that
12 we will, at any point, be able to verify that our
13 existing facilities can meet our District's own
14 demand. So that we're not relying on these wells
15 for producing water for our customers on a normal
16 basis.

17 MR. ADAMS: Okay, and I can see that
18 section 7 addresses the need for the District to
19 have capacity without counting project facility,
20 but does section 7, when you read it closely,
21 limit actual use of the facilities as opposed to
22 overall system capacity?

23 MR. HILL: I didn't understand that
24 question.

25 MR. ADAMS: Well, again, contracts will

1 be interpreted by the words on the paper, not the
2 intent. And again, I -- looking at section 7 I
3 just am hard pressed to see anything there that
4 limits District use of these wells.

5 And if you can read the language you
6 think does that, and explain, you know, how that
7 comes about based on these provisions?

8 MR. HILL: Well, one thing I can say is
9 that we don't control water demand. The water
10 demand is controlled by our customers. They turn
11 on the tap and the water goes. And all that water
12 is coming right now from the basin, whether it's
13 from this well or that well.

14 So, it really doesn't matter where the
15 water comes from. It's coming from the ground
16 right now, 100 percent of it is coming from that
17 well or that well, it's still coming from the same
18 place.

19 So the intent is to use our own wells,
20 but even if we were to use their wells instead of
21 ours, it's the same demand that would have existed
22 with or without the project from the groundwater.

23 MR. ADAMS: Okay, I understand. Let me
24 ask this just to make sure I understand. Under
25 section 7 the District needs to maintain adequate

1 capacity to meet demand free of project
2 facilities, but in fact, the District could,
3 consistent with section 7, utilize project
4 facilities to supply water to customers as long as
5 the capacity existed free of those facilities,
6 actual supply could be provided by project
7 facilities, right?

8 MR. HILL: I suppose so, yeah.

9 MR. ADAMS: Would the District -- I
10 guess this is for Mr. Hill. Would the District
11 contemplate routine use of project facilities in
12 the future to meet water supply?

13 MR. HILL: No, we have no intention to
14 even do it now. You saw something in that
15 contract I didn't see.

16 MR. ADAMS: Well, is there anything in
17 the contract that would limit such use?

18 MR. HILL: As long as we would have the
19 ability, I guess, to meet demand and demonstrate
20 our production capacity so that we're not relying
21 on those wells, no.

22 But as Mr. Ledford has also pointed out,
23 there's nothing that prohibits a property owner
24 from constructing wells in that entire project
25 area. Which is in the middle of our service area.

1 MR. ADAMS: We had testimony more than a
2 few minutes ago from the modeler that the
3 injection of water in this area will raise the
4 water table five to ten feet.

5 Would that higher water table translate
6 into reduced pumping costs if production for
7 Victor Valley Water Agency were to shift to these
8 wells?

9 MR. HILL: I don't know. That's a good
10 question.

11 MR. ADAMS: Does it cost less to produce
12 an acrefoot of water from a well where the water
13 table is 20 feet deep, as opposed to a well where
14 the water table is 50 feet deep?

15 MR. HILL: There's other considerations,
16 for example, this area is remote and we don't even
17 have any transmission means in that area right now
18 to put it into our system. I mean this area is
19 almost completely undeveloped.

20 So, you know, you might have additional
21 head losses through the pipelines if you even
22 constructed the pipelines out there. I mean it's
23 a speculative question.

24 MR. ADAMS: There is a plan to construct
25 pipelines to connect the project facilities to --

1 MR. HILL: Ultimately that land will
2 develop, and it is within our service area.

3 MR. ADAMS: All things being equal, is
4 it cheaper to produce water from a well with a
5 shallow water table as opposed to a well where the
6 water table --

7 MR. HILL: If you have less lift it
8 costs less in energy to lift it.

9 MR. ADAMS: Is that cost savings what is
10 referred to in section 20.1, the last sentence?

11 MR. HILL: The intent of this passage
12 was regarding our existing wells, not the proposed
13 wells. I mean our intent is to continue using our
14 existing wells. And basically what we're saying
15 here is if the activity of the project causes a
16 decrease in water level, they will pay us for
17 additional lift. And if there's an increase in
18 water level, we'll reduce the other charges that
19 are in this contract by a credit equal to the
20 energy savings in the District from that increased
21 water level.

22 MR. ADAMS: Okay, so it was not your
23 intent to include the project facilities in the
24 description District wells?

25 MR. HILL: No.

1 MR. ADAMS: But, in fact, the District
2 will own the project wells, won't it?

3 MR. HILL: True.

4 MR. ADAMS: So could the agreement
5 potential be interpreted as references the
6 District wells, including project facilities?

7 MR. HILL: I suppose it could.

8 MR. ADAMS: Is District ownership and
9 control of these facilities a necessary feature of
10 this agreement in the District's view?

11 MR. HILL: I think that it's a benefit
12 that we wanted in the event that 80 years from now
13 when the agreement ends those facilities are still
14 usable, that they would belong to the District,
15 the property, the wells. It's a benefit to the
16 agency.

17 MR. ADAMS: And maybe I could ask the
18 same question of High Desert. Did you give much
19 thought to relinquishing control and ownership of
20 these facilities?

21 MR. WELCH: Specifically what's
22 contemplated in the agreement, and part of it was
23 the water district has a staff that regularly
24 maintains wells, and we would have no one aboard,
25 look to have no one with such qualifications on

1 our staff.

2 So it's just from a manpower
3 perspective, that's a more logical way of handling
4 things, we believed.

5 MR. ADAMS: Okay. If I could direct
6 your attention to section 14, there is the -- as
7 Mr. Welch has testified, there is a reservation,
8 discretionary reservation to High Desert of the
9 right to approve substitute water.

10 However, the way I read this, the
11 discretion is limited by terms and conditions that
12 will be mutually approved.

13 Can you tell us what is intended there,
14 and whether these terms and conditions will be
15 negotiated?

16 MR. WELCH: I believe you're
17 interpreting that statement different than it was
18 intended. The concept was, and maybe this is poor
19 sentence structure going back, but the concept wa
20 that approval may be withheld at the sole
21 discretion, but if that permission was given,
22 written approval was given, the water could be
23 delivered on terms and conditions mutually
24 approved.

25 So we may have --

1 MR. HILL: I'd like to add to that to
2 give you a bigger picture. Basically I understand
3 that the Energy Commission conditions do not allow
4 them to use any other source of water. So if this
5 provision was to be enacted they would have to go
6 back to the Energy Commission and get it approved.

7 But I'll tell you the interest that my
8 agency has in putting that in here. Right now our
9 agency is looking at and evaluating a regional
10 water treatment plant to treat the same type of
11 water, the identical water that would be in the
12 pipeline, for our own direct use.

13 In early years it would be beneficial to
14 our agency to spread the cost of that over any
15 demand that they might have, so we could take
16 aqueduct water through that treatment plant,
17 through our system, use it for injection in lieu
18 of their treating through RO, and because our
19 facility is planned to be, you know, 50, 60
20 million gallons a day, probably our cost is less
21 than their cost.

22 So they would benefit, we would benefit
23 by spreading the cost over a larger amount of
24 water. So it was intended to be a mutually
25 beneficial clause that would enable us to utilize

1 at a future envisioned regional water treatment
2 plant.

3 MR. WELCH: Let me just add real
4 quickly, would you have been more comfortable with
5 this sentence had there been a comma after HDPP on
6 the third line of that paragraph? Prior to, on
7 terms and conditions mutually approved? The terms
8 and conditions do not apply to the sole
9 discretion, they apply to the sale of water.

10 MR. ADAMS: Okay. No, I was simply
11 seeking clarification of that --

12 MR. WELCH: Okay.

13 MR. ADAMS: -- but I would ask if
14 there's any concern on your part, and I understand
15 the view that the contract is more permissive, the
16 conditions of certification are more restrictive.
17 The more restrictive provision applies.

18 But it seems to me, and I would ask, it
19 seems like a risk to you that employees down the
20 road, 10, 15 years from now, may be more inclined
21 to pull out the contract that governs the
22 relationship between your two organizations and
23 consult that than they will be to go back and dig
24 out the conditions of approval of the Energy
25 Commission.

1 It seems to me it adds a possible
2 misreading of what's allowed and what's not.

3 MR. WELCH: I would expect that as the
4 ongoing project is developed and operated, there
5 will be at least one person on staff for High
6 Desert whose responsibility will be to know the
7 conditions of certification as chapter and verse.
8 As it would be of any other permits. These will
9 be important things that they will have to live
10 by, and there are a lot of things, reporting and
11 the like of, else that would have to be constantly
12 paid attention to.

13 So I do not share that concern.

14 MR. ADAMS: What's the reason for
15 putting it in if it can't be exercised under the
16 conditions of certification?

17 MR. WELCH: The District asked for it.

18 MR. HILL: Yeah, we asked for it. We
19 wanted it in the agreement to give us flexibility
20 to increase demand on a future water treatment
21 plant to reduce costs to our customers.

22 MR. WELCH: And I think it would go to,
23 you know, all this essentially would do is if this
24 weren't in here, and we came upon a new idea which
25 we thought was better, to provide water down the

1 line, rather than without this provision we would
2 have to go to the Energy Commission for amendment,
3 and to the Victor Valley Water District Board for
4 amendment.

5 This gives the flexibility to the
6 general manager to decide, you know. We would
7 still need the Energy Commission approval, but the
8 general manager would need to determine whether or
9 not he had to go back to his board at that point.

10 MR. ADAMS: Does High Desert anticipate
11 seeking changes in conditions at some point down
12 the road?

13 MR. WELCH: We do not anticipate any
14 changes to the conditions at this point. Though,
15 it's my understanding that there are some things
16 that are pretty common. I don't think that this
17 would be entered on after all the work that's been
18 done in the water, that it would be entered on
19 very lightly.

20 So I don't, at this point, see any
21 changes to be made.

22 MR. ADAMS: So there aren't issues that
23 you have right now that you've decided are better
24 deferred and brought back to the Commission at a
25 later date?

1 MR. WELCH: That's not what's
2 contemplated here.

3 MR. ADAMS: Okay. Presuming there is a
4 change in Commission conditions of certification
5 and that section 14 can be exercised, would
6 provision of substitute water be charged against
7 the water bank? I don't think the agreement
8 addresses that at all.

9 MR. WELCH: I'm not sure what the
10 substitution -- the manner in which any substitute
11 water would be provided, so I'm not sure how the
12 mechanics would all work out.

13 I think it's all been -- if I need to
14 know specifically --

15 MR. ADAMS: You could --

16 MR. WELCH: If it were like the example
17 that Mr. Hill gave, that would essentially be
18 replacing our treatment facilities with theirs,
19 you know, that might be -- that would probably end
20 up at -- the mechanics of how everything would
21 work would end up on the same way, meaning there'd
22 be storage of water, there'd be a bank calculated
23 when the water from the aqueduct wasn't available,
24 the water from the bank would be recovered.

25 But I mean, this is a -- there's nothing

1 specific in mind, so it's difficult for me to give
2 you an answer to that.

3 MR. ADAMS: Is it fair to say that water
4 from substitute source would be groundwater from
5 the --

6 MR. HILL: No.

7 MR. WELCH: No, no, that is specifically
8 not what we're talking about.

9 MR. ADAMS: Can you -- I'm sorry if my
10 attention lagged, I know you were explaining what
11 was envisioned just before --

12 MR. WELCH: Yeah, I think we were
13 talking about alternative treatment facilities,
14 using imported water.

15 MR. HILL: Right.

16 MR. ADAMS: So there's no contemplation
17 of substitution of any nonimported water?

18 MR. HILL: Absolutely not.

19 MR. WELCH: Absolutely not. Cannot
20 contemplate coming back to the Commission for that
21 kind of amendment at this point.

22 MR. ADAMS: Well, are you open to
23 amending this agreement if I or others succeed in
24 persuading you that there are some holes here that
25 may not have been intended as far as use of

1 project facilities and substitution of water, that
2 you might not even be contemplating?

3 MR. HILL: Yeah, if you can convince me,
4 I'll take it back to my board.

5 MR. ADAMS: Well, are you --

6 MR. HILL: I'm not convinced.

7 MR. ADAMS: So you're not convinced that
8 this agreement, as written, would allow the
9 District to withdraw 10,000 acrefeet, all 13,000 -
10 - the 13,000 acrefeet that were injected into the
11 bank, or even 100,000 acrefeet over the course of
12 years to supply general water customer demands?

13 MR. HILL: No, clearly that's not
14 possible.

15 MR. ADAMS: Well, I think your testimony
16 previously was that perhaps section 7 did not
17 prevent that.

18 MR. HILL: You're confusing something.
19 There's a storage agreement that the High Desert
20 Power Project's prestored water goes into a bank
21 storage agreement.

22 I have water rights in the water basin.
23 If at some future point in time I want to store
24 water on my own, I would have to have as a storage
25 agreement with the watermaster the same as this

1 storage agreement requires.

2 I can't use their stored water. It's
3 stored in our name because the watermaster
4 requires it to be stored in our name. But it's
5 strictly for the benefit of this project. Their
6 stored water would not be used or consumed by my
7 customers.

8 MR. ADAMS: Okay, I did not word the
9 question very well. But, would it -- is there
10 anything in the agreement that would prevent the
11 District from withdrawing 100,000 acrefeet over
12 the first ten years that these facilities were
13 available during the same period that the project
14 was banking 13,000 acre --

15 MR. HILL: Yes, there is --

16 MR. ADAMS: -- not the same water --

17 MR. HILL: My customers don't need that
18 much water.

19 MR. ADAMS: But if I could interrupt,
20 anything in the agreement that would prevent that?

21 MR. WELCH: The High Desert Power
22 Project has --

23 MR. ADAMS: Can I -- excuse me, I'm
24 sorry, I would like a -- I think it's a very
25 important point, and I would like to nail this

1 down, if you can respond to that.

2 MR. HILL: Can you repeat your question,
3 please?

4 MR. ADAMS: Is there anything in this
5 agreement that would prevent the District from
6 withdrawing a large quantity of water from project
7 facilities, these seven wells, to supply MNI --
8 other customers, others of your customers?

9 MR. HILL: I don't know what was unclear
10 about my previous answers. Our water demand is
11 directly related to how much our customers take
12 water. That demand is the same, and it comes from
13 the same source, regardless if it was their well,
14 or our well.

15 We can't arbitrarily take 100,00
16 acrefeet of water. What would we do with it?
17 It's purchased by customers for use. And that's
18 what generates the demand.

19 MR. ADAMS: Okay, well, I'm still
20 looking for an answer. I understand that the
21 adjudication in many other factors limit the
22 overall amount that can be pulled out of the
23 ground by the District.

24 I guess what I'm asking is --

25 MR. HILL: Actually there is no limit on

1 how much water I can take from the ground.
2 There's no limit at all in the adjudication. What
3 there is is a substantial financial impact to pay
4 for that water as it's used.

5 MR. ADAMS: Okay. Is there anything in
6 this agreement that would prevent the District
7 from shifting production from older, possibly less
8 productive wells in other locations, to these new
9 project wells, and producing a sizeable amount of
10 the water that is demanded by your customers from
11 the project wells?

12 MR. HILL: As you stated it and saw
13 something in the agreement I didn't, no, as I
14 understand it. But I'll also tell you if we don't
15 take it from someplace else, and took it from
16 there, it's still isn't removed from the basin.

17 MR. ADAMS: If I could take just a
18 minute.

19 PRESIDING MEMBER LAURIE: We're going to
20 break at 5:30, Mr. Adams.

21 MR. ADAMS: Mr. Welch testified that
22 High Desert is relying on its discretionary
23 control over substitute water in section 14, to
24 insure that the agreement complies with the
25 proposed conditions of certification.

1 If you could look at section 11.4, does
2 11.4 allow delivery of nonstate water project
3 water and nonbanked water in the absence of High
4 Desert Power Project approval?

5 MR. HILL: I don't see the relation.
6 11.4 basically says that the power project will
7 not hold the District liable in the event that
8 there's a service interruption.

9 MR. ADAMS: The language I'm referring
10 to is after that. It says in the event of
11 interruption District shall use its best efforts
12 to restore use of the facilities as rapidly as
13 possible.

14 And now I'm getting to the language that
15 I'm asking about. And will cooperate in providing
16 any other available water provided that the event
17 of an interruption, HDPP may repair and operate
18 the facilities.

19 MR. HILL: As I understand it, the power
20 project would have to get permission from the
21 Energy Commission to do that.

22 MR. ADAMS: You don't read 11.4 as
23 requiring the District to provide water from any
24 source in the event that they are -- that the High
25 Desert has need for water, banked water but those

1 facilities are unable to function to deliver that
2 water?

3 MR. HILL: Basically in the event of an
4 emergency this clause enables the District, or
5 requires the District, as you say, to provide them
6 water. But the power project still has to stay
7 within, as I understand it, their conditions.

8 MR. ADAMS: Mr. Welch, could you address
9 that?

10 MR. WELCH: As I stated earlier --

11 MR. HILL: Can I just add something onto
12 that just real quick. This is an agreement
13 between the Victor Valley Water District and the
14 High Desert Power Project. And so you wouldn't
15 anticipate seeing all Energy condition
16 requirements in here. And there are many things
17 in here that are more restrictive than the Energy
18 conditions.

19 There's 20 monitoring wells; there's
20 isotope tracing with sodium hexafluoride; there's
21 a lot of things that are a concern to my agency
22 with respect to the power project.

23 So when you want to put conditions on
24 the High Desert Power Project, in addition to what
25 you see in here, they can set those conditions.

1 MR. ADAMS: Mr. Welch?

2 MR. WELCH: As I was stating earlier,
3 the power project has, and it's stated really in
4 11-1, in part 1, if you look at it, we can tell
5 them when we want them to commence delivery. And
6 we can tell them when we want to cease it.

7 So if they are delivering water that we
8 are, by permit, not allowed to accept, we can tell
9 them to stop providing that water.

10 MR. ADAMS: Would you necessarily know
11 where it's coming from?

12 MR. HILL: Yes, because there are meters
13 on the wells. You'll see in here there's a two-
14 way meter installed in each well.

15 MR. WELCH: With telemetry to be
16 connected to both.

17 MR. ADAMS: Would that information be
18 routinely immediately conveyed to High Desert?

19 MR. WELCH: With telemetry it is
20 immediate.

21 MR. HILL: Yes.

22 MR. WELCH: It's real time.

23 MR. HILL: The SKADA is a real-time
24 system. It's electronic control and reporting.

25 MR. ADAMS: Where is that information

1 beamed? Is it to the District or to High Desert?

2 MR. HILL: Our information goes by radio
3 link to our central control. And into a main CPU
4 controller for our telemetry system.

5 Theirs will be wherever they choose to
6 put it.

7 MR. ADAMS: So you both would anticipate
8 receiving?

9 MR. HILL: Yes.

10 MR. WELCH: Yes.

11 MR. ADAMS: Sort of a continuous feed on
12 where water's being produced?

13 MR. HILL: That's correct.

14 MR. WELCH: Yes. That's stated in 1.3.

15 MR. ADAMS: Well, can you give me some
16 assurance on 11.4, section 14 is not intended to
17 have any effect until if and when the Commission
18 amends its conditions of certification?

19 Maybe I should back up, excuse me. Do
20 you view 11.4 as a provision of any other
21 available water in the event of an emergency? And
22 I assume High Desert would classify the situation
23 as an emergency if it needed cooling water, and
24 that water was unavailable for mechanical reasons.

25 Do you think the draft conditions of

1 certification allow that?

2 MR. WELCH: As the draft conditions
3 state, I do not believe that they allow that.

4 MR. ADAMS: Is there a plan to seek that
5 sort of provision?

6 MR. WELCH: No, there is no plan to seek
7 that sort of provision.

8 MR. ADAMS: If either of you could
9 explain 10.2, I simply don't understand it. The
10 second sentence in particular that begins,
11 "Extraction of water by the District for the
12 project will utilize stored water as a credit" and
13 so forth.

14 MR. HILL: Okay. Basically the
15 watermaster is established by the courts. It's an
16 arm of the court established through the
17 adjudication which was the massive lawsuit that
18 established the rules as they currently stand for
19 use of water, charges of water and storage.

20 The storage capability of the ground
21 beneath our feet is controlled by watermaster.
22 They are the only entity that has the right to
23 license the use of that stored water.

24 The adjudication requires any party
25 wishing to store water in the ground to first

1 enter into a storage agreement with the
2 watermaster. And the terms of that agreement
3 dictate the use of that water. And all the
4 provisions that go with it.

5 So the way that it works is in the
6 adjudication there's something called replacement
7 water. Replacement water is any water that you
8 pump out of the ground which is more than your
9 base right. You're obligated, then, to pay for
10 replacement water, water above which is your right
11 that you produced and you have to pay for it.
12 That's called replacement water.

13 What stored water enables you to do is
14 take water when it's ample and available, store it
15 in the ground, and use that stored water to offset
16 replacement water charges.

17 So in essence what would happen with
18 this aquifer storage and recovery project, the
19 state water project would be treated, put down
20 into the wells, and that would become a credit in
21 the water storage account.

22 Then when it's pumped we would go to
23 watermaster and say, take the production from
24 those wells and debit it from the storage account.

25 So you're basically storing the water in

1 advance of using it. It's basically an
2 accounting system for that stored water.

3 MR. ADAMS: So in your view is the
4 adjudication process and let's say accounting
5 compatible with the water banking process and
6 limitations as defined in the proposed conditions
7 of certification?

8 MR. HILL: As I understand it, the
9 requirements of the Energy Commission for
10 reporting and loss, fit exactly with the
11 watermaster's storage agreement.

12 MR. ADAMS: The terminology is a little
13 different?

14 MR. HILL: It is.

15 MR. THOMPSON: I'm going to object to
16 further questions on this document. This is a
17 draft agreement, it is not a final. There are
18 going to be changes in it. We are under an
19 obligation in the conditions of certification to
20 submit the final. We are not going to sponsor
21 this. We did not place into the record the draft
22 that this replaces.

23 And I would just appeal to the parties
24 that this is one of hundreds of contracts that go
25 into a project financing. And you can ask the

1 witness, but I suspect the contracts back up the
2 project and allow the project to conform to the
3 conditions of certification, not the other way
4 around.

5 PRESIDING MEMBER LAURIE: We're going to
6 take a break until 6:30 now. It's unfortunate
7 that we're going to interrupt at this point, but I
8 think it's in the best interests of all parties
9 that we do so.

10 There will be an issue because we will
11 hear that these documents are part and parcel of
12 the mitigation, that's what I expect we will hear.
13 And therefore, the content of the documents are
14 part and parcel of the mitigation. And what we're
15 seeing before us in front of the Committee is this
16 evidentiary hearing being utilized to go through
17 the document. That's an inappropriate use of the
18 evidentiary hearing.

19 Now I don't fault any particular party.
20 The mere fact is that this document's been
21 delivered today. We're not going to use the
22 Committee evidentiary hearing time to do that.

23 So we're going to take a break. We're
24 going to come back at 6:30. These witnesses I'll
25 ask to reappear. I apologize, Mr. Hill, for

1 keeping you through the dinner hour.

2 MR. HILL: That's okay, I can't attend
3 tomorrow, so.

4 PRESIDING MEMBER LAURIE: I'm sorry?

5 MR. HILL: I can't be here tomorrow.

6 PRESIDING MEMBER LAURIE: Okay.

7 MR. HILL: So I can stay late tonight.

8 PRESIDING MEMBER LAURIE: What time can
9 you stay here until?

10 MR. HILL: My wife would like me home by
11 11:00.

12 (Laughter.)

13 MR. THOMPSON: We would also like you
14 home by 11:00.

15 PRESIDING MEMBER LAURIE: In the
16 interim, perhaps the parties can talk among each
17 other and determine what is necessary to be
18 accomplished at this hearing. And what is
19 necessary to be accomplished at some time
20 subsequent. Okay.

21 We'll see you back here at 6:30.

22 (Whereupon, at 5:30 p.m., the hearing
23 was adjourned, to reconvene at 6:30
24 p.m., this same day.)

25 --o0o--

1 EVENING SESSION

2 6:30 p.m.

3 HEARING OFFICER VALKOSKY: All right,
4 before we continue, and we'll continue with Mr.
5 Adams, I'd like to express on behalf of the
6 Committee two of the things the Committee is most
7 concerned with concerning the water supply
8 agreement is one, that such an agreement be in
9 existence and be executed before the Committee
10 proceeds to its recommendation on this case.

11 Basically in our view, at least, and,
12 you know, subject to any correction, is the will
13 serve letter for the project. I think that's as
14 simple as I can put it.

15 And two, in conjunction with that, that
16 any terms and conditions contained in that will
17 serve letter not be in conflict with other
18 conditions that the Commission is going to impose.

19 So, you know, if there's anything else
20 that the parties want to bring out on it that's
21 relevant, feel free. But at this point those are
22 the concerns of the Committee.

23 So, with that, Mr. Adams.

24 MR. ADAMS: Actually I have no further
25 questions. I would like to clarify that I had

1 been informed this agreement was receiving its
2 final signature over lunch. So, I'm now told that
3 there will be some more revisions to it, to
4 clarify. And basically I've gotten through the
5 questions I had. I had a few more issues
6 clarified during the break.

7 So I'm done for now. Thank you.

8 HEARING OFFICER VALKOSKY: Thank you.

9 Mr. Ledford, before we turn to you, and
10 again I'd just like a couple of quick clarifying
11 matters from Mr. Hill and/or Mr. Welch.

12 EXAMINATION

13 HEARING OFFICER VALKOSKY: I understand
14 that under no circumstances would the Victor
15 Valley Water District provide groundwater from
16 existing District wells to the project, is that
17 correct?

18 MR. HILL: That's correct.

19 MR. WELCH: Yes, sir.

20 MR. HILL: Or recycled water.

21 HEARING OFFICER VALKOSKY: Or recycled
22 water.

23 MR. HILL: Yes.

24 HEARING OFFICER VALKOSKY: So, put
25 differently, the only water provided to the

1 project would be the state water project water,
2 which would be injected into the ground?

3 MR. HILL: Correct.

4 HEARING OFFICER VALKOSKY: Correct?

5 Okay. Mr. Hill, is the water supply agreement
6 that you're working on with the applicant
7 consistent with the terms of the existing
8 adjudication?

9 MR. HILL: As the adjudicatio is
10 currently, yes. The adjudication is also before
11 the Supreme Court. And there's a clause in here
12 in the agreement that says if the adjudication
13 changes the basis of this agreement there would be
14 a renegotiation of the agreement with the intent
15 to keep it basically as it is, but accommodate the
16 changes required by the Supreme Court.

17 HEARING OFFICER VALKOSKY: Okay, but
18 as --

19 MR. HILL: As it is now, --

20 HEARING OFFICER VALKOSKY: -- as it is
21 now?

22 MR. HILL: Yes.

23 HEARING OFFICER VALKOSKY: Since you
24 raised the Supreme Court, do you have any
25 information as to when we could expect this

1 Supreme Court decision?

2 MR. HILL: No. If you had that answer
3 you'd be a wealthy man.

4 HEARING OFFICER VALKOSKY: Absolutely.
5 When will the Victor Valley Water District Board
6 execute a final agreement to our will serve
7 letter?

8 MR. HILL: Actually, the board had
9 approved at their meeting of September 28th, the
10 agreement with some minor language changes between
11 the two attorneys, which they finished yesterday.

12 And so we were to execute it today. But
13 obviously fresh eyes have looked at it, have
14 brought up some good points, and so I've
15 identified several people that I will take it back
16 to my board for the third or fourth time, and
17 modify it. So, I've already made an offer to
18 several people to give me their comments and I'll
19 clarify it.

20 Because it seems like a lot of the
21 concern is over issues that we never intended in
22 the agreement. So we'll try and clarify those so
23 that those that are concerned about it will have
24 their concerns met.

25 HEARING OFFICER VALKOSKY: Okay. And

1 how long will this process take, in your
2 estimation?

3 MR. HILL: It'll take probably the first
4 meeting next month of my board. That's probably
5 when I would take it to my board of directors.

6 HEARING OFFICER VALKOSKY: Okay.

7 PRESIDING MEMBER LAURIE: What's that
8 date?

9 MR. HILL: Let me check.

10 MR. WELCH: That should be the first
11 Tuesday of the month, I believe.

12 PRESIDING MEMBER LAURIE: That's fine,
13 your meeting is on the first Tuesday of the month?

14 MR. WELCH: Is that right, the first and
15 third Tuesdays?

16 MR. HILL: Well, it changes.

17 MR. WELCH: Okay.

18 MR. HILL: It would probably be at
19 November the 16th. It possibly could be as early
20 as November 2nd, or November the 16 this probably
21 when I would take it to the board for
22 consideration again.

23 HEARING OFFICER VALKOSKY: Okay, and you
24 mentioned your talking to I believe you used the
25 term other people about certain revisions. Can

1 you indicate who those area?

2 MR. HILL: Steve and Norm Caouette had
3 some comments he wanted me to consider, as well.

4 HEARING OFFICER VALKOSKY: Okay.

5 MS. HOLMES: I think the staff has some
6 concerns, as well. We'd like to be in on that
7 process.

8 MR. HILL: Fax them to me. All comers.
9 More money for the attorneys.

10 MS. HOLMES: No, it's just more hours.

11 MR. HILL: I wasn't talking about your
12 attorneys, I was talking about mine.

13 (Laughter.)

14 VICE CHAIRMAN ROHY: I have a basic
15 concern on the agreement, and I haven't had time
16 to study it except for this evening and this
17 afternoon.

18 And the title of it is aquifer storage
19 and recovery agreement. In some places there are
20 also words like water service agreement. Yet, I
21 haven't found an area in here where the basic
22 water service is agreed on like a will serve, you
23 will provide service.

24 Is that included, in your opinion? And
25 if so, could you point it out to me?

1 MR. HILL: No, the basic domestic
2 service for the project will not be coming from
3 us. They're going to be getting their domestic
4 water supply --

5 VICE CHAIRMAN ROHY: Excuse me, I'm
6 talking about the 4000 acrefeet, or 5000, or
7 whatever the number is. The original source of
8 it, not how you store it and recover it.

9 Is there an agreement that that original
10 source of water will, in fact, come to this
11 project?

12 MR. HILL: I don't understand the --

13 MR. WELCH: The provisions in this
14 agreement is that the state water project water
15 that we receive through the City of Victorville
16 which comes from the MWA will be provided for
17 storage to the Victor Valley Water District.

18 They will then return that water when we
19 ask for it.

20 VICE CHAIRMAN ROHY: That's what I
21 thought this was. Now, is there an agreement
22 between the project and the state water project?
23 Your project, the High Desert Power Project and
24 the state water project?

25 MR. WELCH: Not completely -- I tried to

1 indicate earlier we've not completed the agreement
2 yet between us and the City of Victorville. There
3 is in the City of Victorville the Mojave Water
4 Agency. Under ordinance 9, the City of
5 Victorville has applied and that's an annual
6 thing.

7 Last year when they applied it was
8 approved. It will need to be done on an ongoing
9 basis.

10 VICE CHAIRMAN ROHY: And that is the
11 will serve that we're looking for?

12 MR. WELCH: I only hesitate in that --

13 VICE CHAIRMAN ROHY: This is a
14 storage --

15 MR. WELCH: -- there were lengthy
16 discussions about will serve earlier on in the
17 project at some of the Commission hearings. And
18 the concept was to get these contracts in line,
19 that set up for the ordinance 9 application that
20 would be different from a traditional will serve
21 that a housing development or the like would have.

22 Since there are different parties and
23 each make up a different part of this, there isn't
24 one entity that's going to be able to provide a
25 will serve letter. But there will be -- the idea

1 is that when put all together, the four contracts
2 will be equivalent to that.

3 MR. HILL: My agency's will serve letter
4 with respect to this agreement is contingent upon
5 the Energy Commission approving a project, because
6 your process has to meet the CEQA requirement
7 before we can issue a will serve letter.

8 HEARING OFFICER VALKOSKY: And just to
9 follow that up, Mr. Hill, at what point would you
10 use the Commission's documents, -- let me rephrase
11 that.

12 Which document produced by the
13 Commission would you use as the CEQA evaluation?

14 MR. HILL: The letter that we received
15 from the Energy Commission spoke of --

16 MR. WELCH: Presiding Member Proposed
17 Decision.

18 MS. HOLMES: I can answer that question,
19 because I think I wrote the letter.

20 MR. HILL: Thank you, the Presiding
21 Member's Proposed Decision, that's the document.

22 HEARING OFFICER VALKOSKY: Okay. Thank
23 you.

24 Okay, Mr. Ledford.

25 MR. LEDFORD: I'm not real sure where to

1 start exactly. And I'd be in serious trouble.

2 RE CROSS-EXAMINATION

3 BY MR. LEDFORD:

4 Q I guess maybe I will try and inquire of
5 Mr. Hill, is it fair to say that your board has
6 discussed this agreement at a couple of different
7 board meetings, and had some serious public
8 comment on it?

9 MR. HILL: You were one of the public
10 that commented on it.

11 MR. LEDFORD: And at those board
12 meetings were the minutes transcribed verbatim?

13 MR. HILL: They were.

14 MR. LEDFORD: And do you happen to
15 recall at the September 28th board meeting, I'm
16 quoting now from page 6 of the minutes. I'm sorry
17 I don't have these to be an exhibit, but I will
18 probably bring them tomorrow.

19 Mr. Maguire stated that this agreement
20 also gives the district the right to utilize the
21 treatment facility and the same wells to store
22 water for its own customers under the same storage
23 agreement.

24 MR. HILL: Um-hum.

25 MR. LEDFORD: Is that what your

1 directors were told?

2 MR. HILL: Yes. And if I can clarify
3 that, the basic idea is that would be in addition
4 to the water that they're storing here, our agency
5 would have the option to take additional imported
6 water, treat it and refill the water basin.

7 MR. LEDFORD: On page 8, Mr. Ledford
8 states, "These are the kinds of things that are
9 defective in trying to rush this contract through,
10 and Mr. McDaniels stated something that was
11 probably the most germane part of this.

12 "These folks believe that what you are
13 doing tonight is issuing them a will serve letter,
14 whether you say so or not. They also thought last
15 year that the MWA issued them a will serve letter.
16 The board of directors to the person said exactly
17 what you said, Sally, this is not a will serve
18 letter. It is an intent to do something later.

19 "And if you do not do all the things we
20 still have not done it. Now the agency, I think,
21 basically believes that. I will tell you the
22 agency has not issued a will serve letter, and
23 they do not have a contract with the agency.

24 "They have an agreement with the agency
25 that says exactly this: When we get a CEQA

1 equivalent document from the CEC we will process
2 your application. That is what we have from the
3 MWA.

4 "That would probably be more appropriate
5 for you to do tonight, no execute this agreement.
6 You may give them an intent or say that this isn't
7 what you think it should be. But it's still
8 subject to fine tuning. That by the way, you've
9 told us it is still subject to fine tuning. There
10 are still things that have not been done.
11 Exhibits, contracts.

12 "I suggest that the will serve letter is
13 something that you should see and not delegate to
14 be sure it's what you have in mind."

15 "Mr. Maguire stated that Mr. Ledford
16 raised a very valid point with regard to the
17 source of water and it's one that this agreement
18 adequately addresses.

19 "The source of water for this agreement
20 is imported water coming through the MWA. So if I
21 were in the position of a developer I would be
22 looking for agreements with the MWA.

23 "In the event that, for some reason,
24 there is not agreement with the MWA to provide
25 imported water, then this agreement becomes

1 superfluous."

2 I mean I could go on and on, but is the
3 District a party to an application to the MWA
4 under ordinance 9 for state water project water?

5 MR. HILL: As I understand it, you'll
6 have to forgive me, this predates me. I've been
7 with the District eight months. It's my
8 understanding that the City of Victorville and the
9 Victor Valley Water District jointly made
10 application to the Mojave Water Agency. But
11 that's my understanding.

12 MR. LEDFORD: And are you familiar with
13 ordinance 9, do you know what the terms of
14 ordinance 9 are?

15 MR. HILL: No. I'm not very familiar
16 with it.

17 MR. LEDFORD: So, is the City of
18 Victorville the lead agency in this deal with the
19 MWA? I'm having a real hard time figuring out
20 who's on first. I don't know if anybody else is,
21 but we're supposed to have a will serve letter
22 from somebody, this water's going to come from
23 someplace, and somebody's going to be responsible.

24 And all I see is a lot of agreements to
25 be agreed to, and more agreements that need to be

1 done, agreements between the City and the Victor
2 Valley Water District that don't even exist.

3 And quite frankly, I have a real problem
4 with that. But I can help everybody out a little
5 bit because you have an exhibit, I don't know
6 which one it is, but it is the application. And
7 it is one of the exhibits that's here tonight.

8 And the City of Victorville made an
9 application for 4000 acrefeet of water, and their
10 intent to use this water was for municipal and
11 industrial purposes, and for ground banking. It
12 wasn't for 4000 acrefeet of ground banking.

13 It wasn't for 4000 acrefeet of --

14 HEARING OFFICER VALKOSKY: Mr. Ledford,
15 I'd really appreciate it if you could cross-
16 examine rather --

17 MR. LEDFORD: Quit testifying --

18 HEARING OFFICER VALKOSKY: -- than
19 testify. I mean, --

20 MR. LEDFORD: And I understand, but
21 I --

22 HEARING OFFICER VALKOSKY: Ask the
23 witness questions. You will get your chance, both
24 in your testimony and your closing argument --

25 MR. LEDFORD: I understand.

1 HEARING OFFICER VALKOSKY: -- to draw
2 any inferences. At this time please direct
3 questions to the witnesses.

4 MR. LEDFORD: Okay. I guess I asked him
5 and he doesn't know. So I'll have to ask somebody
6 else.

7 As it relates to this particular
8 contract, I think the contract speaks for itself.
9 The minutes I'll introduce into evidence tomorrow,
10 but there's several places where it talks about
11 the District being able to use the facilities,
12 regardless of what is now being said tonight
13 justifying their position.

14 This is in a growth area. The District
15 is building pipelines in a growth area --

16 PRESIDING MEMBER LAURIE: Mr. Ledford,
17 this --

18 MR. LEDFORD: I'm sorry.

19 PRESIDING MEMBER LAURIE: -- is not the
20 time to make your argument. You have a witness on
21 the stand, you are free to ask questions.

22 MR. LEDFORD: I got it.

23 PRESIDING MEMBER LAURIE: If you have no
24 questions of the witness just say so.

25 MR. LEDFORD: I got it. I think I have

1 no further questions.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you. Mr. Thompson, any redirect?

4 MR. THOMPSON: I have nothing of Mr.
5 Welch.

6 HEARING OFFICER VALKOSKY: Any other
7 questions for Mr. Welch or Mr. Hill?

8 MR. HILL: Can I go home?

9 (Laughter.)

10 MR. THOMPSON: You can.

11 HEARING OFFICER VALKOSKY: Mr. Hill,
12 consider yourself one of the fortunate few.

13 MR. HILL: Okay, thank you.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MR. THOMPSON: We have one more witness
16 in the soils and water resources area, Mr. Beeby.
17 Would the Committee prefer that we put on our last
18 witness on water at this time?

19 HEARING OFFICER VALKOSKY: Um-hum.

20 MR. THOMPSON: Great. Mr. Bob Beeby.
21 Whereupon,

22 ROBERT BEEBY

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

1 DIRECT EXAMINATION

2 BY MR. THOMPSON:

3 Q Mr. Beeby, could you please state your
4 name and place of employment for the record.

5 A Yes, my name is Robert Beeby, spelling
6 is B-e-e-b-y; and my place of employment is
7 Science Applications International.

8 Q And are you the same Robert Beeby that
9 has supplied prepared testimony in exhibit 95 and
10 rebuttal testimony which has been identified in
11 this proceeding as exhibit 130?

12 A Yes.

13 Q And if I asked you the questions that
14 are contained in those two exhibits would your
15 responses today, under oath, be the same?

16 A Yes.

17 Q Do you have any corrections, additions
18 or deletions to make to that material?

19 A No, I don't.

20 Q Would you please briefly summarize your
21 testimony before this Commission?

22 A Yes. My role initially was I was
23 contacted by the High Desert Project officials to
24 make sure that their water plan was consistent
25 with not only the regional water management plan

1 for the Mojave Water Agency, which was under my
2 direction, as being responsible for its
3 preparation, but also to comply with the terms and
4 conditions of the Mojave River Adjudication.

5 I also was asked by Mr. Thompson to
6 prepare some rebuttal testimony to some statements
7 that were prepared by Mr. Ledford.

8 Q Thank you. And the latter responses to
9 the questions, that is now contained in exhibit
10 30(sic), is that correct?

11 A Exhibit 130, as I understand it, yes.

12 Q 130. Do you have anything else to add
13 to the record?

14 A No, I don't.

15 MR. THOMPSON: Thank you very much. Mr.
16 Beeby is tendered for cross-examination.

17 HEARING OFFICER VALKOSKY: Ms. Holmes.

18 MS. HOLMES: Thank you, I have a couple
19 of questions.

20 CROSS-EXAMINATION

21 BY MS. HOLMES:

22 Q First of all, with respect to the
23 adjudication, I asked a question earlier this
24 evening of Mr. Lefkoff and he was unable to answer
25 the question. I'd like to ask you instead.

1 Do you know what the baseflow is for the
2 Mojave River under the terms of the adjudication?

3 A I'm not sure of the precise number. But
4 I believe it's around 20,000 acrefeet, 23,000,
5 something like that, per year, of annual
6 obligation.

7 Q And can you tell me what the actual
8 annual flow has been during say the past two
9 years?

10 A No, I can't.

11 Q Is it less than the amount that's
12 specified in the adjudication?

13 A I haven't seen the numbers, so I don't
14 know.

15 Q Is the baseflow specified in the
16 adjudication expressed in an annual -- is it
17 expressed in annual terms?

18 A Well, I'm not sure when you put the
19 adjudication or not, that's kind of the qualifier.
20 What I will say is that each year the watermaster
21 computes, makes calculations with regard to what
22 the baseflow is.

23 And that baseflow is between the alto
24 and central subarea in the terminology that we're
25 using here. The baseflow is made up of the

1 natural flow at the lower narrows gauge, plus the
2 discharge from the sewer wastewater reclamation
3 authority, and he reports those figures on an
4 annual basis.

5 And that forms the basis for them to
6 make up obligation, that also would have to
7 centro.

8 Q So, in determining what the makeup
9 obligation is, this entity wouldn't add together
10 two years and compare them to a two-year period in
11 the future? It's done on an annual basis?

12 A It's my understanding it's done every
13 year, yes.

14 Q Thank you. I have a couple of quick
15 questions on exhibit 130, your prepared rebuttal
16 testimony.

17 First of all, I hope I didn't tie them
18 together, your response to question 2A, B and your
19 response to 11 A, B and both cases we're referring
20 to banked groundwater.

21 Is it your testimony that the amount of
22 water that's available to the project is the
23 amount that will be calculated by use of the model
24 that is discussed in the CEC Staff's conditions of
25 certification?

1 A I'm not sure if I can answer -- my
2 initial response is no, it's not the model that
3 determines that, unless the model reflects the
4 total annual recharge that the power project
5 makes, and deducts from that any deductions and
6 the degradation, as you've called it, of the
7 banked groundwater account.

8 But it's basically a simple checking
9 account type approach, and they count as a credit
10 whatever is put in. They count as a debit
11 whatever is taken out.

12 And then there's a fixed amount they
13 have to leave in there, and there's also some
14 allowance for depreciation, degradation.

15 Q Specifically in response to question 2A,
16 B, I think it's probably a typographical error,
17 but could you please explain what you meant by
18 stand water?

19 A Stored water --

20 Q Thank you.

21 A -- that was intended to say.

22 Q And then on 11A, B, you responded to a
23 question about the percentage of banked water
24 that's recoverable, and in that answer you don't
25 refer to the bank account approach that you were

1 just talking about. Can you explain why you don't
2 do that in this response?

3 A The response was more in response to a
4 general question. It wasn't specifically with
5 regard to this particular account. And my
6 response was based on the general answer that if
7 it's a recharge project that's based on spreading
8 ponds, there are different categories of losses
9 that a recharge project that's based on direct
10 injection.

11 That's basically what the response was
12 addressing.

13 Q Thank you. Now, I'd like to turn to
14 question 4. You provided a response to a question
15 about CEQA compliance, do you recollect that in
16 your testimony?

17 A I recall I mentioned something about
18 CEQA compliance. I don't have it in front of me,
19 however.

20 Q You specifically provided an answer that
21 said that the master plan for VEDA had undergone a
22 CEQA process. Is it your understanding that the
23 specific conditions of service that were discussed
24 in the draft contract earlier tonight have been
25 evaluated under the California Environmental

1 Quality Act?

2 A I don't think that's been done yet.

3 Q Lastly I'd like to turn to question 14
4 in your testimony. I'm sorry, you don't have it
5 in front of you. It's a discussion about whether
6 or not the model that was used by both Mr. Lefkoff
7 and staff's witness addressed cumulative impacts,
8 and you responded by saying the proper approach to
9 evaluating the effects of the project is to
10 analyze with and without under a standard set of
11 assumptions.

12 Did you mean the modeling analysis?

13 A Yes, that's what I meant, and I was
14 essentially validating the incremental approach
15 that was agreed to by both staff and by Bookman
16 and Evanston Consultants.

17 Q So you agree that a modeling analysis
18 such as the one that's been conducted by Mr.
19 Lefkoff and staff's witness is the most
20 appropriate way to evaluate project impacts and
21 develop a mitigation program?

22 A Yes, I do.

23 Q And you would not support solely the use
24 of hydrographs or contour maps to develop such a
25 mitigation program?

1 A No, I wouldn't.

2 MS. HOLMES: Thank you, those are all
3 the questions I have.

4 HEARING OFFICER VALKOSKY: Mr. Adams.

5 MR. ADAMS: No questions.

6 EXAMINATION

7 HEARING OFFICER VALKOSKY: Again, just
8 before we get to Mr. Ledford, Mr. Beeby, is there
9 any benefit to the underlying basin from the
10 project in terms of excess water recharge, or
11 excess water being available, or just the water
12 recharge?

13 THE WITNESS: The simple answer is yes.
14 The project, as we originally conceived it, was to
15 be absolutely neutral with regard to the
16 adjudication and/or the banking project. In other
17 words, what was brought in was used consumptively.

18 Based on the terms and conditions that
19 are implied, there's an incremental amount of 1000
20 acrefeet that is not subject to being used by the
21 project, so that could constitute a beneficial
22 effect on the basin that was not originally
23 designed into the project, but just is there by
24 nature of the way the project works.

25 The other benefit would be the depletion

1 of the stored groundwater account of someplace
2 between 200 and 500 acrefeet per year that is not
3 recoverable because it goes out of the zone that
4 could be extracted from by the project wells.

5 In fact, while it's not recoverable,
6 nonetheless it does constitute a benefit to the
7 overall Mojave River Basin because it is available
8 for downstream use and may show up as baseflow.

9 HEARING OFFICER VALKOSKY: Okay, thank
10 you. Is the water supply plan for the High Desert
11 Project consistent with the terms of the existing
12 adjudication?

13 THE WITNESS: Yes, it is.

14 HEARING OFFICER VALKOSKY: To your
15 knowledge, can the MWA supply water to this or any
16 other project while the existing overdraft is
17 present?

18 THE WITNESS: Yes, they can.

19 HEARING OFFICER VALKOSKY: And that will
20 be done consistent with the terms of the
21 adjudication?

22 THE WITNESS: Yes, it will. This is
23 just another form of growth in the area.

24 HEARING OFFICER VALKOSKY: Is, in your
25 view, the 100 percent consumptive use of water for

1 the cooling towers consistent with the state water
2 resources control board resolution 75-58?

3 THE WITNESS: In my opinion it is,
4 because they looked at the alternative sources of
5 both using reclaimed wastewater and then briefly
6 we looked at the possibility of assisting in the
7 cleanup of the George Air Force Base shallow
8 groundwater versus potential source of supply, so
9 they did look at these other options, and ended up
10 using the option that's presented before you,
11 which is state water project water.

12 HEARING OFFICER VALKOSKY: Okay, so, and
13 again to assist my understanding, you believe that
14 that resolution only requires an examination of
15 alternate ways to supply cooling?

16 THE WITNESS: That's my understanding of
17 it, yes.

18 HEARING OFFICER VALKOSKY: Thank you.

19 Mr. Ledford.

20 MR. LEDFORD: I had allocated 60 minutes
21 for examination of Mr. Beeby. It is something
22 around 7:00 now. I've been up since 1:30 this
23 morning, and I have to say I'm extremely tired.
24 That's probably how come I got distracted on the
25 last witness.

1 I think his testimony is extremely
2 important. And I'm not sure that I'm really in a
3 good position to start.

4 I would like to continue with Mr. Beeby
5 first thing in the morning when I'm fresh, and can
6 have a chance to gather my notes on the last
7 witness, as well.

8 HEARING OFFICER VALKOSKY: Mr. Thompson,
9 will Mr. Beeby be available tomorrow morning at
10 9:00?

11 MR. THOMPSON: He can be made available,
12 yes.

13 HEARING OFFICER VALKOSKY: All right,
14 Mr. Beeby, in deference to Mr. Ledford's request,
15 the Committee would ask you to return tomorrow at
16 9:00 so that he may cross-examine you.

17 We'll go off the record.

18 (Brief recess.)

19 HEARING OFFICER VALKOSKY: Thank you,
20 sir. If you could introduce yourself for the
21 record, please.

22 MR. CAOUETTE: Yes, my name is Norman
23 Caouette. I'm the Assistant General Manager for
24 Mojave Water Agency.

25 HEARING OFFICER VALKOSKY: Is he going

1 to be one of your witnesses, Mr. Thompson?

2 MR. THOMPSON: My impression is that
3 this is public comment, Mr Valkosky.

4 HEARING OFFICER VALKOSKY: Okay.

5 MS. HOLMES: That's my understanding, as
6 well.

7 HEARING OFFICER VALKOSKY: All right,
8 fine. Just wanted to clarify that, thank you.

9 MR. CAOUETTE: I wanted to explain the
10 process that got us to where we are a little bit.
11 And mention some issues that recently have arisen
12 regarding the proposed water sale.

13 Approximately one year ago there was
14 effort between Mojave Water Agency, Victor Valley
15 Water District Staff, their board and our board,
16 which ultimately resulted in an application for a
17 water sale to the City of Victorville, 4000
18 acrefeet of water, and the sale was requested for
19 the year 2002.

20 The agency considered the application,
21 developed a number of proposed conditions of
22 approval, and the final action that they took was
23 to direct staff to accept the application for
24 processing and also authorize staff to forward the
25 information that had been developed to the staff

1 at the California Energy Commission.

2 So, this is still an open application.
3 I would not characterize it as having been
4 approved. And one of the reasons for that is our
5 ordinance 9 requires a CEQA analysis. After a
6 discussion between our staffs and agency legal
7 counsel and CEC legal counsel, it was determined
8 the best thing for us to do was to wait for
9 conclusion of this process, utilize the CEQA
10 equivalent document that would be developed as a
11 result of the CEC permit process.

12 Once we had that document in hand, this
13 application will be brought back to Mojave Water
14 Agency Board for action.

15 Are there any questions on that?

16 HEARING OFFICER VALKOSKY: Which
17 specific document, CEC document are you referring
18 to?

19 MR. CAOUETTE: The -- I'm in the same
20 position, when the Energy Commission makes their
21 final decision --

22 HEARING OFFICER VALKOSKY: The Energy
23 Commission, as a full five-member body? As --

24 MR. CAOUETTE: I'd need a little help
25 from staff here.

1 MS. HOLMES: We had talked about the
2 Presiding Member's Proposed Decision and the fact
3 that a number of agencies in other cases were
4 using that as what's being referred to as the CEQA
5 equivalent document.

6 HEARING OFFICER VALKOSKY: Okay.

7 MR. CAOUETTE: Okay, and once we have
8 that information that will be presented to Mojave
9 Water Agency Board as the CEQA document, the
10 document that we need to include ordinance
11 procedures.

12 HEARING OFFICER VALKOSKY: And how long
13 will the MWA process then take after that document
14 is available?

15 MR. CAOUETTE: Well, assuming the
16 information in the proceedings are satisfactory to
17 the board and they're able to make the decision, I
18 would expect we could do that in one meeting.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. CAOUETTE: And we meet two times a
21 month.

22 HEARING OFFICER VALKOSKY: All right,
23 so -- well, okay. Again, just for my information,
24 would entering into an agreement between the City
25 of Victorville on behalf of the applicant be

1 consistent with the terms of the existing
2 adjudication?

3 MR. CAOUETTE: Are we talking about the
4 storage and recovery agreement we were discussing
5 earlier?

6 HEARING OFFICER VALKOSKY: I'm talking
7 about the MWA --

8 MR. CAOUETTE: Oh, okay.

9 HEARING OFFICER VALKOSKY: -- water
10 supply.

11 MR. CAOUETTE: Yes, I think it would be.

12 HEARING OFFICER VALKOSKY: Okay. Is --
13 the MWA obtained state water project water,
14 correct?

15 MR. CAOUETTE: Right.

16 HEARING OFFICER VALKOSKY: Is there any
17 difficulty in obtaining that water in terms of
18 quantity of water available?

19 MR. CAOUETTE: That will vary from year
20 to year. One of the things I should have pointed
21 out is that under ordinance 9 our applications for
22 sale are annual, and they're interruptible. And
23 that means that any approved application for sale
24 is good for one year. They have to come back
25 every year and request water from the agency.

1 And it's considered on a brand new
2 basis, if you will. And it's interruptible
3 because there are circumstances beyond our control
4 where the aqueduct may go down, or other
5 circumstances would require Department of Water
6 Resources to inform us that they're not able to
7 deliver water.

8 HEARING OFFICER VALKOSKY: Okay, so
9 again, just to relate it to this particular
10 project, the City of Victorville, on behalf of the
11 applicant, will be coming back every year, and
12 it's pretty much take your chances depending on
13 the availability of SWP water?

14 MR. CAOUETTE: That's correct.

15 VICE CHAIRMAN ROHY: In your comments,
16 you mentioned the 4000 acrefeet. And in a
17 previous discussion we had today, I believe Mr.
18 Ledford was leading the discussion, one of the
19 witnesses claimed -- said that it was not only the
20 4000 acrefeet, but there's an additional 2000
21 required to in fact charge the aquifer in the
22 first years, plus any makeup that might be
23 necessary.

24 Is that your understanding of that?

25 MR. CAOUETTE: Yes, that's correct.

1 VICE CHAIRMAN ROHY: So when you
2 mentioned 4000 acrefeet, you weren't being
3 specific to that number?

4 MR. CAOUETTE: That's correct, that
5 was -- the 4000 acrefeet is the number that was in
6 the application. One of the items that was
7 discussed with our board was the fact that with
8 the structure of this proposal there could, in
9 fact, be a request for higher amounts of water to
10 accommodate not only the operation of the plant,
11 but also for placement of water in the storage
12 bank.

13 VICE CHAIRMAN ROHY: Okay, thank you.

14 HEARING OFFICER VALKOSKY: Were you
15 going to continue, Mr. Caouette?

16 MR. CAOUETTE: Yes.

17 HEARING OFFICER VALKOSKY: Go ahead,
18 please, please do.

19 MR. CAOUETTE: With some other
20 information. It's been sometime since the
21 application was first considered by the board.
22 There has been some additional dialogue with
23 members of the public and also with some of our
24 board members regarding the fact that the High
25 Desert Power Project would result in 100 percent

1 consumptive use of the water that would be
2 purchased.

3 Some are of the opinion that since there
4 is no return flow from the use of this water, that
5 there should be some requirement for what's
6 referred to as a two-for-one water purchase.

7 In other words, for every acrefoot
8 that's used by the plant, there should be another
9 acrefoot that's purchased and put into the
10 groundwater system.

11 The question that the board asked staff
12 was if we choose to do that how is it done. And
13 staff's response was that would require an
14 amendment to ordinance number 9. That's been
15 discussed before with our board.

16 They were unable to come to any
17 conclusion and the matter is coming back before
18 the board on October 12th for consideration.

19 Since that time we have also received
20 communication from High Desert Power Project.
21 There's an October 5th letter from Mr. Barnett
22 indicating that the project proponents are very
23 concerned about the fact that the agency is
24 considering such a change to our ordinance 9.

25 They've provided a summary which they

1 refer to as a dozen good reasons why the MWA
2 should keep its current policy. And they've also
3 included a memorandum that was prepared by their
4 counsel, Best Best and Krieger, regarding any
5 proposed change to ordinance 9.

6 Best Best and Krieger has also shared
7 that information with agency counsel, Galbers and
8 Battersby, and I have received a transmittal from
9 Bill Brunech from that firm dated October 6th.
10 Mr. Brunech points out that any amendment of
11 ordinance 9 by the board would require its own
12 CEQA analysis. That's something we would have to
13 do as part of that process.

14 He reiterates that ordinance 9
15 establishes an annual interruptible sale. And
16 that no long-term agreements committing state
17 project water are permitted under ordinance 9.
18 And he reminds me that we have been sued in the
19 past over proposed long-term agreements.

20 He suggests that the project developer
21 really does have two options. First, they could
22 find a way to purchase production rights from
23 producers in the basin. And notes that the
24 project proponent has not opted for that
25 particular way to provide water.

1 And says that the other option, of
2 course, is to go forward and purchase water from
3 the state water project, as has been proposed. He
4 also notes that if the option of purchasing
5 production rights is utilized, that it is likely
6 to require a two-for-one purchase because of the
7 100 percent consumptive use issue.

8 Mr. Brunech, in reviewing the memorandum
9 from Best Best and Krieger, indicates in his
10 letter that he believes, based on the information
11 that's been provided from High Desert Power
12 Project's counsel, that if the agency does, in
13 fact, anticipate a change of this nature to the
14 ordinance 9, that we may, in fact, be facing
15 litigation over this issue.

16 I'd point out that I've read the same
17 material and I got the same sense.

18 (Laughter.)

19 MR. CAOUETTE: I would like to provide
20 to the Commission copies of both of these letters.
21 I have four of each.

22 HEARING OFFICER VALKOSKY: We definitely
23 appreciate that, and I'll note for the record that
24 will be docketed as soon as I get back to
25 Sacramento.

1 MR. CAOUETTE: Other than that, I did
2 have some issues of concern with the proposed
3 agreement between High Desert Power and Victor
4 Valley Water District, but as was noted earlier,
5 I've discussed them with Mr. Hill and he's more
6 than happy to work with me on those issues.

7 HEARING OFFICER VALKOSKY: Okay. Just a
8 couple of quick questions, Mr. Caouette. One,
9 could you inform our staff, I guess specifically
10 Mr. Buell, of the results of the board action I
11 believe you said it's October 12th?

12 MR. CAOUETTE: I'd be happy to.

13 HEARING OFFICER VALKOSKY: And two, am I
14 correct in understanding that even though there is
15 an existing overdraft in the basin, that the
16 Mojave Water Agency can nevertheless supply state
17 water project water to users such as the applicant
18 in this case?

19 MR. CAOUETTE: I would say that's a
20 correct statement.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you.

23 Any other questions for Mr. Caouette
24 who's been good enough to appear?

25 MR. LEDFORD: Do I get a chance?

1 HEARING OFFICER VALKOSKY: Within the
2 bounds of reason.

3 MR. LEDFORD: One of the provisions of
4 an aquifer storage agreement is that there's a
5 storage agreement between the MWA and the Victor
6 Valley Water District, is that correct?

7 MR. CAOUETTE: Actually it's the
8 watermaster and Victor Valley Water.

9 MR. LEDFORD: I'm sorry, the
10 watermaster.

11 MR. CAOUETTE: Correct.

12 MR. LEDFORD: And has any application
13 been made, official application been made for a
14 storage agreement with the watermaster?

15 MR. CAOUETTE: No. There has been
16 dialogue between watermaster staff and Victor
17 Valley Water District staff. We've provided them
18 with the acceptable format. And it's my
19 understanding that Victor Valley is developing a
20 draft agreement.

21 MR. LEDFORD: Is one of the terms in the
22 standard draft format of the water storage
23 agreement that it could be subject to approval by
24 the Kaiser Court?

25 MR. CAOUETTE: Subject to approval?

1 MR. LEDFORD: Or review or -- I don't
2 have, again I'm somewhat tired at this point, a
3 little punchy, but my recollection of the draft
4 agreement, which is to my best recollection, the
5 watermaster's never entered into a storage
6 agreement with a third party, is that correct?

7 MR. CAOUILLE: They've entered into a
8 storage agreement with Mojave Water Agency, but
9 not to a third party.

10 MR. LEDFORD: Right.

11 MR. CAOUILLE: That's correct.

12 MR. LEDFORD: So this is a first?

13 MR. CAOUILLE: This is a first. I don't
14 recall any specific language that requires the
15 storage agreement be approved by Judge Kaiser, but
16 being --

17 MR. LEDFORD: No, I don't want that to
18 be on the record that way, either.

19 MR. CAOUILLE: Okay.

20 MR. LEDFORD: I believe that the words
21 to the agreement are that the water storage
22 agreements could be subject to review by the
23 court, or subject to something. It's not subject
24 to his approval, but any party could challenge a
25 storage agreement. If they were to challenge it,

1 they would challenge it to the Kaiser Court, is
2 that correct?

3 MR. CAOUETTE: That's correct.

4 MR. LEDFORD: And so this process of a
5 water storage agreement, which is an integral part
6 of this whole will serve process, hasn't even
7 started yet, is that a correct statement?

8 There's no official application for
9 approval of a water storage agreement to the
10 watermaster as of tonight?

11 MR. CAOUETTE: No.

12 MR. LEDFORD: Thank you.

13 HEARING OFFICER VALKOSKY: Mr. Caouette,
14 what's your best guess as to how long it takes the
15 watermaster to approve a water storage agreement?

16 MR. CAOUETTE: Well, if we do our job
17 well, one meeting. Being the first one, there
18 will undoubtedly be some questions. But being the
19 first one, I would also expect that we'd do our
20 best to be as careful as possible.

21 We do have the advantage of having taken
22 the form of the agreement to the watermaster for
23 their concurrence as the basis for our storage
24 agreements, so they are familiar with what their
25 content should be.

1 And that's a long answer to say that I
2 think chances are pretty good that we would have
3 it done in one meeting, if not, probably certainly
4 by the second.

5 HEARING OFFICER VALKOSKY: Okay, so two
6 to four weeks after it's submitted?

7 MR. CAOUETTE: Actually, watermaster
8 meets once a month. So it would be a one to two
9 month process.

10 HEARING OFFICER VALKOSKY: One to two
11 month process after that, okay.

12 MR. CAOUETTE: And as you said, that's a
13 guess only.

14 HEARING OFFICER VALKOSKY: Understood.

15 PRESIDING MEMBER LAURIE: Now, sir, the
16 Presiding Member's Proposed Decision will deal
17 with the water issue. Primary question being how
18 are you going to get your water to the project?

19 MR. CAOUETTE: To the project site?

20 PRESIDING MEMBER LAURIE: No, no, that's
21 not a question to you, that's the question --

22 MR. CAOUETTE: Okay.

23 PRESIDING MEMBER LAURIE: -- that the
24 decision will be asking itself.

25 And in response to the question, the

1 applicant responds that state water is going to be
2 utilized through MWA in the City of Victorville,
3 that's over-simplifying, but that's where the
4 basic water supply is going to come from.

5 It's my understanding that MWA cannot
6 officially act on the application until you get
7 the PMPD, the Presiding Member's Proposed
8 Decision.

9 MR. CAOUETTE: Okay.

10 PRESIDING MEMBER LAURIE: But we still
11 have to talk about it now.

12 MR. CAOUETTE: That's correct.

13 PRESIDING MEMBER LAURIE: What can you
14 tell us regarding MWA's intent, MWA's commitment,
15 MWA's policy that will help us out regarding any
16 security as to the availability of this water
17 supply?

18 MR. CAOUETTE: Security? Well, as I
19 indicated earlier, next Tuesday night the policy
20 may change, I don't know. And after that board
21 meeting I'll have a better idea of where the
22 agency might be going.

23 Other than that, under ordinance 9, it
24 is a year-to-year proposition.

25 PRESIDING MEMBER LAURIE: Okay, thank

1 you.

2 HEARING OFFICER VALKOSKY: Okay, if you
3 could provide us copies of those materials I'd
4 really appreciate it.

5 MR. CAOUETTE: Yes.

6 HEARING OFFICER VALKOSKY: Is there
7 anything else for Mr. Caouette?

8 MS. HOLMES: The only thing that I have
9 is just a comment that he had filed and we had
10 docketed the letter that was represented the
11 acceptance for processing by the MWA for water
12 services by the City of Victorville.

13 And an earlier document discussing that
14 was given a docket number, but the actual letter
15 was not. So you might want to give it an exhibit
16 number.

17 HEARING OFFICER VALKOSKY: I'd love to
18 give it an exhibit number.

19 MS. HOLMES: I thought you would. Not
20 miss the opportunity.

21 HEARING OFFICER VALKOSKY: That will
22 bring us up to, by my count, 134. If you could
23 identify it specifically, please.

24 MS. HOLMES: It's a letter, it's a cover
25 letter to Richard Buell from Larry Rowe, the

1 General Manager of the Mojave Water Agency, dated
2 November 18, 1998. And it says transmitted
3 herewith is the acceptance for processing, et
4 cetera. It has attached letters from Larry Rowe
5 to the City Manager of the City of Victorville,
6 and the General Manager of the Victor Valley Water
7 District. And it has draft editions of approval
8 and a copy of ordinance 9 and some other things
9 attached to it.

10 HEARING OFFICER VALKOSKY: Okay, we'll
11 identify that as 134. Be sure to give me a copy
12 of it.

13 (The above-referenced document was
14 marked exhibit 134 for
15 identification.)

16 MR. LEDFORD: Can you check exhibit 16
17 and see if that might be the same one?

18 MS. HOLMES: I have as exhibit 16 being
19 the health risk assessment.

20 HEARING OFFICER VALKOSKY: Yeah, that's
21 what I have.

22 MS. HOLMES: There's an exhibit 50, but
23 the date was prior to this letter.

24 MR. LEDFORD: Okay, this is going to be
25 exhibit what?

1 HEARING OFFICER VALKOSKY: 134.

2 MR. LEDFORD: And are we going to enter
3 those as exhibits, also, these documents --

4 HEARING OFFICER VALKOSKY: No, this will
5 be docketed. This is nonsworn. But it will be
6 docketed and made part of the record of the
7 proceeding.

8 MR. LEDFORD: Will it be mailed out to
9 all the parties?

10 HEARING OFFICER VALKOSKY: Can certainly
11 mail you a copy.

12 MR. LEDFORD: Norm, could you provide me
13 a copy of those exhibits?

14 MR. CAOUETTE: Sure.

15 MR. LEDFORD: That's fine.

16 HEARING OFFICER VALKOSKY: Okay, so I
17 understand you're getting a copy now, then?

18 MR. LEDFORD: Norm's going to provide me
19 a copy. Thank you.

20 HEARING OFFICER VALKOSKY: Great, thank
21 you, Mr. Caouette.

22 MR. LEDFORD: Just so I'm clear on
23 exhibit 134, did that include the Mojave Water
24 Agency memorandum dated October 26th? The
25 particular memorandum actually had the application.

1 MS. HOLMES: Perhaps after we go off the
2 record tonight, Mr. Ledford and I could compare
3 copies of our documents and clear up any
4 misunderstanding about what's in it --

5 HEARING OFFICER VALKOSKY: That'd be
6 fine.

7 Is there anything else that needs to be
8 brought to the Committee's attention this evening?
9 Any members of the public who wish to offer
10 comment on anything dealt with today?

11 Okay, with that we'll adjourn until 9:00
12 a.m. tomorrow morning.

13 I'm sorry.

14 PRESIDING MEMBER LAURIE: The Committee
15 had indicated that it wanted a clean enunciation
16 of issues and positions before additional
17 witnesses. I think we're not in a position to do
18 that tonight.

19 So we'll do that first thing in the
20 morning. And we'll allow up to a half hour to do
21 that in. What I'm looking for is an understanding
22 of everybody's position as to what they think the
23 issues are on water; a clear, concise enunciation
24 of the issues. And their position on the issues.
25 Not an argument related thereto.

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 1999.

DEBI BAKER

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