

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

FRIDAY, OCTOBER 8, 1999
9:00 A. M.

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

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

2 PRESIDING MEMBER LAURIE: Good morning
3 and welcome to the continued evidentiary hearing
4 for the High Desert Power Project.

5 Let's do some reintroduction for
6 purposes of the record, please. My name is Robert
7 Laurie, Commissioner of the California Energy
8 Commission, Presiding Member of the High Desert
9 Siting Committee.

10 To my left is Mr. Stan Valkosky. Mr.
11 Valkosky is the Hearing Officer assigned to the
12 case and he will be administering these
13 proceedings.

14 To Mr. Valkosky's left is Mr. Bob Eller,
15 Commissioner Rohy's Senior Adviser. Commissioner
16 Rohy will not be present at this hearing today.

17 Mr. Thompson, could you introduce
18 yourself and your team, please?

19 MR. THOMPSON: Thank you, Mr
20 Commissioner, good morning. My name is Allan
21 Thompson, CEC Project Counsel for the High Desert
22 Project. To my right, Mr. Tom Barnett who is the
23 lead project developer for the project. And to my
24 left is Andy Welch who sits in the number two
25 seat, co-pilot for the development team.

1 In the audience we have a number of our
2 witnesses -- a small number of witnesses,
3 including Mr. Beeby who was on the stand when we
4 finished yesterday.

5 PRESIDING MEMBER LAURIE: Thank you Mr.
6 Thompson.

7 Mr. Buell.

8 PROJECT MANAGER BUELL: Good morning, my
9 name is Rick Buell. I'm the Energy Commission's
10 staff Project Manager and to my left is Caryn
11 Holmes, our staff counsel. In the audience today
12 we have Mr. Matthew Layton who is going to be
13 testifying on dry cooling; Linda Bond, consultant
14 to the Energy Commission staff; and we have Mr.
15 Joe O'Hagan who is just entering the room.

16 PRESIDING MEMBER LAURIE: For purposes
17 of the record, Mr. Buell really meant to his right
18 as opposed to his left.

19 Mr. Adams.

20 MR. ADAMS: Stephen Adams, staff counsel
21 at Fish and Game, and Becky Jones is in the
22 audience, a witness from yesterday. We have no
23 additional witnesses.

24 PRESIDING MEMBER LAURIE: Thank you, Mr.
25 Adams.

1 Mr. Ledford.

2 MR. LEDFORD: Thank you. I'm Gary
3 Ledford, I'm an intervenor in this case and my
4 issue is water.

5 PRESIDING MEMBER LAURIE: Thank you,
6 sir.

7 Mr. Valkosky.

8 HEARING OFFICER VALKOSKY: Before we
9 resume with Mr. Ledford's cross examination of Mr.
10 Beeby. At the end of yesterday's hearing
11 Commissioner Laurie asked the parties to prepare a
12 brief statement of where they intended to go with
13 their witness presentations and cross examination
14 and I think this would be the appropriate time to
15 take that.

16 Mr. Thompson.

17 MR. THOMPSON: Thank you. I think our
18 statement is really very simple. We have
19 presented all the witnesses we intend to offer,
20 with the exception of the completion of Mr. Beeby.
21 We believe that the relevant issues are those that
22 are already contained in the record, the AFC,
23 other exhibits and the testimony that has been
24 proffered to date.

25 We have Exhibit 130 which is a response

1 to Mr. Ledford's questions, but I would qualify
2 that by saying we do not believe that that is
3 relevant. We did that as a favor to Mr. Ledford
4 because those are the questions that we believe he
5 has consistently asked in the proceeding.

6 We do not think that the workings of the
7 MWA, the details of the adjudication,
8 relationships between the various agencies, the
9 agencies' responsibilities to the population of
10 the area, questions such as that, are germane.

11 We also do not believe that questions
12 such as CEQA compliance, taxpayers' rights, the
13 process of this Commission are issues which we
14 should take evidence on. We believe that those
15 are more appropriate for oral arguments. And we
16 would further add that we have no further
17 questions of any of the witnesses that are on the
18 witness list.

19 HEARING OFFICER VALKOSKY: Thank you.
20 Ms. Holmes.

21 STAFF ATTORNEY HOLMES: The staff has
22 its two witnesses on water resources to present
23 today, Linda Bond and Joseph O'Hagan. Obviously
24 there'll be cross examination by various parties.
25 With respect to their direct testimony, I'm going

1 to be asking them to provide a more lengthy
2 explanation than I ordinarily would. Because of
3 the fact that with the withdrawal of much of
4 HDPP's testimony on water resources, the only
5 complete discussions in the record are Mr.
6 Ledford's testimony and the staff's. And so I
7 think it's important that staff have an
8 opportunity to give an overview and explain it.

9 In particular we're going to be focusing
10 on discussion of the conditions of certification.
11 There was some discussion yesterday that was a
12 little bit unclear. Staff is going to be walking
13 through the conditions with the Committee so that
14 you can understand exactly what the requirements
15 are and what they mean.

16 We're also going to spend some time
17 explaining how groundwater hydrology works, how
18 the staff analysis was conducted and particularly
19 explaining how both direct and cumulative impacts
20 were evaluated.

21 I had understood Commissioner Laurie's
22 directives to the parties yesterday to be a bit
23 broader to discuss other issues as well. We still
24 have one more thing that we'd like to get to today
25 at some point, when it's appropriate, about the

1 VVWD contract. But that's not going to be
2 addressed during testimony later today, so perhaps
3 you'd rather have me bring that point up later. I
4 await your direction on that.

5 PRESIDING MEMBER LAURIE: Well, let's
6 make sure you bring it up. At the conclusion of
7 the testimony and if we have time, we'll see what
8 we can handle today.

9 STAFF COUNSEL HOLMES: Thank you.

10 HEARING OFFICER VALKOSKY: Mr. Adams.

11 MR. ADAMS: I do not plan any questions
12 either of the witnesses, although it's possible
13 there will be some point there will be some point
14 of clarification. My plan is to move Mr.
15 Bilhorn's testimony into evidence -- prepared
16 testimony. And the only issue which I'll address
17 in closing argument is the VVWD contract and my
18 belief, Fish and Game's belief that it would be
19 appropriate to have a condition of certification
20 that would make sure that those -- that the
21 agreement is not contrary to conditions of
22 approval or harmful to the environment.

23 HEARING OFFICER VALKOSKY: Thank you,
24 Mr. Adams.

25 Mr. Ledford.

1 MR. LEDFORD: Thank you. The issues that
2 I have for today is to ensure that if this project
3 is built and it's going to water for cooling, that
4 there is not a precedent set that will set the
5 stage for the future failure of MWA to fulfill
6 their role to recharge the overdrafted water
7 basins, and this has been consistent in my theme
8 for the last year.

9 This is an issue of property rights, and
10 every action that's approved by the agencies that
11 does not cure the overdraft is a future deferral
12 of MWA's obligations. What the MWA, the Victor
13 Valley Water District and the City of Victorville
14 are expecting is a CEQA equivalent document to
15 approve projects that you, the Commission staff,
16 has not considered.

17 In that regard, the issues I intend to
18 present and provide evidence for and ensure the
19 record is complete are the following. The
20 underlying issues, the Mojave Water River Basin is
21 in a severe and critical overdraft. The use of 15
22 to 20 of MWA's net entitlement slated to cure the
23 overdraft will potentially detrimentally affect
24 MWA's ability to cure the overdraft in the future
25 and deprive the basin of at least 50 percent

1 return flows provided from all other users; that
2 the precedent setting nature of the approval
3 result and the municipal agencies asking for
4 additional reverse, one to two acre feet of credit
5 for the use of treated state project water.

6 The only reason that MWA can testify
7 that SWP water is available is that they've failed
8 to purchase the necessary water to cure the
9 overdraft as mandated by the judgment. That every
10 party to the judgment is subject to the 50 percent
11 average consumptive use analysis unless they
12 specifically had a higher consumptive use prior to
13 the judgment. That the water management plan
14 mandates the recharge to cure the overdraft, as
15 well as other considerations, including further
16 environmental review and five-year plan updates.
17 The MWA has not completed those updates.

18 A clear definition of what wasteful use
19 of water is in the High Desert. The CEQA issues.
20 If the CEC decides that it has the responsibility
21 to take on the CEQA issues for the use of water in
22 the High Desert Project, then before it can do
23 that the staff must have a clear and precise
24 understanding of what those issues are.

25 The 70 pages of testimony, filed by the

1 staff, however for the most part don't describe --
2 they do describe the underlying issues except as I
3 have noted above. What is missing is that the
4 project you have before you is not the project
5 that needs to be certified by the Commission,
6 specifically water.

7 The evidence we received yesterday from
8 Terry Caldwell is the water project will be
9 available for public use.

10 The filing of an application from the
11 City of Victorville with MWA clearly states they
12 intend to use treated water for municipal use. The
13 signed contract entered yesterday between the High
14 Desert Power Plant and the Victor Valley Water
15 District clearly states they can use the project
16 for municipal use.

17 The evidence shows the project is
18 located in the City of Victorville's primary
19 growth area.

20 What we need before us that we don't
21 have, we don't have a lease agreement between the
22 City of Victorville and the High Desert Power
23 Project. We don't have a contract between the
24 City of Victorville and the High Desert Power
25 Project to provide domestic water service and

1 reverse water service to the base.

2 We don't have a contract between the
3 City of Victorville and the Victor Valley Water
4 District to provide the backup water service. We
5 don't have a contract between the City of
6 Victorville and High Desert Power to purchase
7 state project water for municipal and industrial
8 and for injection.

9 We don't have a water storage agreement
10 between the MWA and the Victor Valley Water
11 District to inject and store state project water
12 for the exclusive use of cooling towers in the
13 arid high desert.

14 The first annual agreement to purchase
15 state project water, the terms and the conditions
16 of the agreement and the price of water and how
17 that water use of this entitlement is going to
18 provide a net positive benefit to the basin. This
19 would be a separate CEQA project under the MWA
20 Act.

21 Then there's the extraction agreement or
22 backup water agreement between HDPP and the Victor
23 Valley Water District, that provides for the
24 exclusive use for the fully independent system to
25 use this stored backup water for cooling towers or

1 a shared system that can be used for domestic and
2 backup purposes.

3 And finally, staff's requirement that
4 the High Desert Project use only state project
5 water in accordance with Ordinance 9. Ordinance 9
6 clearly states that state project water cannot be
7 the exclusive source of water. In fact Ordinance
8 9 states something quite contrary. It states that
9 in order to have state project water a reliable
10 source of water, first, must be obtained.

11 In summary, we are here today on water,
12 to have hearings on contracts to use 15 to 20
13 percent of this valley's future water resources
14 for cooling towers, but we don't have the
15 slightest clue of how the project is going to be
16 put together. Thank you.

17 PRESIDING MEMBER LAURIE: Thank you. At
18 this time I'm going to take a five-minute break so
19 I can consult with my Hearing Adviser, over some
20 issues that I deem pertinent. And we'll take a
21 walk outside and we'll see you back in a minute.
22 Mr. Thompson.

23 MR. THOMPSON: Thank you. I don't know
24 what you're going to be discussing.

25 PRESIDING MEMBER LAURIE: Protocols for

1 the rest of the day, Mr. Thompson.

2 MR. THOMPSON: However, I would say that
3 we will resist strenuously the introduction of
4 contracts. It's Fish and Game's suggestion that
5 we change the conditions of certification to have
6 the Commission voice its opinion on private
7 contracts between the High Desert Project and
8 others. There are probably going to be 200, 250
9 contracts in this proceeding. I think it's a very
10 questionable policy that's being suggested by Fish
11 and Game, so I wanted to get that on the record
12 before the break. Thank you.

13 STAFF COUNSEL HOLMES: I'd like to
14 respond to that, if I may.

15 Staff has a similar concern to that of
16 the Department of Fish and Game. We're not
17 interested in looking at private contract terms
18 between two parties, except to the extent that
19 they may have the potential for a significant
20 adverse environmental impact. And if there are
21 contract terms that tell us that this project may
22 have impacts that we haven't looked at, we believe
23 it's appropriate for us to analyze that or to
24 ensure that there are no such contract terms.

25 And that's why we'd like to discuss this

1 with Fish and Game and with High Desert, and this
2 is essentially the issue I was hoping to be able
3 to raise at the end of the day. But we are in
4 concurrence with Fish and Game that it's an issue
5 that does need to be addressed.

6 PRESIDING MEMBER LAURIE: Well, we'll
7 make sure before we get too far towards the end of
8 the day that we allow time for those
9 communications.

10 STAFF COUNSEL HOLMES: Thank you,
11 Commissioner Laurie.

12 (Thereupon a recess was taken.)

13 HEARING OFFICER VALKOSKY: Okay, during
14 the recess the Committee discussed what it views
15 as necessary guidance for the parties for the rest
16 of the hearing today. Basically there are five
17 items the Committee strongly recommends, if not
18 insists, the parties keep in mind during the
19 balance of the proceedings. And I'll go over them
20 in no particular order of importance.

21 First, insofar as the Energy Commission
22 is concerned the project as defined under the
23 California Environmental Quality Act is the power
24 plant and its appurtenant facilities including the
25 direct, indirect and cumulative environmental

1 impacts associated with the power plant.

2 That is our, we believe, our statutory
3 mandate. While there may be very peripheral areas
4 associated with it, we will confine our inquiries,
5 as I have just described.

6 Second, insofar as the propriety of
7 other agency actions is concerned, the Committee
8 believes it is most proper to accept the propriety
9 of the other agency actions. It is not our charge
10 nor within our ability to consider the various
11 policy decisions which the other agencies may have
12 made and the legal strictures under which they
13 operate.

14 If the other agency takes an action in
15 conformance with its own requirements and we are
16 presented with the results of that action, that is
17 what we will react to.

18 Thirdly, written contracts, especially
19 in this case, for the provisions of water
20 services, provide evidence, in our view of water
21 availability. It is the Applicant's burden to
22 establish that water is, in fact, available for
23 the project. The absence of these contracts
24 affects the overall persuasiveness of the evidence
25 which the Committee must consider in rendering its

1 proposed decision.

2 Related to that the issue of private
3 contracts, brought up by Applicant's staff and the
4 Department of Fish and Game, we believe the
5 appropriate inquiry in these proceedings is to
6 determine whether complying with the terms of any
7 of these ancillary contracts would result in the
8 project causing environmental impacts which have
9 not been analyzed and appropriately mitigated.

10 Put otherwise, the Committee's concern
11 is that any conditions contained in these
12 contracts which could affect conditions contained
13 in the Commission decision be consistent.

14 Last, as far as other areas which have
15 been brought up, in our view certain matters, such
16 as taxpayers' rights, ownership of water, the
17 conformance of the CEC process with the California
18 Environmental Quality Act and the role of the
19 public in our process are not evidentiary matters,
20 but are matters most appropriately reserved for
21 closing arguments and final briefs.

22 With that, I assume we can proceed.

23 MR. THOMPSON: Thank you very much, Mr.
24 Valkosky. As we ended yesterday we had Mr. Robert
25 Beeby on the stand and I would like to bring him

1 back up, put him back on the stand for the finish
2 of his cross examination. However, we being
3 mindful of the Committee direction at the end of
4 yesterday's proceeding have developed two flow
5 charts that we would like to distribute and have
6 Mr. Beeby walk through to better explain the water
7 plan for the project.

8 HEARING OFFICER VALKOSKY: Do you intend
9 to do this before Mr. Ledford would cross examine?

10 MR. THOMPSON: I would leave that up to
11 the Committee and Mr. Ledford. However, I think
12 it could be beneficial for the cross examination
13 and for members of the public who are interested
14 in these issues.

15 HEARING OFFICER VALKOSKY: Mr. Ledford,
16 unless you've got any real objection to that, I
17 think that's probably a good suggestion.

18 MR. LEDFORD: Well, I haven't seen it
19 and I would certainly like to see the exhibits and
20 have a moment to determine whether that's what I'd
21 like to do or not.

22 HEARING OFFICER VALKOSKY: Okay, would
23 you provide copies?

24 MR. THOMPSON: Can I recall Mr. Beeby?
25 Either it will be taking this now or it will be

1 cross examination now, but can I bring him up here
2 to get settled.

3 HEARING OFFICER VALKOSKY: You bet.

4 MR. LEDFORD: I have no objection to
5 entering these two documents as exhibits. I'd
6 also like -- we had a housekeeping item last
7 night. We were examining Randy Hill and I brought
8 minutes from the September 28th and October 5th
9 Victor Valley Water District Board of Directors
10 meetings.

11 HEARING OFFICER VALKOSKY: Would you
12 like those identified as an exhibit?

13 MR. LEDFORD: Yes, I'd like both of them
14 identified.

15 HEARING OFFICER VALKOSKY: If you could
16 distribute, please?

17 MR. LEDFORD: Yes, I will.

18 And we have one other item during that
19 conversation which was -- we marked an exhibit
20 which was 134, which was a docketed exhibit, which
21 was the November 18th letter from Larry Rowe to
22 Richard Buell. There was a memorandum docketed on
23 October the 26th which is reflective of the
24 information that's in the November 28th letter.
25 And I talked to staff about that last night.

1 STAFF COUNSEL HOLMES: You beat me to
2 it, Mr. Ledford. I was going to bring it up after
3 you were done.

4 MR. LEDFORD: Well, I'd just as soon let
5 you introduce it then.

6 STAFF COUNSEL HOLMES: It's just going to
7 be another exhibit. Do you want to finish
8 identifying the two documents that Mr. Ledford has
9 handed out first and then I can describe the other
10 one.

11 HEARING OFFICER VALKOSKY: Yeah.

12 Okay, for identification purposes we
13 have the document entitled notice of the regular
14 meeting of the Board of Directors of the Victor
15 Valley Water District, dated October 5th, 1999.
16 We'll identify that as Exhibit 135.

17 (Thereupon the above-referenced document
18 was marked as Exhibit 135 for
19 Identification.)

20 HEARING OFFICER VALKOSKY: And Exhibit
21 136 will be identified as a document notice of a
22 special meeting of the Board of Directors of the
23 Victor Valley Water District and that's dated
24 September 28, 1999.

25 (Thereupon the above-referenced document

1 was marked as Exhibit 136 for
2 Identification.)

3 STAFF COUNSEL HOLMES: Mr. Valkosky, the
4 next document is entitled Mojave Water Agency
5 Memorandum. It's from Norman Caoette to the
6 Planning and Resources Committee dated October
7 26th, 1998. It was docketed at the Commission in
8 October of '98.

9 It's a memorandum with a number of
10 attachments. One is an application for water sale
11 by the City of Victorville. There's also a letter
12 to Mr. Rowe from the City Engineer from the City
13 of Victorville. Several other letters, one from
14 John Vega of Victorville Water District to Mr.
15 Rowe of the MWA. There's a draft set of
16 conditions attached as well.

17 And finally I believe there's a letter
18 from the Victor Valley Water District to the
19 California Energy Commission. They're all
20 included in this document that was docketed at the
21 Commission. So I think that would be appropriate
22 to have that labeled as an exhibit.

23 HEARING OFFICER VALKOSKY: All right,
24 we'll identify it as Exhibit 137.

25 (Thereupon the above-referenced document

1 was marked as Exhibit 137 for
2 Identification.)

3 HEARING OFFICER VALKOSKY: And if you
4 could ensure that anybody who needs copies of it
5 gets copies.

6 STAFF COUNSEL HOLMES: Yes.

7 HEARING OFFICER VALKOSKY: Thank you.

8 Any other housekeeping? We're about
9 ready to proceed with Mr. Beeby.

10 MR. LEDFORD: On the first two exhibits,
11 135 and 136, can we admit those as evidence since
12 they were a part of the testimony last night.

13 HEARING OFFICER VALKOSKY: Is there
14 objection?

15 There is no objection. We'll admit 135
16 and 136.

17 (Thereupon the above-referenced
18 documents marked as Exhibits 135 and 136
19 for Identification were received in
20 evidence.)

21 MR. LEDFORD: Thank you.

22 HEARING OFFICER VALKOSKY: Any other
23 matters?

24 MR. THOMPSON: I don't believe the
25 documents that I've passed this morning have been

1 identified.

2 They consist of two diagrams. One
3 entitled flow of water, the second being contracts
4 and I would like to have those labeled the next
5 exhibits in order please.

6 HEARING OFFICER VALKOSKY: Okay, 138
7 refers to what Mr. Thompson said, the diagram flow
8 of water. It starts with a box with SWP and ends
9 up with a box with groundwater bank. We'll
10 identify that as 138.

11 (Thereupon the above-referenced document
12 was marked as Exhibit 138 for
13 Identification.)

14 HEARING OFFICER VALKOSKY: The next is a
15 sheet saying contracts, which has numerous boxes
16 on the top and items one through five at the
17 bottom. We'll identify that as Exhibit 139.

18 (Thereupon the above-referenced document
19 was marked as Exhibit 139 for
20 Identification.)

21 HEARING OFFICER VALKOSKY: Okay, Mr.
22 Thompson, everyone has been provided copies of
23 these, I trust.

24 MR. THOMPSON: Right, thank you, Mr.
25 Valkosky.

1 Mr. Beeby, I would remind you that you
2 remain under oath and thank you for appearing for
3 us again this morning.

4 REDIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q We have this morning identified two
7 exhibits, Exhibit 138 and 139. Do you have those
8 available to you?

9 A Yes, I do.

10 Q And Exhibit 138 is described at the top
11 as flow of water. Would you please describe this
12 Exhibit 138 in terms that are simple enough for
13 someone like me to understand and I would, I
14 guess, ask you to take the flow of water from SWP,
15 which I believe to be the State Water Project all
16 the way through.

17 A Yes, I'd be happy to. The State Water
18 Project, as you know, was built some years ago and
19 essentially is a system of canals, aqueducts,
20 reservoirs, pipelines, pumping plants to deliver
21 water to 29 separate contractors in the State of
22 California. The Mojave Water Agency is one of
23 those contractors.

24 The contract term ends in 2035 and each
25 of the 29 contractors has what's called a Table A

1 Entitlement, which we've -- various terms have
2 been used here, but for Mojave at the current time
3 it's 75,800 acre feet.

4 So, the water flows from the State Water
5 Project east branch to the Mojave Water Agency
6 through two basic sources currently. One is the
7 Morongo pipeline project, which delivers water to
8 the High Desert area to the east of the Mojave
9 River. It's from that pipeline that a diversion
10 is made to the Rock Springs turnout to accomplish
11 groundwater recharge in the Alta subarea.

12 The other conveyance facility, which was
13 constructed by the Mojave Water Agency is the
14 Mojave River pipeline, which is a pipeline that
15 extends down from the aqueduct, west of the City
16 of Victorville and it's the pipeline that the
17 proposed conveyance pipeline would be connected
18 to.

19 As you go on further downstream on the
20 Mojave River pipeline you come to recharge
21 facilities at Helendale and Lenwood and then on
22 down to Barstow and Daggett. So it's a long-range
23 plan and this was described in the regional water
24 management plan.

25 Jumping back then, Mojave would then

1 deliver the water to the City of Victorville
2 through this connection pipeline that connects the
3 High Desert Project to the Mojave River pipeline.

4 The City of Victorville then would
5 either deliver the water to the High Desert
6 Project treatment plant or for direct use to the
7 power plant. I'm now down at the box that is
8 split. One side says High Desert treatment on the
9 left and High Desert use on the right.

10 So if there's adequate State Water
11 Project water in a particular year, you'd go down
12 to the right leg there and the City of Victorville
13 would deliver water to the High Desert Project for
14 cooling, that's the 4,000 acre feet we've been
15 talking about, on an annual basis.

16 In years when there is excess State
17 Water Project available and plenty of supply,
18 you'd down through the right box -- or, excuse me,
19 the left box, entitled High Desert Power Plant
20 treatment, the water would be treated by the
21 project's treatment plant, delivered to the Victor
22 Valley Water District wells, which is the large
23 box, second up from the bottom, and those wells
24 would be used to inject the water into the
25 underground.

1 PRESIDING MEMBER LAURIE: Mr. Beeby,
2 question please.

3 THE WITNESS: Yes.

4 PRESIDING MEMBER LAURIE: Going back
5 up to the City of Victorville box, under the
6 project's proposal, is the amount of water going
7 from MWA to the City of Victorville 4,000 acre
8 feet?

9 THE WITNESS: It can be more than that
10 when they're trying to use water for recharge at
11 the same time.

12 PRESIDING MEMBER LAURIE: Okay. From
13 the box, the City of Victorville to the project,
14 can the City utilize the water obtained from MWA
15 for purposes other than serving this project?

16 THE WITNESS: No, I don't think so.

17 PRESIDING MEMBER LAURIE: Okay.

18 THE WITNESS: So where I left off was
19 after the water is treated by the High Desert
20 Power Plant and delivered to the Victor Valley
21 Water District wells it is then recharged into the
22 groundwater bank.

23 Now, the diagram I've been talking about
24 so far deals with when water is available from the
25 state project. When water is not available from

1 the state project we start with the groundwater
2 bank, which has already had water recharged into
3 it, the water is pumped from the groundwater bank
4 through the Victor Valley Water District wells and
5 delivered to the High Desert Power Project for
6 use. Now, that's the water schematic.

7 BY MR. THOMPSON:

8 Q Mr. Beeby, are you ready to turn to the
9 page marked Exhibit 139 in the contracts?

10 HEARING OFFICER VALKOSKY: Just, before
11 we do that, one question. Is there any minimum
12 amount of water that has to be placed into the
13 groundwater bank before the project can start
14 extracting as shown on the right hand of your
15 diagram?

16 THE WITNESS: Yes. Well, it's my
17 understanding that water would be banked as soon
18 as possible, because if the State Water Project is
19 not available and they have no water in the bank
20 account, they will have to not operate the plant.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you.

23 THE WITNESS: There always has to be a
24 positive balance in the groundwater account for
25 them to operate, using groundwater that is.

1 HEARING OFFICER VALKOSKY: Okay, thank
2 you.

3 THE WITNESS: Okay, now I'm turning to
4 Exhibit 139, which is entitled contracts.

5 BY MR. THOMPSON:

6 Q Mr. Beeby, before you begin, this not
7 only shows contracts, but at the bottom, the
8 column marked COC, soil and water, this is meant
9 to represent the location of conditions of
10 certification?

11 A Yes.

12 Q Soil and water?

13 A Yes.

14 Q Okay, thank you very much, please
15 proceed.

16 A If we start with the State Water
17 Project, as I mentioned earlier, Mojave Water
18 Agency and 28 other agencies are state water
19 contractors and they have a contract with the
20 State Water Project.

21 Under this example, MWA would have a
22 contract, I shouldn't say -- well, I don't know if
23 it's called a contract or not, but with the City
24 of Victorville they would have a delivery
25 agreement under their Ordinance 9, which is what

1 we talked about yesterday.

2 The City of Victorville, going down
3 through the circle that says five, would then have
4 a contract with High Desert. Now, Mojave Water
5 Agency is somewhat unique, because not only do
6 they have a contract with the State Water Project
7 for the State Water Project, but as a result of
8 the adjudication they were appointed by the Court
9 to act as watermaster.

10 The reason for that, I should maybe just
11 explain a little bit, is that Mojave has the staff
12 and the facilities and it was much cheaper to do
13 it that way. But the Court could have easily
14 appointed a group of engineers, an individual or
15 anyone else to serve as watermaster. But they
16 chose Mojave Water Agency because all the
17 resources were there and it would be in the long
18 run cheaper.

19 So Mojave acting as watermaster now
20 controls all extractions and recharge to the
21 groundwater basin. And I think maybe I should
22 clarify that by saying to the stipulating parties,
23 because there is a court action that addresses who
24 has to comply with watermaster actions. But
25 basically any time a new well is put down, any

1 time water is extracted in excess of preproduction
2 allowance or any time a recharged project is
3 proposed for storage they have to get it cleared
4 through the Mojave Water Agency serving as
5 watermaster.

6 So consequently, Mojave Water Agency
7 serving as watermaster and the Victor Valley Water
8 District have to have a storage agreement, because
9 the water would be stored under Victor Valley
10 Water District's authority as a signatory to the
11 stipulated judgment.

12 Now, Victor Valley Water District now
13 has the water in the bank account and they have to
14 have a contract with High Desert to allow High
15 Desert to not only use their facilities to put the
16 water in the account, but also to take it back out
17 again.

18 So if I can go back down through the
19 contract and what they are, item one, which I
20 described as MWA as the wholesaler to Victorville,
21 that's the Ordinance Number 9 agreement that we've
22 been talking about.

23 Number two, which is between VVWD and
24 High Desert is the aquifer storage and recovery
25 agreement that was testified to yesterday by Mr.

1 Welch and Mr. Hill.

2 The circle three is the storage
3 agreement that has to exist between MWA as
4 watermaster and the Victor Valley Water District
5 as the entity that wants to store the water.

6 And four, is the will serve letter that
7 I understand is one of the conditions in the
8 staff's document, that there has to be a will
9 serve letter.

10 Now, you'll notice that two and four on
11 the schematic connect Victor Valley Water District
12 with the High Desert Power Project. One is the
13 aquifer storage and recovery agreement and the
14 other is the will serve letter, which I understand
15 to be almost synonymous to each other.

16 Q Does that complete your explanation of
17 these two exhibits, 138 and 139?

18 A Yes, it does.

19 Q Let me ask you two other questions.
20 When you mentioned the entitlement of MWA, would
21 you please turn to page eight of the staff water
22 resources rebuttal testimony and the errata for
23 soil and water resources and air quality
24 testimony.

25 A Yes, I've done that.

1 Q There is a chart there and I'd like to
2 ask you two questions. First of all, the
3 entitlement at the bottom for 1997 shows 50,800
4 but I think that I heard you say 75,000. Has that
5 entitlement increased since 1997?

6 A Yes, an additional 25,000 acre feet was
7 purchased from the Brenda-Mesa Water District,
8 which is a member unit of the Kern County Water
9 Agency and the Kern County Water Agency holds the
10 contract to the State Water Project entitlement.

11 So that was done from Brenda-Mesa with
12 Kern County Water Agency approval and that full
13 entitlement was transferred to Mojave Water Agency
14 and now constitutes part of MWA's Table A
15 entitlement.

16 Q Now, Mr. Beeby, at various times in this
17 proceeding we have heard that there are no long
18 term guarantees that water will be available, but
19 I believe that you have done some analyses for the
20 project that there is -- of the likelihood that
21 water would be available. And referring to this
22 chart, do you have any comments on the likelihood
23 that water will be available from the State Water
24 Project for this project?

25 A Yes, let me answer that in two ways.

1 The deliveries shown here are the actual
2 deliveries taken by Mojave Water Agency. For the
3 deliveries 1980, '81 and '82, I believe those were
4 for demonstration purposes and the water was
5 merely released from Silverwood Lake. It was
6 before they had any facilities -- before the
7 agency had constructed any facilities, so there
8 was a release from Silverwood to the Mojave River
9 Channel for groundwater recharge purposes to use
10 as a demonstration project, using the Mojave River
11 Channel as a recharge as opposed to the ponds,
12 recharge ponds and facilities that are proposed in
13 the regional plan.

14 I'm not sure how to explain 1987. There
15 wasn't much water available, but the main reason
16 that these figures are low is not from a lack of
17 supply but from lack of revenue to purchase the
18 entitlement supply.

19 My understanding of the way Mojave is
20 financed is they have a certain tax base. MWA is
21 one of their assessments and those revenues raised
22 from that assessment are used to pay the fixed
23 cost of the state water project. But, as I
24 understand it, there is no mechanism, or I should
25 say was no mechanism, for the agency to raise

1 revenue to pay for the variable component of the
2 State Water Project.

3 So these figures here represent not a
4 supply demand situation but a lack of revenue
5 situation that Mojave did not have the revenues to
6 purchase more than what is shown here.

7 Getting back to the second part of your
8 question, Mr. Thompson, one of the analyses that
9 we did in evaluating the reliability of the State
10 Water Project was to use something called DWRSIM
11 which is a model that is done by the Department of
12 Water Resources.

13 Essentially what that does is it assumes
14 that there would be a repetition of a certain
15 period of hydrology and I think when we did the
16 study it was from 1922 to 1994. And the
17 reservoirs and rainfall are all assumed to exist
18 as they did then, the difference being that the
19 State Water Project's operational criteria changed
20 and by knowing what the quote, "supply" is to the
21 State Water Project, and their method of
22 operation, including endangered species, Bay Delta
23 accords, the way they work the reservoir, the way
24 they interchange with the federal component of the
25 San Luis project, all that is factored in to this

1 model study to determine what the entitlement or
2 delivery might be to each contractor, assuming
3 that they were all at full entitlement, requesting
4 full entitlement over this period of time.

5 So when we did that analysis we found
6 that if we reserved for Mojave as an agency -- I'm
7 sorry, I should back up. Mojave's entitlement of
8 70,800 by Board policy, one-seventh of that is
9 devoted to the Morongo Basin pipeline and that
10 service area which is outside the Mojave River
11 Basin.

12 So the remaining six-sevenths of their
13 entitlement can be used for beneficial purposes in
14 the Mojave River Basin. So we took the six-
15 sevenths that was available -- well, we started
16 with the full entitlement delivery that might be
17 available using the repetition of the historical
18 hydrologic period. We devoted one-seventh of
19 whatever the available supply was to Mojave to
20 Morongo and we took the bounds as potentially
21 deliverable to the Mojave Water Agency, assuming
22 that revenue was not a constraint, but just water
23 supply.

24 We also recognized that Mojave has a
25 contractual commitment to exchange water with the

1 Antelope Valley Water Agency, which is another
2 state water contractor for about 12 to 15 acre
3 feet to run Luz power plant over near Kramer
4 Junction.

5 So we took that out as something that
6 was, that had to be done. Then we said, all
7 right, if there's only 4,000 acre feet available
8 to the agency it's not likely that that water
9 would be totally dedicated to the power plant,
10 because Mojave has a broader responsibility than
11 just serving the power plant.

12 So we selected, just to test the
13 sensitivity, we selected various values that
14 Mojave would reserve for its own purposes and we
15 started at 12,000 acre feet, which was essentially
16 10,000 acre feet for the main agency uses and 1500
17 acre feet for Kramer Junction. And we rounded
18 that to 12,000 and said look, if there's only
19 12,000 acre feet available from the state project,
20 the project would get zero and they would have to
21 pump.

22 So we started at that level and
23 determined how many years that that would take
24 place. And we worked our way up to about 40,000
25 acre feet reserved and only till we got past

1 30,000 acre feet of prior reservation did the
2 power plant have to pump more than two years in a
3 row. And that was our evaluation, to indicate
4 that with the repetition of the State Water
5 Project hydrology and with the current operations
6 as they existed in 1995, there would only be short
7 periods of time, never in excess of three years,
8 and they were scattered out over this 70-year
9 hydrologic period, where actual pumpage would be
10 required. And we used that as the basis to
11 evaluate the reliability of the state project to
12 meet the demands. And whenever the state project
13 wasn't available then they would be on the
14 underground.

15 So that was the context of our analysis.
16 And I think that's in some of these -- I think
17 it's been submitted as evidence someplace, our
18 studies, that is.

19 Q Thank you. One final question, Mr.
20 Beeby. It has been alleged that the introduction
21 of this project, the construction and operation of
22 this project, could cause water prices to rise for
23 other consumers in the valley, in the area. Would
24 you comment on that?

25 A I don't think that's possible, because

1 Mojave Water Agency is a wholesaler of water and
2 they don't sell water directly to purveyors. As I
3 understand it there will be a substantial increase
4 in tax revenues as a result of the High Desert
5 Power Project being constructed.

6 Since an increase in tax revenues
7 generally would contribute to the amount that
8 Mojave receives for its MWA assessment number one,
9 they would essentially be getting more revenues
10 than they would otherwise and it would be up to
11 the Board as to whether or not they would reduce
12 the ad valorem tax under their Mojave Agency
13 number one or leave it the same.

14 So I think, if anything, the price -- or
15 the water cost might drop down as it was purchased
16 from the Mojave Water Agency.

17 MR. THOMPSON: Thank you very much.
18 That concludes our further direct.

19 HEARING OFFICER VALKOSKY: Yeah, Mr.
20 Beeby, I'd just like to clarify one point that you
21 made. Is it correct to characterize the present
22 situation with the Mojave Water Agency and the
23 State Water Project supply as the fact that there
24 is sufficient water available and Mojave's
25 problem, if you will, or lack of -- or constraint

1 in obtaining this water is directly related to
2 revenues and not the supply of water?

3 THE WITNESS: Yes, that's correct.

4 HEARING OFFICER VALKOSKY: Thank you.

5 PRESIDING MEMBER LAURIE: Mr. Beeby, how
6 much is Mojave paying the state as a wholesale
7 price, approximately?

8 THE WITNESS: Some figures that I saw
9 recently that were prepared by Mr. Norman, the
10 manager, and I think it might have been for
11 current time, it's about \$10 million a year for
12 the fixed price and then the variable component
13 currently is on the order of a hundred dollars an
14 acre foot.

15 PRESIDING MEMBER LAURIE: And then how
16 much does Victorville pay Mojave?

17 THE WITNESS: At the moment they don't
18 pay Mojave anything, except through the
19 adjudication. And the purpose of the adjudication
20 was to develop a revenue supply for the agency to
21 purchase water. That revenue supply is generated
22 as people produce, pump in excess of their free
23 production allowance, they have to pay a
24 replacement assessment to the watermaster.

25 The watermaster then gives the money to

1 Mojave to purchase State Water Project water for
2 groundwater recharge. But Mojave, per se, does
3 not sell water directly to any of the purveyors.

4 PRESIDING MEMBER LAURIE: Does it make
5 sense to ask the question what is the retail price
6 of water, the source of which comes from the State
7 Water Project?

8 THE WITNESS: Well, I hate to say it
9 doesn't make sense to ask the question. I'm not
10 sure I can give you the answer.

11 Mojave, as I said, is a wholesaler and
12 they have certain costs in order to get the water
13 recharged. They have the cost of the debt service
14 on the Mojave pipeline, operational costs, staff,
15 that kind of thing.

16 So they, when they configured the amount
17 that the replacement assessment should be, factors
18 in, factor in their costs. So Mojave has a price
19 that they are charging for the replacement
20 obligation and that's their only source or revenue
21 other than taxes.

22 Now the City of Victorville and the
23 Victor Valley Water District have their own
24 structure or prices which takes into account their
25 production costs, their treatment costs, much like

1 Mr. Hill talked about yesterday. And in addition
2 to that -- I don't know for certain, but I would
3 think that they would be factoring in their
4 projected replacement obligation to the
5 watermaster and factor that into their price
6 setting for water that they would sell the retail
7 customers.

8 PRESIDING MEMBER LAURIE: And is that an
9 acre foot cost?

10 THE WITNESS: Normally a wholesale rate,
11 we speak in terms of dollars per acre foot. Like
12 the Mojave Water Agency or to the power project,
13 typically the retail rate, and I don't know for
14 sure how Victor Valley Water District does it, but
15 it's usually per hundred square feet, cubic feet,
16 unit, so many dollars per cubic foot, or hundred
17 cubic feet. I think that's how they do their
18 water bill.

19 You can convert between cubic feet and
20 acre feet, but I don't have those figures.

21 PRESIDING MEMBER LAURIE: I'm just
22 trying to get a general idea of how much water
23 costs for a consumer out of the State Water
24 Project, in generalities. If I wanted to put up a
25 bunch of houses and I needed 500 acre feet, the

1 source of which was State Water Project water,
2 what would it cost me?

3 THE WITNESS: I can't answer that for
4 municipal uses. I do have a better feel for the ag
5 use. And, for example, the Kern County Agency
6 water from the State Water Project, would cost on
7 the order of \$50, \$50 to \$75 an acre foot, if you
8 were to purchase it from the Kern County Water
9 Agency. That's further upstream on the project.
10 As you come further south and as you get into the
11 east branch you have major lifts at Edmonston to
12 get over the hill.

13 San Diego is charging, wholesale rate,
14 about \$450 to \$500 an acre foot, but again they
15 treat the water and they're essentially delivering
16 a potable supply, which Kern County is not. So
17 the range can be from 50 to 400, but you're not
18 really comparing equivalents.

19 PRESIDING MEMBER LAURIE: I understand,
20 close enough, thank you.

21 HEARING OFFICER VALKOSKY: Mr. Ledford.

22 RE CROSS EXAMINATION

23 BY MR. LEDFORD:

24 Q Mr. Beeby, can you tell me what your
25 professional background is?

1 A Yes, I'm a Registered Civil Engineer,
2 Registered Ag Engineer. I've worked as a
3 consultant in the engineering profession since
4 1966. I was with Bookman-Edmonston Engineering
5 until 1998 and have now changed employers to
6 Science Applications International.

7 Q And do you consider yourself an expert
8 in hydrology?

9 A Yes, I've been qualified as an expert in
10 hydrology, I should say, on numerous occasions.

11 Q And did you testify in the adjudication
12 on water rights in this case, Mojave water --

13 A I testified, but not on the subject of
14 hydrology.

15 Q All right. I'd like to start with your
16 Exhibit 138, your flow of water.

17 And the flow of water coming from SWP to
18 the City of Victorville in a pipeline, I want to
19 make real clear this testimony that that pipeline
20 can be used for no other purpose than to provide
21 water for the High Desert Power Plant, is that a
22 correct statement?

23 A That's not my testimony.

24 Q That isn't your testimony?

25 A No.

1 Q I thought that the question from the
2 Commission was whether or not that pipeline could
3 be used only for recharge and cooling?

4 A No, it was -- I thought the question was
5 to deliver water to the City of Victorville. And
6 so that pipeline exists there. Victorville has
7 a -- would have an agreement with the agency to
8 purchase water under its Ordinance 9. It's my
9 understanding that that's all that's covered under
10 the Ordinance 9 and these other agreements is the
11 use of water for the power project.

12 Q So your testimony is that that pipeline
13 could be used by the City of Victorville for any
14 other purpose that they wanted to?

15 A I'm not qualified to say what the
16 contract will say, but from an engineering
17 perspective and from the water management
18 perspective, I would say that if the City of
19 Victorville wanted to embark upon a groundwater
20 banking project on its own, or if the Mojave Water
21 Agency wanted to use that little section of
22 pipeline to bank for its account, that would be a
23 good water management practice.

24 Q I wouldn't disagree with you that that
25 would probably be a good practice, but from the

1 standpoint of the project that we're looking at
2 today, do you know what the capacity of that
3 pipeline is?

4 A No.

5 Q And back up just a little bit. You're
6 testifying here today as a witness for High Desert
7 Power?

8 A That's correct.

9 Q And you have a contract with High Desert
10 Power?

11 A Not -- no.

12 Q And who is your contract with?

13 A I don't know that I have a contract.
14 SAIC, my current employer, has a subcontract with
15 Bookman-Edmonston so that I can provide services
16 to Bookman-Edmonston under that contract.
17 Bookman-Edmonston does not have a contract with
18 High Desert, either, to my knowledge. As far as I
19 know it's Resource Management International that
20 has the contract with the High Desert Project.
21 But neither Resource Management nor Bookman-
22 Edmonston exists today because now they've been
23 merged into Navigant.

24 (Laughter.)

25 THE WITNESS: Now, I'm not sure this --

1 I'm trying to be helpful, but it's very confusing.

2 MR. LEDFORD: So what else is new about
3 this project?

4 (Laughter.)

5 BY MR. LEDFORD:

6 Q I think what I'm trying to get at in its
7 most simplest terms is that you -- Bookman-
8 Edmonston or its successor in interest has a
9 contract with High Desert Power, would that be a
10 correct statement?

11 A Not to my knowledge.

12 Q There is no contract at all?

13 A Not between Bookman-Edmonston and High
14 Desert Power Project.

15 Q Is there a contract with one of the High
16 Desert Power Project's partners?

17 A I don't know that. I know if I submit
18 my bills I get paid.

19 Q Was Bookman-Edmonston the engineer on
20 the water management plan?

21 A Yes.

22 Q And were you the principal engineer on
23 that project?

24 A Yes.

25 Q And how long did you work on that

1 project?

2 A Let's see, I think Bookman-Edmonston was
3 retained by the agency in late '89 or early 1990.
4 And our first effort was to start with the zone
5 benefit evaluation. We then phased into the
6 regional water management plan and that was
7 underway from probably 1992 or three to '94,
8 something like that.

9 Q A period of three to four years?

10 A Yes.

11 Q And can you tell me approximately how
12 much did that water management effort cost?

13 A I think the total Bookman billings just
14 for the management plan were on the order of six
15 to \$800,000.

16 Q And were there other consultants and
17 engineers and contractors involved in developing
18 that plan?

19 A We had --

20 MR. THOMPSON: I'm going to object to
21 this line of questioning unless a show of
22 relevance. The amount paid to a consultant years
23 ago on another matter, I don't think is helpful to
24 the record.

25 HEARING OFFICER VALKOSKY: I agree. Mr.

1 Ledford, where are you going with this? What are
2 you attempting to adduce?

3 MR. LEDFORD: It will take me about two
4 more questions and we'll be done with it.

5 HEARING OFFICER VALKOSKY: Okay, fine,
6 two more questions.

7 THE WITNESS: There were other
8 contractors involved, but the numbers I gave you
9 from six to \$800,000 is the total that was billed
10 to the agency for the Regional Water Plan, to the
11 best of my recollection.

12 BY MR. LEDFORD:

13 Q All right, thank you. And has Bookman-
14 Edmonston done other work for the MWA since the
15 Water Management Plan was done?

16 A Not to my knowledge.

17 Q Have you done other work for the agency
18 since the Water Management Plan was completed?

19 A Not directly for the agency, no.

20 Q In the course of accepting this
21 agreement to provide consulting services to High
22 Desert Power was there ever a request from the
23 agency for waiver of conflict?

24 MR. THOMPSON: I think he testified
25 there is no agreement.

1 HEARING OFFICER VALKOSKY: Just answer
2 the question.

3 THE WITNESS: When I was approached by
4 High Desert Power Project to assist them in
5 developing the water plan, as I testified in
6 direct, my role was to try to make sure that it
7 was consistent with the water management plan and
8 the adjudication.

9 I did not perceive that there was a
10 conflict and contacted Mr. Rowe to make sure that
11 the agency, Mojave Water Agency had no feelings
12 that there might be a conflict if I worked on the
13 High Desert Project. And I don't recall that we
14 got that in writing, but I got his verbal
15 statement that said go ahead, it doesn't bother
16 me, something to that effect.

17 BY MR. LEDFORD:

18 Q Going on back to Exhibit 138, we're at
19 the City of Victorville receiving the 4,000 acre
20 feet of water and your testimony is that it either
21 goes directly to the High Desert Power Project or
22 it goes to treatment.

23 Now, how much water in the very first
24 year is going to be required to come through this
25 pipeline to address the project's requirements?

1 A Well, I don't want to be difficult, but
2 I think you have to define first year.

3 Q I'm talking about the first 12 months --

4 A Of what?

5 Q Of water delivery under a contract with
6 the Mojave Water Agency?

7 A Let me see if I can answer it this way.
8 As soon as the treatment plant is constructed, the
9 wells and the connecting facilities are
10 constructed, and if water is available to the
11 project, it would be my recommendation to the
12 project that they start importing water for
13 groundwater recharge.

14 If that is coincident with the time that
15 they're operating the power plant then some of the
16 water that is delivered under the Ordinance 9
17 contract would be delivered for power plant
18 cooling purposes.

19 But my testimony was not limited to
20 4,000 but whatever the agreement was in the
21 particular year that was in effect. So it could
22 be more if they were trying to operate the power
23 plant and undertake groundwater recharge at the
24 same time.

25 Q Well, unfortunately that answer is --

1 maybe I didn't structure my question correctly,
2 but the answer isn't responsive to my question.

3 I guess I can try and break it down. My
4 understanding is that six months prior to the time
5 they're going to start commercial operation that
6 they would start water banking, is that your
7 understanding?

8 A I don't know.

9 Q Well, my understanding is that in order
10 to start the project they have to have at least
11 2,000 acre feet of water banked before they can
12 start the project, is that your understanding?

13 A I don't know.

14 Q Okay. Let's go to Exhibit Number 139.
15 The MWA, as the wholesaler, we'll talk about that,
16 and in order for the MWA to wholesale water they
17 have to sell water under Ordinance 9, is that your
18 understanding?

19 A Yes, it is.

20 Q And is it your understanding that in
21 order to buy water you have to be a stipulating
22 party to the judgment?

23 A Yes.

24 Q And you have to make an application
25 under Ordinance 9, is that your understanding?

1 A Yes.

2 Q And have you seen the application of the
3 City of Victorville or the Victor Valley Water
4 District for the first year of operation for this
5 project?

6 A No.

7 Q We earlier introduced --

8 MR. THOMPSON: Pardon me, Mr. Ledford,
9 would it be possible to move Mr. Beeby up to one
10 of the microphones. We're still having a little
11 trouble with a few members of the audience and if
12 we could indulge the Committee I think it would
13 help all of us if we could move him up there.

14 BY MR. LEDFORD:

15 Q We introduced Exhibit 137 earlier, which
16 was a previously docketed exhibit. I have not
17 brought additional copies, unfortunately. But
18 within this exhibit is an actual application which
19 has been testified to as being the Mojave Water
20 Agency's commitment to serve 4,000 acre feet of
21 water for the project.

22 And under Ordinance 9, as I understand
23 it, not only does the application have to -- the
24 initial application have to have a one-year
25 forecast, but actually has to have a five-year

1 estimate. To the best of my knowledge this
2 application doesn't have a five-year estimate,
3 which makes life a little more difficult.

4 But I'd like to read to you paragraph
5 five, which is the description of the proposed use
6 and that description states that the --

7 STAFF COUNSEL HOLMES: Excuse me, I'm
8 sorry, if the witness would like a copy I have an
9 extra if that would be helpful. I'm sorry to
10 interrupt. Would you prefer to be looking at it?

11 THE WITNESS: It depends on his
12 question.

13 (Laughter.)

14 BY MR. LEDFORD:

15 Q In paragraph five it says "the water to
16 be provided to industrial users, largest current
17 proposed user is the High Desert Power partners
18 electric plant cooling. To the extent that
19 treatment facilities are constructed treated water
20 shall be utilized for municipal purposes and
21 groundwater purposes."

22 Now what I'd like you to explain to me,
23 if you can, is how the water that's in this
24 pipeline and under these contracts in your flow
25 chart and a part of this 4,000 acre feet of water

1 that's going to come from the water agreement with
2 the Mojave Water Agency fulfills all of those
3 roles?

4 PRESIDING MEMBER LAURIE: One moment,
5 Mr. Beeby, do not answer that question yet.

6 Okay, answer the question, Mr. Beeby.

7 THE WITNESS: You're asking, Mr.
8 Ledford, how I would characterize municipal
9 purposes and groundwater recharge in paragraph
10 five on page two of three of the ordinance -- of
11 the application that is?

12 BY MR. LEDFORD:

13 Q No, what I'm saying is we have a flow
14 chart, and to my understanding is that this flow
15 chart tells us how the water regimen for this
16 project is going to work, what contracts are
17 required, how the pipeline is going to work, how
18 the treatment facilities are going to work and
19 what the water is going to be used for.

20 And my understanding of these two
21 exhibits is at the end of the day these two
22 exhibits reflect that the only thing that the
23 water that's going to go through this project is
24 going to be used for is for the cooling towers at
25 the power project.

1 However, the application that has been
2 made and has been entered into evidence here today
3 and has been docketed with the CEC as the document
4 that is going to provide water for this project,
5 says that this water can be used for other uses.
6 And they are asking the Mojave Water Agency to
7 supply water for other uses. And it even says
8 that the water has to be treated, which would mean
9 the power project would -- my understanding is
10 this water is going through the power project's
11 treatment plant for other uses.

12 That's the way I read it. Now you may
13 know something different and that's my question.

14 A All right, let me take a shot at it
15 then. For groundwater recharge in order to
16 establish the bank, the project's treatment
17 facilities have to treat that water to background
18 levels in order to comply with Regional Water
19 Quality Control Board standards.

20 So, as I've shown on the arrow diagram,
21 if we're going to groundwater recharge, after we
22 come to the City of Victorville box, we go down to
23 the HDPP treatment box. Now the pipeline between
24 the MWA Mojave River pipeline and the High Desert
25 treatment plant is the two and a half mile

1 pipeline that's referred to on this sketch,
2 schematic.

3 So to accomplish groundwater recharge,
4 because we're using injection wells rather than
5 percolation ponds, we have to treat the water.

6 Q Correct.

7 A All right. That same pipeline would be
8 used when State Water Project is available to
9 deliver water directly to the power plant for
10 cooling purposes.

11 Q Correct.

12 A Since it's not a potable supply and
13 since it's not going to the underground and since
14 it's going to the power plant for cooling purposes
15 that does not have to be treated. So
16 schematically there would be a pipeline and then
17 it would Y off or T off, one leg would go to the
18 treatment plant for groundwater recharge, the
19 other leg would go to the power plant for cooling.

20 Q Correct.

21 A Now, to me the groundwater recharge is
22 covered in the paragraph 5 that you mentioned.
23 And municipal purposes, I don't know what that
24 means, but it could easily mean -- I mean if we're
25 being precise in our language, I might have said

1 municipal and industrial uses. But I don't know
2 what they mean by municipal uses.

3 Q Well, in order for State Project water
4 to be used for municipal purposes it would have to
5 be treated, is that correct?

6 A If you refer to municipal uses as being
7 potable water supply, yes.

8 Q Okay, fair enough. I'm not trying to
9 beat this horse to death but it seems to me like
10 in this flow diagram we're missing one piece and
11 that is municipal uses. In other words, the
12 application appears to me to say to MWA is we want
13 to put water in a 24-inch pipeline and we want to
14 deliver it to the George Air Force Base. That's
15 what we want to do with this water.

16 The principal user it says -- the
17 principal user in this particular application is
18 going to be the High Desert Power Project. And
19 we're going to do groundwater -- all the things
20 that you've just said. I think they're all
21 extremely accurate.

22 But they've also said that treated water
23 can be used for municipal use, and I think that
24 there's an arrow missing and a box missing on your
25 flow diagram that should, if the application is

1 accurate, if that's the intent of the City of
2 Victorville, who's not here today, to purchase
3 4,000 acre feet of water for those uses, then I
4 think we're missing a component. And this is one
5 of my big issues before this Commission today is
6 what the intent of the parties are in creating
7 this particular water project is to use the water
8 for more than what is being talked about here
9 today.

10 MR. THOMPSON: Mr. Ledford, if I may
11 jump in here. We created Exhibit 138 to show the
12 flow water for project purposes. We did not try
13 and show any water flows from entities such as the
14 City of Victorville to its other users.

15 MR. LEDFORD: Are you testifying,
16 because I would love to ask you some questions.

17 MR. THOMPSON: No, what I was trying to
18 do is to clarify what we tried to do on Exhibit
19 138. I was trying to help.

20 MR. LEDFORD: And I understand, but I
21 think that the perception is and has been for some
22 period of time that this whole water plan is and
23 has been analyzed by the CEC staff as only for
24 your project. And I'd firmly -- first of all I
25 know from conversation with lots of folks that

1 that isn't what their ultimate intent is. That's
2 not what the intent is. And does that mean it's
3 bad, perhaps not. But it has not been fully
4 disclosed. It has not been studied.

5 And I'm trying again to beat out -- I'd
6 like to get on with it. I don't need you to
7 testify.

8 PRESIDING MEMBER LAURIE: The problem,
9 Mr. Ledford, and I truly respect and we will honor
10 your right and ability to present your case, but
11 when we have witnesses we have to move in a timely
12 and a direct manner.

13 MR. LEDFORD: And I'd like to get
14 through that as well. I will try and shorten this
15 up as much as I can.

16 Q In order for the High Desert Power
17 Project to bank 2,000 acre feet of water and
18 operate for a period of six months and bank
19 another 2,000 acre feet of water, isn't the High
20 Desert Power Plant during the first 12 months, the
21 first water year contract, going to need 6,000
22 acre feet of water?

23 A Under hypothetical operation it would,
24 yes.

25 Q And then during the second year wouldn't

1 it need at least 8,000 acre feet of water?

2 A If water were available from the state
3 water project it would be my recommendation to the
4 High Desert Power Project to bank as much water as
5 possible as quickly as possible. And if they're
6 trying to operate the power plant at the same time
7 they're banking then they would use the 4,000 acre
8 feet or they would use 4,000 acre feet for cooling
9 and whatever else they could squeeze through the
10 pipeline and down the wells for banking.

11 Q All right. Let's go back to Exhibit
12 139. As we sit here today, to the best of your --
13 in order for this project, this water flow project
14 to actually come to fruition it's going to take,
15 under your list, five separate contracts, is that
16 correct?

17 A My list lists five separate agreements
18 slash contracts, but as I mentioned in my direct,
19 two and four are more or less the same things. So
20 I don't know that the number is important, but
21 just to clarify.

22 Q Okay. As of today the project does not
23 have an approval under Ordinance 9 to deliver any
24 water, is that correct?

25 A That's my understanding, they have an

1 application only.

2 Q And as of today the aquifer storage and
3 recovery agreement is now subject to some
4 renegotiation, is that also correct?

5 A Based on what I learned yesterday.

6 Q And Item Number three, the storage
7 agreement with the Mojave Water Agency has not
8 even been applied for?

9 A It's my understanding that there's been
10 a draft of it. Whether it's been actually handed
11 to the agency or not, I'm not aware of that. I
12 don't know that.

13 Q But there is no executed agreement
14 before the Commission here today?

15 A I don't know that, I don't think so.

16 Q There is no executed water storage
17 agreement with the Mojave Water Agency here today?

18 A I don't think so.

19 Q Thank you. Number 4, your will serve
20 letter, to the best of your knowledge and belief
21 is there any will serve letter before the
22 Commission for approval here today?

23 A No.

24 Q And Number 5, the water supply
25 agreement, and that water supply agreement is, as

1 I understand it, is between the City of
2 Victorville and the High Desert Power Project. Is
3 there any water supply agreement before the
4 Commission here today?

5 A Not to my knowledge.

6 Q All right. So in order for this whole
7 thing to work it's subject to a whole lot of
8 agreements that would happen sometime in the
9 future?

10 A That's my understanding.

11 Q All right. Did you take part in any way
12 in the preparation of the fifth annual report to
13 the Court for the Mojave Water Agency?

14 A No.

15 Q Are you familiar with the term ramp
16 down?

17 A Yes.

18 Q And can you tell me how that works?

19 A Ramp down, as used in the adjudication,
20 was a mechanism to increase the amount of
21 replacement water that existing pumpers would be
22 required to purchase from the watermaster through
23 the agency. We started by quantifying, or at
24 least the adjudication parties started by
25 quantifying what was called base production

1 allowance. And base production allowance was
2 ramped down by five percent each year for five
3 years to get to be 80 percent of what they had
4 produced in the highest year during the five-year
5 analysis period.

6 And so ramp down was the term used to
7 define what is called free production allowance,
8 which is the amount of water that a groundwater
9 pumper can produce without being subjected to a
10 replacement obligation or a replacement
11 assessment.

12 Q In the Alto Basin was it assumed under
13 the adjudication that all of the water was in one
14 pool?

15 A I'm not sure I understand what you mean
16 by pool, but assuming you mean one basin, as
17 opposed to a compartmentalized basin or
18 compartmentalized by purveyors, it was considered
19 to be one reservoir, one basin, or one sub-area I
20 should say.

21 Q Would the words common source of water
22 be -- I'm sorry, I'll let you answer that
23 question, common source of water, one common
24 source of water?

25 A The hydrology done in the adjudication

1 was based on the natural flow of water into each
2 of the sub-areas. So to the extent that that, in
3 your terminology is referred to as a common source
4 of water, it was the natural supply of not only
5 the Mojave River but tributary flow and
6 precipitation contributed to the water supplies
7 available to the Alto sub-area.

8 Q Okay and in the Alto sub-area how much
9 water is naturally recharged, and this can be an
10 approximate number?

11 A On a long-term average basis, as I
12 recall the numbers, surface in-flow at the
13 upstream end of Alto was around 65,000 acre feet a
14 year. And, as I recall, outflow around the
15 narrows which is the beginning of the transition
16 zone was around 30 some, so that would make about
17 30 to 35,000 of natural recharge from stream flow.
18 Then there's return flow from -- I mean there's
19 precipitation and other sources of inflow,
20 tributary inflow also.

21 Q And how much overdraft in the Alto Basin
22 currently?

23 MR. THOMPSON: I'd like to object to the
24 line of questioning. I believe that this is --
25 this line of questioning clearly goes to MWA

1 practices and two of Mr. Ledford's issues that he
2 wanted to raise today. MWA entitlement and their
3 failure to cure overdraft, I think are beyond the
4 scope of what we are doing here today.

5 MR. LEDFORD: I'd like to lay some
6 foundation.

7 HEARING OFFICER VALKOSKY: Could you
8 just respond to where you're going with this, Mr.
9 Ledford?

10 MR. LEDFORD: Absolutely. The testimony
11 has been, from Mr Beeby, that MWA can provide
12 State Water Project water for this project for the
13 given life of the project. And the water
14 management plan that he prepared clearly shows
15 that there is over production. It also indicates
16 that it's going to take all of the MWA entitlement
17 to cure the overdraft. And the fact that the MWA
18 hasn't raised the money yet to cure the overdraft
19 certainly doesn't mean that they won't soon or
20 that somebody isn't going to require them to do
21 that.

22 The issue of the fact that this Alto
23 Basin that we're sitting over right now every year
24 continues to be an overdraft, without that
25 overdraft being cured, is a significant issue

1 relative to whether or not the MWA can provide
2 water in this project and I think the testimony is
3 very relevant.

4 HEARING OFFICER VALKOSKY: I guess I
5 disagree in part, Mr. Ledford. The Committee
6 stated earlier we will accept, basically we will
7 accept the agency's action on its face. If the
8 agency provides state water -- as I understand it,
9 and please correct me if I'm wrong, if the agency
10 provides State Water Project water to the High
11 Desert Power Project then that will go through the
12 flow chart. If it doesn't, the project won't
13 operate it as I understand. Does anybody have a
14 disagreement with this?

15 MR. LEDFORD: May I explain for a second
16 where I think you're not -- and I'll apologize for
17 maybe not --

18 HEARING OFFICER VALKOSKY: No,
19 certainly, go ahead and explain it.

20 MR. LEDFORD: -- making this clear. But
21 the issue is that the MWA wants to rely on this
22 Commission's CEQA action to approve a water supply
23 or an annual agreement under Ordinance Number 9.
24 In other words they're going to say whatever you
25 say, whatever you say, that concerns CEQA about

1 that project, they're going to take that and
2 embody that and put it in that agreement and that
3 is the problem.

4 Because you take -- the Commission takes
5 the other side of the coin. The Commission says
6 we don't have to be concerned with what MWA might
7 do. If the Commission said, listen MWA, do your
8 own CEQA analysis, get your contract together, do
9 all the stuff that you need to do and give us a
10 contract because we don't want to hear about it, I
11 think that would be wonderful, but that's not
12 what's before you.

13 The MWA wrote the Energy Commission a
14 letter and they said we're not going to take any
15 action on this project until there's a CEQA
16 equivalent document for our action to provide
17 water to this project and that means that this is
18 a CEQA issue. And if they're going to rely on
19 what you do then this testimony is very valid,
20 that's my problem.

21 HEARING OFFICER VALKOSKY: Well, I mean
22 to the extent that the basin is an overdraft I
23 mean I think you can assume that yes, the evidence
24 establishes that, but I'm also sure that MWA is
25 aware of that as I am sure that they are aware of

1 their recharge obligations under the adjudication.

2 MR. LEDFORD: And it would be wonderful
3 if the Pollyanna approach worked, and I've always
4 thought it should but, if for some reason it
5 doesn't -- it's a political issue that if you can
6 dodge the bullet by letting somebody else take the
7 responsibility we'll dodge it.

8 HEARING OFFICER VALKOSKY: Well, again,
9 that's a political -- if it is, in fact, a
10 political issue I guess it's up to the Directors
11 of the MWA to resolve that, not this body.

12 MR. LEDFORD: You are --

13 HEARING OFFICER VALKOSKY: And again,
14 Mr. Ledford, I just, you know, you certainly have
15 the right to continue, but again realize that the
16 Committee is not here to pass upon the propriety
17 of as, you termed it, political decisions that MWA
18 may make. Nor are we here to try to reformulate
19 the adjudication. That is simply beyond our scope.

20 Proceed.

21 MR. LEDFORD: Thank you. I am
22 struggling with this and I have since we started,
23 but I think that if the Commission is willing to
24 be responsible for the CEQA elements of the use of
25 water in this project that are for other than

1 project related conditions, that those issues need
2 to be embodied in the mitigation measures of this
3 project, and I think we're just a long ways from
4 there. I'll try and speed this along again.

5 Q In relation to the report to the Court I
6 would -- I have introduced the text of the fifth
7 annual report to the Court, which embraces the
8 ramp down, and on page 26 it states that "The
9 current estimate of available natural supply
10 including consumption by threathytes and
11 accounting for long-term outflow at Afton Canyon
12 is about 45,000 acre feet," would you agree with
13 that number?

14 A I don't have any basis to agree or
15 disagree with it.

16 Q All right. "The total water production
17 during the 1997-'98 timeframe is approximately
18 150,000 acre feet or about three times the
19 available supply, would you agree with that
20 number?

21 A The same answer, I have no basis to
22 either agree or disagree.

23 Q Based on your knowledge of the
24 adjudication and the overdraft as you studied it
25 during the timeframe in which you studied it,

1 would that be a good reference point that the
2 production was about three times the available
3 supply?

4 A Excuse me, I was distracted.

5 Q Me too.

6 A The regional plan approached the
7 hydrology a little bit different than what finally
8 ended up in the adjudication, principally because
9 the regional plan dealt with issues of consumptive
10 use. Consumptive use is the amount of water that
11 is lost by evapotranspiration or transpiration
12 directly by crops. And since it's difficult to
13 measure when the adjudication was put together
14 they developed production as the measure of
15 consumptive use.

16 What shows here in the total for 1990
17 was that there was 123,000 acre feet of
18 consumptive use. Now, that's what it shows in
19 here and it shows that the total supply was about
20 125,000, less -- well, excuse me. It ended up
21 that the total deficiency for the entire basin was
22 about 68,000 acre feet in 1990 and Alto was
23 20,000, 19,900. That's what it shows then, for
24 1990.

25 Q And as of today you don't have any idea

1 as to whether or not the Alto Basin is still
2 currently in overdraft or not?

3 A For today, no, although in late '98 I
4 was asked to do an update of the hydrology and
5 prepared a memo on that.

6 Q And that memo stated?

7 A All that memo stated or all that memo
8 illustrated was estimate of annual supplies and
9 demands from the period 1990 through, I believe,
10 it was '96-'97.

11 Q And did it still show that the basins
12 were in overdraft?

13 A What it showed was that the Alto sub-
14 area had 38,000 acre feet more water in it '96-'97
15 than it did in 1990. So it was a gain of 38,000
16 acre feet, not a deficiency. But that needs to be
17 clarified because the overdraft, as defined in the
18 adjudication, is long-term averages. And the
19 38,000 of increase amount of water in storage was
20 attributable partly to wet years in '93 and '95, I
21 think.

22 There may have been some reduction in
23 production, but I don't know. The net result was
24 there was 38,000 acre feet more water in 1996-'97
25 than there was in 1990.

1 I might also add that that included some
2 importation by the agency of what they imported
3 from 1990-'91 through the period of analysis, so
4 that was factored in too.

5 Q You've reviewed the staff's report on
6 this project?

7 A I've read it, yes.

8 Q And in that staff report it talks about
9 the flood plain aquifer as opposed to the regional
10 aquifer. Are you familiar with those terms?

11 A Yes, that was a key issue in the
12 adjudication as well.

13 Q And is the flood plain aquifer
14 hydraulically connected to the regional aquifer?

15 A My understand is that it is, yes.

16 PRESIDING MEMBER LAURIE: Mr. Ledford, I
17 need to ask you a question. It's the Committee's
18 understanding that this project will use State
19 Water Project water. Because this project cannot
20 stick a tube into the aqueduct system itself it
21 has to go through other agencies, MWA, the City of
22 Victorville and for storage purposes Victor
23 Valley.

24 Is it your position that because MWA
25 gets the water out of the aqueduct and passes it

1 through to the project that that will affect the
2 overdraft? That's what I'm interested in. I want
3 to know if you believe this project adds to the
4 overdraft because it is using state water?

5 MR. LEDFORD: It adds to the overdraft
6 because it fails to use the water to cure the
7 overdraft.

8 PRESIDING MEMBER LAURIE: Is there a law
9 that says that must occur?

10 MR. LEDFORD: I believe that there are
11 court orders and regulations for that to occur.

12 PRESIDING MEMBER LAURIE: And who are
13 those court orders and regulations addressed to?

14 MR. LEDFORD: To the Mojave Water
15 Agency.

16 PRESIDING MEMBER LAURIE: So is it your
17 belief that the Mojave Water Agency is not free,
18 legally, to take some actions that it pretends to
19 take?

20 MR. LEDFORD: Well, it hasn't taken any
21 actions yet.

22 PRESIDING MEMBER LAURIE: Well then, the
23 Committee's position is you take that up with MWA.
24 We cannot tell MWA to act legally or illegally.
25 That is its own discretion. Nor are we going to

1 interpret MWA's own regulations and tell them how
2 to act.

3 We will assume that they know there was
4 and they will act legally. And so what the
5 Committee is frustrated with is we understand
6 state water is being used. And we don't
7 understand how if state water is used it is going
8 to add to the overdraft. That is what we don't
9 understand and, therefore, if it doesn't add to
10 the overdraft it is properly mitigated through the
11 proposed measures.

12 MR. LEDFORD: If state project water is
13 first allocated to cure the overdraft and it is
14 not being used to cure the overdraft and if you
15 set a precedent with this project to use 100
16 percent consumptive use water that cannot benefit
17 the basin, and then the next project comes along
18 and says well, they have that deal, now we want
19 that deal.

20 PRESIDING MEMBER LAURIE: Now that is a
21 question of policy, that is not our jurisdiction.

22 MR. LEDFORD: You're being asked to
23 create a CEQA document for the use of this State
24 Water Project water for this project when there is
25 more than adequate documentation and evidence in

1 this file, including the staff's own testimony
2 that says there is not enough water in the state
3 project water allocation to cure the overdraft.

4 You're going to develop conditions that
5 are supposed to mitigate this project as against
6 everything else and the Mojave Water Agency will
7 intend to use your document as a CEQA equivalent
8 to justify that as a reason. That is
9 circumventing what the process is supposed to do.

10 PRESIDING MEMBER LAURIE: Our document
11 is an informational document. It is not a policy
12 document.

13 MR. LEDFORD: They cannot -- the Mojave
14 Water Agency, the Victor Valley Water District and
15 the City of Victorville cannot enter into these
16 agreements to do the things that they're going to
17 do for this project without a CEQA document that
18 analyzes what they are going to do with the
19 project. And the project that is before you is
20 not the project that they intend to use.

21 Now they may have tried to alter their
22 testimony here to justify that, as I have brought
23 out. The applications that have been made to the
24 Mojave Water Agency are different and what has
25 been applied for and entered into evidence and put

1 before this Commission for agreements is different
2 than what you are going to approve. And yet they
3 are going to take your approval and use that to
4 create this contract and that is not what CEQA is
5 all about.

6 PRESIDING MEMBER LAURIE: Well, then you
7 challenge MWA.

8 MR. LEDFORD: All right, I will.

9 HEARING OFFICER VALKOSKY: One follow-up
10 question. Mr. Ledford, is your position based on
11 the presumption that the State Water Project -- or
12 that water may not be allocated by MWA without
13 first curing the overdraft? I mean is that a
14 fundamental tenet that you have?

15 MR. LEDFORD: It can't be allocated for
16 a hundred percent consumptive use project without
17 the proper CEQA analysis. And this project --

18 HEARING OFFICER VALKOSKY: Go back to
19 that that water has to be first used to cure the
20 overdraft.

21 MR. LEDFORD: Yes.

22 HEARING OFFICER VALKOSKY: Is that
23 correct?

24 MR. LEDFORD: Yes.

25 HEARING OFFICER VALKOSKY: Okay. Do you

1 believe that the water agencies involved,
2 specifically the MWA and the Victor Valley Water
3 District, agree with that presumption of yours?

4 MR. LEDFORD: I believe that some people
5 on the Boards of Directors agree and I believe
6 that some people on the Boards of Directors
7 disagree.

8 HEARING OFFICER VALKOSKY: Okay, let's
9 go to formal agency action. Is there any formal
10 agency action from either of those which would
11 either indicate agreement or disagreement with
12 your presumption?

13 MR. LEDFORD: The formal agency action
14 -- the only formal agency action to date is the
15 Victor Valley Water District and I have entered
16 two exhibits that have a considerable amount of
17 dialogue between myself and various members of the
18 Boards, which is worthy of reading.

19 The bottom line on CEQA that was
20 presented to the Boards --

21 HEARING OFFICER VALKOSKY: No, let's go
22 back to your presumption, the allocation of the
23 water without first curing the overdraft, because
24 that's where I'm trying to stay.

25 MR. LEDFORD: Well, the Victor Valley

1 Water District's position is that is not their
2 issue.

3 HEARING OFFICER VALKOSKY: Okay, so
4 basically the majority of the Board, that's why
5 I'm saying, is a formal agency action --

6 MR. LEDFORD: A majority of the Board
7 voted to enter into the agreement for water
8 storage and it was explained to them, as the
9 exhibits will show, that the water was to be --
10 the water system was to be of benefit to the
11 district in other ways beyond the project.

12 HEARING OFFICER VALKOSKY: Okay, but --

13 MR. LEDFORD: And the next piece of that
14 equation was that they were going to rely on the
15 Commission's CEQA equivalent document to approve
16 that contract.

17 HEARING OFFICER VALKOSKY: I understand,
18 but basically that action indicated their
19 disagreement that the water first be allocated to
20 cure the overdraft, exclusive of --

21 MR. LEDFORD: No.

22 HEARING OFFICER VALKOSKY: No? Well,
23 okay we can -- anyway, move on.

24 MR. LEDFORD: They just didn't address
25 that issue.

1 HEARING OFFICER VALKOSKY: Okay.
2 Yesterday I heard several witnesses testify that
3 the Mojave Water Agency believes it can't allocate
4 State Water Project water to the water -- to the
5 project, excuse me, without first curing the
6 overdraft. Did you hear the witnesses say that?
7 Were those statements made?

8 MR. LEDFORD: No.

9 HEARING OFFICER VALKOSKY: Well, then I
10 guess we have a difference.

11 MR. LEDFORD: Yes.

12 HEARING OFFICER VALKOSKY: Again, just
13 keep in mind we're not here to, you know, to set
14 any sort of foundation to attack the actions of
15 the other water agencies. The Committee has
16 indicated it's going to accept whatever formal
17 action they take, and the emphasis is on formal
18 action.

19 MR. LEDFORD: But don't you see the
20 Catch 22 in that? They're not going to take an
21 action until you approve this project, until you
22 deliver back to them a document that they can say
23 is a CEQA equivalent document so they can approve
24 the action. And if you're going to deliver a CEQA
25 equivalent document to them, to take an action to

1 use State Project water for this project, which
2 is, as I've said, about 15 to 20 percent of the
3 net available water, when you net it out as to
4 what's available on an annual basis, that's a
5 major piece of what the future water allocation
6 would be. And it's for a hundred percent
7 consumptive use.

8 When you recharge the water basins and
9 the average of 50 percent consumptive use is used
10 by all domestic and agricultural users, 50 percent
11 of that water becomes return flow. So that's like
12 taking away 8,000 acre feet.

13 These issues are not before you, but
14 that is -- those are the issues -- they're going
15 to take your CEQA equivalent and, as Mr. Caoette
16 said, if they can do their job well, they'll get a
17 contract approved in a week.

18 HEARING OFFICER VALKOSKY: Well, let's
19 -- again, I think we can get off that and I'll
20 note that, you know, that's a presumption on your
21 part that they will blindly accept, without
22 discussion, whatever the Commission comes up with.

23 MR. LEDFORD: Maybe I could draw your
24 attention to Ordinance 9 because that's been
25 talked about a lot in the -- are you familiar with

1 Ordinance 9? I think we've -- Mr. Beeby?

2 THE WITNESS: Yes.

3 BY MR. LEDFORD:

4 Q Are you familiar with the provision, I
5 believe it's in 3.05 of the Ordinance. It's also
6 referenced in the staff testimony on page two.

7 STAFF COUNSEL HOLMES: I'm sorry, could
8 you repeat the reference again to staff testimony?

9 MR. LEDFORD: Staff testimony on page
10 two, Mojave Water Agency laws, rules and
11 ordinances.

12 Are you familiar with that provision?

13 THE WITNESS: I have it in front of me.

14 BY MR. LEDFORD:

15 Q And I only have in front of me the short
16 version. Maybe you could read the long version.

17 A Well, I couldn't say whether it's the
18 long version or the short version, but I'll read
19 what I have.

20 "Section 3.05, backup capacity of
21 applicant. Each application shall
22 contain information indicating that the
23 applicant is capable of sustaining its
24 service requirements from independent
25 sources during the period of any

1 interruption or curtailment of service
2 from agency facilities. In no instance
3 shall the agency be the sole source of
4 water supply to any water purveyor for
5 the development within the purveyor's
6 service area."

7 Q So it says that the State Water Project
8 water can't be the sole source of water for the
9 project?

10 A Well, it says what it says, yes.

11 Q And if we went to condition number one,
12 page 65 of staff's testimony, condition number one
13 says, "The only water used for project operation,
14 except for domestic purposes shall be State
15 Project water obtained by the project owner
16 consistent with the provisions of Mojave Water
17 Agency's Ordinance 9." Don't you find those two
18 statements conflicting?

19 A Not at all.

20 Q Okay. Then tell me why you don't?

21 A Ordinance 9 provides the mechanism for
22 the project through the various entities to
23 purchase water directly from Mojave Water Agency.
24 The purchased water will either be used for power
25 plant cooling or groundwater recharge to establish

1 a bank account.

2 Q You don't consider that to be then State
3 Project water?

4 A Yes, I do.

5 Q It is State Project water?

6 A Well, its source is State Project water,
7 yes. Once it's put in the underground for the
8 account of Victor Valley Water District or High
9 Desert through all those contracts, it is not
10 native groundwater. It is banked water and
11 that's what the account is set up to handle.

12 Q It's still State Project water.

13 A No, it isn't State Project water. It's
14 source is State Project water.

15 Q That's exactly right, it's source is
16 State Project water.

17 A Which is governed by Ordinance 9.

18 Q And Ordinance 9 says that the project
19 can't rely on State Project as its sole source of
20 supply. As a matter of fact it says that you
21 can't even get your application approved until you
22 -- for your project, you can't get your project
23 approved until you can demonstrate that you have a
24 separate source of water.

25 At least that's the reference that I

1 have in staff's testimony. Staff's testimony says
2 on page two, "Section 3.5 of the Ordinance states
3 that SWP water cannot be the sole source of water
4 for a project and that a reliable source of water
5 must be obtained prior to the approval of any
6 application to the MWA."

7 Now it just seems to me like that
8 Ordinance 9 is for supplemental purposes, an
9 interruptable water source, it's not a reliable
10 water source --

11 PRESIDING MEMBER LAURIE: Mr. Ledford,
12 you're free to make that argument. The facts in
13 the record are the existence of Ordinance 9 and
14 the proposed condition. If you want to argue
15 those are conflicting, then argue that those are
16 conflicting. Please don't make argument to the
17 witness.

18 MR. LEDFORD: Thank you. I have no
19 further questions at this time.

20 HEARING OFFICER VALKOSKY: Thank you.

21 Mr. Beeby, is there an alternative
22 source of water for the project?

23 THE WITNESS: I think we're hung up on
24 the definition of what it means by State Project
25 water. The purpose, as I understand Ordinance 9,

1 is that the agency cannot guarantee a
2 noninterruptable supply of water to any purveyor.
3 If that purveyor, such as this project or other
4 projects who want to undertake groundwater banking
5 as part of their project concept, take State Water
6 Project water when it's available and stores it in
7 the underground for future use, that, to me, is
8 the intent and it doesn't have to do with whether
9 you call it State Project water.

10 If you want the strict definition of
11 State Project water it is water that's under
12 control of the Department of Water Resources. Now
13 once the underground bank account is established
14 and the water is delivered, once it comes out of
15 the aqueduct in other words, it loses its
16 character as State Project water.

17 HEARING OFFICER VALKOSKY: Right, and
18 again, I'm just interested since, you know, the
19 indication is that the project uses only State
20 Water Project water supplied by MWA. And, as I
21 understand Ordinance 9, under Ordinance 9, under
22 Ordinance 9, the project also has to have the
23 alternate supply of water. Am I correct that far,
24 going that far?

25 THE WITNESS: The project definitely has

1 to have the alternative supply --

2 HEARING OFFICER VALKOSKY: Alternative
3 supply --

4 THE WITNESS: Which would be the banked
5 groundwater.

6 HEARING OFFICER VALKOSKY: Right, okay.

7 THE WITNESS: And as it says here in
8 3.05, "In no instance shall the agency be the sole
9 source of the water supply."

10 HEARING OFFICER VALKOSKY: Right. I
11 think that's the difficulty that Mr. Ledford has
12 been having. So basically, the banked water, in
13 your view, qualifies as the alternate supply,
14 under Ordinance 9?

15 THE WITNESS: Yes.

16 HEARING OFFICER VALKOSKY: And until
17 there is banked water, there is no alternate
18 supply? I mean is that another way of putting it?

19 THE WITNESS: I think that's a fair way
20 to say it, yes.

21 HEARING OFFICER VALKOSKY: Okay, great,
22 thank you.

23 Mr. Thompson, any redirect?

24 MR. THOMPSON: We have no redirect,
25 thank you.

1 HEARING OFFICER VALKOSKY: Anything
2 else?

3 STAFF COUNSEL HOLMES: No.

4 HEARING OFFICER VALKOSKY: Mr. Adams,
5 anything else?

6 MR. ADAMS: No.

7 HEARING OFFICER VALKOSKY: Any other
8 questions of Mr. Beeby from anyone?

9 Thank you.

10 MR. THOMPSON: Mr. Valkosky, the
11 Applicant would like to have moved into the record
12 Exhibits 25, 130, 138 and 139.

13 HEARING OFFICER VALKOSKY: Is there
14 objection?

15 Hearing none, those exhibits will be
16 admitted.

17 (Thereupon the above-referenced
18 documents marked as Exhibits 25, 130,
19 138 and 139 for Identification were
20 received in evidence.)

21 HEARING OFFICER VALKOSKY: Does that
22 conclude your presentation, Mr. Thompson?

23 MR. THOMPSON: With the sole exception
24 that we would like to, at the very end, put Mr.
25 Barnett on to testify on behalf of Applicant, the

1 acceptance of all of the conditions of
2 certification, and I want to move into evidence
3 the AFC and other common documents with multiple
4 sponsors.

5 HEARING OFFICER VALKOSKY: Okay. As far
6 as your presentation, I think we've just approved
7 the very end, haven't we? Oh, no, you have direct
8 cooling to deal with, I'm sorry. Okay.

9 All right. Ms. Holmes.

10 STAFF COUNSEL HOLMES: Thank you.
11 Staff's water witnesses are Joe O'Hagan and Linda
12 Bond. And it would be -- I'm wondering if it
13 would be possible to have them speak from here so
14 that they can face both Mr. Ledford, who I
15 understand has cross examination and the Committee
16 and the High Desert Applicant does not. So that
17 way they can both be picked up by the reporting
18 lights and the amplifying lights and face the
19 people that are asking them questions.

20 HEARING OFFICER VALKOSKY: As long as we
21 have mike availability, it will be fine.

22 MR. THOMPSON: May I -- let me suggest
23 that this may be a good time for a break, because
24 my suspicion is that we can work out some of the
25 difficulties on the contract issues and it may be

1 the best idea to work those out before staff
2 witnesses take the stand.

3 PRESIDING MEMBER LAURIE: Do you want to
4 take a -- because we need to take a short luncheon
5 break. So do you want to take a five minute break
6 or do you want to take a half hour lunch break?

7 STAFF COUNSEL HOLMES: I was going to
8 suggest that perhaps what we could do would be to
9 take the public comment and get the witnesses
10 sworn and -- well, let's just take the public
11 comment.

12 HEARING OFFICER VALKOSKY: Yeah, the
13 question on the table is do you want to get this
14 resolved in a quick break or do you want to take a
15 more extended lunch --

16 STAFF COUNSEL HOLMES: I think we should
17 do the -- I don't think it will get resolved in
18 five minutes.

19 PRESIDING MEMBER LAURIE: After the
20 public comment, then we'll take a half hour or so
21 lunch break.

22 HEARING OFFICER VALKOSKY: We understand
23 that there are two members of the public who wish
24 to provide public comment. As an accommodation to
25 their schedules we'll take that comment now.

1 I have identified Mr. John Wakula and
2 Carmen Edison?

3 MS. EDISON: No, we feel it's not
4 necessary at this time to make a statement.

5 HEARING OFFICER VALKOSKY: Okay, so you
6 do not wish to make a statement then?

7 MS. EDISON: No.

8 HEARING OFFICER VALKOSKY: Thank you for
9 your participation.

10 Okay, we'll recess until 12:15.

11 (Thereupon the lunch recess was taken.)

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1 Applicant has not indicated any desire to cross
2 examine on that. Mr. Ledford has indicated his
3 cross examination will take about 15 minutes.

4 Finally Applicant will present Mr.
5 Barnett on general matters. Direct testimony is
6 expected to take about five minutes.

7 Insofar as closing arguments are
8 concerned, staff has indicated they will require
9 about five minutes as will Applicant. And the
10 Department of Fish and Game, Mr. Ledford,
11 indicated his closing will be about 15 minutes.

12 Is there anything I've left out?

13 PRESIDING MEMBER LAURIE: Mr. Buell was
14 going to make some closing comments.

15 HEARING OFFICER VALKOSKY: Yes, oh yes.
16 Mr. Ledford, do you wish to have Mr. Buell answer
17 any questions concerning participation at the
18 workshops, things like that?

19 MR. LEDFORD: Questions that I might or
20 might not have for Mr. Buell would be associated
21 with the water issues, so once staff has made
22 their testimony and I cross examine I may have
23 questions for Mr. Buell at that point and possibly
24 not.

25 HEARING OFFICER VALKOSKY: Okay to the

1 extent that they're within his knowledge and realm
2 of expertise staff may wish to have him testify as
3 part of the panel.

4 STAFF COUNSEL HOLMES: He doesn't have
5 any expertise as a water witness, nor could we, I
6 think, qualify him as a water witness, so I'm not
7 sure if that's appropriate. I'm certainly happy
8 to make him available to answer questions about
9 what occurred at workshops or how he pulled
10 together staff assessment and subsequent staff
11 filings that have been presented as part of the
12 proceedings.

13 HEARING OFFICER VALKOSKY: Right, I
14 believe that is the scope of Mr. Ledford's
15 relevant inquiries.

16 STAFF COUNSEL HOLMES: Then I think it
17 would make sense to have him testify, or to offer
18 his comments, to answer questions, after the
19 experts testify.

20 HEARING OFFICER VALKOSKY: Okay. We'll
21 proceed --

22 MR. LEDFORD: That would be my
23 intention.

24 HEARING OFFICER VALKOSKY: Okay, we'll
25 proceed in that manner then.

1 Okay, all of that will take about, as I
2 have it, about two and a half hours. So the
3 parties know the expectations, I trust you'll help
4 us achieve them.

5 PRESIDING MEMBER LAURIE: Mr. Valkosky
6 added it up a little different than I did. When I
7 add those hours up I came to about four and a half
8 hours. If it's just two and half hours that gives
9 you a lot more flexibility than I desire. So
10 we're going to maintain those timeframes. There
11 may be a little slippage, but we expect those
12 timeframes to be approximately met.

13 HEARING OFFICER VALKOSKY: Okay, Ms.
14 Holmes.

15 STAFF COUNSEL HOLMES: Thank you.
16 Staff's witnesses in water are Joseph O'Hagan and
17 Linda Bond. They do both need to be sworn.
18 Whereupon

19 JOSEPH O'HAGAN AND LINDA BOND
20 were called as witnesses and having been first
21 duly sworn, were examined and testified as follows:

22 STAFF COUNSEL HOLMES: Would the two of
23 you each please state your name for the record?

24 MS. BOND: Linda Bond.

25 MR. O'HAGAN: Joseph O'Hagan.

1 STAFF COUNSEL HOLMES: Thank you.

2 DIRECT EXAMINATION

3 STAFF COUNSEL HOLMES: Do you have with
4 you a copy of what has been identified as Exhibit
5 131? It contains both staff's rebuttal and direct
6 testimony on water?

7 MR. O'HAGAN: Yes, we do.

8 STAFF COUNSEL HOLMES: And Mr. O'Hagan
9 was a copy of your qualifications filed in the
10 staff objective which was identified as Exhibit
11 82?

12 MR. O'HAGAN: Yes, it was.

13 STAFF COUNSEL HOLMES: And Ms. Bond were
14 your professional qualifications filed in Exhibit
15 83?

16 MS. BOND: Yes, they were.

17 STAFF COUNSEL HOLMES: Was the Water
18 Resources' portion of Exhibit 131 as stated in the
19 qualifications prepared by you?

20 MR. O'HAGAN: Yes.

21 STAFF COUNSEL HOLMES: Do you have any
22 corrections to the documents that you're
23 sponsoring?

24 MR. O'HAGAN: No.

25 STAFF COUNSEL HOLMES: Are the facts

1 contained in the documents you're sponsoring true
2 and correct to the best of your knowledge?

3 MR. O'HAGAN: Yes, they are.

4 STAFF COUNSEL HOLMES: And do the
5 opinions contained in the documents you're
6 sponsoring represent your best professional
7 judgment?

8 MR. O'HAGAN: Yes.

9 STAFF COUNSEL HOLMES: Mr. O'Hagan, at
10 this time, could you please explain which one of
11 you will be responsible for discussing the
12 different portions of the testimony?

13 MR. O'HAGAN: Yes, I prepared the
14 testimony in regards to erosion control, flooding,
15 water supply, water treatment for the recharge
16 program. And I also prepared the compliance with
17 applicable laws, ordinances and standards section.

18 STAFF COUNSEL HOLMES: And which portion
19 did Ms. Bond prepare?

20 MR. O'HAGAN: She prepared basically all
21 the discussion dealing with groundwater resources,
22 with the exception of the water treatment process
23 for the recharge program.

24 STAFF COUNSEL HOLMES: Thank you.

25 Ms. Bond, I'd like to ask you a couple

1 of questions about your professional
2 qualifications. Could you please briefly
3 summarize your qualifications as a hydrogeologist?

4 MS. BOND: I have 16 years or experience
5 doing hydrologic investigations. I have
6 particular expertise in groundwater modeling and
7 the analysis of regional groundwater systems. I
8 was a primary developer of four of the dozen or so
9 regional groundwater models that are being used
10 for the management of groundwater supplies in
11 California currently.

12 I also developed the -- was a co-author
13 of the groundwater model program that
14 coincidentally was used for the groundwater model
15 for this project, the High Desert groundwater
16 model. And 12 years ago I was responsible for
17 preliminary hydrogeologic site investigations on
18 the George Air Force Base and developed a
19 preliminary transport and groundwater model for
20 the George Air Force Base.

21 STAFF COUNSEL HOLMES: Thank you. Mr.
22 O'Hagan, I have a couple of questions I'd like to
23 ask of you to address some of the concerns that
24 have been raised in recent days.

25 First of all, have you read a letter

1 from the EPA to Mr. Dale Jackson, dated September
2 22nd, 1999?

3 MR. O'HAGAN: Yes, I have.

4 STAFF COUNSEL HOLMES: Could you please
5 briefly respond -- I'm not sure, -- excuse me, Mr.
6 Valkosky, I'm not sure that that's been identified
7 as an exhibit.

8 HEARING OFFICER VALKOSKY: That has not.

9 STAFF COUNSEL HOLMES: Do you have a
10 copy of that with you?

11 MR. O'HAGAN: No, I do not.

12 STAFF COUNSEL HOLMES: Mr. Valkosky,
13 this is a letter from Barbara Smith of the United
14 States Environmental Protection Agency, dated
15 September 22nd, 1999. It's addressed to Mr.
16 Jackson and it's concerning FT20 High Desert Power
17 Project, Southern California logistics airport.

18 Can we have that identified, please?

19 HEARING OFFICER VALKOSKY: It will be
20 identified as exhibit next in numbered order.

21 (Thereupon the above-referenced document
22 was marked as Exhibit 140 for
23 Identification.)

24 STAFF COUNSEL HOLMES: Mr. O'Hagan,
25 could you please briefly respond to each of the

1 points that are raised in that letter?

2 MR. O'HAGAN: Well, the thrust of the
3 letter from EPA is that they're concerned that the
4 construction of the power plant project will
5 constrain the Army -- excuse me, the Air Force's
6 ability to characterize and remediate groundwater
7 contamination in the vicinity of the proposed
8 power plant site. And the thrust of the letter is
9 urging the Air Force to hurry up and go out and
10 characterize this groundwater contamination. They
11 don't know the extent of it, prior to construction
12 of the facility, because they're afraid that would
13 constrain their opportunity to, you know, put in
14 test wells and that sort of thing.

15 I had also in regard -- actually prior
16 to this letter had discussions with the Regional
17 Water Quality Board, which is the state agency
18 working with the Air Force on remediation of the
19 former George Air Force Base. They had some
20 concerns and I had proposed a condition of
21 certification that suggested that the Applicant
22 would provide access to the Air Force at any time
23 to do work for site contamination,
24 characterization and remediation. And I believe
25 there is also a letter from Randy Welch to the

1 Regional Board making the same point.

2 I also talked with Harold Reed of the
3 Air Force about the site and he had expressed
4 concerns. They feel constrained because they
5 haven't budgeted for working on this particular
6 area at the project site. And so I was happy to
7 see the EPA's offering to assist the Air Force in
8 getting this work done prior to construction of
9 the project.

10 STAFF COUNSEL HOLMES: Does anything in
11 the letter change any of your conclusions or cause
12 you to recommend changes to your conditions of
13 certification?

14 MR. O'HAGAN: No, it doesn't.

15 STAFF COUNSEL HOLMES: Thank you.

16 Next, I'd like to turn to a couple of
17 questions about Exhibit 133, which was the aquifer
18 storage and recovery agreement that we discussed
19 yesterday. Do you recollect that document?

20 MR. O'HAGAN: Yes, I do.

21 STAFF COUNSEL HOLMES: And have you read
22 the terms of the agreement?

23 MR. O'HAGAN: As it was presented,
24 yesterday, yes.

25 STAFF COUNSEL HOLMES: And do you

1 believe that the terms of that agreement as it's
2 currently worded are consistent with the staff's
3 proposed conditions of certification?

4 MR. O'HAGAN: Right now, no, I don't.

5 STAFF COUNSEL HOLMES: Thank you. I'm
6 not going to ask you to go over the list of
7 inconsistencies since I understand there was some
8 potential that the agreement may be redrafted,
9 unless the Committee wants that discussion.

10 What I would like to do is specifically
11 focus on the one issue that has arisen with
12 respect to the contract terms allowing DDWD use of
13 the wells. Are you familiar with that provision?

14 MR. O'HAGAN: Yes.

15 STAFF COUNSEL HOLMES: And is your
16 belief that there is a potential environment
17 effect associated with DDWD use of the wells?

18 MR. O'HAGAN: The potential concern
19 would be that it would be -- their use of the
20 wells would represent a shift to additional
21 groundwater pumping from existing wells farther
22 away from the river to closer to the river where
23 there's a greater potential for impacts to the
24 riparian vegetation.

25 STAFF COUNSEL HOLMES: So your concern

1 is that this displacement, if you will, if it were
2 to move production one way versus another, could
3 have a deleterious effect on the riparian habitat

4 MR. O'HAGAN: There is that possibility.

5 STAFF COUNSEL HOLMES: But if the
6 displacement were to occur in another way, it
7 would not have that effect?

8 MR. O'HAGAN: Actually it could be quite
9 beneficial.

10 STAFF COUNSEL HOLMES: Is there any kind
11 of concern with DDWD using the wells for
12 injection, which is also discussed in the
13 agreement?

14 MR. O'HAGAN: No, it wasn't a factor
15 that we had evaluated, but I certainly don't have
16 concerns in that regard.

17 STAFF COUNSEL HOLMES: Lastly, there was
18 some discussion earlier today about the potential
19 that the Energy Commission's decision could be
20 used for CEQA compliance purposes with respect to
21 other activities. Were you in the room when that
22 discussion was being conducted?

23 MR. O'HAGAN: Yes, I was.

24 STAFF COUNSEL HOLMES: Did your analysis
25 include activities other than those contemplated

1 as part of the High Desert Project?

2 MR. O'HAGAN: No, they didn't.

3 STAFF COUNSEL HOLMES: And do you
4 recommend that your analysis be used for CEQA
5 compliance purposes for those kinds of activities?

6 MR. O'HAGAN: No, I wouldn't.

7 STAFF COUNSEL HOLMES: Ms. Bond and Mr.
8 O'Hagan are available for cross examination.

9 HEARING OFFICER VALKOSKY: Mr. Thompson.

10 STAFF COUNSEL HOLMES: Oh, I'm sorry,
11 excuse me, Ms. Bond was going to give a summary of
12 her testimony.

13 MS. BOND: What my summary consists of
14 is three main points, how do we determine project
15 impacts, how do we determine an effective
16 mitigation and what are the requirements in terms
17 of water supply of the conditions of
18 certification.

19 The reason why I want to review these
20 three topics is because there is, after listening
21 to the testimony for a day and a half I can see
22 that there still are some confusions regarding
23 these issues. And also I think just bringing it
24 all together will help us focus the questions for
25 the rest of the hearing.

1 Okay, first of all, how did we determine
2 the project impacts. The process on the face of
3 it appears pretty simple. The Applicant has
4 proposed to bank -- usurp its water supply when
5 it's available, bank surface water supply in the
6 groundwater system for use when there is an
7 interruption of the surface water supply and then
8 withdraw it, so we have a deposit and a
9 withdrawal.

10 This would be a very simple process
11 except for the fact that we're injecting a liquid,
12 we're dealing with a liquid. And when you inject
13 groundwater into the system it does not stay in
14 place. It dissipates with time, it spreads out.
15 One way to visualize it, it's like pouring syrup
16 on a pancake. It sort of mounds up when you first
17 put it in and then it spreads out. And so what
18 this results in is a loss from the available
19 balance of banked groundwater.

20 To address the question of the rate of
21 dissipation and the amount of water available to
22 be withdrawn later, we decided to recommend and
23 then we eventually became involved in developing
24 the groundwater model that you've heard a lot
25 about.

1 Essentially the rate of decay and the
2 shape of the changes in water levels caused by the
3 project's groundwater injection is determined by
4 several factors. It's determined by the physical
5 nature of the groundwater system, how deep it is,
6 how wide it is, where it intersects with the river
7 and what the permeability and storage capacity is
8 of the aquifer system.

9 It also depends on the rate of
10 injection, the amount of water that's injected.
11 And then finally it also depends on what the time
12 lag is between -- well, the rate of injection
13 depends on those two factors. And then when you
14 determine how much is still available in the bank,
15 it depends on when the injection occurred and then
16 when the withdrawal will occur.

17 One of the questions that has been asked
18 is how do you know if you're -- what this model
19 is, it models simply the impacts of the project
20 itself. It's very important to remember that the
21 groundwater model is one of the tools used in this
22 overall analysis. And how we interpret results,
23 how we determine the significant criteria places
24 the framework for analyzing results within this
25 basin, which is overdrafted.

1 The reason why we can use the
2 groundwater model and just consider the injection
3 and withdrawal of the banked groundwater without
4 modeling all of the other uses of water in the
5 Basin is because what controls this process of
6 dissipation is the, again, the physics of the
7 system, the permeability of the aquifer, the size
8 and the shape of the aquifer system.

9 Let me go on and talk a little bit more
10 about the mitigation, how we came up with an
11 effective mitigation.

12 The image I'd like you to consider is
13 that we had -- the aquifer system could be looked
14 at as a glass of water and the water that
15 currently is in the groundwater system, let's say
16 is a half of a glassful. When we add in the
17 banked groundwater, that is added to the glass of
18 water.

19 If the project uses -- okay, and there's
20 a crack in the bottom of the glass, that's the
21 dissipation. If the water you take back out, the
22 water that the project takes back out of the
23 groundwater system is no more than what they put
24 in, minus what leaks out, then it doesn't matter
25 if they're actually taking in the molecules they

1 put in or just an equivalent amount of what they
2 put in minus what's dissipated.

3 The other reason -- I think we've talked
4 somewhat about how the water that's injected mixes
5 with the native groundwater. A question has been
6 posed well, why is there dissipation and how can
7 you figure that out. Essentially the way the
8 model is constructed, based on the physics of the
9 groundwater system, when you inject water into the
10 groundwater system it initially forms a mound,
11 your water levels in the well field itself rise.
12 And then what happens with time is this water
13 pushes out the water in the rest of the --
14 surrounding the well field and it causes an
15 increase in the overall water levels and
16 specifically it causes an increase in discharges
17 from the regional aquifer into the river. Okay,
18 in the Mojave River and into the aquifer.

19 So it's a pressure gradient. It's a
20 push. The molecules stay more or less in place,
21 but it's the push that affects the dissipation.

22 When we perform these model runs and
23 analyze the impacts that would occur, what we were
24 trying to get at was how could we condition the
25 project so that any subsequent withdrawal of

1 groundwater would cause no change in the
2 conditions as they would have been if the project
3 had never occurred. So we want a no impact
4 situation.

5 And specifically how we define no impact
6 and how we analyze the results and the mitigation
7 we have proposed, is that in terms of the river,
8 in terms of the Mojave River and number one,
9 Mojave River alluvial aquifer, which is the
10 productive aquifer immediately surrounding the
11 river. And in terms of downstream users, there
12 should be no negative impacts at any time.

13 And the reason why we made this
14 judgment, developed this significant criteria is
15 because if water levels are reduced because of the
16 project in the Mojave River alluvial aquifer or
17 there is a decrease in the base flows, then the
18 plants and animals along the river will suffer and
19 potentially die. They can't -- the basin is
20 already overdrafted. The minimal flows in the
21 river, the minimal base flows in the river are
22 already below what the adjudication required. And
23 so in our judgment it was appropriate that there
24 should be no negative impacts at any time to the
25 river.

1 Now, we also looked at the regional
2 aquifer itself. The regional aquifer is where the
3 wells are located. The regional aquifer is
4 connected to the Mojave River alluvial aquifer,
5 but the criteria is slightly different for the
6 regional aquifer itself.

7 Fluctuations in the regional aquifer
8 will affect water levels in the well field and
9 primarily in the wells, VVWD wells, that are close
10 to the project.

11 What we determined was that there should
12 be no long term negative impact to the regional
13 aquifer itself, no negative impact. And what this
14 means is essentially that there could be
15 fluctuations but on average water levels would
16 have to be as high or higher than they would have
17 been without the project.

18 The reason why we determined that it was
19 acceptable for there to be moderate fluctuations
20 in the regional aquifer is because that is going
21 to have no critical difference. In other words,
22 nothing is going to die. What's going to happen
23 is, in some years, VVWD will be pumping from a
24 lower elevation and sometimes a higher elevation.
25 The pumping lifts will cost more or less but on

1 average water levels will remain as high or higher
2 than they would have been otherwise. So those
3 were the criteria we used to analyze the results
4 of the modeling.

5 Now finally, -- and this is how we
6 address the issue of the cumulative impacts,
7 finally, I'd like to quickly go over the water
8 supply requirements and the rules which are
9 imbedded in the conditions. They're fairly
10 complex. I am actually not going to cover them in
11 total detail, but I think it's important to get
12 the numbers and the requirements straight. And
13 for that I developed a couple of overheads.

14 Rick, I need the top one first -- no,
15 I'm sorry, the other one.

16 Now, I borrowed from Mr. Beeby's diagram
17 and greatly simplified it to focus in on the three
18 points I want to make. Oh, I have handouts of
19 this. I have about 20 of them, so I think if
20 people just pass them around, you'll have it on
21 the screen -- Karen has got them now.

22 HEARING OFFICER VALKOSKY: Ms. Holmes,
23 would you like this identified as an exhibit?

24 STAFF COUNSEL HOLMES: Certainly. There
25 is an exhibit that's entitled Conditions of

1 Certification, Water Supply and Rules Diagram.
2 And I've forgotten where we are in the exhibit
3 numbers.

4 HEARING OFFICER VALKOSKY: I believe
5 it's 141.

6 (Thereupon the above-referenced document
7 was marked as Exhibit 141 for
8 Identification.)

9 STAFF COUNSEL HOLMES: And the second
10 document, at the top of the page, it's got both
11 rows and columns on it. It's entitled Conditions
12 of Certification - Water Supply and Rules Chart.

13 HEARING OFFICER VALKOSKY: Mark that as
14 142.

15 (Thereupon the above-referenced document
16 was marked as Exhibit 142 for
17 Identification.)

18 STAFF COUNSEL HOLMES: Thank you, Mr.
19 Valkosky.

20 MS. BOND: All right, as I was saying,
21 I've simplified the diagram and modified it a bit
22 from what Mr. Beeby had presented earlier.

23 The top box, SWP stands for State Water
24 Project, okay. What I want to talk about there is
25 the State Water Project water is going to be used

1 for two purposes, that's why the arrow splits as
2 it comes down. It will be used, as indicated on
3 the right, for High Desert operational use and on
4 the left for water injection into the groundwater
5 system.

6 The water that's injected into the
7 groundwater system is what supplies the
8 groundwater bank, which includes a buffer, and
9 I'll talk about that. And then subsequently water
10 will be pumped, when needed for High Desert
11 operational use.

12 The three topics I want to discuss are
13 what the required supply is to both supply water,
14 ongoing for operational use of High Desert and
15 also what is needed to maintain -- well, to fill
16 the groundwater bank.

17 The second thing I want to talk about,
18 as indicated on the left, next to the diagram, are
19 the injection rules. When does water have to go
20 in, according to the conditions of certification?

21 And number three, the phrase on the
22 right of the diagram, "available balance rules."
23 That's the balance in groundwater bank, what
24 determines how much can be withdrawn.

25 Now one reason -- let me see -- let's go

1 ahead to the second figure now. One reason why
2 this was not simple was that there are
3 requirements that High Desert has for getting up
4 and started. And so, -- and at the same time we
5 have a need to provide as much insurance that
6 there will be no negative impacts to the Mojave
7 River alluvial aquifer and the regional aquifer
8 and the river itself to the system.

9 Okay. On the left, the first column, I
10 have entitled project life. So this is the life
11 of the project. I'm trying to give a chronology
12 of how these rules will apply. They've been
13 divided up based on when rules -- or required
14 supply changes. So let's just deal with the first
15 and second column, the required supply. Don't
16 worry about the injection rules and the other
17 rules yet.

18 Okay, during the first year of the
19 project the project will need 5,000 acre feet of
20 State Water Project water. That will be 4,000
21 acre feet for operations, plus 1,000 acre feet to
22 be injected into the groundwater system. Okay.

23 In the next four years, year two through
24 five, there will be needed an average of 7,000
25 acre feet of State Water Project. And how this

1 breaks down is it's a total -- it can vary from
2 year to year, month to month, but as a total over
3 those four years, they're going to need 28,000
4 acre feet of water.

5 Sixteen thousand of it is going to
6 basically go to project operations, that's 4,000 a
7 year, 4,000 for four years is 16,000. Then an
8 additional 12,000 acre feet will need to be
9 injected into the groundwater system. And what
10 you will have at the end of five years is that a
11 total of 13,000 acre feet of water will have been
12 injected into the groundwater system. That will
13 comprise the base groundwater bank reserve.

14 In the following years, until the last
15 three years of the project, from years six until
16 the last three years of the project, there's going
17 to be an average of 4,000 acre feet per year
18 needed of State Water Project water. Now, that
19 4,000 acre feet, though, is just for project
20 operations. It does not include replacement of
21 water that dissipates. And I've used the word
22 decay, decay and dissipates when I talk today
23 means the same thing. It's just a shorter word.

24 That means that as time goes on, because
25 dissipation occurs over time, progressively, there

1 will be less and less of the reserve in the
2 groundwater bank, unless the project elects -- and
3 this will be their choice, to inject water to
4 replace that decayed water, that dissipated water.

5 Okay. And finally in the last three
6 years of the project, the project will have the
7 option of relying on whatever the balance of water
8 in the groundwater bank is there. Whatever is
9 left in the groundwater bank they can use in lieu
10 of importing any more surface water, State Water
11 Project water.

12 Okay. Let me go on to the third column
13 now, injection rules. As indicated in the
14 previous column, during the first year, the
15 project is required to inject a thousand acre feet
16 of water into the groundwater bank. In the
17 following four years, years two through five, they
18 are required to inject, on average, 3,000 acre
19 feet a year and a total of 12,000 acre feet.

20 Now, they may need water off and on
21 during that period, but what it boils down to is a
22 net injection of 12,000 acre feet of water needs
23 to be in the bank, which will be essentially the
24 total that's injected, minus the total pumping.
25 So if they needed a thousand acre feet during

1 aqueduct repairs during those four years, and
2 they've pumped a thousand acre feet, they would
3 actually have to inject an additional 13,000.
4 Thirteen thousand minus a thousand, equals 12,000.
5 Okay.

6 All right, so that makes up the 13,000
7 basic groundwater bank. In addition to that,
8 injection rules that would be enforced the entire
9 time to last three years is that any groundwater
10 that is pumped must be replaced by injecting State
11 Water Project water.

12 Say there's a drought, during any time
13 during the project a drought, and they can't get
14 surface water supplies, for whatever reason, they
15 pump whatever amount, say 3,000 acre feet, then
16 they have to replace that, put that back in.

17 Okay, and in the last -- as I said
18 before, though, in the last three years they can
19 use whatever is left in the bank, subject to our
20 definition of AB rules. AB's are the available
21 balance rules.

22 Okay, let's look at the last column.
23 The available balance in the groundwater bank is
24 the same for all the years of the project, except
25 for the very first year. During the first year

1 the available balance equals the total injected,
2 minus whatever decays or dissipates, minus total
3 pumping.

4 After that point what is added to what
5 must remain in the bank is a thousand acre feet of
6 water, which is a buffer that must remain in the
7 bank, groundwater bank at all times, including at
8 the end of the project. So, at the end of the
9 project, when they go to calculate what's left in
10 the bank, what has to be left in the bank is what
11 they've injected, minus what's decayed, minus
12 whatever they've pumped over all the years, minus
13 a thousand acre feet. And the thousand acre feet
14 serves as a buffer, a buffer to any
15 miscalculations, any unforeseen factors. That's
16 the purpose of the thousand acre feet.

17 That concludes my introduction and thank
18 you.

19 STAFF COUNSEL HOLMES: Now the witnesses
20 are available for cross examination.

21 HEARING OFFICER VALKOSKY: Before we
22 turn to cross, I just want to make sure that I
23 understand -- Ms. Bond, referring to Exhibit 142,
24 when you say replacement of pumped, with an
25 emphasis on the word groundwater, I think there's

1 a lot of confusion, certainly on my part anyway,
2 over what exactly groundwater refers to. Now, as
3 I understand it, groundwater in your analysis, is
4 that imported water from the State Water Project
5 which is injected, as opposed to the water which
6 is already existing in the ground, is that
7 correct?

8 MS. BOND: Not exactly. What I refer to
9 when I say groundwater is once the water is in the
10 ground, it's groundwater. And because when the
11 project pumps, in terms of water supply and
12 practicality, there's no way to ensure that they
13 will pump the exact quantity they put in.

14 HEARING OFFICER VALKOSKY: No, I
15 understand that. I'm not looking for the
16 molecular distinction.

17 MS. BOND: Okay.

18 HEARING OFFICER VALKOSKY: But, let me
19 rephrase that.

20 MS. BOND: Available bounds.

21 HEARING OFFICER VALKOSKY: Okay, but
22 imported State Water Project water becomes
23 groundwater when it's injected into your cup,
24 bowl, whatever?

25 MS. BOND: Yes.

1 HEARING OFFICER VALKOSKY: Okay, fine.

2 Is it possible to give an estimate of
3 your degree of confidence in the thousand acre
4 foot buffer, as to --

5 MS. BOND: Yes, I'm quite confident that
6 will be enough as long -- that will provide a
7 sufficient buffer as long as the conditions of
8 certification that we've recommended, all these
9 other rules, are also followed, or applied.

10 HEARING OFFICER VALKOSKY: Right, and
11 more specifically, that's a buffer sufficient to
12 account for an error in decay rate and things like
13 that. Okay, thank you.

14 Cross, Mr. Thompson?

15 MR. THOMPSON: We don't have any
16 questions, but we would like to express our thanks
17 to Ms. Bond and Mr. O'Hagan for getting us this
18 far and for the excellent recap that was added to
19 the record today.

20 HEARING OFFICER VALKOSKY: Thank you.

21 Mr. Adams, do you have any cross?

22 MR. ADAMS: No questions.

23 HEARING OFFICER VALKOSKY: Mr. Ledford?

24 MR. LEDFORD: Thank you.

25 ///

1 CROSS EXAMINATION

2 BY MR. LEDFORD:

3 MR. LEDFORD: The very last question
4 that was asked of Mr. O'Hagan, I'm not sure I
5 exactly heard it, but maybe staff could help me.
6 I thought what was said that the MWA could not
7 rely on Mr. O'Hagan's testimony as a CEQA
8 equivalent, or was it something like that? Did I
9 totally --

10 STAFF COUNSEL HOLMES: I think that
11 misstates his testimony, but why don't we just ask
12 him the question.

13 MR. LEDFORD: Well, I think I was
14 probably not paying attention, but --

15 MR. O'HAGAN: If I recall correctly,
16 Gary, the question was whether our analysis here
17 is addressing any other project other than the
18 High Desert Power Project. And the answer to that
19 is no.

20 MR. LEDFORD: Right.

21 Since I'm a little bit fresh with your
22 Exhibit 142, during the -- the pump groundwater,
23 what must be replaced over in about the fourth
24 column over is the water that would be used during
25 the down operations for the aqueduct?

1 MS. BOND: Are you asking me?

2 MR. LEDFORD: That's a question for you.

3 MS. BOND: Yes. The water that is
4 pumped that must be replaced is either -- is any
5 groundwater that is pumped by this project from
6 the groundwater system.

7 MR. LEDFORD: The reason for my question
8 is in doing a total analysis of how much water
9 that needs to be purchased from the MWA, you need
10 to take that into consideration. And I think
11 that it's a reasonably established fact that it's
12 at least 30 days and it may be more.

13 MS. BOND: Right and during those 30
14 days they would not be using State Water Project
15 water, they would be pumping groundwater. And
16 when they start up again they would have to
17 essentially for one month, if possible, double
18 their imports of State Water Project water.

19 MR. LEDFORD: So you'd say it's net
20 zero?

21 MS. BOND: It would be a net zero, as
22 long as we always remember in the background
23 there's this dissipation of the original bank.

24 MR. LEDFORD: Right. When you start the
25 bank, you've got 12,000 acre feet in it and

1 they're allowed to let the bank dissipate over the
2 life of the project?

3 MS. BOND: Yes.

4 MR. LEDFORD: And your determined life
5 of the project is 30 years?

6 MS. BOND: That was what we evaluated,
7 yes.

8 MR. LEDFORD: And you understand the
9 contract that was presented yesterday with the
10 Victor Valley Water District is for 80 years?

11 MS. BOND: Yes, I do.

12 MR. LEDFORD: And does your analysis --
13 would you have the same analysis and the same
14 conditions if you were providing conditions for an
15 80-year agreement?

16 MS. BOND: I would estimate that near
17 the end of 30 years, it might be 20 years, it
18 might be 50 years, that the reserve of -- that the
19 available balance of groundwater in the
20 groundwater bank would have entirely dissipated.

21 One of the requirements we have is
22 that -- I'm trying to think -- the project would
23 have to shut down if the water was entirely
24 dissipated and they didn't have the surface water
25 supply coming in.

1 MR. LEDFORD: So that I'm really clear
2 on this. In the event that you go below a
3 thousand acre feet of water in the water bank, the
4 project would have to shut down, is that correct?

5 MS. BOND: Yes. They cannot withdraw
6 any more water once they reach the point that
7 there's only a thousand acre feet of that buffer
8 in the groundwater system.

9 MR. LEDFORD: My basic problem with this
10 particular part of the equation is when we first
11 started this and we studied the history of the
12 Basin we said that there's going to be sometime
13 when there's going to be a three-year drought,
14 since we had one in the recent past. And that was
15 one of the reasons for having 12,000 acre feet in
16 the water bank.

17 And I guess I missed something along the
18 way, but we were going to maintain those 12,000
19 acre feet, so that if, at any time along the way,
20 we had a three-year drought, they would have a
21 three-year reserve to draw on. If, for some
22 reason we went along for ten years and just had
23 regular water decay, the water bank is going to
24 reduce down to some number, maybe it's going to be
25 five or 6,000 acre feet, nobody knows, right,

1 we're going to determine that as we go along?

2 MS. BOND: Well, we've done studies --
3 our analysis included that kind of calculation,
4 but --

5 MR. LEDFORD: Well, it's almost straight
6 line.

7 MS. BOND: No, it's not straight line.
8 The decay is --

9 MR. LEDFORD: It's heavier on the front
10 end and lighter on the back end?

11 MS. BOND: The decay is more rapid at
12 the beginning and less rapid with time.

13 MR. LEDFORD: Because of the hydrologic
14 pressure in the bank?

15 MS. BOND: Correct.

16 MR. LEDFORD: But again my point is that
17 at some point out there everything is kind of
18 cooking along and everybody thinks things are fine
19 and all of a sudden we're in the drought, and
20 we're in a three-year drought. And two years into
21 the drought or a year and a half into the drought,
22 we're at the thousand acre feet of water. Is the
23 Energy Commission going to shut this plant down?

24 MS. BOND: That's what the conditions of
25 certification require, correct.

1 MR. LEDFORD: It will happen. It just
2 seems like a very unlikely event to me.

3 STAFF COUNSEL HOLMES: Are you asking my
4 witness to speculate?

5 MR. LEDFORD: I'd rather ask you, you're
6 the lawyer.

7 STAFF COUNSEL HOLMES: I think the
8 witnesses can testify to what the recommended
9 condition of certification is.

10 MR. O'HAGAN: Gary, the Applicant has
11 been very clear from the start that if there
12 wasn't sufficient State Water Project water or if
13 the bank water as calculated on the proposed
14 conditions is not available they would shut down.
15 As a staff of the Commission, if these conditions
16 are, in fact, adopted by the Commission, I would
17 hope that we would enforce that.

18 MR. LEDFORD: Okay, I would like to get
19 back to the fact that -- the issues that you had
20 talked about, Joe, the issues about the -- the
21 issues along the river and that you were studying
22 this project only. But you may have been made
23 aware in this process that this particular project
24 is a part of the redevelopment of George Air Force
25 Base, is that correct?

1 STAFF COUNSEL HOLMES: I want to object
2 to that question. It both misstates the testimony
3 and it assumes facts not in evidence.

4 HEARING OFFICER VALKOSKY: Sustained.
5 You can rephrase, Mr. Ledford.

6 MR. LEDFORD: Are you aware that the
7 High Desert Power Project is a part of the Victor
8 Valley redevelopment project?

9 MR. O'HAGAN: Yes.

10 MR. LEDFORD: And as a part of your
11 investigation of this project, did you review the
12 Environmental Impact Report for the reuse of
13 George Air Force Base?

14 MR. O'HAGAN: I reviewed those sections
15 that were docketed by you. I had, previous to
16 that, I thought I had reviewed that document, but,
17 in fact, double checking, it was the EIS dealing
18 with the remediation phase.

19 MR. LEDFORD: And if you were to do -- I
20 understand that your study doesn't include those
21 development activities, but had you included those
22 development activities, would your analysis of the
23 project impacts been the same? In other words, if
24 the project had been all of the above in your
25 environmental analysis and you took into

1 consideration the amount of development that's
2 going to happen at George Air Force Base, as well
3 as the power project, in other words that was the
4 project, would your analysis have been the same?

5 MR. O'HAGAN: If, in fact, what we were
6 analyzing is the complete redevelopment of the
7 former Air Force Base I couldn't answer that
8 honestly.

9 MR. LEDFORD: And my question to you,
10 Linda, is similar. If you had done your modeling
11 based on the anticipated amount of pumpage from
12 the Victor Valley Water District's wells and the
13 cumulative impacts of that pumping on the
14 groundwater basin, where you intend to bank this
15 water, would your analysis have been the same?

16 MS. BOND: My conclusions, as I
17 understand your question, would have been the
18 same.

19 MR. LEDFORD: You've showed us and
20 talked about the zero line. And when you bank the
21 water, the bank goes up. And in reading your
22 testimony in here, it's my understanding that the
23 Victor Valley Water District's wells and the
24 regional aquifer get no natural recharge. And
25 that every year that they pump their wells they

1 continue to be overdrafted.

2 You're nodding, so -- and the tape
3 recorder is not going to hear your nod. Is
4 that --

5 MS. BOND: Yes.

6 MR. LEDFORD: Yes, okay. And so every
7 year over the next 30 years the Victor Valley
8 Water District's wells are going to continue to go
9 down unless there is some other recharge, is that
10 correct?

11 MS. BOND: Yes, based on the information
12 that I've reviewed.

13 MR. LEDFORD: So that your zero line,
14 even without a new development, your zero line,
15 based on the regional area where these wells are
16 going to be, would actually be a declining line,
17 based on the total production?

18 MS. BOND: No, because zero line as --
19 what the zero line represents is different than
20 what you're expressing.

21 MR. LEDFORD: Okay, can you explain that
22 for me?

23 MS. BOND: Yes. What the zero line in
24 my model represents is the with and without
25 project impacts. What I analyzed was what would

1 -- let me see how to put this. The zero
2 represents what the impacts would be without the
3 project.

4 Another way to put it might be to say
5 I've got ten apples I'm adding to the bin, how
6 many apples am I adding to the bin? I'm adding
7 ten apples. It doesn't matter whether there's
8 only two apples left in the bin, so two plus ten
9 is twelve or whether there's 200 apples in the
10 bin, two hundred plus twelve, I'm adding twelve to
11 the bin. In other words, it's literally how much
12 is added or subtracted to what would exist
13 regardless of the project.

14 So that zero line doesn't mean zero
15 elevation. It doesn't mean a base line. It is
16 not a base line. It is the more or less within
17 and without the project.

18 MR. LEDFORD: Okay, fair enough. If the
19 zero line was an elevation -- can we create a
20 hypothetical -- if the zero line was actually a
21 well elevation, and you were to graph the
22 production as that being a zero line and the
23 injection being the positive impact to the Basin
24 at the time of injection and the extractions being
25 the cumulative impacts of the surrounding Victor

1 Valley wells, then what would the baseline look
2 like?

3 MS. BOND: What you've described is
4 redefining the definition of the baseline and
5 that's not a correct definition of the work I
6 performed. It's not a correct definition of the
7 groundwater modeling analysis. I can't change the
8 definition of the baseline.

9 In other words if water levels when we
10 start the project in the area are -- I can't quite
11 remember the numbers, but let's say 2,000 feet
12 above land surface, okay. And in 20 -- and the
13 water -- and the project at the beginning makes
14 water levels in the Victor Valley wells go up and
15 down by five feet, in 20 years if the water levels
16 in the Victor Valley wells, without the project,
17 would be 50 feet lower, the project would still be
18 making water levels only go up and down five feet
19 from what exists.

20 MR. LEDFORD: I understand that to be --

21 MS. BOND: There is no argument on my
22 part that the Basin is in overdraft and that given
23 the projections of growth in the Basin that
24 there's a projected decline by the USGS. There's
25 no argument on the part of the Energy Commission

1 staff that the overall water levels in the Basin
2 have been and probably will continue to decline.

3 What I did was analyze how that project
4 would add or subtract from that condition -- from
5 the existing and projected conditions and in 30
6 years what we determined was how to ensure that
7 the project would not make things any worse than
8 they would be otherwise.

9 MR. LEDFORD: I understand that.

10 MS. BOND: Okay, good.

11 MR. LEDFORD: In your rebuttal testimony
12 where I was talking about a vacuum, and my
13 analysis of a vacuum that you are taking this
14 microscopic piece in this puzzle and saying it
15 doesn't make any difference where this piece in
16 the puzzle is, it's not going to affect the
17 environment because it stays in the puzzle.

18 However, if you blew that -- if you blew
19 the package off of that and you put that puzzle
20 into the rest of the package, it would make a
21 significant difference, and the significant
22 difference is if the water levels are going to
23 decline over the next 30 years and your 13,000
24 acre feet is basically going to dissipate also, at
25 the end of the period of time, when the water

1 levels are -- when the dissipated water bank is
2 down to zero and the water levels are down 20 or
3 30 or 50 feet, whatever that happens to be and
4 there's no water left in the Mojave River, it
5 didn't make any difference as to whether or not it
6 was your project or their project, but the Mojave
7 River is still going to be screwed up.

8 MS. BOND: By -- well, you're not asking
9 a question.

10 MR. LEDFORD: I'm sorry, I guess I was
11 testifying again. I'm very sorry about that.

12 HEARING OFFICER VALKOSKY: Please phrase
13 it as questions.

14 MR. LEDFORD: So my question is, based
15 on that analogy, would that be a correct
16 statement?

17 MS. BOND: I'm sorry, you're going to
18 have to ask the question just a little bit --

19 (Laughter.)

20 MR. LEDFORD: I would like to say that
21 was a hypothetical before I got started.

22 MS. BOND: I know you painted a picture,
23 but I just need to be a little more clear exactly
24 what you're asking.

25 MR. LEDFORD: The water levels are going

1 to go down over the next 30 years. And even if
2 you put 14,000 acre feet or 13,000 acre feet in
3 the Basin, that 13,000 acre feet will not benefit
4 the river at the end of that period of time if the
5 water levels are too low.

6 In your testimony you've talked about,
7 as the water levels go down, you're going to
8 reverse the hydrologic pressure and the water is
9 going to come from the river and go into -- or at
10 least the water molecules may not go out of the
11 river, but the hydrologic pressures are going to
12 go out? So as you reduce that down, even though
13 this water is in here, it's not going to get to
14 the Basin.

15 You're shaking your head, but --

16 MS. BOND: You've got to ask me a
17 question.

18 MR. LEDFORD: Oh, I'm trying to -- I
19 thought you were answering. Is that true? And I
20 think you're saying no.

21 MS. BOND: No, what you, hypothetically
22 you just posed is not true.

23 MR. LEDFORD: Okay, can you explain that
24 for me.

25 MS. BOND: Certainly. Over the life of

1 the project, given the conditions that we've
2 required, the project will add to the flow of the
3 Mojave River because of the dissipation. They
4 can't pull it back into their system, they can't
5 pull it back to their wells, so that's a loss to
6 them, but a gain to the river. Okay.

7 In 20 years or 30 years, if the river is
8 entirely dry and the project is still injecting
9 water and it's dissipating it will add to the --
10 whatever is left of the alluvial aquifer in the
11 Mojave River or have no negative effect.

12 MR. LEDFORD: It doesn't make common
13 sense to me, I'm sorry.

14 In the original AFC, the document talked
15 about drilling 28 wells and, of course, this was
16 talking about what the water district was going to
17 need for it's entire development. Do you happen
18 to recall that?

19 MS. BOND: I'm sorry, I didn't review
20 documents, maybe Joe did.

21 MR. O'HAGAN: If I understand correctly,
22 Gary, I believe you're referring to what the
23 Victor Valley Water District identified in their
24 master plan as I think maximum demand over some
25 timeline, which I can't recall, for pressure zone

1 two, they identified a range of demands.

2 MR. LEDFORD: Right, correct.

3 MR. O'HAGAN: And I think 28 wells might
4 have been maximum.

5 MR. LEDFORD: Correct.

6 If in pressure zone two you drilled 28
7 wells or you drilled 21 new wells besides the
8 seven wells that you're already drilling and
9 you've banked this water and you rely on those
10 additional 21 wells to supply water to the
11 development in pressure zone two, how is that
12 going to affect your water bank?

13 MS. BOND: It will not affect the amount
14 of water that High Desert injects into the water
15 and what -- or how fast it dissipates or how much
16 they -- how much is available for them to draw
17 out.

18 MR. LEDFORD: I asked one of the
19 witnesses yesterday what happens if these seven,
20 six or seven wells that you drill are all dry
21 holes or part of them are dry holes, what would
22 that indicate to you?

23 MS. BOND: Hypothetically it would
24 indicate they didn't drill wells deep enough.

25 MR. LEDFORD: There's an exhibit in Mr.

1 Beeby's testimony and it's a linear exhibit and it
2 shows wells, are you familiar with that exhibit?

3 MS. BOND: Not offhand. If you tell me
4 what exhibit, I'm sure we can pull it up. I'd be
5 glad to look at it.

6 MR. LEDFORD: It's his water study. I
7 actually think I left it in the car today. But
8 there is one well that's a thousand feet deep,
9 it's located out around 395 and Palmdale Road, and
10 the well is basically a dry well. Are you
11 familiar with that well?

12 MS. BOND: No, I'm sorry, I'm not.

13 MR. LEDFORD: Are you familiar with the
14 two new wells that have been drilled at George Air
15 Force Base?

16 MS. BOND: I know that they were
17 drilled, but I haven't seen well logs or any
18 report on them.

19 MR. LEDFORD: Joe, would that be a
20 better question for you to answer? I believe in
21 your testimony it shows that the two wells were
22 drilled and later abandoned.

23 MR. O'HAGAN: My understanding was that
24 at the time, that when the wells were drilled that
25 the water quality, I believe for arsenic and

1 fluoride exceeded drinking water standards. My
2 understanding at the time was that they weren't
3 going to go ahead with that and I think they were
4 under negotiations with either the City of
5 Victorville or Victor Valley Water District about
6 supplying water.

7 And then, more recently, just recently,
8 I should say, I understand that they're either
9 considering or building a water treatment facility
10 to address the arsenic and fluoride issue to
11 provide water. But I've never seen anything
12 written to that effect.

13 MR. LEDFORD: Okay. Well, that happens
14 to be my understanding as well, so I don't have a
15 different understanding. But that leads me to are
16 you familiar with the water quality in several of
17 the Adelanto wells that are of similar nature?

18 MR. O'HAGAN: I believe that there's
19 several wells that had problems with excess
20 fluoride.

21 MR. LEDFORD: Fluoride is a primary one,
22 but the arsenic issue is really a threshold issue.
23 I think it's subject to the new arsenic rules that
24 are coming into place at the end of this year.

25 MR. O'HAGAN: Right, EPA is looking at

1 coming up with a new standard for arsenic.

2 MR. LEDFORD: And I think the federal
3 prison system is trying to conform to those rules,
4 maybe before everybody else.

5 However, when that comes into play
6 that's going to also be a water quality issue.

7 PRESIDING MEMBER LAURIE: Just ask
8 questions, please, Mr. Ledford.

9 MR. LEDFORD: Would it be true that
10 that's going to be a water quality issue that
11 we're going to have to face?

12 MR. O'HAGAN: Yes, any water purveyor is
13 going to -- with the new arsenic standard it's
14 going to be difficult for many water districts to
15 meet that new standard.

16 MR. LEDFORD: I brought up the issue of
17 the Mojave Water Agency's Section 3.05 which you
18 have put into your testimony that states that SWP
19 water can't be the sole source of water. And did
20 you have any conversation with the Mojave Water
21 Agency that would indicate that the banking of
22 water changes its characteristics?

23 MR. O'HAGAN: Yes.

24 MR. LEDFORD: And do you have any
25 letters from the Mojave Water Agency that support

1 that?

2 MR. O'HAGAN: No, I do not. That was
3 based entirely on conversations.

4 MR. LEDFORD: So the Mojave Water Agency
5 Board might have a difference of opinion?

6 MR. O'HAGAN: That's possible, yes.

7 MR. LEDFORD: You have also conceded, I
8 believe, in your testimony that based on your
9 investigation of the amount of water that's
10 available to the Mojave Water Agency and the
11 amount of overdraft, that it would take the entire
12 amount of Mojave Water Agency's allocation to cure
13 the overdraft?

14 MR. O'HAGAN: I don't recall that in my
15 testimony.

16 MR. LEDFORD: Let's see if I can help
17 you with that.

18 On page 19, the first paragraph, last
19 sentence, last couple of sentences, maybe. "Staff
20 cannot argue that all the imported water is
21 necessary to address the overdraft and none would
22 be available for the project."

23 MR. O'HAGAN: That is correct. What I'm
24 stating there is that I based it on my discussions
25 with the Mojave Water Agency and others that

1 there's no information that I'm aware of that all
2 of the State Water Project water allocation that
3 the agency has will need to be used to address the
4 overdraft.

5 MR. LEDFORD: Do you agree that the
6 overdraft condition is severe and critical?

7 MR. O'HAGAN: Yes, I do.

8 MR. LEDFORD: Linda, you had -- and I'm
9 assuming this is yours, discussed the issue of
10 clay layers?

11 MS. BOND: Yes.

12 MR. LEDFORD: And I had also noticed
13 that in the well interference report from CURE
14 that they had also expressed a pretty large
15 concern about clay layers.

16 MS. BOND: I can't testify to their --

17 MR. LEDFORD: You didn't study their
18 report?

19 MS. BOND: I did, I don't recall that
20 specifically.

21 MR. LEDFORD: Okay, because their report
22 is cited in here in several --

23 MS. BOND: Certainly no, I certainly
24 reviewed it, I just don't remember that
25 specifically.

1 MR. LEDFORD: Can you tell us what
2 concerns that in the injection program that the
3 clay layers could provide as being problematic?

4 MS. BOND: Yes. If water is injected
5 above the water table and above significantly
6 thick continuous clay layers, the injected water
7 might become perched and would need to percolate
8 through those clay layers, through an unsaturated
9 zone before it could be part of the regional
10 groundwater system.

11 The reason why that's important is then
12 subsequently when the wells pump if they are
13 drawing water from, primarily the -- well, when
14 they were drawing water from the saturated zone it
15 would not necessarily tap into the perched water.

16 That is why one of our conditions, I
17 believe we require that the groundwater -- that
18 the injected water be injected below the water
19 table.

20 MR. LEDFORD: I guess that gets back to
21 my other question, what happens if you drill a dry
22 well?

23 MS. BOND: What happens if you drill a
24 dry well is that you haven't gone deep enough to
25 -- one reason would be that you've not drilled

1 deep enough to enter the saturated zone of the
2 aquifer.

3 MR. LEDFORD: If you were to drill a
4 thousand foot well out there, would that be deep
5 enough?

6 MS. BOND: I don't recall the specific
7 depths to be drilled.

8 MR. LEDFORD: Okay, thank you.

9 On the issue of dry cooling, given the
10 real complexity of this water basin and all of the
11 issues related to this water basin, would dry
12 cooling be a viable alternative in this project?

13 MR. O'HAGAN: Well, I believe Mr.
14 Layton's testimony on dry cooling is that it's
15 technologically feasible.

16 MR. LEDFORD: Correct, but I have
17 noticed that a number of the staff on various
18 other topics where water is kind of interrelated,
19 relate their testimony to the Department of Water
20 Resources Resolution, I believe it's 7558 --

21 HEARING OFFICER VALKOSKY: Why don't we
22 try it this way, Mr. Ledford. Mr. O'Hagan and or
23 Ms. Bond, are there -- would the use of dry
24 cooling cause any significant adverse water
25 impacts?

1 MR. O'HAGAN: No, I would imagine
2 there'd be a small water demand for domestic uses
3 and then for the steam cycle as well, but it would
4 be a significant reduction in the water demand of
5 the project.

6 HEARING OFFICER VALKOSKY: In your view
7 does the State Water Resources Control Board
8 resolution 75-58 require the use of dry cooling on
9 this project?

10 MR. O'HAGAN: No, what the policy asks
11 in terms of dry cooling, or wet dry cooling is
12 that it be evaluated.

13 HEARING OFFICER VALKOSKY: Did you
14 perform such an evaluation?

15 MR. O'HAGAN: Not personally, but Matt
16 Layton did.

17 HEARING OFFICER VALKOSKY: Okay, so he's
18 the appropriate witness?

19 MR. O'HAGAN: Yes.

20 HEARING OFFICER VALKOSKY: Thank you.
21 Continue, Mr. Ledford.

22 MR. LEDFORD: Would the use of dry
23 cooling eliminate any potential water related
24 impacts for this project?

25 MR. O'HAGAN: I would, like I say, I

1 would imagine a couple of hundred acre feet of
2 water would still be required by the project.
3 Certainly how that was procured might raise some
4 issues, but, in general, I would say yes.

5 MR. LEDFORD: And based on the fact that
6 this is a critically and severely overdrafted
7 basin would dry cooling be a preferable choice for
8 this project?

9 MR. O'HAGAN: I did not recommend dry
10 cooling or recommend denial of the project because
11 I didn't identify that this project would
12 contribute to any significant impacts to water
13 resources. I think from, just from the basis of
14 water conversation, you know, I think dry cooling
15 is a great idea, but I certainly am not
16 recommending it for this specific facility.

17 MR. LEDFORD: I have no further
18 questions.

19 HEARING OFFICER VALKOSKY: I just have a
20 couple of clarifying questions before we turn to
21 redirect.

22 Mr. O'Hagan, concerning Exhibit 140,
23 which is the EPA letter --

24 MR. O'HAGAN: Yes.

25 HEARING OFFICER VALKOSKY: On the second

1 page, first full paragraph, the first sentence
2 basically contains the suggestion that a
3 remediation -- lack of remediation effort may
4 affect the design of the project or the selection
5 of a project site. Are you familiar with that
6 sentence, the first sentence in the first full
7 paragraph on page two?

8 MR. O'HAGAN: Yes, I am. My discussion
9 with Mr. Chang was that, you know, with the
10 opportunity to put in the monitoring wells and
11 parking areas and slant drilling for say if pump
12 and treat is necessary to deal with the TCE
13 contamination, that my experience with power
14 plants is that it's certainly something that can
15 be worked around and dealt with, and he seemed
16 comfortable with that.

17 HEARING OFFICER VALKOSKY: Okay, so
18 that's, in your opinion, nothing that the
19 Committee and eventually the Commission would have
20 to worry about?

21 MR. O'HAGAN: No, I don't anticipate
22 that whatever is necessary to remediate that plume
23 would require the site to be moved or any
24 alterations in project design.

25 HEARING OFFICER VALKOSKY: Thank you.

1 And again, I'd just like to clarify on the line of
2 questioning that Mr. Ledford was engaging and
3 basically it's three questions. The first is will
4 the level of development projected in the base
5 reuse EIR, and absent any reinjection or other
6 mitigation measures, cause a decline in the
7 underlying aquifer?

8 MR. O'HAGAN: Yes.

9 HEARING OFFICER VALKOSKY: Okay. Will
10 the proposal as mitigated in the staff's proposed
11 conditions of certification, contribute to this
12 decline?

13 MR. O'HAGAN: No.

14 HEARING OFFICER VALKOSKY: Will the
15 project water supply plan, especially focusing on
16 the dissipation and buffer provisions, actually
17 mean that this decline would, in fact, be less
18 than it would be without the plant?

19 MS. BOND: That the decline would be
20 less than if the project goes in -- the High
21 Desert Project goes in?

22 HEARING OFFICER VALKOSKY: No, I'm
23 saying, will the decline, with a decline, which is
24 going to happen, be less with the project than it
25 would be otherwise?

1 MS. BOND: To a very small degree it
2 will probably be less than -- the decline will be
3 slightly less than --

4 HEARING OFFICER VALKOSKY: Than it would
5 be without the project --

6 MS. BOND: -- is what my estimate is, or
7 no effect.

8 HEARING OFFICER VALKOSKY: In any event
9 the decline would not be increased by the project?

10 MS. BOND: Correct.

11 HEARING OFFICER VALKOSKY: Thank you.

12 PRESIDING MEMBER LAURIE: A five-minute
13 break, Mr. Valkosky.

14 HEARING OFFICER VALKOSKY: Okay, we'll
15 reconvene about 2:05.

16 (Thereupon a recess was taken.)

17 HEARING OFFICER VALKOSKY: Okay, could
18 we reconvene, please?

19 Redirect of staff's witnesses, Ms.
20 Holmes.

21 STAFF COUNSEL HOLMES: Thank you, Mr.
22 Valkosky.

23 REDIRECT EXAMINATION

24 BY MS. HOLMES:

25 STAFF COUNSEL HOLMES: A question for

1 Ms. Bond. There was a question that you responded
2 to earlier this afternoon about your degree of
3 confidence in the effectiveness of the thousand
4 acre foot buffer to prevent or mitigate impacts.
5 Do you recollect that discussion?

6 MS. BOND: Yes, I do.

7 STAFF COUNSEL HOLMES: And are there any
8 specific provisions in the staff's testimony of
9 proposed conditions of certification that increase
10 your degree of confidence in the effectiveness of
11 the buffer?

12 MS. BOND: Yes, there is. We have two
13 requirements that we will -- will add to my
14 confidence in the model calculations.

15 The first is that we are requiring
16 aquifer tests to be performed on the project
17 wells. And from these aquifer tests we will have
18 site specific information on the aquifer
19 parameters, permeability and storage factors that
20 are primary determinants in the rate of
21 dissipation and behavior of the groundwater
22 system. That information will be used to modify
23 the existing model.

24 Secondly, if the USGS has completed
25 their Mojave River groundwater basin model we will

1 also incorporate specific information regarding
2 the aquifer parameters from that model into our
3 model. And those two changes will raise the
4 accuracy and my degree, corresponding degree of
5 confidence in the analysis that we perform on an
6 annual basis with the model to provide the
7 Applicant, or the project operator, with
8 guidelines as to how much water is available in
9 the groundwater bank for withdrawal.

10 STAFF COUNSEL HOLMES: So what you're
11 saying, if I can paraphrase, is the actual rate of
12 dissipation that will apply to the project will be
13 based upon data that's likely to be much more
14 accurate than the data that was used in the model
15 in the staff assessment?

16 MS. BOND: I'm not sure that it will be
17 significantly different, but it may be and it will
18 be more accurate, but we'll have a much higher
19 confidence level in it.

20 STAFF COUNSEL HOLMES: Thank you.

21 I have a second question for you as
22 well. Do you remember a question from Mr. Ledford
23 earlier this afternoon about whether your analysis
24 would have been the same if the project had an 80-
25 year life?

1 MS. BOND: Yes, I do.

2 STAFF COUNSEL HOLMES: And can you tell
3 me if the project had come to the CEC requesting a
4 license for 80 years would your analysis be the
5 same or different and in what way?

6 MS. BOND: The method of analysis and
7 the interpretation, the significant criteria would
8 have been no different. However, the mitigation
9 requirements might have been different, probably
10 would have been different, given the length of the
11 project and the rate of dissipation that we've
12 calculated with the model.

13 STAFF COUNSEL HOLMES: And if this
14 project, whether because it operates longer than
15 30 years or because the data that was used in the
16 initial estimate of the decay rate has a
17 dissipation such that there is no available
18 balance left to bank, what is the effect of that?

19 MS. BOND: The project would have to
20 either resupply the bank, essentially replace the
21 dissipated water with new injected water, or
22 they'd have to stop using groundwater, and if
23 there was no other surface water supply, shut
24 down.

25 STAFF COUNSEL HOLMES: Thank you. That

1 concludes my redirect.

2 HEARING OFFICER VALKOSKY: Are the
3 conditions sufficiently flexible to encompass an
4 operating life of more than 30 years?

5 MS. BOND: I believe that the conditions
6 are such that it will force the project operator
7 to choose between shutting down or resupplying the
8 bank in the sense of replacing the dissipated
9 water. The purpose, the focus, of the conditions
10 as we described them was to provide sufficient
11 oversight, or I'm not sure what the current term
12 is, but sufficient oversight by the Energy
13 Commission that we will be able to determine what
14 the status of the bank is. And that the risk
15 involved in a shortfall of water supply will fall
16 to the project operator and not to the
17 environment.

18 If there is a shortfall the environment
19 will not suffer, it will be the project operators.

20 HEARING OFFICER VALKOSKY: Okay, and you
21 mentioned a reevaluation of the modeling results.
22 How often will that occur?

23 MS. BOND: Under most conditions it will
24 occur once a year. The project operator and/or
25 VVWD will be reporting on a quarterly basis the

1 amount of water pumped and the amount of water
2 injected into the groundwater system. And once a
3 year we will run the groundwater model and
4 determine the available bounds of water available
5 in the groundwater bank, unless the amount of
6 water available in the bank is less than one
7 year's supply. In which case we will be working
8 with the Applicant on a quarterly basis to tell
9 them how much water is left in the bank, in the
10 groundwater bank.

11 So the -- excuse me, Caryn, let me ask
12 you the right word. It's not the monitoring, but
13 the compliance?

14 STAFF COUNSEL HOLMES: Yes, that's the
15 correct word.

16 MS. BOND: The compliance operator will
17 be monitoring this on a quarterly basis if that
18 groundwater bank drops to the thousand acre feet.
19 That's not including the buffer, but available
20 balance.

21 HEARING OFFICER VALKOSKY: Right and in
22 no event would the project operate if the
23 available balance were less than 1,000 acre feet?

24 MS. BOND: They would not be able to
25 operate with groundwater supplies, yes.

1 HEARING OFFICER VALKOSKY: Thank you.

2 Recross, Mr. Thompson?

3 MR. THOMPSON: Nothing, thank you.

4 HEARING OFFICER VALKOSKY: Mr. Adams?

5 MR. ADAMS: No questions.

6 HEARING OFFICER VALKOSKY: Mr. Ledford?

7 MR. LEDFORD: No questions.

8 HEARING OFFICER VALKOSKY: Are there any
9 other questions for either Ms. Bond or Mr.
10 O'Hagan?

11 Seeing none, thank you very much.

12 STAFF COUNSEL HOLMES: Mr. Valkosky,
13 could I ask that the water portions of Exhibit 131
14 and the qualifications in Exhibit 83 be admitted
15 into evidence.

16 HEARING OFFICER VALKOSKY: Okay. And
17 would you also like to include 140, 141 and 142?

18 STAFF COUNSEL HOLMES: That would be a
19 good idea, thank you for helping me out.

20 HEARING OFFICER VALKOSKY: Okay, are
21 there any objections to the admission of those
22 designated exhibits?

23 There is none. Those exhibits will be
24 admitted into the record.

25 (Thereupon the above-referenced

1 documents marked as Exhibits 83, 131,
2 140, 141, 142 for Identification were
3 received in evidence.)

4 HEARING OFFICER VALKOSKY: Okay. Any
5 direct testimony, Mr. Ledford?

6 MR. LEDFORD: None -- oh, direct
7 testimony from me? It's my turn. I thought wet
8 dry coolants was next. I guess not.

9 HEARING OFFICER VALKOSKY: Well to the
10 extent we could keep that distinct from the water
11 issues, I would prefer that.

12 DIRECT TESTIMONY

13 MR. LEDFORD: My proposal is to admit my
14 written direct testimony into the record as an
15 exhibit and to include all of the exhibits that we
16 have previously marked and which have been
17 referenced in the last two days of hearings.

18 I can go down the list and if we can do
19 that I will defer any further direct testimony.

20 HEARING OFFICER VALKOSKY: Okay, if you
21 could just for the specificity of the record, just
22 give us the numbers of those exhibits, I would
23 appreciate it.

24 I think I start at Exhibit 98. That one
25 is going to be in the rebuttal testimony to

1 Matthew Layton. I don't know if, just for the
2 sake of time, if we want to get all these in.

3 HEARING OFFICER VALKOSKY: Why don't we
4 just hold off on that, because that is very
5 specific as to dry coolant.

6 MR. LEDFORD: Right. Exhibit 99 is a
7 rebuttal testimony of Linda Bond and Joe O'Hagan.
8 Do you want me to list them all?

9 HEARING OFFICER VALKOSKY: Yeah, just
10 list them in sequence.

11 MR. LEDFORD: Exhibit 109 is selected
12 pages from the fifth annual report to the Mojave
13 River Basin Watermaster. Exhibit 110, selected
14 pages from the Regional Water Management Plan.
15 Exhibit 111, selected pages from the Mojave Water
16 Agency Master Plan for the delivery of imported
17 water.

18 Exhibit 112 is selected pages from
19 Respondent's opening brief on the merits to the
20 Supreme Court. Exhibit 113 is a graphic
21 representation submitted by myself. Exhibit 114
22 is selected pages from USGS report 95-4189.

23 Exhibit 115 is Mojave Water Agency water
24 pricing dated August 23rd, 1999. Exhibit 116 is
25 selected pages from the EIR on George Air Force

1 Base. Exhibit 117 is the declaration of Norm
2 Caoette.

3 Exhibit 118 is Mojave Water Agency memo
4 of September 14th and minutes of August 16th.
5 Exhibit 119 is -- it's already been admitted.
6 Exhibit 121 is direct testimony of Gary Ledford on
7 water and related matters.

8 Exhibit 122 is direct testimony --
9 that's on dry cooling. I guess we'll wait on that
10 one.

11 Exhibit 123 is an E-Mail from Norm
12 Caoette to Rick Buell dated April 13th, 1999.

13 Exhibit 124 is the State Water Resources
14 Control Board water quality control policy on the
15 use and disposal of inland waters used for power
16 plant cooling, adopted June 19th, 1975.

17 Exhibit 125 is selected pages from
18 certificates of participation in the amount of
19 \$26,290,000 dated May 1st, 1997.

20 Exhibit 126 is selected pages from a
21 draft issue memo regarding beneficial uses for
22 ground and surface waters within the Mojave
23 watershed dated October, 1994.

24 Exhibit 127 is an agreement for
25 cooperation between the Mojave Water Agency and

1 the Victor Valley Economic Development Authority
2 dated December 22nd, 1993.

3 Exhibit 128 is a declaration of Larry
4 Rowe in support of motion for entry of
5 interlocutory decree of judgment.

6 Exhibit 129 is a letter from Andrew
7 Welch to John Roberts -- oops, that's not mine.

8 And I think that's all.

9 HEARING OFFICER VALKOSKY: Okay, is
10 there objection to admission of the identified
11 exhibits? Mr. Thompson.

12 MR. THOMPSON: Although we may have some
13 quarrel with the relevancy and possible use of
14 these exhibits, we do not object to their
15 introduction into the record.

16 HEARING OFFICER VALKOSKY: Ms. Holmes?

17 STAFF COUNSEL HOLMES: No objection.

18 HEARING OFFICER VALKOSKY: Mr. Adams?

19 MR. ADAMS: No objection.

20 MR. LEDFORD: That's my direct
21 testimony.

22 HEARING OFFICER VALKOSKY: If there are
23 no objections the identified exhibits are
24 admitted.

25 (Thereupon the above-referenced

1 documents marked as Exhibits 98, 99,
2 109-119, 121-129 for Identification were
3 received in evidence.)

4 HEARING OFFICER VALKOSKY: Does any
5 party desire to examine Mr. Ledford?

6 MR. THOMPSON: Applicant does not, thank
7 you.

8 STAFF COUNSEL HOLMES: No questions.

9 MR. ADAMS: No questions.

10 HEARING OFFICER VALKOSKY: Okay, the
11 Committee will consider your testimony and
12 exhibits along with everything else, Mr. Ledford.

13 MR. LEDFORD: Thank you.

14 HEARING OFFICER VALKOSKY: As I have it
15 the next topic is dry cooling.

16 I'm sorry -- yes, Mr. Adams.

17 MR. ADAMS: Yes, we filed Tom Bilhorn's
18 declaration, it's Exhibit 132. I don't know if
19 the objection voiced last week is still there or
20 not, but I guess the way of finding out is to
21 offer to move into evidence Exhibits 93 and 96,
22 based on declaration and Mr. Bilhorn's
23 unavailability.

24 HEARING OFFICER VALKOSKY: That would be
25 93, 96 and 132? I think we identified 132 as the

1 declaration from last week, did we not?

2 Okay, is there objection to receiving
3 those into evidence?

4 MR. THOMPSON: None from Applicant.

5 STAFF COUNSEL HOLMES: None from staff.

6 MR. LEDFORD: None from me.

7 HEARING OFFICER VALKOSKY: Okay. Those
8 exhibits are admitted into the evidentiary record.

9 (Thereupon the above-referenced
10 documents marked as Exhibits 93, 96 and
11 132 for Identification were received in
12 evidence.)

13 HEARING OFFICER VALKOSKY: We're
14 prepared to proceed on the topic of dry cooling.

15 STAFF COUNSEL HOLMES: Thank you.
16 Staff's witness -- was Mr. Barnett going to be
17 testifying on dry cooling at all?

18 MR. THOMPSON: No.

19 STAFF COUNSEL HOLMES: That was a
20 mistake.

21 MR. THOMPSON: He let me know that if I
22 said that it was a mistake.

23 STAFF COUNSEL HOLMES: Didn't want to
24 jump the gun.

25 Staff's witness on dry cooling is

1 Matthew Layton. He has not been sworn yet.

2 Whereupon

3 MATTHEW LAYTON

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

6 DIRECT EXAMINATION

7 BY MS. HOLMES:

8 Q Good afternoon. Could you please state
9 your name for the record?

10 A Matthew Layton.

11 Q Do you have a copy with you of what has
12 been identified as Exhibit 85 containing your
13 testimony on dry cooling?

14 A Yes, I do.

15 Q And was a copy of your qualifications
16 filed in the document that's been identified as
17 Exhibit 83?

18 A I believe they were.

19 Q And do you have any corrections to the
20 documents that you are sponsoring?

21 A I do not.

22 Q Are the facts contained in the documents
23 you're sponsoring true and correct?

24 A Yes.

25 Q And do the opinions contained in the

1 documents you are sponsoring represent your best
2 professional judgment?

3 A Yes.

4 STAFF COUNSEL HOLMES: Mr. Layton is
5 available for cross examination.

6 HEARING OFFICER VALKOSKY: Mr. Thompson?

7 MR. THOMPSON: No questions, thank you.

8 HEARING OFFICER VALKOSKY: Mr. Adams?

9 MR. ADAMS: No questions.

10 HEARING OFFICER VALKOSKY: Mr. Ledford.

11 CROSS EXAMINATION

12 BY MR. LEDFORD:

13 Q Is dry cooling being used in a number of
14 power plants in California presently?

15 A Yes, I believe it is.

16 Q And to the best of your knowledge is it
17 being utilized successfully?

18 A Yes.

19 Q Is it being utilized economically?

20 A I assume so. I don't have access to the
21 books for the power plants.

22 Q Are you familiar with the recent Sutter
23 project?

24 A Somewhat.

25 Q And was that project approved for dry

1 cooling -- or with dry cooling, I should say.

2 A Yes, it was.

3 Q And do you have any knowledge as to
4 whether or not there was a readily available water
5 supply in that area?

6 A I can't testify to a water supply on
7 that particular project.

8 Q Do you have any knowledge as to what the
9 climate conditions are in the Sutter area as
10 opposed to --

11 A Yes, I live near there.

12 Q Does it get hot there in the summertime?

13 A Yes, it does.

14 Q Does it get cold there in the
15 wintertime?

16 A Yes, it does.

17 Q Is there any indication that it might be
18 similar conditions to Apple Valley?

19 A I'm not familiar with the conditions in
20 Apple Valley.

21 Q Did you do a financial feasibility study
22 in your dry cooling analysis for this project?

23 A No. I did a qualitative assessment.

24 Q And in the State Water Resources Control
25 Board Resolution 75-58, does it require a

1 financial analysis of dry cooling or does it
2 suggest a financial analysis of dry cooling, might
3 be a better --

4 A I believe it suggests.

5 Q And are you aware of the severe and
6 critical --

7 PRESIDING MEMBER LAURIE: One moment,
8 Mr. Ledford. Thank you, please continue.

9 BY MR. LEDFORD:

10 Q Are you aware of the severe and critical
11 nature of the water overdraft in the High Desert?

12 A I've been educated the last two days,
13 yes.

14 Q And based on your listening to the
15 nature of the water issues, would you recommend
16 dry cooling as a viable alternative for this
17 project?

18 PRESIDING MEMBER LAURIE: Mr. Ledford,
19 for the record can you define the use of your term
20 viable? Viable economically, viable
21 technologically?

22 MR. LEDFORD: All right. Thank you very
23 much.

24 Q How about if we start with viable
25 technologically?

1 A Dry cooling is a viable cooling
2 technology for the High Desert Power Plant, yes.

3 Q And is it viable economically?

4 A That is a very good question. That
5 question is very hard to answer because dry
6 cooling does perform differently than a wet
7 cooling tower and therefore it would affect the
8 performance of the plant. You could experience a
9 degradation of output of the steam cycle of a few
10 percent and that could be lost megawatt hours or
11 it could actually be whole lost days of operation.

12 I don't know if those two things would
13 make it uneconomical. Because, again, I think
14 you're aware that some power plants are very
15 dependent on selling peak power and they have
16 contracts that require them to. Perhaps dry
17 cooling would make a project like that
18 uneconomical.

19 Q Has any evidence been submitted to you
20 in this proceeding that would indicate to you that
21 it is not economical?

22 A No.

23 Q Did you review the rebuttal testimony
24 that I provided in this case?

25 A Yes, I did.

1 Q And I attempted to use a study that CURE
2 had initially started and then added some
3 components to that study that I believe had been
4 omitted. Did you review those?

5 A Yes, I did.

6 Q And do you take any exception to those
7 numbers?

8 A No, I do not.

9 MR. LEDFORD: I have no further
10 questions.

11 HEARING OFFICER VALKOSKY: Okay.

12 Mr. Layton, could you address the
13 conformity of the 100 percent consumptive use of
14 water proposed by the project with State Water
15 Resources Control Board Resolution 75-58?

16 STAFF COUNSEL HOLMES: Mr. Valkosky, I
17 think that was actually addressed in Mr. O'Hagan's
18 testimony and not in Mr. Layton's testimony and I
19 think that he may have been -- I would be happy to
20 recall him for --

21 HEARING OFFICER VALKOSKY: I thought Mr.
22 O'Hagan said Mr. Layton was the witness.

23 STAFF COUNSEL HOLMES: The question was
24 slightly different. I can't remember the exact
25 question you asked, but he did defer a question to

1 Mr. Layton and I remember thinking this was going
2 to come back at us later. Mr. O'Hagan is
3 available to be recalled specifically to address
4 that issue, if you would like.

5 HEARING OFFICER VALKOSKY: Okay, I would
6 like that issue addressed, please.

7 You've heard the question, Mr. O'Hagan.

8 MR. O'HAGAN: Yes, and if I can recall
9 it, the State Water Resources Control Board policy
10 dealing with the Resolution 75-58 that you
11 reference does not address whether power plant
12 projects, you know, is a hundred percent
13 consumption or not. It just addresses alternative
14 sources of water for cooling or alternative
15 cooling technologies.

16 HEARING OFFICER VALKOSKY: Did you
17 analyze the conformity of this project with that
18 resolution?

19 MR. O'HAGAN: Yes, yes, I did.

20 HEARING OFFICER VALKOSKY: Could you
21 explain the results of your analysis to me?

22 MR. O'HAGAN: Well, the policy
23 encourages the use of alternative sources of
24 cooling water that either provides a priority of
25 use which would be, you know, wastewater being

1 discharged to the ocean, ocean water, brackish
2 inland waters, irrigation return flows, that sort
3 of thing.

4 We did look at alternative sources of
5 water in the project area. Originally when the
6 AFC was filed the Applicant identified using
7 wastewater from a wastewater treatment plant as a
8 cooling source and as was discussed yesterday, I
9 believe in biology, there was concerns that
10 wastewater right now is being discharged to the
11 Mojave River and diversion of that water is
12 considered a potential for significant biological
13 impacts, so that alternative was dropped. And the
14 Applicant developed the proposal to use the State
15 Water Project water in the banking program.

16 I also evaluated looking at contaminated
17 groundwater sources at the former George Air Force
18 Base. There is a shallow aquifer there that is
19 contaminated. Based on my discussions with the
20 Air Force it was felt that that would not be a
21 sufficient source for a project of this size, in
22 fact, it would be vastly insignificant.

23 There was other contaminated sources but
24 they didn't seem to be -- would be suitable
25 either. And so on that, then we also had

1 performed by Mr. Layton the -- because the policy
2 also directs that you take a look at the
3 feasibility of using dry or wet dry cooling and
4 Mr. Layton's testimony goes to that point.

5 The final evaluation was is that the
6 policy states that, you know, alterative sources,
7 you know, if they're environmentally unsuitable or
8 economically unsound it shouldn't be proposed.
9 I've had many discussions with State Water
10 Resources Control Board attorneys in terms of this
11 policy. There's never been a case taken to the
12 State Board, even though it is their own policy in
13 regard to this, and I find it fairly ambiguous.

14 So that in terms of economically unsound
15 or environmentally unsuitable, in terms of
16 evaluating alternatives, there are significant
17 additional costs. As Mr. Layton indicated for dry
18 cooling, we, working up the proposed condition
19 certification feel confident that the project will
20 not contribute to significant environmental impact
21 of water resources. And on that basis I decided
22 that the project does comply with this policy.

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

1 STAFF COUNSEL HOLMES: No, I don't.

2 HEARING OFFICER VALKOSKY: Any other
3 questions for either Mr. Layton or Mr. O'Hagan
4 since he's here?

5 MR. THOMPSON: I've got one.

6 CROSS EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Layton, when Mr. Ledford asked you
9 if you had looked at the cost figures in his
10 testimony, and I'm not sure I could characterize
11 his question, but didn't quarrel with him or
12 didn't object to them, you didn't mean to imply
13 that you checked those numbers, did due diligence
14 on the numbers to make sure that they were right,
15 did you?

16 A No, I did not, but I guess what I was --
17 my response was to suggest that I think there are
18 a broad range of numbers possible. You know,
19 there's a broad variety of configurations you can
20 have for dry cooling.

21 Q Okay.

22 A So that's what I was agreeing to.

23 MR. THOMPSON: All right. Thank you
24 very much. That's all I have.

25 MR. LEDFORD: Can I just have a minute?

1 HEARING OFFICER VALKOSKY: Certainly.

2 MR. LEDFORD: I have no further
3 questions.

4 I would ask that my two exhibits --

5 HEARING OFFICER VALKOSKY: Let me do
6 their exhibits first.

7 MR. LEDFORD: Oh, I'm sorry.

8 STAFF COUNSEL HOLMES: Mr. Valkosky, can
9 those portions of Exhibits 85 and 83 that Mr.
10 Layton is sponsoring please be admitted into
11 evidence?

12 HEARING OFFICER VALKOSKY: Are there any
13 objections to admission?

14 Hearing no objections, the designated
15 portions of the exhibits are moved into evidence.

16 (Thereupon the above-referenced document
17 marked as Exhibits 83 and 85 for
18 Identification were received in
19 evidence.)

20 HEARING OFFICER VALKOSKY: Anything
21 further from anyone for either Mr. Layton or Mr.
22 O'Hagan?

23 Do you have anything?

24 MR. LEDFORD: Only my exhibits.

25 HEARING OFFICER VALKOSKY: Thank you,

1 gentlemen.

2 Okay, on the topic of dry cooling, Mr.
3 Ledford.

4 MR. LEDFORD: I would move that my
5 rebuttal testimony and my direct testimony,
6 Exhibits 98 and Exhibits 122 be entered.

7 HEARING OFFICER VALKOSKY: Is there
8 objection? Applicant?

9 MR. THOMPSON: None.

10 STAFF COUNSEL HOLMES: None.

11 HEARING OFFICER VALKOSKY: Department of
12 Fish and Game, no objections, I take it?

13 MR. ADAMS: No objections.

14 HEARING OFFICER VALKOSKY: Okay,
15 Exhibits 98 and 122 will also be received into
16 evidence.

17 (Thereupon the above-referenced document
18 marked as Exhibits 98 and 122 for
19 Identification were received in
20 evidence.)

21 Before we commence closing argument, as
22 I have it, the last witness is Mr. Barnett in
23 behalf of the Applicant, is that correct?

24 MR. THOMPSON: Yes.

25 HEARING OFFICER VALKOSKY: Proceed.

1 MR. THOMPSON: Thank you very much,
2 Applicant would like to recall Mr. Barnett.

3 Mr. Barnett is being recalled for the
4 explicit purpose of a policy wrapup question and
5 to adopt the conditions of certification on behalf
6 of the project. Mr. Barnett you remain sworn.

7 DIRECT EXAMINATION

8 BY MR. THOMPSON:

9 Q With regard to the conditions of
10 certification that appear in the staff assessment
11 as amended and including changes to those staff
12 conditions of certification that were agreed to
13 between Applicant and staff in the biology area,
14 do you, on behalf of the project, accept the
15 conditions of certification and agree that the
16 conditions of certification will guide the project
17 and that they will be reflected in project
18 contracts and agreements as you go forward?

19 A Yes.

20 MR. THOMPSON: Thank you very much,
21 that's all I have.

22 HEARING OFFICER VALKOSKY: Any questions
23 for Mr. Barnett?

24 Mr. Adams, any questions for Mr.
25 Barnett?

1 MR. ADAMS: No questions.

2 HEARING OFFICER VALKOSKY: Mr. Ledford?

3 MR. LEDFORD: No questions.

4 HEARING OFFICER VALKOSKY: One question,
5 Mr. Barnett, you say the conditions, I understand
6 there is still some potential redrafting or
7 reexamination of the water supply agreements as
8 they apply to the conditions of certification, is
9 that correct?

10 THE WITNESS: That's correct.

11 HEARING OFFICER VALKOSKY: Could you
12 explain when the Committee will receive a final
13 version?

14 THE WITNESS: We've actually made quite
15 a bit of progress during breaks here today and
16 it's my understanding that we have reached a
17 tentative agreement on language and, therefore, I
18 would expect that we will be able to provide the
19 new conditions of certification language for that
20 rapidly.

21 I would hesitate to say, give you an
22 exact timeframe, but we will certainly be working
23 with staff to do it as quickly as possible and it
24 could be as early as next week in my opinion.

25 HEARING OFFICER VALKOSKY: Okay, you'll

1 be working with staff and the Department of Fish
2 and Game as I understand it, is that correct?

3 THE WITNESS: Absolutely, the Department
4 of Fish and Game.

5 HEARING OFFICER VALKOSKY: Does that
6 conform with the other party's understanding?

7 STAFF COUNSEL HOLMES: That's my
8 understanding, as we've got draft language for the
9 condition of certification. Staff and Fish and
10 Game both, I believe, want to make sure that the
11 way the condition is currently worded it could be
12 easily verified and enforced and I share Mr.
13 Barnett's optimism that this issue could be
14 resolved sometime next week.

15 HEARING OFFICER VALKOSKY: Mr. Adams are
16 you similarly optimistic?

17 MR. ADAMS: I agree, yes.

18 HEARING OFFICER VALKOSKY: Okay. We'll
19 look forward to that. Are there any other matters
20 before we go into closing comments, closing
21 arguments?

22 STAFF COUNSEL HOLMES: Does Mr. Ledford
23 have any questions of Mr. Buell?

24 MR. THOMPSON: Oh, I have some exhibits
25 that I would like to move in.

1 HEARING OFFICER VALKOSKY: I'm sorry, of
2 course.

3 MR. THOMPSON: My records show that I've
4 failed to ask to be put into the record Exhibit
5 101, which is Mr. Barnett's rebuttal testimony.
6 If I failed to do that I would like to do so at
7 this time. And I would like to move the following
8 exhibits into the record.

9 Number 1, which was Applicant's AFC.
10 Number 2, data responses to staff's data requests.
11 Three, responses to CURE data requests. Sixty-
12 one, which were the Applicant's comments on the
13 staff assessment. Ninety-five, which was our
14 witness and exhibit list and finally 102, which
15 were our declarations.

16 HEARING OFFICER VALKOSKY: Is there
17 objection to admitting any of those?

18 STAFF COUNSEL HOLMES: No.

19 MR. ADAMS: No.

20 MR. THOMPSON: That completes
21 Applicant's case.

22 HEARING OFFICER VALKOSKY: Mr. Ledford,
23 any objections to those exhibits?

24 MR. LEDFORD: No.

25 HEARING OFFICER VALKOSKY: Those

1 exhibits will be admitted.

2 (Thereupon the above-referenced document
3 marked as Exhibits 1,2,3,61,95,102 for
4 Identification were received in
5 evidence.)

6 HEARING OFFICER VALKOSKY: Again, before
7 final argument, thank you, Ms. Holmes. Do you
8 have any questions of Mr. Buell?

9 MR. LEDFORD: No.

10 HEARING OFFICER VALKOSKY: Okay.

11 PRESIDING MEMBER LAURIE: Mr. Ledford,
12 did you want to take a few minutes break before we
13 start closing arguments?

14 MR. LEDFORD: No.

15 HEARING OFFICER VALKOSKY: Okay, we'll
16 begin with Applicant.

17 CLOSING ARGUMENT BY THE APPLICANT

18 MR. THOMPSON: I don't wish to prolong
19 these proceedings and so I would only say that I
20 want to thank the guidance that the Committee has
21 given us with regard to relevance. And I
22 appreciate the guidance that the Committee has
23 given us which allowed us or prompted us to become
24 clearer in the presentation of the water issues.
25 I think it has helped the record immensely.

1 We have no comments on the relevancy. I
2 think we've made those before and that completes
3 our portion of our 20 minutes.

4 We have nothing further, thank you very
5 much.

6 HEARING OFFICER VALKOSKY: Okay, Mr.
7 Thompson.

8 Ms. Holmes.

9 STAFF COUNSEL HOLMES: Staff waives any
10 closing argument.

11 HEARING OFFICER VALKOSKY: Mr. Adams.

12 CLOSING ARGUMENT BY FISH AND GAME

13 MR. ADAMS: Just a few remarks. I think
14 CEC's staff and High Desert should be commended on
15 the way the issues were worked out. The
16 Department is satisfied that with the conditions
17 of certification, with the one condition remaining
18 to be nailed down, but with apparent agreement on
19 it, that there will be complete avoidance of any
20 impact on the Mojave River riparian system and on
21 the species located there.

22 So we think the final product looks
23 pretty good. Thank you.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Mr. Ledford.

1 MR. LEDFORD: Thank you.

2 CLOSING ARGUMENT BY THE INTERVENOR

3 MR. LEDFORD: I think that my problem
4 with the process has probably been well enunciated
5 throughout the course of this hearing and I do
6 thank the Commission and the parties for giving me
7 the opportunity to present my case. And I'm sure
8 I'll have the opportunity to argue that further in
9 some type of a final brief.

10 The problem that I've had with the
11 overall is that I got involved in the process
12 about a year ago when the Mojave Water Agency
13 issued its intent to process an application and
14 rely on the CEC's process for their CEQA
15 certification. Otherwise I would probably never
16 have been here.

17 And throughout the process I initially
18 started by trying to identify some of the issues,
19 such as the makeup water and the replacement water
20 issues and the two to one issues and the
21 alternatives of using vested legal water rights
22 and free production allowance and also using the
23 -- just for the High Desert Power Project to drill
24 their own wells on their own property and comply
25 with it -- become the stipulating party and comply

1 with the terms of the judgment.

2 It should be noted that those
3 alternatives have never been addressed in any of
4 the staff's reports, and they are viable
5 alternative water resources. And to the extent
6 that those potentials for water could be used and
7 could be used as a primary source with the State
8 Project water as a secondary source, I certainly
9 would have thought that those would have been
10 addressed.

11 And I think of particular concern to me
12 is the fact that as an intervening party and
13 particularly involved in this particular aspect of
14 the project, attending, I think, all but one
15 workshop, virtually none of the comments that I
16 ever made ever wound up in a staff report, except
17 at the very end when we had some rebuttal
18 testimony.

19 And the rebuttal testimony addresses the
20 focused issue that the CEC is addressing this as a
21 project. This, being the power project alone.
22 And I hope that I have at least brought to this
23 Commission's attention that there is a very strong
24 possibility that the multiple contracts to provide
25 for water service to this project will have

1 additional CEQA analysis and could ultimately
2 create a significant reason why the contracts may
3 never be issued, or even if they are issued, why
4 they may be litigated.

5 And it's quite disturbing to me, as a
6 member of the public, because I think it should be
7 somewhat obvious, I've stated this a number of
8 different times, I'd really prefer not to be here.
9 And I'd really rather not be here talking to this
10 developer about a CEQA. And it isn't this
11 developer that I'm talking to, it is the multiple
12 agencies that will be issuing contracts and
13 agreements that will purport to provide water in
14 this regard and not address the issues of this
15 vast adjudication and the critical and severe
16 overdraft of this basin.

17 And I do believe that the project is
18 studied in a vacuum when it should be more than
19 evident that there is a problem that continues to
20 exist and the primary contractor that's going to
21 provide water service continues to exasperate the
22 overdraft and it is not curing it.

23 Over the past six years since the
24 adjudication went into place and replacement water
25 assessments were to be assessed, not one acre foot

1 of water that I know of has been purchased by a
2 municipal producer in the Alto Basin to replace
3 water. That is a significant problem. And I'm
4 not suggesting that it's the CEC's problem, nor am
5 I suggesting that it is High Desert Power
6 Project's problem.

7 However, if the problem doesn't get
8 fixed, it's going to become so large that it may
9 not be fixable. And this project will become a
10 cumulative impact project.

11 So I will take my argument back to the
12 local agencies and I will take my argument to
13 other water agencies that may change their
14 policies about whether dry cooling is the right
15 thing to do, especially with State Project water.

16 If we don't have that water available
17 for development in California over the next 80
18 years, we're going to be sacrificing a lot of
19 water for human consumption. And State Project
20 water that is put in to the basin and then
21 extracted in groundwater wells and put through the
22 systems and water that goes to regional treatment
23 plants, it can then be reused but it gets to be
24 reused again, so it has multiple benefits.

25 And water that goes into a cooling tower

1 is evaporated into the atmosphere and has no net
2 positive benefit to these basins. It is a
3 significant impact. And while I understand what
4 your rules are, I think that it might be time to
5 take another look at those rules. And I'm hoping
6 that at some point in the future that I can
7 convince either the Commission as a whole or other
8 agencies to take a hard look at this water issue
9 because I'm very concerned about it.

10 And I thank you again for putting up
11 with me, including Applicant and staff, and for
12 giving me the broad time to present my case and
13 make this record, and I wish you all well.

14 HEARING OFFICER VALKOSKY: Thank you,
15 Mr. Ledford.

16 MR. LEDFORD: Is that less than 15
17 minutes?

18 HEARING OFFICER VALKOSKY: I didn't even
19 time you actually.

20 And on behalf of the Committee I would
21 like to thank you for your participation in this.
22 I think you've added a very important element to
23 this, both from the technical and just from a
24 public participation perspective, and I mean that
25 sincerely.

1 MR. LEDFORD: Thank you.

2 HEARING OFFICER VALKOSKY: Is there
3 anything else that anyone would like to bring to
4 the Committee's attention before we get into the
5 briefing schedule?

6 Are there any members of the public who
7 would like to make public comment concerning the
8 water or any other issues that we've heard on
9 this?

10 Okay, with that, I'll turn to the
11 briefing schedule. The Committee will provide the
12 parties the opportunity to present post hearing
13 briefs on this. The date that I've picked out
14 rather arbitrarily for opening briefs is October
15 29th and for replied briefs of November 12th.
16 Does that cause a particular concern to anyone?

17 MR. LEDFORD: I'm on a hunting trip
18 until about the 26th, so that's only going to give
19 me three days. Is there any chance we could push
20 that out another few days?

21 HEARING OFFICER VALKOSKY: We could push
22 both those out another week.

23 STAFF COUNSEL HOLMES: I would also
24 prefer that. I've got hearings in another case
25 next week.

1 HEARING OFFICER VALKOSKY: Okay, we'll
2 go off the record for one second.

3 (Thereupon a recess was taken.)

4 HEARING OFFICER VALKOSKY: Okay, Mr.
5 Ledford, after consultation with people much more
6 knowledgeable about these things than I, we'll
7 amend the briefing schedule. The opening briefs
8 will be due November 5th and the reply briefs
9 November 19th. Does that accommodate your needs?

10 MR. LEDFORD: Thank you.

11 HEARING OFFICER VALKOSKY: Okay. Is
12 that suitable to all the other parties?

13 Okay, with that, anything else need to
14 be brought to the Committee's attention?

15 I thank you very much for your
16 participation in this series of hearings. We're
17 adjourned.

18 (Thereupon the October 8, 1999 High
19 Desert Power Plant Hearing was concluded
20 at 3:00 p.m.)

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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 19th day of October, 1999.

DEBI BAKER

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