

COMMITTEE CONFERENCE ON PMPD  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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

COUNCIL CHAMBERS  
VICTORVILLE, CALIFORNIA

THURSDAY, JANUARY 27, 2000

1:00 P.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Laurie, Presiding Member

STAFF PRESENT

Stanley Valkosky, Hearing Officer

Bob Eller, Adviser to Vice Chairman Rohy

Caryn Holmes, Staff Counsel

Richard Buell, Project Manager

REPRESENTING THE APPLICANT

Allan J. Thompson, Attorney  
21 C Orinda Way  
Suite 314  
Orinda, CA 94563

Thomas M. Barnett, Vice President and Project  
Manager

Andrew C. Welch, P.E., Project Director  
High Desert Power Project LLC  
3501 Jamboree Road, South Tower, Suite 606  
Newport Beach, CA 92660

INTERVENORS PRESENT

Gary A. Ledford, Builder  
Jess Ranch  
11000 Apple Valley Road  
Apple Valley, CA 92308

ALSO PRESENT

Norman Caouette  
Mojave Water Agency

Robert Wilkins

Lore Sonnenfeld

Jack Beinschroth

Bob Almond

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

2 1:00 p.m.

3 PRESIDING MEMBER LAURIE: Good morning.

4 I'm Robert Laurie, I'm Presiding Member of the  
5 Siting Committee hearing the High Desert Power  
6 Project.7 To my left is Mr. Stan Valkosky. Mr.  
8 Valkosky is the Hearing Officer who will actually  
9 conduct today's proceedings. To Mr. Valkosky's  
10 left is Mr. Bob Eller, Advisor to Commissioner  
11 David Rohy.12 The purpose of today's hearing is to  
13 conduct a public hearing on the Presiding Member's  
14 Proposed Decision which is a public document. For  
15 a further description of today's proceeding I'd  
16 like to ask Mr. Valkosky to do a couple things.17 One, have all parties introduce  
18 themselves; two, provide some background as to the  
19 process that we're going to be following today.20 HEARING OFFICER VALKOSKY: Thank you,  
21 Commissioner Laurie. I'd like to begin with the  
22 introductions of the parties. Staff, if you'd  
23 introduce yourself, please.24 MR. BUELL: My name is Rick Buell. I'm  
25 the Project Manager for the staff.

1 MS. HOLMES: Caryn Holmes, staff  
2 counsel.

3 HEARING OFFICER VALKOSKY: Thank you.  
4 Mr. Thompson.

5 MR. THOMPSON: Thank you. My name's  
6 Allan Thompson, counsel for the project with  
7 regard to CEC matters.

8 MR. BARNETT: I'm Tom Barnett, I'm the  
9 Project Manager for the High Desert Power Project.

10 MR. WELCH: Andy Welch, Project Director  
11 for the High Desert Power Project.

12 HEARING OFFICER VALKOSKY: Mr. Ledford.

13 MR. LEDFORD: Thank you, Mr. Chairman,  
14 my name is Gary Ledford. And my principle issue  
15 is the use of water for evaporative cooling.

16 HEARING OFFICER VALKOSKY: Are there any  
17 other formal parties present here today  
18 specifically California Unions for Reliable Energy  
19 or California Department of Fish and Game?

20 They're apparently not present.

21 PRESIDING MEMBER LAURIE: Mr. Valkosky,  
22 I would note that this proceeding is being  
23 recorded. So during the course of the proceeding  
24 if you are speaking too quickly or there's a  
25 problem with the recording, we may interrupt you

1 temporarily in order to insure that there are no  
2 blips in the recordation process.

3 Two, the applicant's folks, you do not  
4 have an amplifying microphone. And so just be  
5 cognizant of that, please.

6 Mr. Valkosky.

7 HEARING OFFICER VALKOSKY: Thank you.

8 By way of background I'd like to establish that  
9 the Committee issued the Presiding Member's  
10 Proposed Decision and scheduled today's conference  
11 on December 15, 1999. The public comment period  
12 concluded on January 18th of this year.

13 The following submitted formal comments  
14 on the PMPD: applicant, staff, Mr. Ledford,  
15 intervening California Department of Fish and  
16 Game, the City of Barstow, and Ms. Betty Williams.

17 In the interim the Mojave Desert Air  
18 Quality Management District has provided  
19 additional information concerning air offsets, and  
20 that was in a letter of December 22, 1999. And  
21 the Victor Valley Water District also submitted  
22 information concerning the aquifer storage and  
23 recovery agreement. The first of those  
24 submissions was on December 28, 1999.

25 In addition, the Bureau of Land

1 Management initiated formal consultation on the  
2 Southwest Gas natural pipeline on December 22,  
3 1999. And the United States Fish and Wildlife  
4 Service published a draft environmental impact  
5 statement on December 23rd of last year.

6 I also have received today a filing  
7 entitled, opposition to the motion of applicant to  
8 reopen the evidentiary record, which has been  
9 submitted by Mr. Ledford.

10 And finally, on January 14th of this  
11 year, applicant filed a motion to reopen the  
12 proceedings for a limited purpose.

13 Today we basically have two main items  
14 on the agenda. The first is to afford all those  
15 present an opportunity to discuss applicant's  
16 motion to reopen the evidentiary record. And  
17 after we have finished with that, we'll take  
18 general comments from the parties and all members  
19 of the public concerning the existing Presiding  
20 Member's Proposed Decision.

21 Are there any questions or is there any  
22 objection to that procedure? Seeing none, with  
23 that we will begin by discussing applicant's  
24 motion to reopen. And the order in which I intend  
25 to proceed is to have applicant explain its

1 motion. Then I'd like to get reactions from  
2 staff, and from Mr. Ledford, and as I said before,  
3 the other intervenors are not present. After that  
4 we'll open discussion on the motion to reopen to  
5 members of the public.

6 Mr. Thompson.

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

8 I will try and be loud enough so the audience can  
9 hear without blowing up the ear drums of the  
10 reporter.

11 Following the issuance of the Presiding  
12 Member's Proposed Decision it was clear to us that  
13 there were two areas of concern that that document  
14 invited additional testimony. Those two areas  
15 were air offsets and the water issue.

16 With regard to air offsets, the  
17 California Code requires that offsets be acquired  
18 prior to licensing, which I interpret to mean  
19 before the final decision. So there was no  
20 requirement that the offsets all be acquired prior  
21 to the Presiding Member's Proposed Decision.

22 However, this Committee correctly, I  
23 believe, stated that it needed evidence of the  
24 acquisition of all required offsets before the  
25 Committee could recommend to the full Commission

1 that this project be licensed. This was pointed  
2 out in the Presiding Member's Proposed Decision,  
3 as I said.

4 And subsequent to the date of that  
5 decision we acquired -- the project acquired all  
6 required offsets. And one of the areas that we  
7 wanted to place additional testimony in the record  
8 was to demonstrate that those offsets had been  
9 acquired.

10 The second issue is the water issue.  
11 Those of you that were in attendance at the last  
12 meeting that we had here understand that the  
13 California Fish & Game and staff had some  
14 difficulties with some of the contract provisions  
15 that the VVWD contract contained within it.

16 The applicant took a backseat in many of  
17 those negotiations as VVWD had some contract  
18 requirements that they wanted to, in order to  
19 better serve the citizens of this community. We  
20 left the last meeting with the understanding that  
21 the parties would work toward an agreement that  
22 would satisfy the Commission Staff that the  
23 agreement would be in concert with the conditions  
24 of certification of the decision. And also  
25 satisfy VVWD, California Fish and Game that their

1 concerns were addressed in the contract.

2 That was done, and the contract that was  
3 finally approved for signing was the second item  
4 that we wanted to put into the record and was the  
5 subject of our motion.

6 Given that we were asking the Committee  
7 to open up the proceeding to take two additional  
8 pieces of information, we also decided to put in  
9 two other things.

10 One was evidence of site control. The  
11 Presiding Member's Proposed Decision pointed out  
12 that site control had not yet been achieved, so we  
13 thought that that was an invitation to us to  
14 address that issue when we obtained site control,  
15 which has been done. That was the third item that  
16 was contained in our motion.

17 And finally we sought to put in some  
18 additional material on the economics of dry  
19 cooling, especially in peak summer periods.

20 It was those four items that we  
21 requested in our motion that the Committee reopen  
22 the proceeding to hear to complete the record.

23 HEARING OFFICER VALKOSKY: Thank you,  
24 Mr. Thompson. Mr. Holmes.

25 MS. HOLMES: Staff does not oppose the

1 motion to reopen the record of the proceeding. We  
2 would point out if the Committee is going to be  
3 looking for any additional testimony from staff,  
4 other than a reaction to what the applicant has  
5 proposed to enter in, we would need some notice  
6 and some time to respond.

7 HEARING OFFICER VALKOSKY: Mr. Ledford.

8 MR. LEDFORD: Thank you. To make the  
9 record clear my motion this morning, it's in  
10 opposition to the applicant's motion to reopen the  
11 evidentiary record and hold additional -- and a  
12 separate motion of my own to reopen the  
13 evidentiary record and hold additional evidentiary  
14 hearings for the same limited purposes.

15 My concern is that this motion would be  
16 perfunctorily approved without a public hearing,  
17 without the ability to have these documents placed  
18 in the record on a formal basis with the ability  
19 to cross-examine witnesses.

20 And I have specifically outlined what I  
21 believe to be the deficiencies in the documents as  
22 they exist. And I won't belabor that because I've  
23 outlined those issues.

24 Specifically I object and have made a  
25 motion to strike the prepared testimony by

1 Mr. Welch on dry cooling. Mr. Welch was never  
2 qualified as an expert witness.

3 And furthermore, as an intervenor, I  
4 requested documents to be prepared and served on  
5 me the relative to the economic feasibility by the  
6 applicant on dry cooling. And that was completely  
7 stonewalled. We were told that all that was  
8 proprietary information and would not be provided.

9 It is my opinion that since the  
10 applicant was unwilling to provide any economic  
11 information on dry cooling in the discovery  
12 process, that no new information relative to  
13 economics should be available to them at this  
14 time.

15 And then finally if the Committee elects  
16 to reopen the evidentiary record and allow new  
17 evidence to be placed in the record, then I would  
18 like the opportunity to also place new evidence in  
19 the record. Specifically issues that have come to  
20 light on water just in the recent few weeks.

21 One of those issues is there's  
22 scientific evidence of JPL Laboratories that over  
23 the next 10 to 20 years we can expect a drought in  
24 this region.

25 The best available evidence that was

1 presented in this case was that there would be not  
2 longer than a three-year drought, and the maximum  
3 amount of banking that has been provided as a  
4 mitigation measure is for no more than three  
5 years.

6 I think this is a significant amount of  
7 new evidence that mitigation measures proposed for  
8 water banking may not work here.

9 Also, a separate action by the state  
10 water resources control board, which in a  
11 companion case, which we have discussed relative  
12 to the use of reclaimed water from the sewage  
13 treatment plant, those hearings have been put on  
14 indefinite hold until the State Supreme Court  
15 rules on water rights.

16 I think the issues that the state water  
17 resources control board raises on the issue of  
18 water and a good reason to wait on any action in  
19 that case should be germane in this case.

20 And then finally the conduct of the  
21 applicant since the last hearings relative to  
22 certain political matters in this valley, extreme  
23 unprofessionalism bringing an unbelievable amount  
24 of money to this valley to smear good citizens of  
25 this valley so that they could put people in

1 political office so they could get a vote their  
2 way.

3 After the Mojave Water Agency had  
4 studied the issue of consumptive use for more than  
5 a year and made their ruling, this applicant, we  
6 believe, conducted themselves in a highly  
7 unprofessional way. I don't think that that is  
8 the way to bring power plants into fruition in  
9 this state.

10 And if this Committee elects to reopen  
11 these hearings we'd like to have them as full  
12 evidentiary hearings and be able to have witnesses  
13 and cross-examination and provide additional  
14 evidence, as well.

15 Thank you.

16 HEARING OFFICER VALKOSKY: Any reaction,  
17 Mr. Thompson?

18 MR. THOMPSON: I do have a reaction.  
19 First of all, let me say that California 20 CCR  
20 1754(b), the first sentence reads: The Chairman  
21 may require that certain statements by parties and  
22 other persons be submitted in writing in advance  
23 of hearings.

24 I think there's a reason for that, and  
25 that is that filing a motion with this type of

1 evidence three minutes before the hearing puts us  
2 in somewhat of a disadvantage to have a proper  
3 reaction.

4 But going to the merits, I believe that  
5 the Committee has considered the case for opening  
6 up the proceeding for this type of evidence. The  
7 Committee understood that the evidence that we  
8 intend to proffer into the record will be  
9 beneficial. And I would urge the Committee to  
10 reject Mr. Ledford's motion to deny our motion to  
11 reopen.

12 With regard to the affirmative positions  
13 of Mr. Ledford, Mr. Welch has a mechanical  
14 engineer, bachelor of science from Rutgers  
15 University with 12 years in the power industry. I  
16 would suggest that he's absolutely well qualified.  
17 However, issues such as that can be handled at the  
18 hearings, and I would invite Mr. Ledford to ask  
19 questions regarding Mr. Welch's competence in the  
20 engineering area.

21 With regard to our refusal to provide  
22 cost data some time ago, I obviously do not have  
23 those documents with me today because of the  
24 lateness of Mr. Ledford's motion. However, our  
25 recollection is that those questions were on a

1 different matter.

2 With regard to the costs that Mr.  
3 Ledford alleges, the amount of money that a  
4 project would make on certain hot days, I don't  
5 think that that is really germane. The new JPL  
6 evidence, if it could be considered evidence, is  
7 in the nature of a newspaper article. I'm not  
8 sure that it rises to the level of testimony or  
9 sponsored exhibits in a proceeding such as this.

10 The companion case and the state water  
11 resources control board action, I would submit,  
12 has little or no relevance.

13 And the conduct of applicant, we believe  
14 is untruthful. We don't believe that there is  
15 anything to this. And I guess I would further say  
16 that if the citizens of this valley go to the  
17 polls and have an election and cast their votes,  
18 they have spoken. And we respect whichever way  
19 they vote and whomever they vote.

20 Having said that, we would reiterate our  
21 motion for evidentiary hearings. But if Mr.  
22 Ledford wants to present his evidence, in quotes,  
23 at that time, we would not object strenuously to  
24 keeping him out.

25 HEARING OFFICER VALKOSKY: Thank you.

1 Ms. Holmes, any reaction from staff?

2 MS. HOLMES: I think the only reaction I  
3 have is that I believe that if the Committee is  
4 going to be reopening the record on certain  
5 subjects, staff believes that the record should be  
6 reopened for all parties to put in evidence, not  
7 just one party. That to do otherwise would be  
8 unfair.

9 HEARING OFFICER VALKOSKY: Thank you.  
10 I've got a few more questions so I can better  
11 understand what we're talking about in terms of  
12 potential evidence.

13 But I'd like to preface this by  
14 indicating to all present that if the Committee  
15 does, in fact, decide to order reopening of the  
16 record, it would essentially be a continuation of  
17 the proceedings we most recently held in October.

18 It would be a full evidentiary hearing or  
19 hearings; witnesses would be present to testify,  
20 to sponsor exhibits; cross-examination by other  
21 parties would be allowed.

22 So, Mr. Ledford, that's not at issue if it's  
23 reopened.

24 MR. LEDFORD: All right, thank you, that  
25 was my concern.

1 HEARING OFFICER VALKOSKY: Yes, that  
2 would certainly happen.

3 Mr. Thompson, are there any documents  
4 other than those appended to your January 14th  
5 filing that you anticipate offering as exhibits?

6 MR. THOMPSON: When a clean copy of the  
7 VVWD agreement that we have previously filed gets  
8 signed, and I would anticipate that in the next  
9 day or two, we will submit a signed, executed  
10 copy. But it will be the same as the document  
11 that has previously been submitted.

12 HEARING OFFICER VALKOSKY: Right, so --

13 MR. THOMPSON: Other than that, the  
14 answer's no.

15 HEARING OFFICER VALKOSKY: Okay, so I  
16 can understand then that -- or can I understand  
17 that VVWD has, in fact, adopted that agreement at  
18 this time?

19 MR. THOMPSON: That is correct. And I  
20 think that there may be someone from VVWD here to  
21 speak to that at the proper time if you wish.

22 HEARING OFFICER VALKOSKY: Okay. Well,  
23 I don't know if I need any more than that right  
24 now at least.

25 Secondly, would it be your intent to

1 have a representative from the air district  
2 present to validate the production of the emission  
3 reduction credits?

4 MR. THOMPSON: Yes, if you grant our  
5 motion and we present the evidence on the emission  
6 credits, we would intend to ask the district if  
7 they can have a representative there to confirm  
8 that all the offsets have been acquired.

9 HEARING OFFICER VALKOSKY: Okay, so then  
10 basically we're just dealing with the, I believe  
11 it's four exhibits, Mr. Welch as your primary  
12 witness, and a witness from the air district. How  
13 about from the water district, would you intend to  
14 have a water district witness to authenticate the  
15 agreement?

16 MR. THOMPSON: Yes, we will.

17 HEARING OFFICER VALKOSKY: Okay, thank  
18 you. Staff, which of those area indicated by  
19 applicant would you intend to cross-examine on?  
20 Air, water, site control and dry cooling.

21 MS. HOLMES: At this time we don't have  
22 any plans to cross-examine the applicant on any of  
23 those areas. But I don't know that our staff has  
24 looked, technical staff has looked yet at the  
25 filing. It's possible there might be a few

1 questions on dry cooling. But there certainly  
2 would not be extensive cross-examination.

3 HEARING OFFICER VALKOSKY: Okay, would  
4 you intend to present a witness on an area such as  
5 water to examine the coordination between your  
6 proposed conditions and those contained in the  
7 aquifer storage and recovery agreement?

8 MS. HOLMES: We can make a witness  
9 available, and we'd plan to make a witness  
10 available for both of the areas which were  
11 unresolved, in staff's opinion, at the end of the  
12 hearings, that is air and water.

13 HEARING OFFICER VALKOSKY: So you would  
14 have an air --

15 MS. HOLMES: Yes.

16 HEARING OFFICER VALKOSKY: -- and a  
17 water witness and potentially do some cross-  
18 examination on dry cooling? Would --

19 MS. HOLMES: That's --

20 HEARING OFFICER VALKOSKY: -- you also  
21 have a witness on dry cooling or not?

22 MS. HOLMES: Not unless the Committee  
23 asked for additional testimony.

24 HEARING OFFICER VALKOSKY: Thank you.  
25 Mr. Ledford, would you be cross-examining on all

1 four of the issues indicated by applicant?

2 MR. LEDFORD: Probably, probably I  
3 would.

4 HEARING OFFICER VALKOSKY: Okay. Would  
5 you be calling any additional witnesses on any of  
6 those four areas?

7 MR. LEDFORD: I would hope to have at  
8 least one witness relative to water.

9 HEARING OFFICER VALKOSKY: And that  
10 witness would be who?

11 MR. LEDFORD: I'm not sure who it would  
12 be at this point.

13 HEARING OFFICER VALKOSKY: What would be  
14 the witness' field? I mean would it be a --

15 MR. LEDFORD: I mean the issue continues  
16 from our standpoint to be one of the overdrafted  
17 basin and the 50 percent consumptive use. So that  
18 would be the expertise that we would be looking  
19 for.

20 HEARING OFFICER VALKOSKY: Okay, but you  
21 understand that the applicant is moving to reopen  
22 really only to discuss the sufficiency of the  
23 water agreement, the VVWD aquifer storage and  
24 recovery agreement?

25 MR. LEDFORD: Correct.

1 HEARING OFFICER VALKOSKY: Okay, so  
2 would your witness pertain specifically to that  
3 agreement?

4 MR. LEDFORD: Correct.

5 HEARING OFFICER VALKOSKY: Okay. Then  
6 as far as your intent to offer the JPL and the  
7 water resources control board information, would  
8 you tend to sponsor that with a witness or just  
9 the documentary submissions that you've attached  
10 to your motion?

11 MR. LEDFORD: This information just came  
12 out the day before yesterday. So I haven't had an  
13 opportunity to attempt to contact the people in  
14 Pasadena. But since they're close I would hope  
15 that there could be a witness that would be able  
16 to support that position so that if it is  
17 significant enough, that a three-year drought-  
18 tolerant mitigation program isn't appropriate,  
19 that something else should be considered.

20 HEARING OFFICER VALKOSKY: Okay.

21 MR. LEDFORD: This is brand new  
22 information for us.

23 HEARING OFFICER VALKOSKY: Okay. At  
24 this point the Committee is going to take this  
25 under submission temporarily. We'll continue with

1 the rest of the proceedings today, and take a  
2 break in a little while.

3 Are there any members of the public that  
4 wish to comment on the matter we've just  
5 discussed, that is the motions to reopen the  
6 record for a limited purpose?

7 Okay, there are not. Thank you.

8 Next we'll move to general comments on  
9 the Presiding Member's Proposed Decision. By way  
10 of introduction the parties may assume that the  
11 Committee will incorporate the appropriate  
12 technical and editorial minor revisions suggested.  
13 And appreciate if the parties could just focus  
14 primarily on those comments which they have  
15 submitted which affect the substance of the PMPD,  
16 including any necessary modifications to the  
17 conditions of certification.

18 Mr. Thompson.

19 MR. THOMPSON: Thank you. I'm trying to  
20 decide whether any of our comments rise to the  
21 level of needing to be addressed.

22 HEARING OFFICER VALKOSKY: Well, one of  
23 them certainly does.

24 MR. THOMPSON: Which one are you  
25 referring to?

1                   HEARING OFFICER VALKOSKY: The dollar  
2 amounts in Bio-7.

3                   MR. THOMPSON: Our understanding of  
4 this, and I may ask some help from those at the  
5 table with me, is that these are calculated  
6 figures, and do not represent any new numbers or  
7 new methods of calculation.

8                   Our understanding it was a mathematical  
9 mistake that was made somewhere along the way.

10                  HEARING OFFICER VALKOSKY: Okay, because  
11 I'd just like to clarify that the Committee used  
12 the figures -- excuse me -- the figures that the  
13 Committee used were derived directly from the  
14 testimony on the record. And your figures are  
15 somewhat different. And I'd like an explanation,  
16 either of the derivation of your dollar amounts,  
17 or the reason for the discrepancy.

18                  Primarily all the Committee is  
19 interested in is making sure the conditions  
20 contain the proper dollar amounts.

21                  MR. THOMPSON: Yes. And we, as well.  
22 And our understanding is that these figures are  
23 the proper amounts, and I know that staff has been  
24 involved in this. I'd like to hear if staff has  
25 any difficulty with it.

1                   We do not intend to offer new evidence  
2                   on these numbers. If these are not the right  
3                   numbers, you know, we would move to strike this  
4                   comment.

5                   HEARING OFFICER VALKOSKY: Okay, fine.  
6                   And other than that which I brought up, do you  
7                   have any other general comments on the PMPD?

8                   MR. THOMPSON: None other than I would  
9                   offer for the record that this is a very small  
10                  number of comments to have on a document this  
11                  size, which synthesized and analyzed the number of  
12                  documents that we had in the record.

13                  And I think that the Committee is to be  
14                  commended. Difficult task done well.

15                  HEARING OFFICER VALKOSKY: Ms. Holmes.

16                  MS. HOLMES: About the only thing I can  
17                  add to that is that we did check with Marc Sasaki,  
18                  who is the biologist who testified on biological  
19                  resources during the hearings. And he was unaware  
20                  of any mathematical errors and believed that the  
21                  dollar figures that he gave at the hearing were,  
22                  in fact, correct.

23                  HEARING OFFICER VALKOSKY: Okay.  
24                  Getting off that point just for a second -- I will  
25                  come back to that.

1                   Do you have any other comments on the  
2 PMPD, general comments?

3                   MS. HOLMES: The only other comment I  
4 have is that we need to correct an error in our  
5 comments on I believe it's page 9. We said that  
6 staff and Fish & Game are concerned that the  
7 payments to the federal government constitute  
8 mitigation. Should have been do not constitute.  
9 And that makes the rest of the sentence make more  
10 sense.

11                   HEARING OFFICER VALKOSKY: Okay. Does  
12 staff have any problems with the revisions  
13 applicant has proposed to air quality conditions  
14 of certification 28-A and 34-A?

15                   MS. HOLMES: No. It's our understanding  
16 that that was an error on staff's part. Those are  
17 conditions that are found in the DOC. And staff  
18 inadvertently failed to include them in its  
19 proposed conditions.

20                   HEARING OFFICER VALKOSKY: Okay, fine.  
21 How about applicant's proposed revisions to  
22 condition Hazmat-5?

23                   MS. HOLMES: We have no problems with  
24 that.

25                   HEARING OFFICER VALKOSKY: Okay, so that

1 will not create any difficulties in terms of  
2 compliance, or the other issues you raised during  
3 the hearings?

4 MS. HOLMES: No.

5 HEARING OFFICER VALKOSKY: Thank you.

6 Mr. Ledford.

7 MR. LEDFORD: Thank you.

8 I'd like to just say at the outset that  
9 many people have said that I'm the only one that  
10 has showed up to oppose this High Desert Power  
11 Project. I'd certainly like this record to be  
12 clear that I do not oppose the High Desert Power  
13 Project.

14 My opposition has been consistent from  
15 the beginning that I oppose the use of water from  
16 the state project for evaporative cooling when  
17 we're in such a severe state of overdraft.

18 And I oppose the direct use of water  
19 from the state project unless the High Desert  
20 Power Project is treated equitably with all other  
21 producers and users of water. The taxpayers in  
22 this valley are going to be subsidizing this  
23 project, and it is a tremendous inequity for the  
24 water rights holders, as well as the taxpayers in  
25 the valley.

1           I believe that my brief addresses those  
2           issues -- my comments address those issues. I am  
3           very specific in relation to my concern as to  
4           whether or not the document drafted that supports  
5           this decision meets the functional equivalent of  
6           CEQA for the use of this document in other  
7           projects.

8           And by way of specific example, the  
9           lease for this project is a 50-year lease.  
10          Whereas the environmental analysis that's been  
11          done for this Commission is for 30 years. And by  
12          way of further example, the water storage and  
13          aquifer agreement is for 80 years, not 30 years.

14          When you do an environmental analysis  
15          for a specific project, it's for the project and  
16          the term and the timing.

17          And then by way of further analysis, by  
18          way of further comments, that is, the water  
19          storage and aquifer agreement which was testified  
20          to here in October, the testimony was that the  
21          only time that the High Desert Power Project's  
22          facilities would ever be used was in the case of  
23          some drastic emergency. And then there was a lot  
24          of dancing around in that testimony as to what  
25          that all meant.

1                   And now when this agreement comes back  
2 before this Commission what you see is that these  
3 facilities can be used at anytime. And then  
4 there's new conditions that there has to be a  
5 balancing of the wells and a review of what the  
6 production is. None of these things that this  
7 Commission ultimately is going to have anything  
8 control over.

9                   But most significantly, never studied  
10 and never a part of the environmental analysis.

11                   And I thought that the direction from  
12 this Committee was quite specific. That the  
13 Presiding Member's Proposed Decision could not be  
14 used for anything that did not have to do with  
15 this project. And that is exactly what is  
16 intended.

17                   It is not that it is bad that we're  
18 building 24-inch pipelines and 16-inch pipelines  
19 to provide 40,000 acrefeet of water for the  
20 redevelopment of George Air Force Base. But what  
21 is bad is that we're doing it and circumventing  
22 the process and providing the mechanism that will  
23 affect other people's property rights. And I'm  
24 extremely concerned about that.

25                   I'd like to get off of that and go

1 straight to the issues of conditions. Because I'm  
2 certain that this project is going to be approved.  
3 And with that my concern is with the conditions.

4 In August when your staff provided  
5 conditions, the very first condition was that if  
6 the conditions weren't met that the project shall  
7 not operate. All of a sudden in all of your  
8 conditions the words shall not operate does not  
9 exist. The closest that it comes to is there's  
10 some words that say may not operate.

11 I'm not a lawyer but I know when you use  
12 the word may that becomes a discretionary action.  
13 So, if for some reason, they're not complying with  
14 the conditions, or the Victor Valley Water  
15 District isn't complying with the conditions, who  
16 you have no authority over, then we're only in the  
17 may not operate mode. There's not even a fining  
18 process.

19 So I'm very concerned that if this  
20 doesn't work, and we find ourselves in a serious  
21 situation, and these folks invested \$300- or \$400-  
22 or \$500 million in this power project that it is  
23 going to be very difficulty to get anybody to step  
24 up to the plate and say, you know, we got a real  
25 water problem up here we haven't solved. And we

1 all thought it would work, but it didn't. And  
2 guess what, guys, you got to shut down that \$500  
3 million project. I don't think that's going to  
4 happen. I don't see that in these conditions.  
5 I'm extremely concerned about that.

6 I have provided kind of a blow-by-blow,  
7 and provided some language that never shows up, so  
8 I don't know what else to say. I could spend a  
9 considerable amount of time going through it line-  
10 by-line, but I would prefer at this point, if you  
11 think any of this is meaningful, to respond to  
12 your questions.

13 HEARING OFFICER VALKOSKY: Mr. Ledford,  
14 I note that conditions soil and water-1 states  
15 that the only water used for project operation,  
16 except for domestic purposes, shall be state water  
17 project water obtained by the project owner  
18 consistent with the provisions of MWA's ordinance  
19 9.

20 Now, to me at least that means that's  
21 the sole source of operational water for the  
22 project.

23 MR. LEDFORD: Then show me, sir, what  
24 happens -- what is the trigger if that doesn't  
25 happen? Where does it say that the plant shall

1 not operate?

2 It's in the August conditions that were  
3 drafted by staff, the original words in there, in  
4 the very first condition of soil and water was, if  
5 you don't meet all these conditions, this project  
6 shall not operate. That is now not part of the  
7 conditions.

8 HEARING OFFICER VALKOSKY: Okay. Mr.  
9 Buell, could you address this?

10 MR. BUELL: I'm trying to look at the  
11 condition of certification that staff recommended  
12 in part C of condition 1 in which it says the  
13 project may not operate. That was the text of the  
14 testimony that we presented in the October  
15 hearings.

16 There may have been an earlier draft in  
17 August that Mr. Ledford's referring to, but that  
18 was not staff's testimony at the hearings.

19 HEARING OFFICER VALKOSKY: Since you  
20 were one of the primary developers of staff's  
21 condition, what is your understanding of the  
22 condition?

23 MR. BUELL: It's my understanding that  
24 if the project does not conform with the  
25 conditions as outlined in the Presiding Member's

1 Proposed Decision, it shall not operate.

2 MS. HOLMES: I believe that staff  
3 testified in the October hearings that staff's  
4 understanding was that when the bank balance, as  
5 we've been referring to it, reached zero, the  
6 project cannot operate.

7 HEARING OFFICER VALKOSKY: Okay, so in  
8 other words, and I'm looking at condition soil and  
9 water 1-C, in the third line are you saying that  
10 the last word on that line, which is currently  
11 "may", could be "shall"?

12 MS. HOLMES: I believe it was intended  
13 to be -- if you read the sentence as a whole,  
14 taken in conjunction with staff's testimony, my  
15 belief is that that would be another way of saying  
16 exactly the same thing. The project shall not  
17 operate when the bank balance is at zero.

18 HEARING OFFICER VALKOSKY: Right. Mr.  
19 Thompson, is that applicant's understanding of  
20 this condition?

21 MR. THOMPSON: It is, however I would  
22 add that I see nothing wrong with reading those  
23 two together, and that is that we will not use  
24 local water and will not pull any water locally if  
25 it reaches zero.

1           But there may be a situation, and I  
2 realize this is not in the record and I'm not  
3 suggesting this change, where sometime in the  
4 future maybe you buy water out of the district and  
5 it goes through the aqueduct and it is delivered,  
6 even if the balance is at zero and you're not  
7 pulling up any water out of the ground.

8           I realize that we probably should have  
9 addressed this earlier, but actually -- did we --

10           (Pause.)

11           MR. THOMPSON: And I believe that that  
12 actually is in -- that material is in the record.  
13 So our understanding is that those two are  
14 consistent and to be read together.

15           HEARING OFFICER VALKOSKY: Okay, well,  
16 let me rephrase that. Is there any difficulty, in  
17 your opinion, in changing the existing word "may"  
18 in condition 1-C to the word "shall"? I mean  
19 that, as I understand what Ms. Holmes said, that  
20 is certainly staff's, and I assume Fish & Game's  
21 intent, since they joined in these conditions.

22           MS. HOLMES: Yes.

23           HEARING OFFICER VALKOSKY: Okay.

24           MR. THOMPSON: The difficulty is the one  
25 I just outlined, is that the way it reads now is

1 the only water used for our operations will be  
2 state water project water. And that's fine, we  
3 can live with that.

4 And it seems to me that may works very  
5 well following that. Because if we buy water from  
6 someone else and use the state water project as a  
7 transporter -- can we get 30 seconds?

8 HEARING OFFICER VALKOSKY: Actually, Mr.  
9 Thompson, why don't I do this. Why don't you let  
10 me take other public comment on the PMPD. At that  
11 time we'll take a recess, and then we'll revisit  
12 this, okay?

13 MR. THOMPSON: We may not have an issue  
14 here.

15 HEARING OFFICER VALKOSKY: Oh, okay.

16 (Pause.)

17 MR. LEDFORD: I don't think that I'm  
18 quite finished, but --

19 HEARING OFFICER VALKOSKY: No, I  
20 understand.

21 MR. LEDFORD: Okay.

22 HEARING OFFICER VALKOSKY: But I don't  
23 want to get off this point at this time, Mr.  
24 Ledford.

25 MR. LEDFORD: And I don't want you to,

1 by the way.

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. THOMPSON: Never mind. We can live  
4 with shall.

5 HEARING OFFICER VALKOSKY: Okay. Thank  
6 you. All right, --

7 MR. LEDFORD: That helps.

8 HEARING OFFICER VALKOSKY: -- continue,  
9 Mr. Ledford.

10 MR. LEDFORD: That helps. I think what  
11 I'm concerned with is that there is, within the  
12 body of this condition, is that the CEC will issue  
13 an order to cease operations if that doesn't work.  
14 And that's what I'm -- I think the shall says that  
15 they should, but if they don't, I would assume  
16 that someone else could take an action in some  
17 other court, a judge would probably do that.

18 I think since this water issue is so  
19 critical and we've all acknowledged, every one of  
20 us have acknowledged that this water issue is  
21 critical, that the public here in the Victor  
22 Valley has the assurance that if it doesn't work  
23 that they will do that. Is that --

24 HEARING OFFICER VALKOSKY: Okay, --

25 MR. LEDFORD: -- how can we get to that?

1 HEARING OFFICER VALKOSKY: -- Mr.  
2 Ledford, under the Energy Commission's compliance  
3 provisions, and these are the provisions that come  
4 into effect after a project is certified, there  
5 are two ways, at least two ways in which an action  
6 can be brought before the Commission for the  
7 violation of a condition of certification.

8 First is staff, as it becomes aware of a  
9 violation of a condition of certification, has the  
10 option to basically file an action to seek certain  
11 relief as it deems is appropriate.

12 Secondly, a member of the public can do  
13 the same thing.

14 MR. LEDFORD: Okay.

15 HEARING OFFICER VALKOSKY: And that's,  
16 you know, that's existing in our regulations.

17 MR. LEDFORD: All right. With the  
18 record clarified that way on that, --

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. LEDFORD: -- that issue will be  
21 satisfied.

22 HEARING OFFICER VALKOSKY: And some of  
23 that is addressed briefly in the compliance  
24 section of the proposed decision, at least the  
25 references are provided in there.

1                   MR. LEDFORD: All right. Another thing  
2                   that I think that we should all be concerned  
3                   about, in your proposed decision you have  
4                   reflected specifically upon the fact that there  
5                   are risks involved, but that the Commission  
6                   shouldn't be concerned with those risks in  
7                   certifying this plant.

8                   I am of the opinion that the conditions  
9                   should reflect that same type of language that the  
10                  applicant understands that there's significant  
11                  risk that the California Supreme Court's  
12                  adjudication may change how all this works. And  
13                  that they're going to indemnify all the parties in  
14                  the Victor Valley that would be in the contract.

15                  If I could reflect, last night at the  
16                  Mojave Water Agency's meeting they presented a  
17                  report on the overdraft. And the overdraft for  
18                  the 1997/98 year was 53,000 acrefeet of water.

19                  And the testimony before this Committee  
20                  was that with the 75,000 acrefeet of entitlement  
21                  the maximum amount of annual water available from  
22                  the state would be about 53,000 acrefeet of water.

23                  So, we're not solving the overdraft.  
24                  And if we were solving the overdraft and  
25                  purchasing the water, it would take all of the

1 water.

2 I'm just extremely concerned that this  
3 action is going to set a precedent, that other  
4 water agencies are going to attempt to emulate it.  
5 And that we're not going to solve the problem that  
6 we have here.

7 So, I'm concerned that we, in a public  
8 sense, put it out just as boldly as we possibly  
9 can that there's significant risk here and that  
10 the applicant is taking those risks.

11 HEARING OFFICER VALKOSKY: Thank you.  
12 Anything --

13 MR. LEDFORD: Okay. In soil and water-3  
14 I had suggested that the will-serve letter which  
15 we're still lacking, and has been much described,  
16 and the standard will-serve letter that the Victor  
17 Valley Water District issues for its developer  
18 clients that are putting in subdivisions, has many  
19 of those types of indemnities within it.

20 By way of example, if a real estate  
21 developer wanting to build houses gets a will-  
22 serve letter from the Victor Valley Water  
23 District, it basically says it's conditional. It  
24 states that there's a water adjudication, and it  
25 states that the developer is taking all the risk

1 and understands that the Victor Valley Water  
2 District may or may not be able to provide water  
3 under the will-serve letter.

4 I just suggest that we add some language  
5 there that has that type of compliance in it.  
6 Soil and water-3 under will-serve letter.

7 HEARING OFFICER VALKOSKY: Mr. Thompson,  
8 do you have any reaction to that?

9 MR. THOMPSON: If we understand Mr.  
10 Ledford's comment to be that we will need a will-  
11 serve letter prior to project operations, I  
12 believe that we have agreed to that, and we will  
13 have that. And the structure for providing that  
14 letter is already in the decision.

15 If he is suggesting that we have it  
16 prior to a decision I believe that that comment  
17 has been responded to in the hearings in chief,  
18 and that staff and applicant worked on a system  
19 whereby we were all satisfied that the conditions  
20 of such a letter were made known to the public,  
21 and we know what will be in that letter. And,  
22 again, that was worked out, you know, some months  
23 ago.

24 HEARING OFFICER VALKOSKY: And those  
25 conditions are contained in the most recent

1 aquifer storage and recovery agreement, is that  
2 correct?

3 MR. THOMPSON: That's right. That's  
4 correct.

5 HEARING OFFICER VALKOSKY: Okay. Do you  
6 have anything further on that point after  
7 applicant's explanation, Mr. Ledford?

8 MR. LEDFORD: I just believe that the  
9 will-serve letter, which does not exist today,  
10 will probably be not in the same format as the  
11 will-serve letter that is issued to general  
12 developers, since applicant's witness would be  
13 available if you reopen the hearings, or the  
14 aquifer storage agreement, I believe we could  
15 address that issue then.

16 HEARING OFFICER VALKOSKY: Okay, fine.

17 MR. LEDFORD: I'm really concerned with  
18 soil and water and the idea that the applicant  
19 could actually withdraw all of the water down to  
20 zero. In many of the previous workshops the  
21 conditions at one point were that they couldn't  
22 withdraw less than 1000 acrefeet of water.

23 I would think that in order to protect  
24 the groundwater basin that they can't draw out all  
25 of the water. It would have to have some positive

1 water bank. I'd propose the number of 500.

2 HEARING OFFICER VALKOSKY: Okay, at this  
3 point let me check with staff, because my  
4 recollection is that there always has to be a  
5 minimum of a 1000-acrefoot balance. That's what  
6 has been referred to as the buffer amount.

7 Is that correct, Mr. Buell or Ms.  
8 Holmes?

9 MR. BUELL: Yes. I think you'll find  
10 that in conditions number 5, the part A of that.

11 PRESIDING MEMBER LAURIE: What page is  
12 that, Mr. Buell?

13 MS. HOLMES: On the printed version it's  
14 page 217 and it doesn't have an A, it's the first  
15 full paragraph, the last line. Minus 1000  
16 acrefeet.

17 PRESIDING MEMBER LAURIE: Yes.

18 HEARING OFFICER VALKOSKY: Okay, now,  
19 Mr. Thompson, does that comport with applicant's  
20 understanding of that condition? In other words,  
21 there always has to be a minimum of a 1000-  
22 acrefoot balance in the water bank?

23 MR. THOMPSON: That is our  
24 understanding, with the exception of the first  
25 year.

1 HEARING OFFICER VALKOSKY: Right.

2 PRESIDING MEMBER LAURIE: Is there a  
3 question, Mr. Ledford, whether that condition 4  
4 accomplishes that intent?

5 MR. LEDFORD: No, but with that  
6 explanation and the record being made clear by the  
7 Committee and the applicant, I'm satisfied with  
8 that.

9 HEARING OFFICER VALKOSKY: Okay, thank  
10 you.

11 MR. LEDFORD: If I could address this to  
12 the applicant, though, on soil and water 6, when I  
13 have discussed this informally, my understanding  
14 of the condition is that after the fifth year when  
15 there's a 13,000 acrefoot water bank, that that  
16 water bank, that 13,000 acrefeet has to then be  
17 fully maintained unless we're in a drought  
18 situation, or during the off-peak times.

19 So if you use the water --  
20 hypothetically during one year you use 500  
21 acrefeet, the next year you would have to refill  
22 the water bank. Is that applicant's  
23 understanding?

24 HEARING OFFICER VALKOSKY: Mr. Thompson,  
25 respond to that, please.

1                   MR. THOMPSON: I think, Mr. Ledford,  
2                   that the refill provisions are in the next  
3                   provision, soil and water-7.

4                   MR. LEDFORD: Right, and so my question  
5                   is, is your understanding that if you use the  
6                   water and the water is then available the  
7                   following year, that you would refill the water  
8                   bank up until the last three years of the project  
9                   during which time you could take your 12,000  
10                  acrefeet out?

11                  MR. THOMPSON: I'll tell you what we'll  
12                  do, Mr. Ledford, we will comply with number 6 and  
13                  7. These are conditions that were hashed out in  
14                  hearings over a fairly long period of time. And  
15                  without evidence in the record that these are  
16                  somehow lacking, I'm very reluctant to agree to  
17                  something on the spur of the moment right now.

18                  We have looked at 6 and 7, as has staff,  
19                  and other parties I assume, and we are all -- we  
20                  all think that they do what we all agreed to do.

21                  MS. HOLMES: I would just add from  
22                  staff's perspective that we do agree that 6 and 7  
23                  must be read together. And when they are read  
24                  together it states that once you read the 13,000  
25                  acrefeet, water that you use must be replaced.

1                   MR. LEDFORD: Well, there's a statement  
2                   in 7 that says, the project owner may choose to  
3                   delay replacement of a limited quantity of banked  
4                   water used for the project operations until the  
5                   cumulative amount of groundwater withdrawn from  
6                   the bank reaches 1000 acrefeet.

7                   My question to you is once they've  
8                   filled it to 13,000 acrefeet, can they then spend  
9                   the next ten years, even if it's 500, 500, 300,  
10                  and then 2000 and 3000, withdrawing it all the way  
11                  down to 1000 acrefeet before they have to replace  
12                  it?

13                  That sentence, to me, is confusing. And  
14                  when I asked the applicant he told me that's  
15                  exactly what it meant.

16                  MR. BUELL: No, my reading of that, Mr.  
17                  Ledford, is that once a cumulative total of 1000  
18                  acrefeet has been reached in drawdown the  
19                  applicant must replace that 1000 acrefeet in the  
20                  following year.

21                  HEARING OFFICER VALKOSKY: But I don't  
22                  think that's a question. I'm sorry, Mr. Welch.

23                  MR. WELCH: My comment, it's the 1000 is  
24                  the amount withdrawn, not the amount left. So,  
25                  the example he gave, 500, 500, at the end of that

1 second 500 we'd be under the obligation to replace  
2 the 1000.

3 So it's not taking it down to 1000  
4 acrefeet, it's when you've pulled out 1000.

5 MS. HOLMES: And for example, if it was  
6 100 feet, then, yes, it would be ten years before  
7 the replacement was required. But it's 1000 feet  
8 cumulative that is the trigger for replacement.

9 MR. LEDFORD: So if they don't withdraw  
10 any more than 1000 acrefeet within say three  
11 years, they don't have to replace it until they  
12 get to that 1000. That's what that means?

13 MS. HOLMES: It means once they have  
14 reached a withdraw of 1000 that they need to  
15 replace it. Over whatever time period that takes.

16 MR. LEDFORD: Okay. Now, does that 1000  
17 acrefeet include the dissipated water?

18 MS. HOLMES: If it's withdrawn it's not  
19 dissipating.

20 MR. LEDFORD: Okay, but my point is  
21 there's another provision here for dissipated  
22 water.

23 MS. HOLMES: That's correct. The bank  
24 balance is calculated taking into account a  
25 dissipation rate. But the 1000 acrefeet applies

1 to water that's taken out and used for cooling.  
2 Once it's taken out and used for cooling we're not  
3 going to be applying a dissipation rate that would  
4 have applied had it been in the ground.

5 MR. LEDFORD: I understand. But what  
6 happens if over three years there's 3000 acrefeet  
7 of water dissipated? Do they have to replace that  
8 water, as well?

9 MS. HOLMES: No. The dissipation rate  
10 does not -- the dissipation rate just affects the  
11 bank balance.

12 MR. LEDFORD: So if the water in the  
13 water bank at the end of -- say the end of three  
14 years they've only drawn down 1000 acrefeet. But  
15 the dissipation rate was enough that there was  
16 only -- there was 3000 acrefeet, so the total was  
17 4000 acrefeet. They would only have to replace  
18 1000 acrefeet, they would not have to replace the  
19 dissipated water?

20 MR. BUELL: That's correct, they would  
21 not have to replace that dissipated water. The  
22 dissipated water, however, would not be available  
23 for them to use as cooling for the project.

24 So that's their option. There's no  
25 requirement that they maintain 13,000 acrefeet in

1 the bank at all times.

2 Does that help?

3 MR. LEDFORD: Well, it makes it real  
4 confusing when you go back and read soil and  
5 water-6.

6 MR. THOMPSON: Mr. Valkosky, could I  
7 interject something here?

8 These conditions were contained in the  
9 staff testimony, the final analysis, and were the  
10 subject of extensive cross-examination and comment  
11 during the evidentiary phase of this proceeding.

12 And I would just voice an objection that  
13 we are spending time doing something, ground that  
14 has already been covered. And these are not the  
15 subject of --

16 HEARING OFFICER VALKOSKY: I understand  
17 that, Mr. Thompson. But, you know, so far on the  
18 three or four areas that we've had Mr. Ledford  
19 inquire on, he's basically been satisfied with  
20 responses. And this is just because of some  
21 misunderstanding or desire, at least as I see it,  
22 on his part for additional clarification.

23 To the extent we can assist him in  
24 understanding this, I'm going to give him some  
25 more leeway.

1 MR. THOMPSON: Understand.

2 HEARING OFFICER VALKOSKY: Okay?

3 MR. THOMPSON: Right.

4 MR. LEDFORD: I would also like to say  
5 that I will brief this, and in my -- all of these  
6 issues were briefed --

7 HEARING OFFICER VALKOSKY: Right, and  
8 again, I will afford you some leeway if you're  
9 seeking clarification on some of the language in  
10 the conditions, or if you've got specific changes  
11 that you'd like to propose.

12 MR. LEDFORD: Well, I say when you go  
13 back, when you hear the explanation but you go  
14 back and read soil and water-6 -- soil and water-6  
15 leads you to believe that there's going to be  
16 13,000 acrefeet in the water bank. That's the way  
17 that it looked to me.

18 MS. HOLMES: That's correct.

19 MR. LEDFORD: If for some reason there's  
20 a leaky bottom to this tank, and there's no water  
21 in the tank there would be no water to draw on.  
22 And so you wouldn't have a water bank.

23 MS. HOLMES: That's correct, --

24 HEARING OFFICER VALKOSKY: Right.

25 MS. HOLMES: -- and out of that they

1 could not operate.

2 HEARING OFFICER VALKOSKY: Exactly.

3 That's the point. They could not withdraw any  
4 water from a bank which has a zero balance.

5 MR. LEDFORD: On the other hand, if we  
6 were four or five years into the project and there  
7 was 6000 acrefeet in the water and we went into a  
8 three-year drought, we would not have provided a  
9 mitigation measure to cover a three-year drought.

10 I mean when we went into this whole  
11 process we talked about making sure that we had  
12 enough water in a water bank to cover a three-year  
13 drought, because that was what everybody thought  
14 might be the worst case condition.

15 So my --

16 HEARING OFFICER VALKOSKY: Right, but,  
17 Mr. Ledford, and I think we've gone far enough on  
18 this, that the purpose, at least as the Committee  
19 understood it, of having water in the bank for the  
20 three-year drought was to insure project  
21 operations.

22 Now, if you've got a more severe  
23 drought, or you've got an extended drought, and no  
24 water goes into the bank, under these conditions,  
25 as I understand it, the penalty for that falls on

1 the applicant. Because they have no water for  
2 their cooling towers, therefore they do not  
3 operate. Their protection, in that case, has  
4 failed. But it's basically to their peril.

5 Mr. Thompson, is that a sufficient  
6 summary of applicant's understanding or assumption  
7 of the risk on this?

8 MR. THOMPSON: That is an excellent  
9 summary of our understanding.

10 HEARING OFFICER VALKOSKY: Yeah, so I  
11 mean I don't think we have to go any farther on  
12 that. It's something that --

13 MR. LEDFORD: But --

14 HEARING OFFICER VALKOSKY: -- they have  
15 assumed.

16 MR. LEDFORD: And I will again say, with  
17 that explanation by you and staff and applicant,  
18 in making this record clear, that will satisfy my  
19 concern.

20 HEARING OFFICER VALKOSKY: Okay, thank  
21 you.

22 MR. LEDFORD: Because at some point in  
23 time if it doesn't work we'll bring this record  
24 before somebody and say, this is what we all said,  
25 guys.

1 HEARING OFFICER VALKOSKY: And that's  
2 entirely appropriate.

3 MR. LEDFORD: Okay.

4 HEARING OFFICER VALKOSKY: It certainly  
5 is.

6 MR. LEDFORD: And so this makes me feel  
7 much better. The fact that you won't put it in  
8 the conditions is troublesome. I don't know why  
9 you won't. But the fact that you've clarified it  
10 in the record works.

11 HEARING OFFICER VALKOSKY: One of the  
12 options is that the text of the revised decision  
13 could be clarified.

14 MR. LEDFORD: Thank you. I think with  
15 that, that will conclude my comments.

16 HEARING OFFICER VALKOSKY: Thank you,  
17 sir. Anything further from applicant or staff  
18 before we open to general public comment?

19 MS. HOLMES: Nothing further.

20 HEARING OFFICER VALKOSKY: Okay, at this  
21 time I've got cards from three members of the  
22 public.

23 (Pause.)

24 HEARING OFFICER VALKOSKY: All right,  
25 Mr. Jack Beinschroth. If you could, sir, just

1 approach the microphone here. Tell us your name,  
2 and if you could spell the last name for the court  
3 reporter, we'd appreciate that.

4 MR. BEINSCHROTH: My name is Jack  
5 Beinschroth. I'm a registered civil engineer,  
6 have been a registered civil engineer in the State  
7 of California for over 30 years. A former  
8 Director on Mojave Water Agency. And I'll go into  
9 that former business in a moment.

10 I'm a graduate of CalTech, a masters  
11 degree in civil engineering, structural  
12 engineering, and water resources. So I would like  
13 to feel that I am not the village idiot, and I  
14 think I can address some of these things in an  
15 intelligent manner.

16 It bothers me, in fact it surprises me  
17 that this has reached this point as far as the  
18 siting of this power plant in our location, in our  
19 area, where we're in a situation where we're  
20 60,000 acrefeet of overdraft, and there's no way  
21 of curing it under the present conditions.

22 And we need to take into consideration,  
23 in trying to correct this overdraft, the Mojave  
24 Water Agency went out and purchased some  
25 additional entitlement. They bought 25 million

1 acrefeet, and it's going to cost them \$50 million  
2 to pay it back.

3 So that we, out of this entitlement, are  
4 giving use of 4000 acrefeet, or \$8 million worth  
5 of entitlement water to this project, when the  
6 people in the public and the taxpayers have not  
7 yet seen the end of their payments. This is 20  
8 years that this will be required to pay this  
9 entitlement off.

10 So that the taxpayers of the area are  
11 literally giving the power plant an \$8 million  
12 gift which they'll be paying for for the next 20  
13 years.

14 I just can't believe that we've reached  
15 this stage in siting this project without taking  
16 into consideration the water conditions in the  
17 area. We don't have water to utilize on this  
18 project.

19 They say, well, we're bringing it in on  
20 the aqueduct. You're bringing it in on the  
21 aqueduct, but you're still taking it away from the  
22 entitlement. And so, one way or the other, it's  
23 going to strike home.

24 This plant should not be located in this  
25 area. And if it is located in this area, it

1       should be a dry cooling process. I can't imagine  
2       that it's got to this stage without someone  
3       objecting and making it a serious point that this  
4       be a dry cooling process.

5                In getting to this position, while I was  
6       a member of the Mojave Water Agency Board of  
7       Directors, I objected strenuously to the use of  
8       water in a one-to-one basis. In other words,  
9       we're losing our entitlement, we're losing 4000  
10      acrefeet of entitlement, and we're not putting  
11      anything back into the groundwater.

12               So that was the reason that we felt that  
13      if they wanted to purchase 4000 acrefeet they  
14      should do as all the rest of the people the agency  
15      are required to do, put 4000 back into the  
16      underground.

17               Well, needless to say, the election came  
18      along and they, on the last two or three days  
19      before the election I had a call, and they said,  
20      will you withdraw from running on this board. And  
21      if not, why you'll be faced with a major character  
22      assassination.

23               I says, I'm not withdrawing because I  
24      feel very strongly about this. Well, if you look  
25      at some of the details, look at this chart. This

1 is what they did. Money supplied by the power  
2 project through Buck Johns in the amount of  
3 somewhere close to \$100,000, made a major  
4 character assassination on myself, Don Brennel and  
5 anyone who had voted for the two-for-one policy.

6 Now, this is the type of people that  
7 you're dealing with. People that have no  
8 conscience. They're interested in one thing,  
9 making a profit, and they're not interested in the  
10 overall area, or the people that are in the area.

11 I am very disturbed to see that this  
12 thing reached this stage. And I can't believe  
13 that you people have not taken into consideration  
14 that we're in an area that has 60,000 acrefeet of  
15 overdraft. We don't have the water. We just  
16 should not even entertain this type of a project  
17 with a water cooling system.

18 HEARING OFFICER VALKOSKY: Thank you,  
19 sir. Appreciate your comments.

20 Okay, Lore Sonnenfeld. Ma'am, if you  
21 could spell your name for the record, please.

22 MS. SONNENFELD: Lore, L-o-r-e,  
23 Sonnenfeld, S-o-n-n-e-n-f-e-l-d.

24 I have land in the desert, 395, and  
25 other land, too. And I think my water bill got so

1 high, and we have no water for so long. I don't  
2 like that. To pay, pay, pay. What do we get  
3 back? Nothing.

4 I don't like. This is unfair to the  
5 people.

6 That's all I have to say. And last time  
7 I wasn't here because I had to move. So many  
8 robberies around here. And I didn't get the form  
9 for the meeting in December -- 15 December. So I  
10 came this time.

11 So I really don't like that I pay so  
12 much for water when I don't receive nothing.

13 Thank you.

14 HEARING OFFICER VALKOSKY: Thank you,  
15 ma'am.

16 Mr. Bob Almond.

17 MR. ALMOND: Thank you. Bob Almond,  
18 12875 Bear Valley Road, Victorville.

19 I'd like to speak to the overdraft  
20 situation here for a moment if I might. I am a  
21 Director with the Mojave Water Agency, and I'm  
22 pretty much involved in the water issues up here  
23 in the Victor Valley. I've been involved in  
24 politics and water for the last 11 years.

25 Some of the problems that we have here

1 are a major overdraft. The reason I say I know  
2 there's a major overdraft is because at our  
3 meeting last night we had an engineering  
4 presentation that recommended that we ramp  
5 everybody down another 5 percent.

6 We are currently at 80 percent ramp  
7 down. They recommend we go another 5 percent, so  
8 that would cut everybody back to 75 percent ramp  
9 down. So that should tell you right there that we  
10 do have a water situation up here in this desert.

11 And I think that would really bode well  
12 for making this a dry cooled process for this  
13 plant if it was approved. Because we cannot  
14 afford the 4000 acrefeet that this project is  
15 going to be taking from the state water project  
16 aqueduct over there.

17 That water in that aqueduct right now is  
18 not enough to replace the overdraft that we have  
19 right now, presently today. So what do you think  
20 is going to happen a year from now?

21 What we're looking at is we're looking  
22 at major problems, and I don't believe that  
23 they're going to come along and shut this plant  
24 down once they get water to that plant and start  
25 pumping it up.

1                   And that 4000 acrefeet, to give yo a  
2                   little idea of how much it is, the whole city of  
3                   Adelanto only uses just a little bit more than  
4                   4000 acrefeet per year, and 50 percent of that  
5                   water is credited with going back to the ground  
6                   again.

7                   This plant is 100 percent consumptive  
8                   use, meaning everything goes up into the air.

9                   So I would recommend at this hearing  
10                  here that this plant be limited to the dry cooling  
11                  process or no process at all.

12                  Thank you. Any questions?

13                  HEARING OFFICER VALKOSKY: Just as I  
14                  understand it, since you're a Director you can  
15                  probably confirm, but MWA will be the authority  
16                  which decides whether or not to allocate water to  
17                  the project on an annual basis, isn't that  
18                  correct?

19                  MR. ALMOND: That is correct.

20                  HEARING OFFICER VALKOSKY: Okay, thank  
21                  you.

22                  Okay, are there any other members of the  
23                  public who wish to offer comment on any of the  
24                  matters we've discussed today, or those covered in  
25                  the Presiding Member's Proposed Decision? Okay,

1 seeing none.

2 Okay, at this point we're going to take  
3 a ten-minute recess. We'll reconvene at  
4 approximately 2:25.

5 (Recess.)

6 HEARING OFFICER VALKOSKY: Back on the  
7 record, please. During the recess the Committee  
8 considered the comments that we've received today.  
9 And has decided that it will, in fact, reopen the  
10 evidentiary record on the following areas. And  
11 this will be followed in a written order, but that  
12 won't be issued until early next week. So this is  
13 more in the way of preview.

14 We will reopen the area of air quality  
15 to address the matter of the sufficiency of the  
16 emission reduction credits. Tentatively we expect  
17 a witness from applicant and the district on those  
18 matters, as well as potentially by staff.

19 On the area of site control applicant  
20 has indicated it will sponsor a witness indicating  
21 its control of the site. We also believe,  
22 however, that Mr. Ledford has raised a pertinent  
23 related point, which in our parlance would result  
24 to any growth-inducing impacts by virtue of the  
25 fact that the site lease is apparently for a

1 longer period of time than is the expected project  
2 life.

3 So in any testimony from the parties the  
4 Committee would expect the issue of growth-  
5 inducing impacts to also be addressed.

6 On dry cooling, we will reopen to  
7 receive additional testimony from applicant  
8 concerning the feasibility or the comparison of  
9 the use of the wet and dry cooling technologies.  
10 Also the Committee would like the City of  
11 Barstow's comments to be specifically addressed in  
12 any testimony.

13 Insofar as staff is concerned, that at  
14 this point, since it is not staff's project, we  
15 will afford staff the opportunity to offer  
16 additional evidence on that area. And when I say  
17 staff, I'm including all parties. This is  
18 shorthand right now.

19 Insofar as the water agreement is  
20 concerned, we will reopen to examine the final  
21 aquifer storage and recovery agreement from the  
22 Victor Valley Water District. The three chief  
23 areas of concern under there. And what we expect  
24 the witnesses to address are the consistency of  
25 that agreement with the conditions of

1 certification proposed in the Presiding Member's  
2 Proposed Decision.

3 As in site control, any potential  
4 growth-inducing impacts arising from the fact that  
5 water agreement is apparently for a period in  
6 excess of the expected life of the project. And I  
7 would also advise the staff and applicant to  
8 specifically address any of the changes suggested  
9 by Mr. Ledford insofar as the proposed conditions  
10 of certification are concerned.

11 And with this I think attention has to  
12 be given, as is required in the California  
13 Environmental Quality Act, to insuring that the  
14 conditions are both understandable and most  
15 importantly, enforceable. So that will be a topic  
16 in the water testimony.

17 And finally, as I have it, what the  
18 Committee requires from the parties is some  
19 agreement or some specification as to why there is  
20 this disagreement as to the dollar amounts  
21 concerning the mitigation measures specified in  
22 the condition of certification Bio-7.

23 Are there any questions?

24 And I will get to the estimated timing  
25 for this next.

1 Mr. Thompson.

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

3 You mentioned comments by Barstow?

4 HEARING OFFICER VALKOSKY: Yes.

5 MR. THOMPSON: Have those been served?

6 Did I somehow miss those?

7 HEARING OFFICER VALKOSKY: They  
8 certainly have been docketed. I don't know if  
9 they have been served or not. But the City of  
10 Barstow, on January 18th, I believe -- here, Mr.  
11 Thompson, provide you with Mr. Eller's copy.

12 MR. THOMPSON: There's a possibility  
13 that this could have been served on everyone but  
14 the applicant? We haven't seen this, so we'll get  
15 a copy and we'll be ready.

16 HEARING OFFICER VALKOSKY: Okay. I'd  
17 say that's one of the benefits of coming to these  
18 public events, even for the applicant.

19 (Laughter.)

20 MR. THOMPSON: Among the many, Mr.  
21 Valkosky.

22 (Laughter.)

23 HEARING OFFICER VALKOSKY: Okay. Are  
24 there any questions before I get into the  
25 timeframes the Committee is entertaining for the

1 next evidentiary hearing?

2 MS. HOLMES: None from staff.

3 MR. THOMPSON: No, none.

4 HEARING OFFICER VALKOSKY: Okay. The  
5 timeframe proposed by the Committee, and if the  
6 parties view it as unrealistic, let's discuss it,  
7 but the Committee could proceed to an evidentiary  
8 hearing on February 17th here in Victorville. I  
9 believe that's a Thursday.

10 In order to provide parties time to  
11 prepare and examine their testimony, and I will  
12 note that certainly the bulk of applicant's  
13 testimony has already been submitted on January  
14 14th, the Committee would propose that the parties  
15 submit their prepared testimony, witness  
16 identification, indication of which areas they're  
17 going to cross-examine upon, and copies of any  
18 proposed exhibits which have not thus far been  
19 submitted, on February 10th -- I should say by  
20 February 10th, a week before the hearing.

21 Does that create undue difficulties for  
22 anyone? Mr. Thompson.

23 MR. THOMPSON: No, sir, none for us.

24 HEARING OFFICER VALKOSKY: Ms. Holmes.

25 MS. HOLMES: One moment, please.

1 Staff's concern, we don't have a problem with  
2 filing testimony on the 10th in any area other  
3 than evaluating the comments of Mr. Ledford on the  
4 aquifer storage and recovery agreement, should  
5 that review require additional testimony from  
6 staff.

7 As the Committee will recall, we had  
8 hired an expert witness from the outside to  
9 conduct that analysis. Should we need to hire  
10 this person again, the 10th will not work. And  
11 unfortunately, I cannot tell you right now whether  
12 or not that's going to be necessary. We would  
13 need to contact her and talk with her and talk  
14 with the staff witness who co-sponsored the  
15 testimony.

16 I can --

17 HEARING OFFICER VALKOSKY: When would  
18 you know?

19 MS. HOLMES: I think that we could file  
20 something hopefully by -- yeah, we can file  
21 something by tomorrow in the dockets, and we'll  
22 serve it, letting you know whether or not we would  
23 need to hire somebody.

24 HEARING OFFICER VALKOSKY: And if you  
25 needed to re-retain Ms. Bond?

1                   MS. HOLMES: Then it would probably  
2                   postpone preparation of testimony by another two  
3                   weeks or so.

4                   MR. BUELL: It might be even longer than  
5                   that. If I recall the last time we amended her  
6                   contract it took a month or two.

7                   HEARING OFFICER VALKOSKY: Well, I  
8                   guess --

9                   PRESIDING MEMBER LAURIE: That's not  
10                  going to be acceptable.

11                  MS. HOLMES: I beg your pardon?

12                  PRESIDING MEMBER LAURIE: That's not  
13                  going to be acceptable.

14                  MR. BUELL: I understand that, so staff  
15                  will have to evaluate its options tomorrow and let  
16                  the Committee know who will be our witness.  
17                  Hopefully we can satisfy the needs of the  
18                  Committee.

19                  HEARING OFFICER VALKOSKY: And we'll  
20                  look, at this point, we'll look for your testimony  
21                  on the 10th of February then.

22                  MS. HOLMES: That's fine.

23                  HEARING OFFICER VALKOSKY: Mr. Ledford,  
24                  a timeframe?

25                  MR. LEDFORD: For anything that I know

1 of at this point, it would be okay. If the  
2 applicant comes up with some new stuff, it  
3 wouldn't. And the only other restricting area  
4 would be if we were able to get witnesses from JPL  
5 to come in and testify about the droughts.

6 HEARING OFFICER VALKOSKY: Okay, I'm  
7 sorry, just a minute, go off the record.

8 (Off the record.)

9 HEARING OFFICER VALKOSKY: Okay, we've  
10 just been informed -- I should say I would just  
11 like to emphasize that the 10th and the 17th are,  
12 at this point, tentative dates. The only thing I  
13 can guarantee for sure is that those dates will  
14 not be earlier than the 10th or the 17th.

15 I've been informed there could be some  
16 unforeseen scheduling difficulties. But that will  
17 be addressed in the order that comes out hopefully  
18 by Monday.

19 Are there any other comments on anything  
20 we've covered here today?

21 MR. THOMPSON: Thank you, Mr. Valkosky.  
22 With regard to addressing Mr. Ledford's comments  
23 on the conditions of certification, those  
24 conditions were arrived at with Fish & Game, the  
25 staff, ourselves, and I believe Mr. Ledford in a

1 joint effort.

2 And I would just like to request that  
3 the Committee give us all the flexibility to reply  
4 in a similar manner. If the staff has some  
5 difficulty finding their expert witness or  
6 something, maybe we can jointly make a  
7 presentation that addresses Mr. Ledford's  
8 comments, rather than individual presentations.  
9 And I would just ask for the flexibility to allow  
10 us to do that. I'm not sure we will. But if we  
11 have the flexibility to do that, --

12 HEARING OFFICER VALKOSKY: You're  
13 talking about at the evidentiary hearing?

14 MR. THOMPSON: That's exactly right.

15 HEARING OFFICER VALKOSKY: If that's  
16 appropriate at that time, so move and, you know,  
17 you could certainly present a panel if that's  
18 appropriate.

19 Okay. Is there anything further? Thank  
20 you for your attendance and participation. With  
21 that, we're adjourned.

22 (Whereupon, at 2:50 p.m., the conference  
23 was concluded.)

24 --o0o--

25

## 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 Conference; 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 Conference, nor in any way interested in the outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of February, 2000.

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