

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Commissioner and Presiding Member
James D. Boyd, Vice Chair and Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Paul A. Kramer, Jr., Hearing Officer
Kristy Chew, Advisor to Presiding Member Byron

STAFF and CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel
John Kessler, Project Manager
Tom Hurshman, Project Manager, BLM
Eileen Allen, Supervisor Sighting Staff

APPLICANT

Jeff Harris, Attorney
Ellison, Schneider & Harris

Steve De Young, Project Manager

John Carrier, Environmental Project Manager

Arthur Haubenstock, Government Relations
Attorney

Todd Stewart, Engineer for the company, and

Tracy Wheaton, Las Vegas Office

INTERVENORS

Mark Joseph, California Unions for
Reliable Energy

Gloria Smith, CR Club

ALSO PRESENT

Greg Miller, California Desert District BLM

Al Stein and Jack Hamby, California Desert District BLM

Craig Suba, California Native Plant Society.

ALSO PRESENT

Sidney Silliman, Sierra Club.

Mark Silverstein and Hana Rocek, Clark County
Department of Aviation

Bruce Kinney, Department of Fish & Game.

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PROCEEDINGS

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2 MAY 18, 2009

9:00 A.M.

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HEARING OFFICER KRAMER: Welcome to the Ivanpah Solar Electric Generating System AFC Committee. My name is Paul Kramer. I am the Hearing Officer in this case. To my right is Commissioner Boyd, who is the Associate Member of the Committee. To my left is Commissioner Byron, who is the Presiding Member, and his advisor, Kristie Chew.

We will ask the people on the telephone to identify themselves in a minute. First, let us identify the people in the room, starting with the Applicant's party.

MR. HARRIS: Hi, I am Jeff Harris. I am here on behalf of the Applicant with Ellison, Schneider & Harris. To my right is Steve De Young, who is the Project Manager for the Ivanpah site. To his right is John Carrier, who is the Environmental Project Manager. To our left is Arthur Haubenstock, who is the Government Relations and unfortunately also an attorney. Behind me is Todd Stewart (phonetic), an engineer for the company, and Tracy Wheaton is also here with the Las Vegas Office. I think that is it.

HEARING OFFICER KRAMER: And staff.

MR. RATLIFF: Staff and BLM are represented by Dick Ratliff, Staff Counsel. With me, John Kessler, Project Manager, and Tom Hurshman, the BLM Project Manager. And

1 Eileen Allen, who is the Supervisor from the Sighting
2 Staff.

3 HEARING OFFICER KRAMER: Okay and we have at least
4 two interveners in the room. Mr. Joseph?

5 MR. JOSEPH: Thank you. Mark Joseph on behalf of
6 the California Unions for Reliable Energy.

7 MS. SMITH: Gloria Smith, CR Club.

8 HEARING OFFICER KRAMER: Any other intervenors in
9 the room? Okay, now on the telephone, do not talk all at
10 once, but do not be shy, if you could give us your names?

11 MR. MILLER: Hello, this is Greg Miller with the
12 California Desert District BLM.

13 MR. STEIN: This is Al Stein and Jack Hamby with
14 California Desert District BLM.

15 MR. SUBA: This is Craig Suba with the California
16 Native Plant Society.

17 HEARING OFFICER KRAMER: How do you spell your last
18 name, Craig?

19 MR. SUBA: S-u-b-a.

20 HEARING OFFICER KRAMER: Anyone else?

21 MR. SILLIMAN: Sidney Silliman, Sierra Club.

22 HEARING OFFICER KRAMER: Would you spell your last
23 name?

24 MR. SILLIMAN: Yes. S-i-l-l-i-m-a-n.

25 HEARING OFFICER KRAMER: And your first name?

1 MR. SILLIMAN: Sidney.

2 HEARING OFFICER KRAMER: S-y-d?

3 MR. SILLIMAN: S-i-d-n-e-y.

4 HEARING OFFICER KRAMER: And you were with, again?

5 I am sorry.

6 MR. SILLIMAN: The Sierra Club.

7 HEARING OFFICER KRAMER: Okay, thank you. Anyone
8 else?

9 MR. SILVERSTEIN: Yeah, with Clark County
10 Department of Aviation, this is Mark Silverstein and Hana
11 Rocek, R-o-c-e-k.

12 HEARING OFFICER KRAMER: Two "Ns", no "H"?

13 MR. SILVERSTEIN: H-a-n-a.

14 HEARING OFFICER KRAMER: Okay, I was totally wrong.
15 And that was Mark Silverstein?

16 MR. SILVERSTEIN: Correct.

17 HEARING OFFICER KRAMER: Anyone else on the
18 telephone?

19 MR. KINNEY: This is Bruce Kinney with Fish & Game.

20 HEARING OFFICER KRAMER: That was Bruce Kinney.
21 Could you spell your last name? I am doing this mostly for
22 our Court Reporter.

23 MR. KINNEY: It is K-i-n-n-e-y.

24 HEARING OFFICER KRAMER: Thank you. And I
25 apologize, the second gentleman from BLM, I did not get

1 your name down. Could you repeat it?

2 MR. STEIN: It is Alan Stein, A-l-a-n, S-t-e-i-n,
3 and Jack Hamby, H-a-m-b-y.

4 HEARING OFFICER KRAMER: Okay, thank you. Anyone
5 else on the telephone? Okay, those of you on the
6 telephone, if you need to go away from your phone, please
7 do not put us on hold because some of your offices will
8 have music on hold and that will be initially amusing here
9 in the room, but ultimately frustrating. So if you could
10 just either mute your handset, or I believe the command in
11 the conferencing system is *6 to mute your audio. We would
12 appreciate that.

13 I would also like to make sure everyone knows that
14 our Public Advisor's Office is represented here today, as
15 well.

16 At the back of the room when you came in, you
17 should have found copies of a spreadsheet that I prepared.
18 It is three pages, it was printed double-sided, so -- does
19 anyone else need a copy? We can make more. We will
20 probably be discussing this in the schedule and use this as
21 our visual aid.

22 Okay, it looks like that is taken care of. So, Mr.
23 Harris, this hearing is -- the conference is held in large
24 part at your request, so if you would like to set up the
25 issues as you see them regarding the schedule and any other

1 matters you wish to raise, go ahead.

2 MR. HARRIS: Okay. Thank you, Mr. Kramer. I
3 appreciate the opportunity to be here and, yes, you are
4 correct, we did want to have this meeting in person. These
5 are complex issues and we are also the first of, I guess,
6 several large projects coming through, and so there is a
7 lot to hash through here, there is a lot of education. And
8 these are not the kinds of issues that lend themselves well
9 to e-mail communications, or even, really, written
10 communications. They are much better to be interactive.
11 So we thought it was important to get everybody in the same
12 room so we can all be speaking from the same pieces of
13 paper, I guess, here, and the same level of knowledge. And
14 we are really at a point with this project here, I think at
15 day 512, and we would like to move this project forward.
16 There are a couple of very strong imperatives for doing
17 that, but one is just the logic, we think, between getting
18 the project done. It has taken us some time to get to this
19 point, obviously. I think we are on our third Project
20 Manager during that time period, and I think the last two
21 months have been terrific, frankly. I just want to really
22 compliment John and his crew, Kessler, and his crew for not
23 only their hard work, but also their tone in how they have
24 dealt with us, and they have been very respectful in their
25 written filings and very respectful in the oral

1 communication. So I very much appreciate that.

2 I do think that we do have a bit of a -- I think it
3 is a good faith disagreement on how much is enough, in
4 simplest terms. How much information does the Energy
5 Commission need to put together an informational document
6 to inform the public and inform the decision makers who
7 have the potential impacts of the project? And that really
8 is the appropriate legal standard, both under CEQA and
9 NEPA. And if I had to put a couple bumper stickers
10 together, the first one would be just that that we are
11 dealing with an informational document here. And, really,
12 at the end of the day, what we are interested more than
13 anything else, is getting the final staff assessment and
14 the Draft EIS on the street so that we can start the public
15 participation process, start the public comment period
16 under NEPA, start the evidentiary hearing process under
17 CEQA. And so that good faith disagreement, in my mind, is
18 really rooted in the question of how much is enough. And
19 we think that we have met the informational requirements
20 that are necessary for an informational document. We are
21 not at a decision point yet, this is not a decision
22 document. And that process will play out over the next,
23 hopefully, six to eight months or so to get to an actual
24 decision. But we need to get started moving the
25 informational document together.

1 There is also a very important imperative for us, as
2 well, with the stimulus money that is available to us in
3 2010, that is not available to us in 2011. So one of the
4 things that we have heard constantly from the
5 Administration, from the Governor's Office, and from the
6 Legislature is that California wants to get its economy
7 moving again, and we want to take advantage of as many
8 stimulus dollars as there are available to these packages,
9 and there is a very important imperative and that is that
10 the projects begin construction in 2010, to have that money
11 available. And so I think that is a very important issue
12 for the State of California, to try to get access to that
13 stimulus money, or the first project that is moving
14 forward, if we miss that deadline, clearly everybody who is
15 behind us will also miss that deadline. So we are looking
16 at being able to cut that path for other folks, as well.
17 And we understand a lot of the issues have been first
18 impression issues and some of the reason for the slowdown,
19 but that is a very important part of moving this project
20 forward.

21 I think one of the factual things that I want to
22 make sure the Committee understands about 2010, as well, is
23 that there is a very very limited construction window -- in
24 any calendar year, but that is very important to your
25 decision making process.

1 Over-simplifying things, the first step in
2 construction is going to be relocation of the Desert
3 Tortoise, and that can only occur under certain conditions,
4 certain temperature conditions, and certain times of the
5 year. Roughly stated, it leaves the spring and the fall
6 for the relocation. And I say "roughly stated", again,
7 because it is more dealing with temperature and the
8 conditions on the ground than it is actual seasons, but for
9 short-hand, let's just leave it at spring and fall.

10 If you start backing out the spring and fall of
11 2010, and looking at the schedule here, allowing time for
12 appeals, allowing time for other processes that have to
13 play out, you end up with a situation where you are really
14 going to need a decision at the very end of 2009, or
15 January of 2010 to be able to take advantage of the
16 stimulus monies so that you can go out and do the tortoise
17 clearing, put up the fences so that those animals will
18 remain safe during the construction period, and move
19 forward with your other construction activities. So there
20 is a large imperative related to the Stimulus Package. But
21 just, again, as a matter of course, we are on Day 512, I
22 think, of this proceeding. It has been almost a year,
23 maybe a little more than a year, since we filed what we
24 called the Optimization Package, which locked down the
25 fence lines and the configurations of the project. And we

1 think it is time to move forward.

2 As I look through the list of things that we are
3 being asked to provide at this point, that is why I want
4 the discussion to focus today. To the extent that we get
5 into the weeds, if you will, on how do we move this project
6 forward, I actually would like to take some time and go
7 through each one of the items that staff is requesting and
8 talk about what we submitted, what they think they might
9 need, and also make a case for whether or not we have
10 provided enough information to date. And I will go through
11 a couple specific examples on that, as well.

12 HEARING OFFICER KRAMER: During that break, let me
13 ask the people on the phone, are you hearing Mr. Harris
14 well? Okay, good.

15 MR. HARRIS: Okay, so I will not go through each of
16 those items. There were, I think, seven items identified
17 by the staff in January as critical path items they needed
18 to publish the document that we are really hoping to get
19 out the door as soon as possible. But after kind of these
20 open remarks, we want to come back to that, Mr. Kramer. I
21 will just reserve that discussion as opposed to bogging us
22 down in details as the opening part of the discussion here.
23 But let me give you just one example of why I think there
24 is a disconnect between the informational needs that are
25 required by NEPA and CEQA, and what we are being asked to

1 do, potentially, by the staff. And I will just grab the
2 first one that comes to mind which is the Desert Tortoise
3 Relocation Plan. As I mentioned, we have to relocate those
4 Desert Tortoise from the project site, clear the site and
5 put up a tortoise fence so they do not get back in. The
6 U.S. Fish & Wildlife Service has very specific guidelines
7 for tortoise clearing; they are based on the 1994
8 California Desert Protection Council Guidelines. That is
9 one document that is going to determine how the Desert
10 Tortoise relocation occurs.

11 The second one is actually a specific document that
12 was given to us in December of last year for tortoise
13 relocation on this site; that also provides some very
14 specific guidelines. And in that second document, they
15 also add the catchall caveat, if you will, that to the
16 extent that new guidelines for relocation are developed,
17 the Applicant will have to conform with those issues, as
18 well. So there is a very clear precedent for relocation of
19 these tortoises. There are actually very clear guidance,
20 there are a lot of details to be worked out about time of
21 day, temperature, when those things can be moved. You
22 know, one of the plans says to use cardboard boxes, another
23 one says use plastic, and 20 percent bleach to clean them.
24 That kind of stuff is not the kind of stuff that needs to
25 be in the informational document, in the environmental

1 document we are trying to put out. And, in fact, at the
2 end of the day, what is going to clearly happen is we will
3 receive a condition of certification that says the
4 Applicant cannot relocate Desert Tortoise until you have
5 the Agency's approval, and when you do so, you will do so
6 consistent with the 1994 Desert Protection Council
7 Guidelines, with the December 2009 Guidelines that we have
8 given you for this project, and anything that is developed
9 subsequently. That is absolutely what that Condition of
10 Certification will say; it will not say "relocate the
11 tortoise based upon the plan in the Final Staff Assessment
12 Draft EIS." So there is an informational issue there that,
13 I think, really clearly highlights the difference that the
14 Applicant has between the information needs that we see,
15 and that as the staff sees. And we think that as a matter
16 of law that that condition can deal with those issues. We
17 will not be able to move tortoise without the approval,
18 without following those guidelines. So to say that we
19 cannot publish the environmental document without a final
20 approved tortoise plan misses the point, and the point is
21 that this is an informational document, it is not a
22 decision document. It will be the Commission's obligation
23 in the decision document to write a condition that says
24 "follow these protocols."

25 Now, we do not have any problem continuing to work

1 with staff on resolving the inconsistencies between those
2 two plans, or even working towards putting together a plan
3 that we hope will be final; in fact, it is in our best
4 interest to develop that plan as soon as possible so that
5 we can make the 2010 construction date. But from an
6 informational perspective, from a CEQA perspective, from a
7 NEPA perspective, we think that we have provided what you
8 need to inform the public and inform the decision makers,
9 and as I said, I am glad to go through that list of seven
10 items with you later, but I wanted to put that one on the
11 table as kind of a specific example.

12 We can also talk a little bit about some of the
13 schedules that have been proposed by the staff, moving
14 forward. And I think that what we would like to see, and I
15 think that the Committee would like to see, is a closer
16 alignment between the Commission's decision making process
17 and BLM's. And by that, you know, the decision document
18 for the Commission is going to be the Commission's final
19 decision. The decision document for BLM is the Record of
20 Decision, the ROD. And over-simplifying things, looking at
21 staff's proposed schedule, it appears what staff is really
22 doing is assuming that final EIS is the decision document,
23 it is not taking into account that the ROD will take into
24 consideration the decision by the Commission, will also
25 have things that are outside the Commission's decision like

1 the Biological Assessment. There are a whole series of
2 documents and BLM's that are required to talk about this
3 than I am, but at the end of the day, the Final EIS is not
4 a decision document, and so what we are proposing in our
5 schedule is actually to more closely align the deadlines,
6 the timeframes, for the Commission's decision documents and
7 the BLM's decision on the Right of Way Grant. And we can
8 talk through those particulars, as well. So with those as
9 sort of introductory remarks, I will turn it back to you.

10 HEARING OFFICER KRAMER: Staff, do you want to
11 comment and reply?

12 MR. RATLIFF: Well, we welcome this discussion. I
13 think it is very hard to put our hands around this, the
14 nature of this conflict, because it seems to go across a
15 number of areas and staff has itself spent a lot of time
16 discussing how much information we actually need to do a
17 Draft Environmental Impact Statement under NEPA. But I
18 think that the nature of this project is such that it is
19 quite complicated; and because it is complicated, and
20 because it is so big, the nature of the analysis that
21 underlies the staff's Environmental Assessment continues to
22 change. And we have had several revisions to significant
23 aspects of the project that have been coming in over time.
24 And this goes to both biological issues, but more
25 importantly to drainage issues, which are very important to

1 the definition of the project itself. And because of that,
2 that has required us to revise our analyses and to take
3 more time than we ordinarily would. I do not think it is a
4 correct statement to say that staff is assuming that the
5 DIS has to be on the level of a final decisional document,
6 that is not staff's intent at all, but the goal is to have
7 a document which is complete enough that it would withstand
8 challenge as a federal environmental document. And one of
9 the differences between the federal process and the DEIS
10 process is that it has to be complete the first time, it is
11 not like a preliminary staff assessment. In some ways, it
12 is more exact than even a final staff assessment because
13 the Commission process is iterative and it can correct
14 deficiencies and information at any given time, but if the
15 DEIS is defective, if it lacks critical information, and
16 you have to go back and remedy that by supplement
17 subsequent to its release, you risk the possibility of
18 having to re-circulate, and that is not in either staff's
19 interest or the Applicant's interest, and we want to avoid
20 that. So although we think that there are important issues
21 here that we do need to explore, and we understand the
22 Applicant's frustration, I think we need to be mindful that
23 you do not really gain any time if you do not do it right,
24 and we assume that we have to do it right. So we are
25 trying to get it right and if we can find ways to make time

1 on any of these issues, we will do so, we are open to that
2 and we want to discuss that. But I do not think that it is
3 particularly useful to say that all we need to do is just
4 hurry up. With that, I think I will turn it over -- I am
5 going to rely on my Project Manager here, who has been
6 keeping conscientious control over the flow of the paper
7 between the Applicant and ourselves. I think I would like
8 him to speak to it if he chooses, to the extent that he
9 chooses to.

10 MR. KESSLER: Thank you, Dick. I am John Kessler.
11 Just to compliment what Dick said, I think the Applicant
12 has done just a terrific job to try to be responsive to our
13 concerns and to generate a lot of information in support of
14 those concerns. One of the things that we want to help you
15 appreciate is that the project has undergone some
16 substantial changes in its proposed lay-out and facilities.
17 Those primarily have to do with acreage and the number of
18 heliostats, whether they are single hung, or double hung on
19 each pylon, and how the storm water facilities would
20 respond to the natural conditions. And it was just as
21 recent as this past March, March 25th, that the Applicant
22 was able to respond to one of our issues, was, "We don't
23 have the ability to substantiate," their previous plans
24 which they presented, I believe, back in June of 2008. Our
25 normal process is to be able to, when we look at a set of

1 site and drainage plans, is to say, "Okay, does that meet
2 the local criteria that is normally within the county?" In
3 this case, there is San Bernardino County, as well as Clark
4 County in Nevada, which has more detailed criteria for
5 dealing with alluvial fans and so we agreed that we would
6 account for both of those, and the Applicant has really
7 worked hard to try to get a grasp on those and respond to
8 those. So we went from a project that would have very
9 large storm water detention basins along the entire
10 westward boundaries of the three sites, or the three phases
11 to basically none, and the concept beginning as recently as
12 late March, and so the concept was that water would
13 basically channel through the project and would be able to
14 take the runoff from the Clark Mountains, which is the
15 lion's share of runoff that runs through the site, and keep
16 it within the existing drainages. And it is not that we
17 have ever been opposed to their plans, but we just wanted
18 to have in hand the substantiation for assessing and
19 assuring that the plans that were in conformance with the
20 local laws, ordinances, regulations, and standards, as well
21 as it took into account the specific site conditions. And
22 the Applicant acknowledged that we did not have the
23 information we have, they have actually brought on another
24 engineer, as late as, I believe, just a month before then,
25 and made a very concerted effort to pull together a

1 different approach. And now they are proposing this low
2 impact design approach, which we embrace and, again, we
3 just have to get to a point where we know the underlying
4 assumptions that support that design are -- and to take
5 into account the site characteristics of the ground and the
6 effects the project will have on soil, on compaction, on
7 some loss of vegetation, and so on, that properly addresses
8 those issues and accounts for them in their design. And
9 that is the point we are at, and we just know we received
10 an update to their design this past week and we are looking
11 forward to reviewing that carefully and seeing how their
12 latest design addresses those issues. And so I think we
13 are really getting close to where we need to be and, just
14 frankly, where we are put at right -- or the position staff
15 is in, and BLM staff is in right now, is to say, "Well, how
16 close do we need to be before we produce a document?"

17 So really what it boils down to, on the stormwater
18 issue, just to kind of cut to the chase, is to say, well,
19 if there are -- if staff believes that there could be more
20 runoff generated from the site, and there is a need for
21 detention ponds that are not currently identified, well,
22 how big might those be? And to what degree might they
23 affect the site in terms of the way the site is proposed,
24 or the project is proposed, the effect on displacing other
25 facilities, and so on.

1 Staff does not want to be in the position to design
2 the project for the Applicant. Staff wants to basically
3 raise a concern and how the Applicant responds to it in
4 making a good faith effort to do that. But in terms of
5 being in sync about our team and the Applicant being on the
6 same page, I do not know that we are quite there yet
7 because we have not really had a chance to review their
8 latest plans, which there are more plans that are
9 forthcoming this week to support last week's. But what it
10 boils down to is that, even if there is a disconnect in our
11 positions, then we can also ask ourselves the question,
12 when do we address that issue? Do we need it now in order
13 to prepare the FSA and Draft EIS? Or can we accept it
14 later between the Draft EIS and the Final EIS? And that is
15 something that also has to mesh with the needs of BLM, but
16 also it can be a consideration from the CEC's standpoint of
17 what works for the committee. You know, staff will be
18 producing those FSA Draft EIS, we assume that we are also
19 going to be producing the Final EIS, we are working -- it
20 is primarily a CEC staff effort who are producing that
21 document, and the Final EIS, and whether we call it an FSA
22 Addendum, or whether it feeds into the PMPD, we are not
23 clear on that. But I think we had some latitude as to when
24 we build those modifications and that satisfaction into the
25 document, at what point in the schedule, should there be

1 need to tweak the current version of the Applicant's plans
2 to fully satisfy staff and, in our view, fully mitigate the
3 potential project impacts.

4 MR. HURSHMAN: Tom Hurshman with BLM. I agree with
5 everything that John said there and I think early on, you
6 know, BLM did require that the Applicant provide us with a
7 preliminary engineering design, and looking back perhaps we
8 could have characterized that more succinctly by focusing
9 more on the storm water site characterization that is
10 required, so that we would have sat down and agreed upon
11 the assumptions that needed to go into that storm water
12 site characterization, because that is all necessary to
13 build into any kind of site design, you know. And we have
14 submitted lots of responses, comments, questions back to
15 Bright Source (phonetic) on the preliminary design work
16 they have given us, and most of that focuses back on those
17 assumptions that went into it. I want to emphasize that we
18 have not rejected any design that they have given us. You
19 know, back on the original, I guess more intensive, storm
20 water management approach where they had the large
21 detention dams, we did not say that that was a bad design,
22 we said that your design is lacking the assumptions that
23 went into it. It was lacking the information to determine
24 how big the detention ponds needed to be. Likewise, on the
25 revised approach where they had given us more of the low

1 impact development type of approach, we have not rejected
2 that at all. And actually we think that is a very good
3 approach to head down the path towards; but, again, we had
4 a lot of questions of -- it was lacking enough information
5 for us to make a determination that, once they put these
6 214,000 heliostats out there that they are not going to
7 wash over when the first big storm hits. So, thank you.

8 HEARING OFFICER KRAMER: Let me ask both of you, if
9 for some reason this engineering analysis could be
10 postponed until after the project was approved, would you
11 still require that it be complete before you would allow
12 any construction, or any pre-construction activities such
13 as moving of tortoises to occur? You will need to turn
14 your microphone back on.

15 MR. HURSHMAN: For BLM, absolutely. BLM, if I
16 understood the question right, Mr. Kramer, we are not going
17 to provide any kind of an authorization. The Applicant is
18 going to be required to put together a final Plan of
19 Development and that plan is very comprehensive, it needs
20 to include all of the mitigation that they are proposing to
21 do on the ground, it would describe completely all the
22 activities that are going to take place, including tortoise
23 removal, those things, and that document needs to be in
24 place before BLM is going to issue the right of way grant.

25 HEARING OFFICER KRAMER: [Inaudible]

1 MR. HURSHMAN: Yes.

2 HEARING OFFICER KRAMER: So in some ways, we are
3 talking about when along the time line this activity
4 occurs, but it must all occur before the project is ready
5 to go?

6 MR. HURSHMAN: Absolutely. I would also maintain
7 that, without knowledge of exactly how the project is going
8 to be cited and how it is going to be constructed, it is
9 very difficult for us to predict any kind of accurate
10 impact assessment, of what those downstream impacts are.
11 And it is not just the impacts that are going to take place
12 on the 4,065 acres that are important, there are a lot of
13 other resources below. We have got the Ivanpah Dry Lake,
14 well known as a high valued recreation area for windsailing
15 craft, and designated for that; we have got other public
16 lands adjoining this that are under application from other
17 renewable energy developers; that joint point of entry that
18 is proposed by Caltrans and is immediately downstream. So
19 there are other uses taking place on these public lands
20 that we have a responsibility to be sure that this project
21 is not going to adversely affect those, or, if it is going
22 to affect those, at least disclose what that effect is and
23 develop mitigation for those effects.

24 HEARING OFFICER KRAMER: Ms. Allen, staff has been
25 a big proponent, I think it is fair to say, of cooperative

1 approaches with [inaudible] and I wonder if you could take
2 a moment or two and describe the benefits you see going
3 from that approach, as opposed to [inaudible]?

4 MS. ALLEN: Before I start, I would like to
5 recognize Bob Doyle from the BLM State Office, and Bob was
6 in a discussion with other representatives of the State
7 Office, and the California Desert District Office, with
8 Eric Knight and I and some others from the Energy
9 Commission, and the purpose of our discussion on April 21st
10 was to talk together about lessons learned regarding the
11 BLM Energy Commission Memorandum of Understanding, that is
12 focused on a collaborative CEQA NEPA process. So an
13 underlying assumption is that we still believe that that is
14 the right way to go in terms of BLM in the end being the
15 landlord and the steward on behalf of the public, taking
16 care of this land. So I do not know how we could do
17 anything else, but a joint CEQA NEPA process with the
18 Energy Commission's jurisdiction and BLM's key role as the
19 landlord. So we talked about lessons that we have learned
20 since the MOU was signed over a year and a half ago, and
21 just the sheer size of these massive sites has been a
22 challenge for both agencies. From our perspective, we have
23 begun to think about how the Project Developers may not
24 have had time to think about the water flows and drainage
25 patterns, particularly on a site like the Ivanpah project

1 site that is below a significant mountain range, and then
2 forming the drainage patterns with an alluvial fan. So
3 that has resulted in a lot of changes that the Applicant
4 has worked through with us that John Kessler alluded to.
5 So these major project changes have initiated new review
6 cycles, but it is all appropriate in terms of trying to
7 come up with something that will not be harmful to that
8 fragile environment. So we had not really identified any
9 shortcuts in that process, but that we were all wanting to
10 keep moving forward.

11 Another thing that we discussed that is not as
12 germane to the Ivanpah project here before us, but that
13 does affect the collaborative Energy Commission BLM
14 process, is that many of the large sites near dry lake beds
15 have significant cultural resources, sometimes in the
16 hundreds or in the thousands. So cataloguing them
17 thoroughly has been very labor intensive, but it is not
18 much of a factor for the Ivanpah project. Something that
19 we continue to work on extensively is how CEQA and NEPA do
20 have different information and presentation and format
21 needs as far as how alternative sites are handled. It has
22 been challenging to figure out a robust, thorough approach
23 for both NEPA and CEQA regarding alternative sites that
24 would mitigate significant impacts when, in many cases, the
25 buildable options are spoken for by other solar developers.

1 We are also wrestling with whether alternative sites could
2 be considered that are on private land as opposed other
3 sites on BLM land, so this is something that we are still
4 working through.

5 I think that the Desert Tortoise potential impact
6 issue is well known, that is something that we talked about
7 in lessons learned, and I will leave that for a biologist
8 discussion, along with the participants here. But we did
9 talk about that.

10 Those are the basic items that we discussed. In
11 the end, we talked about continuing to work collaboratively
12 and how we think that it is a successful working
13 relationship. We just need to keep going. And as we
14 identify new ideas for streamlining, we will certainly
15 bring them to your attention.

16 HEARING OFFICER KRAMER: Thank you. Any comments
17 from either of the Intervenors?

18 MR. JOSEPH: Thank you, Mr. Kramer. Mark Joseph
19 for CURE. I just wanted to set a little context for the
20 discussion. You know, I think that it is obvious that the
21 parties are working well together here, and there are no
22 bad actors here that we are dealing with, but there is a
23 friction giving competing interests. I think, you know, as
24 we sit here and listen, it is critical that when you try to
25 resolve this friction, and I do not envy your position

1 having to do that, that you worked backwards at the latest
2 from the Fall of 2010. You know, we have heard that that
3 is sort of the last chance to have the Desert Tortoise
4 relocation and still qualify for Recovery Act money. We
5 certainly spent a lot of political capital making the
6 recovery act something which Bright Source could qualify
7 for by starting construction in 2010. We were very
8 interested in being sure they came out right; the first
9 drafts of the statute did not, and we worked real hard to
10 get that changed so that Bright Source and this project, in
11 particular, would qualify. And we want to be sure that
12 that really comes to pass. The reasons are obvious, you
13 know, in the construction trades we have got 30 percent
14 unemployment. And, you know, I have been telling my
15 clients there are good green jobs on the horizon, really,
16 there are -- really, really, there are -- and that it is a
17 good thing to be supporting renewables, even though there
18 has been an awful lot of work in gas fire generation, but
19 do not worry, renewables are the future, this will be good
20 for you, and it will be good economically and
21 environmentally. And you have developed a substantial base
22 of support among a group of unions which, frankly, are not
23 historically the most progressive. But, you know, we have
24 come a long ways and very much want to support and advocate
25 for, and do the things necessary to advance renewables and

1 create a lot of good green jobs.

2 As you are thinking about how to resolve these
3 issues, I think it is important to recognize that Bright
4 Source is the first one out of the gate here, and in some
5 ways you are lucky that it is Bright Source that is the
6 first one out of the gate because, among the solar
7 developers, they are the most technically sophisticated
8 and, as a company, probably the most talented and savvy.
9 These are not neophytes, these are the ones who actually
10 previously built solar power plants that are still working.
11 But that said, it is important to create the reality, it is
12 important that we not look back near the end of 2010 and
13 say, "Oh, jeez, we really messed this up. You know, here
14 we go, the deadline is going to go by, we're not going to
15 get Recovery Act money, and we still haven't turned the
16 first shovel of dirt to build these projects."

17 Now, the staff, you know, is absolutely correct
18 about the need to get a defensible document and the need to
19 get an environmentally responsible document. And I think
20 they are working really hard to do that. If the staff
21 needs more resources to be able to do that more quickly
22 without in any way shortchanging the quality of the
23 analysis, you know, I think that would be a valuable thing
24 to be sure that they have. We have to be sure that this
25 first project gets across the finish line in time. And I

1 hope, you know, as you try to resolve the friction and
2 figure out a schedule to make that work, you will do
3 everything in your power to see that we can get there.
4 Thanks.

5 MS. SMITH: Thank you, Mr. Kramer. Gloria Smith
6 for Sierra Club. With all due respect, I have never been
7 involved with a project that did not have some financial
8 hurdle, that required the case to move as quickly as
9 possible, and it turns out that this one is not any
10 different. And we are certainly not here to slow down the
11 project and not have this project shovel ready by the time
12 it needs to be. And, frankly, having all the information
13 available to the public and to the agencies as soon as
14 possible is the quickest way for us to get there. And I am
15 not hearing from the agencies whether or not, especially
16 BLM, has the information it needs to even prepare an
17 adequate document and it really concerns me when there is
18 discussion about significant information going in between a
19 draft and a final. That has the potential of really
20 bringing this whole thing to a screeching halt and I would
21 really hate to see that. And I agree with Ms. Allen that,
22 if we could honor the MOU process as much as possible, that
23 is another way for us to get across the finish line as
24 quickly as possible. The Public Advisor's Office made a
25 very good point, that we not have two public comment

1 periods, and I was not clear on what is being proposed here
2 today, but I think that is another potential hurdle where
3 people are not clear when and where they are supposed to
4 comment, and where all those comments will be compiled.
5 So, again, if we just do this right at this first
6 administrative staff level, I think we could get through
7 our evidentiary hearings in a much quicker fashion. Thank
8 you.

9 HEARING OFFICER KRAMER: Let me first go to the
10 Public Advisor's Office. If they wrote a memo that has
11 been docketed in the case, and I believe it was served on
12 the Proof of Service list, did you want to emphasize any
13 part of that, or add to it?

14 MS. MILLER: I am going to make a short brief
15 comment.

16 HEARING OFFICER KRAMER: Say your name first.

17 MS. MILLER: This is Elena Miller. I am the Public
18 Advisor for the Energy Commission. And the memo was borne
19 from my office out of concern after I attended one meeting;
20 Lorraine McMann (phonetic), the Associate Public Advisor,
21 is assigned to this case from my office. And we began to
22 have discussion over our concern that there is so much
23 being done in terms of the substance of this case, and that
24 is not what the Public Advisor's Office's role is, we do
25 not delve -- and I know practically nothing about this

1 case, in fact, the Project Manager, John Kessler, was
2 talking about details of the case that I have heard for the
3 first time today. I am not an expert in the Ivanpah case,
4 nor in most of these cases, for a very important reason --
5 Public Advisor's Office exists for procedural issues,
6 procedural issues having to do specifically with public
7 participation. And so the Applicant's attorney was the
8 first sort of out of the gate to propose a schedule and it
9 caused concern. It caused concern to the level that we
10 started to wonder, well, how would we explain this proposal
11 to the public? How would the Project Manager explain this
12 proposal to the public? In other words, I wanted to know
13 the detail of, you know, how would we put this into
14 policies and procedures. And when I asked questions, there
15 were not any questions. When Lorraine asked questions,
16 there were not any answers because the focus has been for
17 so long on getting this project analyzed and the necessary
18 analysis for CEQA and NEPA.

19 So now that we are approaching the end, I agree,
20 and much has been said about the importance of getting this
21 process done, I am not interested in being a hurdle; what I
22 want is I want to hear clear and concise information being
23 given to the public from the Commission, then my office can
24 translate, when called upon to do so by the public. I do
25 not solicit people coming to my office, I have more people

1 come to my office than I can handle on a daily basis. But
2 when they do find me, which they often do, because I have
3 so much of that coming to my office, I need to have clear
4 concise information to give to them. And in this case, I
5 do not have that yet. And so the memo was written and
6 borne from the need that my office has, but also, I think
7 more importantly, the sighting office, so that when those
8 comments come in, we will know where they need to be
9 distributed, who is going to be responding to them, and
10 then the public does not have any false expectations or
11 angst, anger. I am an enormous advocate here at the
12 Commission, and those of you who have heard me speak at
13 meetings, for getting things done right, getting it done
14 clearly so that the public understands what is going on,
15 because I know in too many instances the public calls me
16 after the fact so late in the game, and this is to a
17 certain degree happening in this case, as well.

18 People have sort of been standing on the sidelines
19 and not really jumping in. I do not want anymore of that.
20 I want people to understand exactly what is coming, I want
21 them to know exactly when the deadlines are for comment
22 periods, where to send their comments, and who is going to
23 be responding, if anybody at all. Comments do not come in
24 generally very clear, they do not stick on one point, they
25 generally have many different points made. John Kessler

1 and I work on other cases where he will get an e-mail from
2 somebody and, embedded in it, there is a question or a
3 comment about, well, you know, well, how do I participate?
4 This will be happening in this case, as well. And so
5 before the Tsunami hits my office, and hopefully it is not
6 going to happen, this memo needed to come out, out of
7 concern. And so let me end by saying that we do not want
8 to slow this process down. I am extremely appreciative of
9 the deadline and the stimulus money that is available to
10 these people, and yet I do not think that we are
11 disagreeing with one another, I think that it is of the
12 utmost importance that we get this done right and that we
13 get it done well because, if there are legal challenges
14 that hit these developers after they leave our building, I
15 want them to have a record from the Energy Commission of
16 what the Energy Commission did, and that the Energy
17 Commission did it well. And that is all I have to say.
18 Thank you.

19 HEARING OFFICER KRAMER: Thank you. Anyone on the
20 telephone on the subject of the schedule and the
21 impediments? Okay, hearing none, Mr. Harris, could you
22 respond to the kind of general question -- first, tell me,
23 I think you said that you accept that -- and you talked
24 about the two processes going together, and yet there is
25 another theme in the schedule you proposed, that to me ears

1 at least, speaks about separating them. And a question
2 that arises is, how does the Applicant -- the Applicant
3 needs both a permit from the Energy Commission and also a
4 right of way grant from the BLM before they can construct
5 this project, so what is the advantage to having the Energy
6 Commission process run ahead of the BLM process?

7 MR. HARRIS: I am not sure I understand the
8 question, Mr. Kramer.

9 HEARING OFFICER KRAMER: Well, you were talking
10 about going -- what we are hearing from the BLM is that,
11 once the document, the FSA/DEIS is ready, that there is a
12 delay, they have sort of a built-in delay in their noticing
13 procedures of 45 days, at least as things are going now,
14 because they have to get permission to publish the notice
15 that it is available. And I believe you were suggesting
16 that, as soon as the FSA comes out, the Commission should
17 start its process towards hearings. And as I understand
18 the timetables, that is going to cause the Commission to be
19 quite a bit ahead of the federal process. One of the risks
20 I think we are concerned about is that there may be some
21 changes to the project where the analysis that will come
22 out as a result of the Federal Review, and if we have
23 already completed our process, certainly to the point of a
24 final decision and its discovery that the project needs to
25 be modified, you could put yourself in the position of

1 needing an amendment, which would then drag in some
2 noticing overhead at the Commission level and probably
3 extend things. I like long-winded questions, you might
4 have noticed.

5 MR. HARRIS: I am your man, then. Did you want to
6 weigh-in on something, Tom, before I --

7 MR. HURSHMAN: Let me mention one thing. Thank
8 you, Jeff. In our previous scheduling conference, you
9 know, I kind of laid out the longer requirements that BLM
10 has in place for those Notice of Availability review
11 processes through our headquarters office, and the
12 Assistant Secretary of Lands and Minerals. I do not know
13 exactly what the change will be, but there has been, with
14 the Administration change, there has been a renewed effort
15 to take a closer look at that process and I am being told
16 that those reviews will be far more expedited in terms of
17 the time frame that it would take once it reaches the
18 headquarters office, as in the period of possibly two
19 weeks, as opposed to the eight to ten weeks that I had
20 previously talked about. So I thought -- I wanted to make
21 the Committee aware of that change. I have not seen it
22 take place in practice yet because there have not been any
23 projects move forward yet, but --

24 COMMISSIONER BOYD: The mere fact you heard of it
25 is encouraging.

1 MR. HURSHMAN: Thank you, Tom. I guess a couple
2 things. And I think this is a really important point, it
3 kind of goes to what Elena, excuse me, the Public Advisor
4 -- sorry -- was talking about. This is a joint process, it
5 is not a single process. And people have got to get that
6 out of their brain, okay? This is not a single process.
7 It is two processes. They are proceeding jointly, but it
8 is not a single process. And I hear the comments about,
9 you know, one public comment period that I do not really
10 even understand what that means because it defies the
11 requirements of the law in the sense that BLM has got a
12 NEPA process with a 90-day comment period, you all have an
13 Energy Commission process with pre-hearing conferences and
14 evidentiary hearings, and briefing and all that kind of
15 stuff, those things all have to happen for the Energy
16 Commission process, and they also have to happen for the
17 BLM process and they are going to happen jointly, hopefully
18 closely in time, but they are not one process. We do not
19 have a single process here, folks. And that is, I am
20 sorry, just difficult to explain to people. Even my family
21 laughs at what I do for a living, okay? My wife is tired
22 of hearing it, by the way.

23 But it is not a single process. And so what we are
24 asking for, I think at the highest level, is for you all
25 who are here representing the Commission who have, really,

1 the authority to tell the Commission what to do, to proceed
2 down your normal course of process, which is to put out a
3 document, have a pre-hearing process, go to evidentiary
4 hearings. In terms of staff's role, staff is obviously
5 going to do more, I think, in this process than they do in
6 a typical process because it is joint, not single. But at
7 the end of the day, staff's official role in this process
8 on the Energy Commission side of things ends when the
9 evidentiary hearing record closes and the briefs are done.
10 That may be that the staff helps the BLM and, God, I hope
11 they will, with your expertise, and your knowledge, and
12 having been involved in the process to respond to comments
13 on the federal side. But that is a separate process; it is
14 a separate legal requirement. And what we are saying is
15 those things need to proceed separately. And when I hear
16 people saying, "Well, we need to wait for a 90-day comment
17 period to close before we start evidentiary hearings," that
18 is trying to turn a joint process into a single process,
19 and we just cannot do that. And what we have actually
20 proposed in our schedule is an ability to get there. And
21 that is why we have two columns in our schedule, by the
22 way. You will look and there is a set of activities that
23 you all control. And those are really what we want you to
24 focus on. Hang on just a second.

25 So essentially what we are asking the Commission to

1 do is to follow its normal processes and procedures and let
2 the BLM side play out the way it will. Now, we hope that
3 what Tom is hearing is even less optimistic than the
4 reality. We are hoping that they can turn it around
5 quickly. We have been assured that the Administration
6 thinks this is a high priority and that the stimulus money
7 is a high priority, and that they want to turn things
8 around quickly. But the point is that you all do not have
9 to wait for those folks to do their process, to continue to
10 do the extra steps in your process that are required. And
11 let us be really clear about the differences in those two
12 processes, they are very very very different. BLM's
13 process is largely a paper process, so we have got a draft
14 environmental document, written comments, they do not even
15 have to have a hearing on those comments, although they
16 likely will, NEPA allows for that possibility, but it is
17 basically a draft document, written comments, and a final
18 document. You all have that additional step in your
19 Certified Regulatory Program and what we are saying is do
20 not make the lagging item drive the schedule.

21 HEARING OFFICER KRAMER: Okay, the point about
22 allowing the public an opportunity to comment at one time
23 or place during a one time window, and have that go both to
24 the BLM process and to the Commission's process requires
25 that there be some overlapping between the two. Are you

1 proposing to eliminate the possibility that the public can
2 provide comments in one forum and it would be heard by both
3 agencies?

4 MR. HARRIS: No, I am not proposing that at all.
5 If that is the understanding, then we need to spend some
6 time to clear that up because what we are proposing is that
7 your processes do move forward. And, again, you have a
8 long way to go before you get to a decision document. And
9 people who want to weigh in really need to weigh in before
10 you get to the decision. One of the things that is
11 frustrating for me, you know, dealing with your process is,
12 if somebody comes to me and says, "I only have three
13 meetings I can go to during your 12-month sighting process,
14 which three do I go to to have the most impact?" That is
15 an impossible question to answer, it really is. That does
16 not change because it is a joint process, all right? So
17 there are still going to be those difficulties giving the
18 public the information about where they should weigh in,
19 but the Sierra Club, I am sure, is going to participate in
20 this proceeding as an Intervenor, and they are going to
21 take advantage of this venue, and they also have the right
22 and probably the obligation -- I do not know if the
23 obligation -- they certainly have the right to participate
24 in the separate federal NEPA process, with comments there.
25 What I hope will happen is that the agencies will collect

1 their information and pose them all together on the Energy
2 Commission's website, and also on the Federal website, so
3 that if somebody from the public writes a comment and it
4 goes to BLM, that it does make its way to the state, as
5 well. But, again, they are separate processes and they are
6 not going to be a single process, and people are going to
7 have to deal with that complexity.

8 HEARING OFFICER KRAMER: Okay, I gather you are
9 suggesting that this Commission staff, Energy Commissioner
10 staff, would not normally require the level of detail for
11 the drainage plans that the BLM is requiring, and because
12 of that, the Commission should just go on without that
13 information if you issue an FSA, and then the Commission
14 hearings could begin? Is that the point you are making?
15 Did I summarize that correctly?

16 MR. HARRIS: I do not think that is the point we
17 were making. Let me back up. Focusing down, we are really
18 down to two areas here, we are down to the biological
19 resources and the water issues. The water issue is the one
20 you are raising now. This is the area where I think we
21 have the greatest sympathy for the staff's position of the
22 two, for sure. It is a difficult complex site, there are
23 4,000 acres, and the Clark Mountains and other things that
24 we have mentioned, and we have given the staff a lot of
25 detailed information recently, like as recently as today.

1 So on that issue, I think staff needs some additional time
2 to digest that issue, the information, look at it, ask us
3 questions. But our position, certainly my position as
4 counsel for the project, is that as a matter of law we have
5 provided enough information for an informational document,
6 the EIS and the Final Staff Assessment, to go forward. Do
7 you want to add -- Steve has been poking at me here, but
8 apparently I cannot hear him on this side of my ear, so...

9 MR. DE YOUNG: I am Steve De Young, the
10 Environmental Manager for Bright Source. I think one thing
11 needs to be clarified and that is that the information that
12 Bright Source has been providing on the storm water issue
13 has been going to both agencies, that the data requests
14 coming from the CEC are joint comments, they are CEC/BLM
15 comments. So we are not saying that, because CEC staff
16 would normally require a Draft Erosion Control Plan very
17 late in the process, that they should not be evaluating it
18 now because BLM wants a more detailed document now. So you
19 mentioned changes that might come up after FSA, or after
20 hearings, but prior to the closure of the comment period on
21 the Draft EIS, and we are saying that we do not think that
22 is a possibility because the documents that they are
23 reviewing are the same documents, the information requests
24 that have come to us and our responses are going to both
25 agencies for their review.

1 HEARING OFFICER KRAMER: Staff recently wrote back
2 to you about those plans and had a series of questions
3 about your assumptions in various parts of those plans. Do
4 you consider the information they have now to be complete
5 without those answers? Or are you planning on providing
6 those?

7 MR. DE YOUNG: They have those answers. There have
8 been a number of things that have gone in, in the last week
9 up to today, and there may even be one more submittal
10 tomorrow. But it is a complete response to all of the
11 various rounds of questions. These have not all been
12 written questions from the agencies, some of them have
13 occurred on teleconferences. What we have done is go back
14 to the very beginning, taken every question, every comment,
15 and handled it in a very progressive way so that we are
16 providing all of the responses. You need to understand
17 that the level of detail here is many many thousands of
18 hours of engineer and design time, we are not talking about
19 minor issues. It is many hundreds of thousands of dollars
20 and many thousands of man hours. So we are confident that,
21 once they have the chance to review everything that we have
22 provided in the last few days, and the drafts that they
23 have seen over the last couple of months, that they have
24 everything that they need that will address the assumptions
25 that went into the storm water design, and that we have the

1 ability to control storm water at the site in an
2 environmentally conscious way.

3 MR. RATLIFF: My Hearing Advisor, if I may?

4 HEARING OFFICER KRAMER: Go ahead.

5 MR. RATLIFF: Just to make sure we are clear on the
6 issues. I think there are two separate issues here; one is
7 how much analysis is enough analysis before we do the Draft
8 Environmental Impact Statement, I think that is the one
9 that Steve is addressing, and the other issue is the one
10 that I think Jeff was addressing, which is in terms of
11 process, after the Draft Environmental Impact Statement is
12 released, do you allow -- do you essentially permit the two
13 processes to proceed independently, or in large part
14 independently, to their conclusions, to their separate
15 conclusions, the Energy Commission going through its
16 hearings and through its PMPD process, and to a final
17 decision. During that time, the BLM is receiving comments
18 on the Draft Environmental Impact Statement and, after the
19 conclusion of the PMPD, then responding to those comments
20 and then going to its ROD decision. I think those are two
21 separate issues. I think on the first issue, I think what
22 I hear Bright Source saying is, "We have given you that
23 information and now you have enough information," and I
24 have not had the time to read those submittals yet, and I
25 am very hopeful that they are right. I mean, that would be

1 great if we could agree, and maybe John knows more about
2 that. Maybe John and Tom have actually had time to review
3 the filings, very likely they have not had enough time.
4 And some of that will have to be reviewed, of course, by
5 the Technical Specialists below them. But that is one
6 issue that we have not been satisfied with until now; we
7 felt like there were still informational documents
8 outstanding that we had to have to have a complete
9 Environmental Impact Statement. And if everything is
10 answered now, then great. And we will know soon, I
11 suppose. The other issue is one which I think arose from
12 the record of conversation that you filed and that was a
13 apart from the Public Advisor's separate identification of
14 an issue, and that issue was one that discomfited the staff
15 when we looked at the proposed schedule, that we had
16 actually previously agreed to out of the earlier set of
17 hearings. And that one was one that, if you just look at
18 the proposed schedule, there seems to be a somewhat -- and
19 Hearing Advisors probably said this better than I can --
20 but there is kind of a disjuncture between the two public
21 processes, one that the Energy Commission is following on
22 the one hand, and the other that the BLM is following on
23 its part. The one that struck us as most apparent was the
24 fact that the PMPD would be up for adoption by the Energy
25 Commission while BLM was still writing its responses to

1 comments on the Draft Environmental Impact Statement. And
2 it is not my intent -- I express no opinion about whether
3 there is any legal problem with that here, but there is
4 certainly an appearance problem to have one decision going
5 forward on the state level, and yet the staff for the
6 Energy Commission probably being very involved in writing
7 the responses to comments on the BLM side, at the same
8 time. And that is what troubled us and that is why we
9 wanted to bring it to the Committee's attention. And
10 again, that is a -- I do not know if that is a legal issue,
11 but it is an appearance issue and we wanted to bring it up.

12 HEARING OFFICER KRAMER: In what sense -- I am not
13 sure I see the appearance problem. Could you spell it out
14 for me a little clearer? Are you saying that it appears to
15 put pressure on the BLM? Or give the project some kind of
16 momentum?

17 MR. RATLIFF: Well, I think if you are a
18 participant in the hearings and, first of all, I think it
19 is important to realize that the participants in these
20 hearings, thus far, the Intervenors strike me as quite
21 sophisticated, and that is important. But even so, if you
22 are intending to comment on the Draft Environmental Impact
23 Statement, you might be somewhat chagrined to see that the
24 Energy Commission has already made its decision before
25 there is any response to your comment on the BLM side. So

1 that aspect of it can be confusing, I think, from an
2 unsophisticated participant, and it may suggest that BLM's
3 decision has already been made because the Energy
4 Commission has already made the decision. I do not think
5 that is the case, but if was just the appearance of it
6 struck us as unfortunate in the current schedule.

7 HEARING OFFICER KRAMER: Oh, I think there may be a
8 misunderstanding because the comment period was expired by
9 the time -- actually, if you look at the October schedule
10 column, the comment period ended June 1 --

11 MR. RATLIFF: Which schedule are you looking at?

12 HEARING OFFICER KRAMER: The spreadsheet.

13 MR. RATLIFF: At your spreadsheet.

14 HEARING OFFICER KRAMER: Yes.

15 MR. RATLIFF: But I am looking at our spreadsheet,
16 which is the Applicant's proposed schedule, which is what
17 we --

18 HEARING OFFICER KRAMER: Oh, well I was talking --
19 yours was a reaction -- okay.

20 MR. HARRIS: Can I comment, sort of responded, I
21 guess?

22 HEARING OFFICER KRAMER: Sure.

23 MR. HARRIS: I guess, Dick, what I have been
24 assuming is that the NOA will get published nearly the same
25 time as the environmental document, okay? So Tom's two-

1 weeks is closer to two weeks, right? Then we have got a
2 90-day period to run. If we can have a pre-hearing
3 conference, have evidentiary hearings, have briefings, and
4 have the Committee write a decision in less than 90 days,
5 you know, that would be super-human. So I guess there is
6 only a problem if there is an extreme delay with the NOA
7 because I do not think you guys can get through these
8 additional Energy Commission processes, the pre-hearing
9 conferences and testimony and the hearings and briefings
10 and PMPD in 90-days. I would love to think you could, but
11 I just think that is probably not possible. And I do not
12 think we ever proposed that. And it may just be the fact
13 that we put two columns together and the line should have
14 been above the other line, but this is what happens when
15 you let me use Microsoft Office. But I am envisioning that
16 the 90-day period is closed before we ever get done with an
17 evidentiary record closed, and PMPD.

18 HEARING OFFICER KRAMER: Mr. Joseph.

19 MR. JOSEPH: My Kramer, unless I am missing
20 something, I do not think there actually is a problem here
21 if you look at the last column of the spreadsheet that you
22 prepared. If the starting point for the FSA and the Draft
23 EIS are the same, and you look at the time period that you
24 have sketched out, you do not get to evidentiary hearings
25 until about 70 days after the FSA/DEIS, if the evidentiary

1 hearings are also the public comment period, the oral
2 public comment period for the Draft EIS, that would be sort
3 of a normal kind of place to have it near the comment
4 period, but with some time left for written comments after
5 that. And so then, if the evidentiary hearings are closed
6 15 days before the end of the comment period on the Draft
7 EIS, that does not seem to be a problem there. And then
8 you start running to 60-day comment period for responses to
9 comments for the Final EIS and preparation of the PMPD,
10 simultaneously. So given the column that you have laid out
11 here, I do not really think there is a problem.

12 MR. RATLIFF: Well, Mark, just to make sure we are
13 talking about the same thing, I mean, you said it is going
14 to be 90 days from the time the FSA is published until
15 hearing, and yet if you look at the October '08 schedule,
16 which I am not sure if it is amended here or not, but
17 currently the October schedule was to have that roughly
18 following two weeks from the month -- hearings two weeks to
19 a month from the filing of the FSA, which was very very
20 close.

21 MR. JOSEPH: Right, but Mr. Kramer's schedule --

22 MR. RATLIFF: Okay --

23 MR. JOSEPH: He seems to have solved the problem.

24 MR. RATLIFF: I see, by building in more time
25 between the hearings, you are saying it reduces the amount

1 of time.

2 MR. HARRIS: Would it help if I passed -- sorry,
3 Mr. Kramer -- would it help if I passed around the -- I
4 took your table and had my crack paralegal assume some
5 dates and put some actual dates in here that are going to
6 not make the staff happy, but I would like to pass that
7 around because I think it makes Mr. Joseph's point, if you
8 are okay with that?

9 HEARING OFFICER KRAMER: Yes, please, because I was
10 going to try to focus people on filling in the table.

11 MR. HARRIS: Before staff sees this, what I asked
12 my paralegal, Karen Mitchell, to do was assume that the
13 document was published a month from today, okay? So get
14 back in your chairs. I know that is not a realistic
15 assumption, but it gives you some idea. And, really, you
16 need to turn to the second page, this is a three-page
17 document, and my staff will hear from me for not making it
18 double-sided later. But on page 2, there is some
19 handwritten dates in the schedule column that Mr. Kramer
20 put out there, and those again key-off the final Staff
21 Assessment/DEIS being published, and that is the June 15
22 date that is in the third cell on page 2 of the hand-out.
23 And I apologize to the people on the phone, we will
24 definitely docket and serve this document today. To the
25 point Mr. Joseph was making, if you look at that

1 handwritten set of comments that the DEIS public comment
2 period would end on September 14, 2009, and the PMPD would
3 not be published until thereafter, the hearing would be
4 October 28th. So I think that appearance issue is dealt
5 with by Mr. Kramer's proposed schedule.

6 MR. RATLIFF: Well, now that I understand the
7 schedule, I think it does because you have extended greatly
8 the amount of time before the hearing. But does that still
9 work for you in terms of meeting your --

10 MR. HARRIS: Yeah, you know, I am not going to hand
11 this one out because I want to docket it, too, but before
12 the hearing, I asked my paralegal, I said we need to get
13 the decision by the end of the calendar year, and she threw
14 in the dates, and we ended up with a January 12th decision.
15 And I think she picked January 20th off on this one because
16 that is the actual date that the Commission meets. But,
17 yeah, if we can hold these dates and this schedule,
18 acknowledging that June 15 is probably early, that gets us
19 a decision in January. As I said, I think we can move
20 tortoise generally speaking in spring and fall. If we were
21 to get a decision in January, or even February, God forbid,
22 of 2010 that would allow us hopefully to be able to start
23 that process of doing the clearing and get the construction
24 going.

25 MR. HARRIS: The thing that I like about -- and I

1 was so pleased to see this e-mail this morning, Mr. Kramer,
2 was that at the end of the day, if you look at this table,
3 and if you look at what I asked my staff to prepare, at the
4 end of the day, we kind of reached the same conclusion on
5 how long it should take from FSA to final decision, and
6 that is about a six-month time period. So the question is
7 how quickly we can get that six-month period started.

8 MS. SMITH: Before we have any discussion about the
9 concept of a FSA on June 15th or thereabouts, I would really
10 like to hear the biology discussion.

11 MR. HARRIS: Okay, fair enough. And I want to
12 reiterate what Steve said, too, we acknowledge that we gave
13 you guys a whole lot of information on water real recently,
14 so, you know, that is why --

15 MS. SMITH: We appreciate the acknowledgement.

16 MR. HARRIS: That is right.

17 MR. DE YOUNG: I would also like to point out that
18 the project change that we talked about, that we called our
19 "Optimization Package" that, what it essentially did, is it
20 added 250 feet to the border of each one of the projects,
21 and added additional mirrors and cut down on the number of
22 towers, that was filed May 8th of 2008. So if we consider
23 that the issues that we are dealing with right now, that
24 are biology and stormwater, it would seem that we have had
25 a year to deal with every other issue, to prepare FSA

1 sections on air quality, cultural -- everything else that
2 we have been dealing with in the project, so that we are
3 down to a couple of issues here. Now you want us to talk
4 about biology?

5 HEARING OFFICER KRAMER: Well, yeah.

6 MS. SMITH: Well --

7 HEARING OFFICER KRAMER: You guys had all powered
8 up, so I could not even power up my mike, but yeah, there
9 has got to be an override on this system. I am thinking
10 that I am losing power or something. Yeah, I think we do
11 need to get to whether -- because this all hinges on when
12 could this timetable start. But before we do that, let us
13 talk for a minute about -- apparently Mr. Harris is
14 perfectly fine with the amount of time that we have allowed
15 between the publication of the FSA and the evidentiary
16 hearings for the exchange of evidence. The point here is
17 we -- it is a relatively new initiative from us in the
18 hearing office and the committees, but we are trying to
19 avoid what we used to see, which is people would be pulling
20 documents out of the air sometimes at the hearings, and
21 then that would engender panic on the part of some, to
22 perfectly cover themselves they might want to have some
23 additional time to go out and see what they could generate
24 by way of rebuttal, and of course that adds delay, quite
25 possibly, to the issue of a decision. So what we are doing

1 here is creating a system in which everybody is going to
2 exchange everything up front, and only in the rarest of
3 cases, where extremely good cause is shown, will somebody
4 be allowed to pull a document out of their ear at the
5 hearing and present it as evidence. So that means -- and
6 Mr. Harris originally had, I think, 30 days between the FSA
7 and the hearing starting, this is about probably eight
8 weeks. And even at that, I just want to telegraph and
9 discuss with you for a moment whether we need to commit to
10 that long a schedule at this point, or whether the parties
11 would like to perhaps have a scheduling conference at the
12 time the FSA goes out, where we can ask everyone more
13 definitively how many issues they really have; for
14 instance, if there really are no issues to be contested,
15 then we are wasting a few weeks sitting around waiting to
16 share documents when there probably will be none. So one
17 suggestion I have is that, shortly after the FSA comes out,
18 perhaps the parties could -- or maybe just at that time,
19 they could file preliminary -- or then perhaps in their
20 status report, a preliminary statement of what they believe
21 the likely contested issues are and that would allow all of
22 us to assess how much time we really need. I cannot
23 imagine anything less than four weeks, perhaps five,
24 because this is a big document, talking about a big land
25 mass, and the public needs some time to digest it. And

1 then we also have the issue of the BLM comment period, as
2 well. But we might be able to trim that down a little bit.

3 MR. HARRIS: I think that is a great idea,
4 actually. And we can file papers, we maybe can do a
5 teleconference -- pre-hearing teleconference. Anyway, a
6 publicly noticed document because I think talking to these
7 issues, sometimes they are easier to talk through them than
8 to try to put on paper, as we all found out through the
9 last year and a half. But I think it is a very good idea
10 and your basic concept there is not to build time into the
11 schedule if it is not necessary. I obviously would like to
12 see the time between the FSA and the hearings to be as
13 short as reasonably possible, but we also do have the
14 concurrent interest in having the 90-day period run. So if
15 we use that time wisely, yes. And our hope is to get this
16 down to very few issues to be litigated. I think there are
17 only a couple issues where there is a cullable claim of
18 litigation issues, keeping in mind that it is a factual --
19 the purpose of the evidentiary hearings are to develop a
20 factual record, and not to make legal arguments. So we are
21 kind of hoping for a pretty narrow set of issues, as well,
22 would be our goal.

23 MR. KESSLER: Hearing Office Kramer, if I could ask
24 just one clarification?

25 HEARING OFFICER KRAMER: Yeah, go ahead.

1 MR. KESSLER: One of the primary questions for
2 staff right now is to inquire when is our last bite at the
3 apple, and what I am getting at is, you know, in a Final
4 Staff Assessment, we would normally include the conditions.
5 We would consider really that our last bite, other than
6 providing comments on the PMPD, but we would normally
7 include the conditions that are inclusive of permits that
8 would normally be, say, issued by state agencies, the
9 Stream Bed Alteration Permit. The permits are normally
10 issued by the Regional Board, and so on. If we assume that
11 our last opportunity to include those for public
12 consideration and review and comment is our FSA Draft EIS,
13 then that is also work that has to go here in the near
14 term. If we assume, since we will be the principal authors
15 of the Final EIS, as well, responding, working with the BLM
16 staff to respond to the public and agency comments, and
17 produce a Final EIS, at what point would that be able to
18 contribute to the PMPD and the process going on with
19 hearings, and so on? So we just want to be sure that, if
20 there is an expectation that, in terms of the permits and
21 the bio-mitigation that has to be developed, as well as
22 those requirements for permits normally issued by the
23 Regional Board, the waste discharge requirements and so on,
24 we do not believe a 41 Water Quality Certification will be
25 required because we learned from the Applicant today that

1 there are not waters of the U.S. that are considered
2 jurisdictional for the project, so that is really good
3 news, but there are some state level permit requirements
4 that are inclusive, and so our recommended conditions of
5 certification that are considered, you as a committee and
6 the Commission for adopting and the license, at what point
7 in time do we have the opportunity to plug those in? If it
8 is in the interest of the Committee to move this forward
9 faster, and we have an opportunity to plug those in between
10 the Draft and the Final EIS, then I have not talked to my
11 cohorts here, but we just want to make sure we have that
12 opportunity. I think that is our primary concern. If we
13 need the opportunity to -- if our last bite is the Final
14 Staff Assessment, we are going to need a little bit more
15 time than just reviewing these stormwater calcs, we are
16 also going to need more information from the Applicant to
17 work with the agencies, which they have been depending on
18 having their Stormwater and Site Development Plans put
19 together before they can conduct and complete those
20 consultations. So we need to -- if it is possible to have
21 some direction as to are we looking at Energy interjecting
22 this what would normally be our Final Conditions of
23 Certification for the FSA Draft EIS, or within the FEIS?

24 HEARING OFFICER KRAMER: Did you want to talk to
25 this point, Ms. Smith? Or something else?

1 MS. SMITH: I think it is to this point.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SMITH: With respect to the FSA, typically
4 staff holds an FSA Workshop, and given all the new
5 information in this proceeding between the PSA and the FSA,
6 it may be in the best interest of everyone involved to have
7 an FSA Workshop again so we can resolve this stuff early.
8 And from my experience, the FSA workshops have been fairly
9 productive. You know, it is not built into the system, I
10 do not know if you have any intention of doing that, but
11 again, we all want to pare the issues down as much as
12 possible before we go into evidentiary hearings. Thank
13 you.

14 HEARING OFFICER KRAMER: Normally that is an option
15 that staff chooses to exercise or not. Committees
16 sometimes encourage it. First, to answer your question,
17 Mr. Kessler, well, I mean, normally an FSA would have all
18 those things worked out and I think you could -- you may
19 not have all of the details, but you need to provide
20 whatever you can in the FSA. We are not planning on
21 adopting a final decision and creating a problem of needing
22 to do an amendment down the road until we know that the BLM
23 process is all, but for the paperwork, decided on what
24 their requirements are going to be. So I cannot give you a
25 precise answer, but I would encourage you to put everything

1 that you know into the FSA, and explain what it is that you
2 do not know, and work as diligently as you can to fill that
3 gap prior to the evidentiary hearing.

4 MR. HARRIS: Mr. Kramer, I want to respond just to
5 the one thing. John, did you mean Draft Stream Bed
6 Alteration Application? Or did you actually mean the
7 permit, because I think you said permit.

8 MR. KESSLER: We would normally receive the permit
9 requirements that would typically be included in the actual
10 permit, but we would normally receive those requirements
11 and build those into our conditions of certification. And
12 this is a fairly new development, Jeff, in terms of how we
13 have worked the process, but it really boils down to under
14 Warren Ahlquist, if I am quoting that correctly, Dick, you
15 know, that our agency is considered the one stop licensing
16 shop, and we, rather than -- we do not want to put you as
17 an Applicant in a position where you are held up because
18 you have to rely on another local or state agency for a
19 separate permit. We want our license to be all-inclusive,
20 except for the federal permit requirements.

21 MR. HARRIS: Okay, well, my understanding is most
22 of these issues are typically dealt with in the biological
23 conditions of certification, the BRMMP, which I can never
24 remember what it stands for, but Biological Resources
25 Mitigation and Monitoring Program, I believe. John, you

1 guys can fix it later. Anyway, but it will be in the
2 BRMMP, it will say, "You will abide by the Biological
3 Opinion, the Stream Bed Alteration Agreement, the 401
4 Certification, if applicable," so those things are
5 typically entitlements that will rely on the Energy
6 Commission certification as their CEQA clearance, and so
7 they typically happen post-approval, and they are typically
8 dealt with through conditions.

9 HEARING OFFICER KRAMER: On that point, I -- maybe
10 staff will need to comment further, but it has always been
11 my understanding that, while the Final, for instance,
12 Biological Opinion may not have been issued at the time
13 that the Commission approves a project, the Commission
14 knew what it was going to say, and there would be no
15 surprises. So I think that may imply a -- correct me if I
16 am wrong, Mr. Harris -- but it sounds as if you are
17 envisioning a world in which the details may change after
18 the Commission acts. And that, at least, is not consistent
19 with the way I understand the Commission has operated in
20 the past.

21 MR. HARRIS: Well, I am envisioning a world where
22 the Commission does exactly what it said in the past, so
23 if, as you mentioned with the Biological Opinion, you have
24 approved projects without Biological Opinions, you have
25 usually had some kind of indication informally about what

1 is going to be in those opinions; BLM, for NEPA purposes,
2 is going to want that final opinion before they get the
3 Record of Decision, and that is certainly BLM's practice,
4 and we do not disagree with that practice, and so there are
5 some things that may happen later on in the process, but
6 that is typical. And so, if you are all thinking or asking
7 for something that is atypical, let us identify it and talk
8 about it because that is --

9 MR. RATLIFF: We are just wanting you to do what
10 you always do --

11 MR. HARRIS: In terms of conditions.

12 MR. RATLIFF: If I may, yes, we have testified, I
13 think we may have even had decisions where we did not have
14 the Biological Opinion yet, that is possible.

15 MR. HARRIS: Setter (phonetic) -- the first one,
16 post -- I am sorry, Dick.

17 MR. RATLIFF: But I am not sure that is really the
18 issue here. I think what John is referring to is the
19 effort that we are making now to get the take permit and
20 the Stream Bed Alteration Agreement conditions into our own
21 permit, is the agency which is supposed to be in lieu, give
22 the one in-lieu license for those permits. And John may
23 want to elaborate on that more, but we want to have those
24 take conditions in the Stream Bed Alteration Agreement
25 conditions in this permit. And I think his question went

1 to the issue of, if we have to go sooner, rather than later
2 with the FSA/DEIS, when is the ultimate point at which we
3 can express the permit conditions that we are getting from
4 another agency, in this case, the Department of Fish &
5 Game, to put into that permit. Is that right, John?

6 MR. KESSLER: Yes, and just to clarify that, in as
7 recently as I think two or three years ago, and prior, we
8 would -- the way Mr. Harris characterized it is that we
9 would have conditions to certifications that says, "You
10 will go out and obtain this permit, an Incidental Take
11 Permit, the Stream Bed Alteration Agreement, from Fish &
12 Game," and that agency -- Fish & Game -- had the
13 opportunity to be satisfied at that point, post-licensing.
14 But now, because they have to be -- when we boiled those
15 conditions, or the permit requirements into our license
16 decision, they have to be satisfied with what we --
17 building in a sufficient level of detail for those permit
18 requirements before the license. And our place to inject
19 those requirements is in the FSA. So we do not have an
20 opportunity later, if we are going to boil these
21 requirements into the decision, to do so later than the
22 FSA, from at least our more recent practice.

23 MR. HARRIS: Can I respond?

24 HEARING OFFICER KRAMER: Go ahead.

25 MR. HARRIS: You know, you were talking about your

1 last bite of the apple. I think we are down to the core
2 and seeds at this point. You do have the ability in the
3 briefs to propose changes to conditions if you so desire; I
4 have seen it in many cases based upon factual
5 circumstances. I guess I want to be clear, 1) there is not
6 a gap in the information; if the condition says, "You must
7 live by the Biological Opinion," that is not a gap. Now,
8 you might get better information later, maybe the
9 Biological Opinion comes out and, if the evidentiary record
10 is not closed, I am sure that it will go into the
11 evidentiary record and you can brief the issue. If the
12 evidentiary record is closed, I am sure that Mr. Kramer
13 would entertain a motion to re-open that, and we would not
14 object for something like that. And so we are not talking
15 about gaps here at all, we are talking about quality of
16 information. And the process very much does allow you to
17 fill in higher quality information when it becomes
18 available, whether that is in the FSA or whether it is in
19 the Supplemental that you guys have regularly done in the
20 past, or whether that is in briefings, or whether it is in,
21 you know, post-record closing new information. But the key
22 is not to have a gap in there, not to miss a condition, not
23 to put in there a condition that says "abide by the
24 Biological Opinion" is wrong, but to add better quality
25 information later, I think there is plenty of opportunity

1 for you to do that right up to the time the Commission
2 makes their final decision, and even thereafter.

3 MR. KESSLER: Well, somewhat along the spirit of
4 what Gloria was speaking to, you know, we try to have these
5 conditions built in for the Preliminary Staff Assessment,
6 and that allows the parties, the agencies, the
7 environmental interest groups, to hopefully get comfortable
8 with what is included in those requirements so that they
9 know that we are being good environmental stewards. And so
10 now we are talking about injecting those specifics late in
11 the process, and that does not provide that opportunity.
12 We are dealing with a situation on CARIZA (phonetic) right
13 now where we produced a PSA, but we did not have those
14 specifics built in, so we are looking at actually issuing a
15 preview of staff's analysis that would include those to the
16 greatest degree possible, allow for a public review and
17 comment period, and then build those into our Final Staff
18 Assessment for the sake of conducting that public
19 opportunity for reviewing comments. So my only point is
20 that I am not sure that is -- your suggestion is consistent
21 with the spirit of our process.

22 MR. RATLIFF: Well, can I just add to that?
23 I think that what John is alluding to is that, to this
24 point in the process, the issue which is in many ways the
25 most interesting and the most difficult, I think, for the

1 permitting agencies, is the issue of biological mitigation.
2 And the Take Permit requirements under the Endangered
3 Species Act, the California Endangered Species Act, that
4 would be in the Commission's Permit, are the critical part
5 of those -- it will address those issues. So it is not
6 like -- it is not really like this could be an after-
7 thought with this proceeding, it really is essential to
8 proceeding to have the mitigation for the Biological
9 Impacts, if not in the FSA, certainly timely enough that
10 all the parties can discuss them at hearing; they cannot
11 come later in the proceeding because that is really what we
12 are talking about here. And when it gets down to it, this
13 is where there has been difficulty arriving at how that
14 complex mitigation package will be put together. And so I
15 think we cannot really proceed without an FSA that has Take
16 Permit Conditions, and that is one of the things that we
17 have been striving for, and that is one of the things that
18 has been difficult to arrive at because that issue is still
19 being discussed.

20 HEARING OFFICER KRAMER: So given all of that, is
21 this June 15 projected date realistic in any sense?

22 MR. KESSLER: Our latest schedule suggested 45 days
23 was ambitious from the time that we had all information in
24 hand to be able to produce an administrative draft to
25 substantially complete, from which BLM would be able to

1 prepare their Notice of Availability and run it through
2 their system. We heard from Mr. Hurshman that what was
3 considered to be a 45-60 day process on the NOA may be
4 reduced substantially in consideration of the 45 days from
5 the time that we have the information that we need in hand,
6 we also need to consider time for us to review the latest
7 information. Now, we will do our best to cut that schedule
8 down to the degree humanly possible, and to the degree our
9 resources are available to us. I think we are all
10 committed to do that, but we have to do our comprehensive
11 job and, right now, there is a lot of information that we
12 have not had a chance to review and understand to what
13 degree it is responsive and allows us to proceed.

14 HEARING OFFICER KRAMER: Well, okay, as I calculate
15 it, then, taking off two weeks per Mr. Hurshman, you
16 basically have a little less than two weeks to finish to
17 meet the June 15th target. Is that correct? We are at May
18 18.

19 MS. SMITH: Respectfully, we are dealing with a
20 state and federal holiday, and we are dealing with two
21 state furlough days, too.

22 MR. RATLIFF: I am sorry, could you restate that
23 question because I did not understand.

24 HEARING OFFICER KRAMER: Oh, just that we are at
25 May 18, and you need to have basically a document that is

1 ready to go out in order for Mr. Hurshman to then, in two
2 weeks, hopefully, get permission to publish the notice of
3 its availability. So to hit June 15, you subtract two
4 weeks and the remaining time, which is less than two weeks,
5 and on this proposal, the time you have to finish up an
6 FSA.

7 MR. HURSHMAN: Well, I will speak for BLM and tell
8 you that June 15th is absolutely impossible. I am
9 cautiously optimistic that the package that Bright Source
10 has submitted, which we have not reviewed any of it at this
11 point, will be complete and that they will have addressed
12 all of the assumptions and the questions and conditions
13 that we had previously asked, in sufficient detail that we
14 will be able to move forward. But I am not going to make
15 the commitment -- or I am not able to make a commitment for
16 the agency that says that we would come anywhere close to a
17 June 15th date to actually produce the Draft EIS, without
18 even having looked at this package.

19 MR. RATLIFF: I am still quite puzzled by your
20 question. Is it to try to determine working -- is this an
21 effort to kind of get a work back to try to see how much
22 time is required to do things? Or is this assuming that
23 June 15 would be some kind of a magic date? Or -- I do not
24 understand.

25 HEARING OFFICER KRAMER: No, I was just wondering

1 if this was realistic at all.

2 MR. RATLIFF: No, it is not realistic.

3 HEARING OFFICER KRAMER: Okay.

4 MR. RATLIFF: Even Jeff has agreed that it is not
5 realistic.

6 HEARING OFFICER KRAMER: My approach here is that,
7 you know, to at least for the start of the timetable, not
8 to have a hard date in the schedule because, otherwise,
9 then we have to come back and spend some of your resources
10 that could be used in analyzing projects, talking about it
11 again. So I am intending always to have a formula, but I
12 am just wondering for the sake of everyone here, if to
13 pretend that the June 15 is going to cause this magic
14 result, when we know it is impossible, is not probably the
15 best way to leave the room either. Ms. Allen, did you want
16 to say something?

17 MS. ALLEN: Well, in a number of different ways, we
18 have huge reservations about June 15th. As I noted, we have
19 not even heard from the Biologists yet and what they tell
20 me is that they are still dealing with an uncomfortable
21 number of basically black boxes, so we would like to at
22 least discuss that.

23 HEARING OFFICER KRAMER: Okay.

24 MR. HARRIS: So if we can solve those by June 15th,
25 are you comfortable? It is a serious question.

1 MR. HURSHMAN: What is the --

2 MR. HARRIS: Serious question -- well, then do not
3 ask for the answer, Ed. It is a serious question.

4 MS. SMITH: We are open to hearing what you have to
5 say. We would very much like to hear what is happening in
6 terms of biological mitigation agreements.

7 MR. HARRIS: Okay, but if I told you that tomorrow
8 they are solved, then do you still think the 15th is
9 unreasonable?

10 MS. SMITH: I would have to hear from the staff and
11 then we could talk some more.

12 MR. HARRIS: I can hear you dancing over there.

13 MS. SMITH: Yes.

14 MS. MILLER: Hearing Officer Kramer? To take the
15 light off of the June 15th date for a moment, to allow
16 everybody to think, I have a question. And my question has
17 to do with the dates for September and October and, again,
18 these are hypothetical dates provided by Mr. Harris' firm.
19 And I appreciate having them because it does help
20 considerably. But being that I am not an attorney in any
21 way, with any background in NEPA, I have a question that
22 has to do with pre-decisional concerns. I am startled and
23 surprised that I have not heard from BLM and/or anybody
24 else regarding concern of having -- and we are talking
25 about a 30-day difference here -- of having the PMPD

1 issued, 30 days after BLM's comment period ends. And for
2 selfish purposes -- so I have asked my question -- but for
3 selfish purposes, that puts us in the decision making role
4 of having to have clear and concise information to provide
5 to people, and that would be, as I see this hypothetical,
6 telling people, "Comment on the joint document, if you want
7 your comment to come to the Energy Commission, comment
8 period ends on this date, 30 days, if you want your comment
9 responded to by the BLM, it ends in 90 days, and yet
10 comment again if you have not heard a response yet from
11 BLM, which you will not have had, comment again once the
12 PMPD is issued." That speaks to what Mr. Ratliff, I think,
13 was trying to shed light on earlier in terms of perception.
14 I would have to tell people, "Comment multiple times to
15 multiple people," unless we decide -- not me, the
16 Commission and the Committee, that we are going to do it
17 differently. And so I am not interested in making a
18 recommendation so much as I am a plea to please have this
19 decided in a clear and concise manner so that I can break
20 it out in bullet points and deliver that message to
21 sophisticated participants, as well as unsophisticated
22 participants, because no matter how long someone has had a
23 Bar license in the State of California, they still often
24 have questions about our process; it is a complicated
25 process. Thank you.

1 HEARING OFFICER KRAMER: Thank you. We will keep
2 that in mind.

3 MS. SMITH: Mr. Kramer?

4 HEARING OFFICER KRAMER: Ms. Smith.

5 MS. SMITH: Wasn't -- I mean, the whole purpose of
6 the MOU to begin with was to address exactly the issue that
7 she, Ms. Miller, is raising. I mean, we have a built-in
8 process for the most part that solves that problem, and now
9 we are just trying to jumble the whole thing up -- to that
10 point. If we would stick to the MOU as much as possible,
11 we are in good shape with respect to notice and comment and
12 not confusing the public. The notion that the Stream Bed
13 Alteration Agreement and California Endangered Species Act
14 issues can just sort of be supplanted into the document
15 later without any notice and comment, any chance for the
16 public to review it, is just not going to work, and I think
17 that is what John is trying to talk about. I mean, there
18 has never been a situation where the public did not get a
19 look at it. And with all the public interest focused on
20 this case right now, it is just a non-starter, and I just
21 think it is going to backfire, and we are just going to
22 find ourselves in trouble down the road. I mean, we always
23 get some idea of what is coming. And this is one-stop
24 shopping, and that is why, so that the public can look at
25 everything at one stop, not get to look at it at all until

1 there is a final decision made. Thank you.

2 MR. HARRIS: And I need to respond because that is
3 incorrect. The public is going to get more opportunity to
4 participate in this process than they would in a non-
5 process. And let us just take a PV Project, the only
6 difference is that it is not Energy Commission
7 jurisdictional. There is a good chance the public would
8 never see the documents they are going to see in our
9 process here. I just think that is wrong, I am sorry. To
10 Elena's point, you know, it is a joint process, but it is
11 not a single process, you are going to have to tell
12 everybody to file their comments in two dockets, that is
13 the law. And until Congress acts differently, and
14 California acts differently, that is the law, and I am
15 sorry that is complex, but that is the answer. You cannot
16 simplify that further.

17 HEARING OFFICER KRAMER: Well, we may be able to,
18 for instance, just agree that anything that is given to us
19 will be given to the BLM, and vice versa. We may also
20 choose, though, to say that if you want your comments to be
21 considered by the CEC, that you will have to make that at
22 or prior to the evidentiary hearing, which may be at a time
23 that is somewhat less than the 90 days that the BLM would
24 allow you. But I agree with Ms. Miller that we should be
25 very clear about that, and I will remember to put something

1 in the order that, then, she can read to people who ask her
2 questions. As far as the biology issues go, we will need
3 to wrap this up in about 20 minutes. But, Mr. Harris, are
4 you suggesting that the Committee would direct -- are you
5 asking the Committee to direct the staff to, in effect,
6 back off on some of their requests for information?

7 MR. HARRIS: No. No, we are not suggesting that at
8 all. And you all do not know that because we have not
9 gotten to this discussion yet. The Department of Fish &
10 Game is in the audience and they can speak for themselves,
11 probably should, but let me do say, one thing that has been
12 good is we have been able to have some dialogue with that
13 agency because they are not the permitting agency here,
14 they will not be issuing a permit, the Commission will be
15 issuing the permit. And so if anybody is getting excited
16 about ex parte issues, that is simply not there. But we
17 have had a lot of good dialogue and I think we are getting
18 very close to reaching a solution, a proposed mitigation
19 package for your consideration in a decisional document,
20 that I think is appropriate. I think I would like Scott,
21 if he can, to speak on behalf of the agency since I
22 certainly cannot do that.

23 MR. FLINT: Good afternoon. I am Scott Flint,
24 California Department of Fish & Game.

25 HEARING OFFICER KRAMER: Could you spell that for

1 us?

2 MR. FLINT: Last name is Flint, F-l-i-n-t.

3 HEARING OFFICER KRAMER: Thank you.

4 MR. FLINT: So two things, I do want to reiterate
5 what was just said as far as CESA mitigation. The
6 Department is near completing its recommendations to the
7 Commission on mitigation alternatives, and we have
8 committed to having those to the Commission staff for their
9 consideration at the end of the month. There is a second
10 issue here, however, related to Stream Bed Alteration, the
11 two areas where the Department has had primary jurisdiction
12 is CESA Endangered Species Permitting, and then separately
13 under 1600 of the Fish & Game Code for Stream Bed
14 Alteration. That -- so while we are close on providing the
15 CESA recommendations, our 1600 impact analysis and
16 recommendations will be based on the same stormwater and
17 site drainage specific work that is just being submitted
18 now, today, and maybe over the next couple days or two. We
19 will need to evaluate that information. Typically, if we
20 were permitting this project, we would have 90 days under
21 the law; we would certainly work to do that within 45 days
22 and finalize those recommendations, but something like a
23 schedule of June 15th would clearly not work. I also want
24 to reiterate, in the past, the Department has issued
25 permits on some energy projects and, for the eight, nine,

1 or 10 that I have worked on since 2000, all of those were
2 worked through the Commission process where the Department
3 would provide all that information into the docket, and it
4 would be provided in the PSA and FSA for public review.
5 And our permit that was issued at the end would simply
6 ensure that there was no deviation from our
7 recommendations. We -- two things, if we were to do that
8 and were truly issuing separate permits, we would still
9 need to rely on the Commission's process and document for
10 the CEQA compliance for the issue of those permits, that is
11 one point, so that information does need to be in there in
12 sufficient detail; secondly, in the spirit of working under
13 the Executive Order for one stop permitting, we are no
14 longer issuing those separate permits. So our desire is to
15 have the Commission conditions for certification serve as
16 those permits, where that issue may have been a little
17 confusing in the past, but we are clear on that going
18 forward that that is what we desire to happen. We have one
19 project that has been permitted that way, exclusively, and
20 this is the second project that will be going through that
21 process.

22 HEARING OFFICER KRAMER: Thank you. So, Mr.
23 Harris, did you want to speak to the biological issue some
24 more? Or have we covered them?

25 MR. HARRIS: Yeah, I guess I want to emphasize what

1 Scott said, that the thought was that they are committed to
2 get us something by the end of the month. I think we had
3 mentioned the 27th, which is a week from tomorrow, or today.
4 Anyway, Wednesday, maybe. So the big issues are the CESA
5 issues. There is only one species of concern on the site
6 that is both state and federally listed, that is the Desert
7 Tortoise. And BLM has a mechanism that involves an in-lieu
8 fee at a 1:1 ratio for lands of this character. We have
9 talked to the BLM's Needles office about how that will all
10 play forward and we are looking for some similar treatment
11 for the state on the CECA issues. We really want to put
12 these issues to bed and we want the department to become
13 comfortable with the approach we are going to take, as I
14 know that they will look to apply it in other settings.
15 And so it really gets down to the issue of land valuation
16 and then in-lieu fees because there is simply not 12,000
17 acres of land available in the desert to be purchased at a
18 3:1 ratio some people would like us to see. I think you
19 are going to see a pretty good dialogue has taken place,
20 and you are also going to see a very good result in the
21 next 10 days or so, and I think that should hopefully put
22 most of these issues to bed. And I want to emphasize again
23 how you can deal with these issues in your Conditions of
24 Certification. You do not have to have the final document,
25 you have to have the information available, yes, so people

1 can make the decision, but you do not have to wait for the
2 permits to be issued like the Stream Bed Alteration Permit,
3 I guess, is not even going to be issued anymore. So let us
4 not confuse enforcement mechanisms with informational needs
5 for the environmental document.

6 COMMISSIONER BOYD: I will just comment, while Mr.
7 Harris at the beginning of this thing said it is two
8 processes, Mr. Ratliff basically said it is two processes,
9 and all day long we have tried to mesh it together and then
10 take it apart again, so I have lots of notes and I am not
11 the sighting committee, but I may have some advice to
12 counsel for the sighting committee. This is just one case,
13 there are going to be others like it. So -- interesting,
14 to say the least.

15 HEARING OFFICER KRAMER: Well, hopefully it is a
16 learning experience.

17 MR. KESSLER: Hearing Officer Kramer, if possible
18 --

19 HEARING OFFICER KRAMER: Turn your mike on.

20 MR. KESSLER: If possible, I would like to provide
21 Susan Sanders, our biologist, with just a few minutes. I
22 realize we are trying to bring this to closure, but I think
23 she can just quickly give some clarification as to why, as
24 Mr. Flint said, and I have said, that some of the specific
25 requirements of what these permits that would normally be

1 issued by state agencies need to be included in our
2 Conditions and Certification.

3 HEARING OFFICER KRAMER: Okay, go ahead.

4 MS. SANDERS: I am Susan Sanders, biologist working
5 on Ivanpah. And just to reiterate what Scott and John have
6 said, things like the Translocation Plan are part of our
7 conditioning, and we have to have enough information so we
8 have assurance that there is a safe place, protected place,
9 to put the tortoise. So while I will agree, small details
10 can be worked out, the questions that we laid out in our
11 comment letter on your Translocation Plan, we need the
12 answers to those before we can proceed. And I do not think
13 they are necessarily all that challenging, I mean, we can
14 offer whatever help we can provide in getting that, but we
15 need information about the habitat, whether it is feasible
16 to fence the site, because if it is not, we need to figure
17 out another site soon before we proceed any farther. The
18 same thing with the Stream Bed Alteration Agreement, right
19 now, we do not know if all 198 acres of state waters are
20 impacted, or if it is a substantive event. And to get that
21 information we need what you have just give us today, we
22 need to analyze it and make sure we are comfortable with
23 it, and so these are not small details, these are major
24 components of our conditions and the permits that we are
25 now incorporating into our document.

1 HEARING OFFICER KRAMER: Thank you.

2 MR. RATLIFF: And Commissioners, if I may, I think
3 if Bright Source is saying that you do not have to have the
4 Conditions of Certification in your environmental analysis
5 document, that it is just the information, then we disagree
6 with that and I want to emphasize that because, I mean,
7 under state law, if you do not have your mitigation in your
8 decision, then you have an inadequate decision. And
9 backing up from that, you have to have, I think, these
10 conditions in terms of process available for review at some
11 time where people can hold them up to the light and say,
12 "Is this really a special mitigation?" So I think that, in
13 our view, we have to have the conditions that Fish & Game
14 would require, and any other conditions that would be
15 required to mitigate environmental impacts under CEQA in
16 our document when it is published.

17 COMMISSIONER BYRON: In the FSA.

18 MR. RATLIFF: Yes, or certainly, if it is not going
19 to come then, it has to come in time in the process for it
20 to be publicly available prior to the hearings, otherwise I
21 do not think we can proceed, I mean legally proceed. So I
22 just want to illustrate, we may have a very important
23 disagreement on that point.

24 MR. HARRIS: I think you unintentionally
25 mischaracterized what we are saying, Dick. We are not

1 saying push everything to the back end and deal with it
2 then, and just say, "Here is the condition that says we'll
3 deal with that." The conditions have to call out things
4 like the Translocation Plan, and they have to call them out
5 in detail, and they will say we cannot translocate until
6 you guys approve. But the kind of questions we are being
7 asked on that plan, in particular, things about the
8 implementation details, cardboard boxes vs. plastic
9 containers, those kinds of things are exactly the types of
10 things that happen post-certification. That is the point.
11 The point is not ignore it and push it out until the end,
12 the point is use exactly the same processes, go pull any
13 one of your standard biological conditions out of the last
14 35 projects you have approved, that says, "Here is you
15 BRMMP and here is what you have to do." That is what we
16 want in this project, that is all we are asking for. We
17 are not asking for you to ignore those things.

18 HEARING OFFICER KRAMER: Okay.

19 COMMISSIONER BOYD: Let me ask if the staff
20 envisions that differently, based on, Dick, what you just
21 said?

22 MR. KESSLER: Yes. Well, if you look at the
23 Victorville 2 decision, that was one of the first cases I
24 worked on, where we included these conditions, the state
25 permits, the Stream Bed Alteration Agreement, the

1 Incidental Take Permit, as conditions of certification; so
2 we had to spell out in adequate detail how the Applicant
3 could satisfy the condition. Now, I am not to the level of
4 detail that some other plans or associated plans like under
5 the BRMMP, where there is still some follow-up developments
6 that can occur post-licensing. But in order for Fish &
7 Game to rely on our document, be satisfied that there is
8 the details of those permits are adequately specified, they
9 need to be included in our Conditions of Certification.
10 You heard that from Mr. Flint, you heard that from Ms.
11 Sanders and you are hearing it from me. That is the way we
12 have been processing our documents -- recently.

13 HEARING OFFICER KRAMER: Well, let me ask you this.
14 Are there cases where, if you do not have the absolute
15 details of the performance, you can write a performance
16 standard that would adequately mitigate?

17 MR. KESSLER: Yes.

18 HEARING OFFICER KRAMER: And will you be doing that
19 wherever you can to avoid this problem, if it is going to
20 cause delay, otherwise?

21 MR. KESSLER: My understanding is, well, as long as
22 we can demonstrate the mitigation to a level that could be
23 understood, that can demonstrate that it mitigates the
24 impact, that there is proper specificity, if that can be
25 expressed in terms of a performance standard, we look at

1 doing that. We are not trying to bog things down to a
2 level of detail. We do not necessarily have to specify,
3 for example, the particular lands that have to be acquired
4 as part of habitat compensation, but we may have to
5 describe what the general quality of those lands are, or a
6 formula for how those lands, when you take into account
7 their existing land use, and how those will be used in the
8 future, to what degree does that provide habitat quality to
9 offset the impact. So those are the kinds of things that
10 we do in terms of like a performance standard in order to
11 try to basically get enough information out there that
12 everybody can understand, that that is a reasonable
13 approach, and that is going to achieve mitigating, or
14 lessening, or avoiding an impact.

15 HEARING OFFICER KRAMER: Okay, thank you. Does any
16 party wish to make -- well, first let us take public
17 comment if there is any. Does anybody in the room wish to
18 make a public comment? Seeing none, anybody on the
19 telephone?

20 MR. SUBA: Yes, this is Greg Suba from the
21 California Native Plant Society. I appreciate the
22 opportunity to comment. I heard a wish in the background
23 that Ivanpah be a learning experience, and to that extent I
24 am wondering, if this project goes through in the site
25 where it is currently planned, what will we learn at an

1 eco-system level in terms of where we are sighting these
2 projects? Especially in terms of the cumulative impacts
3 from, for renewable energy projects, from the incursion
4 into undisturbed habitats and fragmentation of undisturbed
5 habitats? So my question, I guess, is how does Ivanpah fit
6 into an ecosystem level sighting process?

7 HEARING OFFICER KRAMER: Well, today all we think
8 we can do is note your question and staff may be able to
9 address it in their report.

10 MR. SUBA: Okay, I am sorry if it was not specific
11 enough. I just have a genuine desire to understand how
12 that part of the process works and how Ivanpah fits into
13 that process, either the desert renewable energy
14 conservation planning process, or the recently released BLM
15 proposed solar energy zone development. You know, I hope
16 we get large solar energy projects like this, I just wonder
17 what we are learning in this process at an ecosystem level.
18 And I appreciate all the detail that has been discussed and
19 that is being developed at this particular level, but this
20 not happening in a vacuum and I am wondering how this fits
21 into a larger picture and how that is being planned for.

22 HEARING OFFICER KRAMER: No, I understand your
23 question. It is not something -- this is a micro part of
24 the process, if you will. I assume that you are
25 participating and monitoring those other processes.

1 MR. SUBA: Yes, sir.

2 HEARING OFFICER KRAMER: Okay, good. Any other
3 comments? Any closing comments? Commissioner Byron?

4 COMMISSIONER BYRON: I have a question. I would
5 like to go back to Mr. Hurshman, I think I want to hear
6 from you one more time. This is going back earlier in the
7 discussion with regard to what I thought I heard staff
8 agree was acceptable, and that is a process that went
9 parallel, whereby a PMPD was issued. I am looking at the
10 Applicant's schedule that they handed out and I realize
11 that the FSA starting date is in question here, of June
12 15th, but now I am looking down further where the BLM Draft
13 Environmental Impact Statement would come out around
14 September 14th, and the PMPD would come out around October
15 28th. Now, the dates are not what is important here because
16 I realize the starting date is in dispute, but I was
17 curious to hear from you because we did not earlier,
18 whether or not that kind of bifurcated process where we
19 would work in parallel while you do your noticing process
20 -- and forgive me if I say it incorrectly -- and we would
21 proceed with the evidentiary; would that be acceptable to
22 you? In other words, did you hear anything new today that
23 would allow you to depart from the letters that we got from
24 BLM indicating not to bifurcate this?

25 MR. HURSHMAN: No, as a matter of fact, in some of

1 our previous discussions and previous scheduled talks in
2 October, we actually had PMPD's that were being released
3 prior to when the comment period even closed on the Draft
4 EIS. And I definitely foresee that there is a public
5 perception problem with that. The public will look at it
6 as being pre-decisional and, "Where is BLM way back here
7 and the Commission is way out ahead?" Certainly, this
8 becomes a lot easier to justify to the public and -- I
9 guess my concern still ends up down the road in the final
10 decisions that the Commission issues, being aligned with
11 the BLM Record of Decision. And I think we are going to
12 need to be very careful in whatever schedule we are
13 adopting and craft here that we do not end up coming to the
14 end of the process and reaching different conclusions, and
15 having different mitigation in BLM's decision vs. the
16 Commission's.

17 COMMISSIONER BYRON: Okay. Commissioner Boyd, I am
18 ready to provide some closing comments. Do you have any
19 questions or comments?

20 COMMISSIONER BOYD: No further questions.

21 COMMISSIONER BYRON: Well, certainly we have heard
22 from staff and from the Public Advisor and a number of the
23 Intervenors about the confusion and difficulty for public
24 review, if we were to make some changes to this schedule,
25 and the value of keeping the state and federal process

1 joined. We have also understood the Applicant's
2 frustration with [quote] "how much is enough" and the
3 increased cost. In fact, we never even really delved into
4 this, Mr. Harris, so I will ask you a quick question. Are
5 there other limitations with regard to your Power Purchase
6 Agreement that might be at play here, as well? If you are
7 going to say yes, I am going to ask what they are.

8 MR. HARRIS: Which is why I was looking for
9 somebody smarter than me to answer the question, so... I
10 think I will let Arthur, who just decided to take his cough
11 drop to answer that.

12 COMMISSIONER BYRON: Now, Mr. Haubenstein, you do
13 not need to go into great detail, but on previous cases we
14 have had problems where we were not aware of dates that
15 came and went for Applicants, and if you can give us
16 anything specific in this regard, the Committee would like
17 to hear it.

18 MR. HAUBENSTOCK: Certainly, and thanks for the
19 opportunity. First of all, I just wanted to comment. I
20 think Mr. Hurshman is correct that the issue is whether the
21 final decisions are aligned, and the important thing is to
22 ensure, as Ms. Smith earlier alluded, that we have all the
23 information coming to us in the public comment period for
24 the DEIS. And this schedule would take care of that. I
25 would also like to emphasize that this schedule, assuming

1 that we are not too far off of June 15th, would accommodate
2 us. But the real question, the real butting edge is,
3 whether we can participate in the era, in the Stimulus
4 Package, and this is not any mere financial addition, this
5 is -- to give you a little bit of background which you may
6 be aware of, and I apologize if you are, under every large
7 scale solar project is premised on the notion of the
8 Investment Tax Credit which is 30 percent, and that was
9 extended for eight years at the beginning of the economic
10 crisis; unfortunately, given the current economic
11 conditions, there is very little tax liability for credit
12 to be useful, and so there is no real tax investment
13 appetite and there is no financing for projects such as
14 this based on an investment tax credit. For that reason,
15 thanks to a variety of entities being very involved in the
16 Legislative arena, when the era was passed, Congress took
17 the unprecedented step of converted the ITC into a grant,
18 so rather than having to have a tax liability to set aside
19 the tax credit, there is a grant available which is 30
20 percent of the solar portion of the investment of the
21 project, which is incredibly substantial and critical to
22 our financing. If we do not commence construction by the
23 end of 2010, that is gone, and the tax actually becomes an
24 issue. Regarding the PPA, assuming that we stick to the
25 schedule with minor latitude from June 15th, we will be able

1 to make our PPA deadlines. But the PPA deadlines are at
2 issue for both Southern California Edison and for PG&E for
3 this project.

4 COMMISSIONER BYRON: Okay. Well, I will just
5 finish, then. Clearly, the goals are this Commission to
6 focus on this project and making sure the public interests
7 are met in the review of all the documents in the
8 proceeding. But we do need to keep our eye towards future
9 projects in the MOU that we have with BLM. So I believe
10 that what we will plan to do here as a committee is to
11 issue a schedule that attempts to balance all of these
12 issues. I do not think I will say anything more than that
13 at this point.

14 HEARING OFFICER KRAMER: Okay. I think, with that,
15 if there are no concluding remarks, we are adjourned.
16 Thank you.

17 [Adjourned.]

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CERTIFICATE OF REPORTER

I, TAHSHA SANBRAILO, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Energy Resources Conservation and Development Commission Application for Certification, 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 proceeding, nor in any way interested in outcome of said proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of May, 2009.

Barbara Little