

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
The Ivanpah Solar Electric) 07-AFC-5
Generating System)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 4, 2010

1:11 P.M.

Reporter - Peter Petty, CER**D-493
Transcriber - Margo Hewitt, CET**00480
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey Byron, Presiding Member

James Boyd, Associate Member

HEARING OFFICER AND ADVISERS

Paul Kramer, Hearing Officer

Kristy Chew, Adviser

Sarah Michael, Adviser

STAFF AND CONSULTANTS PRESENT

John Kessler, Project Manager

Dick Ratliff, Staff Counsel

APPLICANT

Jeffery D. Harris, Attorney

Greggory Wheatland, Attorney (via teleconference)

Samantha Pottenger

Ellison, Schneider and Harris, LLP

Steve De Young, Vice President

Todd Stewart

Arthur Haubenstock

Bright Source Energy

INTERVENORS

Greg Suba

California Native Plant Society

Gloria Smith, Senior Staff Attorney

Sierra Club

Joshua Basofin

Defenders of Wildlife

INTERVENORS

Bart Brizzee, Deputy County Counsel
(via teleconference)
County of San Bernardino

Michael Connor (via teleconference)
Western Watershed Project

Lisa Belenky (via teleconference)
Center for Biological Diversity

ALSO PRESENT

Thomas Hurshman, Project Manager
(via teleconference)
Bureau of Land Management

Mark Silverstein (via teleconference)
Hana Rocek
Clark County Department of Aviation

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

2 1:11 p.m.

3 PRESIDING MEMBER BYRON: Good afternoon,
4 everyone. I'm Commissioner Jeff Byron, the
5 Presiding Member on the Ivanpah Solar Electric
6 Generating Station Project.

7 With me is my Associate Member of this
8 Committee, Vice Chairman Boyd. All the way to my
9 left is my Adviser, Kristy Chew. And, of course,
10 our Hearing Officer is Paul Kramer.

11 Happy New Year, everyone. It seems like
12 we've been here before. And I think we're going
13 to spend a lot of time together next week. I
14 really appreciate all of your attention to
15 maintaining our schedule and trying to keep the
16 documentation flowing during what normally is a
17 very challenging time of year for everyone.

18 But, I believe everything has been on
19 schedule and I'd like to thank you ahead of time
20 for meeting those dates.

21 We're going to do a prehearing
22 conference today. I think we've done one of these
23 already, if I'm not mistaken. Didn't we do a
24 prehearing conference before we did our
25 evidentiary a few weeks ago?

1 HEARING OFFICER KRAMER: Yes, and then
2 we sort of changed things, so we wanted to have
3 this one again before the main evidentiary
4 hearings to make sure everything is running on
5 track. Or if it isn't, to put it back on track.

6 PRESIDING MEMBER BYRON: Well, this is a
7 very important project. Let's go ahead, Mr.
8 Kramer, and see how much we can get done in terms
9 of the prehearing conference today, and scheduling
10 material for next week.

11 I believe that we're going to target
12 completion here today, if we could, by about 4:00
13 or 4:30, is that correct?

14 HEARING OFFICER KRAMER: I hope so.

15 PRESIDING MEMBER BYRON: Okay. Please
16 go right ahead.

17 HEARING OFFICER KRAMER: The first order
18 of business is to introduce the parties. We'll
19 get to the telephone folks in a minute.

20 Applicant, could you introduce yourself?

21 MR. HARRIS: Good morning, or afternoon,
22 I guess. It's Jeff Harris on behalf of the
23 applicant. To my right is Steve DeYoung with
24 BrightSource. And behind me are Todd Stewart and
25 Arthur Haubensstock from BrightSource. And

1 Samantha Pottenger from my office.

2 HEARING OFFICER KRAMER: And staff.

3 MR. RATLIFF: Dick Ratliff, Energy
4 Commission Staff Counsel. And with me is John
5 Kessler the Energy Commission Staff Project
6 Manager.

7 HEARING OFFICER KRAMER: We have a
8 couple of intervenors here with us. Sierra Club.

9 MS. SMITH: Good afternoon, Gloria Smith
10 from Sierra Club.

11 HEARING OFFICER KRAMER: And Defenders
12 of Wildlife.

13 MR. BASOFIN: Good afternoon, Happy New
14 Year. Joshua Basofin with Defenders of Wildlife.

15 PRESIDING MEMBER BYRON: Is the volume
16 up sufficiently so that everyone on the phone can
17 hear us?

18 MS. BELENKY: Yes.

19 PRESIDING MEMBER BYRON: All right,
20 thank you.

21 HEARING OFFICER KRAMER: Anyone else in
22 the audience? I don't see anyone that needs to
23 identify themselves.

24 So, let's go to the telephone. Let me
25 call some of the parties first, and then we'll

1 allow anyone who I didn't catch to identify
2 themselves.

3 Do we have anyone from CURE? Western
4 Watersheds Project?

5 MR. CONNOR: Yeah, Michael Connor.

6 HEARING OFFICER KRAMER: Good afternoon.

7 MR. CONNOR: Good afternoon.

8 HEARING OFFICER KRAMER: Basin and Range
9 Watch? Center for Biological Diversity?

10 MS. BELENKY: Yes. Good afternoon.

11 This is Lisa Belenky.

12 HEARING OFFICER KRAMER: California
13 Native Plant Society? County of San Bernardino?

14 MR. BRIZZEE: Yes, Bart Brizzee, County
15 Counsel.

16 HEARING OFFICER KRAMER: Okay. Anyone
17 from the BLM with us on the phone?

18 MR. HURSHMAN: Tom Hurshman.

19 HEARING OFFICER KRAMER: Hi, Tom.

20 Anyone else from BLM? Department of Fish and
21 Game, State Department of Fish and Game?

22 Okay, so who's on the telephone that I
23 didn't pick up there?

24 MR. SILVERSTEIN: Mark Silverstein and
25 Hana Rocek with Clark County Department of

1 Aviation.

2 HEARING OFFICER KRAMER: Okay. And we
3 know how to spell Hana's name, Mark. How do you
4 spell your last name?

5 MR. SILVERSTEIN: S-i-l-v-e-r-s-t-e-i-n.

6 HEARING OFFICER KRAMER: Thank you.
7 Anyone else?

8 MR. WHEATLAND: Gregg Wheatland,
9 attorney for the applicant.

10 HEARING OFFICER KRAMER: Anyone else?

11 MR. WHEATLAND: Gregg Wheatland,
12 attorney for the applicant.

13 HEARING OFFICER KRAMER: Oh, I'm sorry,
14 Gregg, we got you.

15 MR. WHEATLAND: Okay, thank you.

16 HEARING OFFICER KRAMER: Okay. We have
17 a few issues to deal with, and then if I've missed
18 some, please bring them up after we go through the
19 Committee's list.

20 First was Defenders of Wildlife
21 subpoena. They wanted to subpoena a witness from
22 the California Department of Fish and Game. And,
23 Mr. Ratliff, I understand it's staff's intention
24 now to add a witness from the department to the
25 staff witness list, is that correct?

1 MR. RATLIFF: Yes, Mr. Kramer. As you
2 know, the Department of Fish and Game is
3 responsible for take permits, and the Energy
4 Commission incorporates take permit conditions
5 into its in lieu permit.

6 We have been in consultation with Fish
7 and Game Staff over the months, and the two people
8 with whom we have been in contact are Kevin
9 Hunting and Scott Flint.

10 They have indicated that one of them
11 will be available. It's not clear which one
12 because Scott Flint has some family health issues
13 to deal with.

14 But we would request that you add them
15 as witnesses with regard to the biological
16 testimony. In other words, as co-sponsors to the
17 existing testimony with regard to those conditions
18 that have to do with the incidental take permit.

19 HEARING OFFICER KRAMER: Okay, that was
20 Scott Flint and -- I'm sorry I didn't --

21 MR. RATLIFF: Kevin Hunting.

22 HEARING OFFICER KRAMER: Now, are you
23 expecting both of them, or --

24 MR. RATLIFF: No. I expect one of them,
25 but I don't know which one. Kevin Hunting

1 expressed a willingness to come if Scott finds
2 himself unable to.

3 HEARING OFFICER KRAMER: Okay. Mr.
4 Basofin, does that alleviate your need for a
5 formal subpoena?

6 MR. BASOFIN: I believe it does. I
7 mean, I think our subpoena requested the
8 attendance of Mr. Flint, or the appropriate DFG
9 representative. So, I suppose if both are -- if
10 Mr. Flint is unable to attend and Mr. Hunting is
11 familiar with the issues, and able to testify,
12 then I believe that will suffice.

13 PRESIDING MEMBER BYRON: My recollection
14 is that Mr. Hunting is Mr. Flint's boss, is that
15 correct?

16 MR. RATLIFF: That's correct.

17 PRESIDING MEMBER BYRON: It's always
18 nice to go up in the organization.

19 HEARING OFFICER KRAMER: Okay, well,
20 then we'll consider --

21 MR. HARRIS: Mr. Kramer, could the
22 applicant speak on this question?

23 HEARING OFFICER KRAMER: Certainly.

24 MR. HARRIS: Your order, I think,
25 clearly laid out one of the hallmarks is

1 preventing unfair surprise at these hearings.

2 And my question now is which witness and
3 what testimony. I don't know how to prepare for
4 Scott or someone else.

5 The parties were ordered to file
6 testimony in this proceeding, opening testimony,
7 by Friday the 18th of December. And if staff had
8 intended to sponsor them as a witness, it should
9 have filed that testimony at that time on the
10 18th.

11 And all parties were also ordered to
12 file rebuttal testimony by today. And so if staff
13 intends to sponsor this witness, I'd like to see
14 written rebuttal testimony that should have been
15 filed today, to have been, you know, strictly
16 complying with the order so far.

17 And, you know, your admonition to
18 caution parties to exchange witnesses and
19 information is a very important one. And so, you
20 know, while you can accept comments during this
21 period, the Committee cannot really, in fairness
22 to the applicant or the other parties, allow the
23 staff to introduce testimony in violation of the
24 Committee order.

25 It doesn't matter whether the witness is

1 a staff member or a consultant or a member of
2 another agency. If CDFG feels compelled to
3 address the Commission at this late date in the
4 proceeding and after the deadlines have all
5 passed, then it seems like you really have two
6 choices under this, the Commission's rules.

7 The CDFG can submit their comments as
8 public comment, and not as testimony or evidence
9 in the proceeding. Or it can prepare written
10 testimony, have it approved by hopefully the
11 Director or someone farther up the food chain, and
12 file a motion for that late filing of that
13 testimony.

14 Because at this point we don't know who
15 the witness will be or what they're going to say.
16 And you've been very clear about how to put
17 testimony in in this proceeding. And the
18 applicant objects to allowing basically a stream
19 of consciousness testimony at this point, when the
20 prefile dates passed almost a month ago.

21 MR. RATLIFF: If I may, Mr. Kramer,
22 staff has already filed its testimony. I thought
23 it was quite clear that the testimony to which the
24 Fish and Game witness would be testifying are
25 those portions of the testimony which pertain to

1 the take permit for desert tortoise. That's
2 prefiled.

3 We will be filing rebuttal testimony
4 today as the order calls for. So there's nothing
5 new, no surprise. And I think the applicant's
6 well aware that responsible agencies whose permit
7 authority has been subsumed within the Energy
8 Commission permit, are frequently witnesses in our
9 cases, as to those portions of the testimony for
10 which their agency would otherwise be responsible.

11 You see this all the time in our cases
12 in the area of air quality where you have air
13 district witnesses who come in and testify as to
14 the air quality issues, particularly those that
15 pertain to the conditions which the air district
16 has proposed. This is no different from that.

17 MR. HARRIS: If I may, Mr. Kramer. It's
18 very different from that. Your regulations have a
19 specific provision that allow the air districts to
20 testify on the PDOC. And so your regulations
21 specifically contemplate this.

22 And where it's important, as in the air
23 district, it's called out. And I could get the
24 citation, if you want, but I think it's 1747 or
25 '8. It's specific to the air districts. It's not

1 general to any state agencies.

2 And so to suggest this is normal course,
3 I think, is a mis-reading of the Commission's
4 regulations. And there is a prefiled testimony
5 requirement. And right now staff cannot identify
6 either the witness or the testimony. And they
7 expect us to be prepared.

8 MR. RATLIFF: I think we've identified
9 both the witness and the testimony. And I guess
10 it's just, to me, very strange that the applicant
11 would be so alarmed that the Department of Fish
12 and Game would testify in this proceeding.

13 HEARING OFFICER KRAMER: Am I correct
14 that one or both of these gentlemen has
15 participated in some of the workshops that have
16 occurred between staff and the applicant over the
17 last year or two?

18 MR. RATLIFF: Mr. Hunting attended at
19 least one workshop that I'm aware of.

20 HEARING OFFICER KRAMER: And one of them
21 was at the -- one of those scheduling conferences
22 we had in the summer, I believe. I recall him
23 speaking to the subsumation, if that's a word, of
24 their permit in our permit.

25 MR. RATLIFF: I'm told that was Scott

1 Flint who attended in July.

2 MR. HARRIS: Mr. Hunting did participate
3 in one of the workshops, but made it very clear
4 that he was not there to participate, only
5 observe. And did leave early.

6 So, it's kind of a tenuous hat to hang
7 on here.

8 MR. RATLIFF: Well, Mr. Hunting's
9 expression of intent to me was to participate.
10 But after waiting all morning and not having an
11 opportunity to participate, he had to leave for a
12 different appointment. I don't think it was his
13 intent not to participate.

14 He attended with the intent to
15 participate. That's why we had him there.

16 MR. HARRIS: Neither one of these
17 witnesses were identified in the FSA as having
18 prepared the testimony that Mr. Ratliff now
19 suggests that they will sponsor.

20 Their declarations were not included.
21 Their qualifications were not included. And he's
22 essentially asking them to adopt someone else's
23 testimony as their own. And I think that's as
24 clear violation of the rules, as well.

25 HEARING OFFICER KRAMER: Mr. Basofin has

1 asked that one of these gentlemen be a witness.
2 Presumably -- or he'll have to answer for sure,
3 but possibly by way of rebuttal. And are you
4 suggesting, Mr. Harris, that it would be
5 inappropriate for him to identify these witnesses
6 at this stage of the exchange of evidence?

7 MR. HARRIS: I think they have until
8 close of business today to file rebuttal, written
9 rebuttal testimony. I don't know whether they're
10 intending to do that. And if they are, maybe this
11 discussion is moot.

12 But, again, I'd like to know which
13 witness and what testimony.

14 MR. RATLIFF: We've already identified
15 that. But, keep in mind the reason --

16 MR. HARRIS: You have not.

17 MR. RATLIFF: -- we find ourselves even
18 having this conversation is because of the
19 applicant's insistence on an expedited schedule.
20 If they weren't trying to go 2000 miles an hour
21 with this case, we'd have plenty of time for both
22 the -- all of the parties to identify witnesses
23 and identify their testimony more completely.

24 But in this case I think it's entirely
25 appropriate for the Department of Fish and Game to

1 testify about those portions of the take permit
2 for which they are ultimately responsible in
3 participating with the Energy Commission in
4 identifying.

5 So, I mean, again, what are we afraid of
6 here?

7 MR. HARRIS: We're afraid of nothing.
8 Written testimony would indicate that it is the
9 position of the department, and if you want to
10 allow the department till Wednesday, close of
11 business, to file written testimony so I have
12 testimony and a witness identified, I'm okay
13 allowing you a couple extra days to do that
14 testimony.

15 I'm not trying to -- we're not afraid of
16 anything and we're not trying to cut anything off.
17 We just want a fair trial without surprise. And
18 so we're willing to give a little bit on the
19 timing, but not a lot, given that this starts next
20 week.

21 MR. BASOFIN: If I could --

22 HEARING OFFICER KRAMER: Mr. Basofin, I
23 think it is your turn.

24 MR. BASOFIN: My objective in submitting
25 an application to subpoena a witness from DFG was

1 to have someone there from DFG who I couldn't
2 sponsor as a witness because they were unwilling
3 or unable to serve as a sponsored witness.

4 So I don't think I can or need or should
5 file rebuttal testimony. I think, you know, my
6 intent was to essentially subpoena an adverse
7 witness. And I think I filed my application for
8 subpoena in a timely manner.

9 It was my intent to allow the parties to
10 identify their witnesses before I did submit that
11 application for subpoena. So I think it was filed
12 in a timely way.

13 HEARING OFFICER KRAMER: Mr. Harris, are
14 you suggesting that no witness can testify about
15 something that they have not first reduced to
16 writing?

17 MR. HARRIS: My understanding of the
18 Commission's practices is that the witnesses are
19 bound by their prefiled testimony. And, in fact,
20 we had a couple blow-ups during our first
21 evidentiary hearing about well, we haven't seen
22 this map before, and we hadn't seen a map from the
23 staff, the measles map I like to call it, with the
24 -- Mr. Kanemoto's map.

25 And staff had similar complaints about

1 some of our maps with Mr. Priestley. And it was
2 very disruptive to the hearing. And so I'm try to
3 avoid that kind of situation.

4 Mr. Basofin's actions would have been
5 completely proper if they had been done before
6 December 18th when opening testimony was
7 requested. And there's been no showing of good
8 cause as to why he delayed in seeking this
9 witness. And there's been no showing as to good
10 cause as to why the staff now wants to bring a
11 witness in when the day for opening testimony
12 passed on the 18th of December.

13 We're willing to compromise if we can
14 get some written testimony prefiled. But
15 otherwise we continue to object for the lack of
16 showing of good cause.

17 MR. BASOFIN: Again, you know, I don't
18 believe that December 18th was the deadline to
19 submit applications for subpoenas. That was never
20 in an order from the Committee.

21 The document that requested oral
22 testimony is predicated on is the letter, the
23 comment letter that was submitted by the
24 Department of Fish and Game commenting on the
25 preliminary staff assessment, which all the

1 parties received through the docketing system.

2 And has also been identified by Defenders, and I
3 believe other intervenors, as an exhibit.

4 So I think the argument that any of the
5 parties are ill-prepared to deal with what a
6 representative from the Department of Fish and
7 Game will be testifying on is a faulty argument.

8 MR. RATLIFF: And I might add to that, I
9 mean, again, the testimony is the testimony that
10 is already filed, to which these witnesses,
11 whichever one appears, would be testifying.

12 And so it's prefiled. There's no
13 surprise. I think Mr. Basofin is saying that his
14 purpose was to -- the purpose of subpoenaing this
15 witness from the Department of Fish and Game was
16 to ask questions about inconsistencies that he
17 perceives between correspondence from Fish and
18 Game about the PSA and what appears in that
19 testimony. I think it's entirely within his right
20 to do that.

21 But I think the most important thing
22 here, and this is what staff believes is
23 appropriate for this, is to have the most
24 complete, the most fulsome discussion we can have
25 about the issues pertaining to biological

1 resources, which is the principal case of this
2 issue -- issue of this case.

3 And if we can have all of those people
4 with expertise in this area in this room,
5 available to the Commission to have that exchange,
6 I think you'll have the best exchange. And that
7 includes the Department of Fish and Game,
8 obviously, since they're responsible -- they would
9 otherwise be responsible for issuing a take
10 permit.

11 HEARING OFFICER KRAMER: Let's go off
12 the record for a second.

13 (Off the record.)

14 HEARING OFFICER KRAMER: We are going to
15 allow the CDFG witnesses. Mr. Harris, you're
16 free, if you find that they are going beyond the
17 scope of the testimony that Mr. Ratliff refers, to
18 bring that to our attention and we'll rule upon
19 whether testimony of that sort will be admissible.

20 And if need be, you can, if you need
21 time to prepare a response to something truly new
22 that they add to the mix, we'd be inclined to
23 allow that, as well. So that's our ruling.

24 MS. SMITH: Point of clarification.

25 HEARING OFFICER KRAMER: Ms. Smith.

1 MS. SMITH: I don't anticipate having
2 questions for the biologists from CDF&G. But in
3 my prior involvement in these cases, CDF&G has
4 been there just sort of available.

5 And now I'm feeling like this is going
6 to be very limited testimony. I'm a little bit
7 confused. Do I need perhaps to file some rebuttal
8 testimony if I want to discuss alternatives, for
9 example, with CDF&G? I mean this seems a little
10 unprecedented what's going on here.

11 HEARING OFFICER KRAMER: Well,
12 alternatives are in the -- already in the scope of
13 the FSA, are they not?

14 MS. SMITH: Yes, they are, but I hadn't
15 identified CDF&G, you know, per se, as a component
16 to our concerns, you know, as they relate to
17 alternatives in biological resources.

18 So I'm just concerned there's going to
19 be some narrowing here that I just haven't seen
20 before.

21 HEARING OFFICER KRAMER: Well, without a
22 specific instance it's hard to say for sure. But
23 I think it is fair to say that this process that
24 we're working through, exchange of documents, it
25 is relatively new, the formality of it. And we

1 are, to a degree, learning as we go.

2 We do want to avoid surprise, as much as
3 we can, but I don't think we can ever completely
4 avoid it. And there are remedies if somebody is
5 truly surprised to their prejudice, and that would
6 be additional time to prepare a response.

7 For instance, when we get to the topic
8 of visual, at our last hearing we offered the
9 staff time to review that rather lengthy EIS, I
10 believe it was, that was offered as an exhibit, to
11 what the professed to be their surprise. And they
12 have an opportunity, if they choose to take it, to
13 make some sort of response to that document.

14 That actually will be one of my
15 questions for a little bit later, is whether they
16 intend to do that.

17 I note that Mr. Suba, from --

18 MR. SUBA: California Native Plant
19 Society.

20 HEARING OFFICER KRAMER: -- has now
21 joined us in the room. Welcome. And that's Greg
22 Suba, for the record.

23 MR. BASOFIN: Mr. Kramer, if I could
24 just take a brief opportunity in the interim here
25 between topics. We've had some discussion about

1 the rebuttal testimony and it is due today.

2 I'd like to request, because this
3 preconference hearing is coinciding with the
4 deadline for that rebuttal testimony, that we have
5 a brief extension.

6 HEARING OFFICER KRAMER: Do the other
7 parties wish to -- have any objection to that?

8 MR. HARRIS: Yes. We're going to be
9 starting in hearings a week from today. Mr.
10 Basofin and Defenders, in opening testimony, which
11 again was due on the 18th of December, filed only
12 exhibits. No witness was identified; no testimony
13 was submitted.

14 He has now, in his prehearing conference
15 statement, said that he's going to be sponsoring
16 the testimony of a professor from the University
17 of Reno, Nevada, as quote "rebuttal".

18 I'm already skeptical if that will be
19 true rebuttal testimony. And I don't know how he
20 could file his exhibits for his rebuttal testimony
21 before he files his rebuttal testimony.

22 So, I think the process here is being
23 disrespected, not intentionally, but I think
24 that's the result.

25 And I guess I want to put Mr. Basofin on

1 notice that we're going to look closely at
2 whatever he files today to see if it really is
3 truly in the nature of rebuttal testimony.
4 Because if it is additional opening testimony, it,
5 too, is late, and should not be allowed.

6 MR. RATLIFF: Mr. Kramer, if I may, I
7 think in all fairness we should have more time to
8 file testimony. I mean this is an extremely tight
9 timeframe to respond to the voluminous testimony
10 that staff and the applicant have sponsored into
11 the record.

12 I'm actually quite sympathetic to the
13 plight of the intervenors in having time to file
14 their cases. And if they need an extra day, or
15 two extra days, good grief, we ought to be able to
16 suffer that on their account. I think it's an
17 extremely difficult situation the schedule puts
18 them in.

19 MR. BASOFIN: I could even just use a
20 couple more hours to make up for the time that the
21 prehearing conference is usurping, I mean,
22 frankly.

23 MR. RATLIFF: I mean, it is one thing to
24 accommodate the applicant's request for an
25 expedited schedule. And it's another thing then

1 to apply the rules so strictly that the
2 intervenors can't participate. I feel like that.
3 I think they're kind of caught in this vise.

4 MR. HARRIS: We had 12 days to file our
5 opening testimony over Thanksgiving. And we've
6 had, you know, less than 14 days over Christmas to
7 prepare our --

8 MR. RATLIFF: You've had (inaudible) two
9 years --

10 (Parties speaking simultaneously.)

11 MR. HARRIS: -- our rebuttal testimony.
12 We have a 1250-page document and filed our
13 testimony 12 days later. And so to suggest that
14 we're not holding up our end of the bargain, I
15 think, is just simply incorrect. We'd take back
16 our Christmas and our Thanksgiving in a minute.

17 But we are where we are. And this is
18 beyond the 11th hour to suggest that we're moving
19 too fast. And I'd remind everybody, we're
20 probably 1000 days into this proceeding.

21 MS. SMITH: Intervenors are in no way
22 trying to delay this proceeding. And none of our
23 requests for extensions or any of our concerns are
24 delay tactics. Please know that.

25 I counted 15 people on BrightSource's

1 behalf at our workshops. There was Josh for
2 Defenders, myself for the Sierra Club, and Greg,
3 alone, as well. We're doing this alone. So we're
4 doing the best we can, but we don't want our cases
5 to be compromised because of this really insane
6 schedule. And I say this with all due respect.
7 We're really not using this as a delay tactic.

8 HEARING OFFICER KRAMER: Okay, --

9 MR. BASOFIN: I believe this should be
10 noted, as well, I believe in all or most of the
11 intervenors' prehearing -- final prehearing
12 statements we agreed to move forward with the
13 hearing, although there were ongoing discussions
14 happening between staff and applicant. We did
15 agree to move forward, so I think that's further
16 evidence that it isn't our intent to delay.

17 PRESIDING MEMBER BYRON: Mr. Kramer, I'm
18 just thinking, we're going to spend a great deal
19 of time together next week. Can we bring it down
20 a notch here, in terms of the strife?

21 I appreciate the comments that everyone
22 has provided here. Very sympathetic to the
23 schedule that we're trying to move to. And as I
24 said in my opening comments, very appreciative
25 that you all made efforts over the holidays to do

1 that.

2 Mr. Kramer, I'm inclined to grant an
3 additional 24 hours so that we can get the
4 evidence -- I'm sorry, the rebuttal testimony. We
5 are certainly interested in it. And if that's
6 acceptable to parties, that would be my
7 suggestion.

8 Commissioner Boyd?

9 ASSOCIATE MEMBER BOYD: (inaudible)

10 PRESIDING MEMBER BYRON: Okay.

11 HEARING OFFICER KRAMER: And given that
12 one party's objected, I suppose what you want to
13 say is that will be the ruling.

14 MR. HARRIS: We'll withdraw our
15 objection. I just want to make sure that I can
16 get on the phone with our witnesses and tell them
17 to stop the presses, literally, because we went to
18 print at noon. And so we'll take the time that's
19 being granted.

20 And I would like you to consider the
21 possibility of the DFG additional testimony since
22 we're going to take some additional time for
23 testimony. I'd like to know if that testimony
24 speaks for the department, not on behalf of Kevin
25 or Scott, but the department.

1 And I think something on department
2 letterhead, even if they just simply recast their
3 comments on the FSA, would be very helpful to us.

4 HEARING OFFICER KRAMER: Would it not be
5 sufficient to simply ask them when they come
6 whether they're speaking for the department or
7 not?

8 MR. HARRIS: I think something on their
9 letterhead would suggest that they're speaking for
10 the department. I don't think that's too much to
11 ask.

12 HEARING OFFICER KRAMER: Mr. Ratliff, do
13 you believe they could do that?

14 MR. RATLIFF: Well, I think it's silly.
15 I mean, yes, you can ask them a question when they
16 come here. I mean, do they speak for the
17 department or not. Who do they speak for, if not
18 the department. Yes, let's let them be asked.

19 MS. BELENKY: Excuse me. This is Lisa,
20 the Center for Biological Diversity.

21 HEARING OFFICER KRAMER: Go ahead.

22 MS. BELENKY: I just wanted to make sure
23 I understood the ruling on the extension. So
24 that's one day, so it's due tomorrow at -- there
25 was a 4:00 deadline, I thought, but I just want to

1 make sure I know when it's due.

2 HEARING OFFICER KRAMER: Let me verify
3 that. I think you may be correct.

4 No, it's 4:00 on the dates in the filing
5 schedule table. So it will be 4:00 p.m. tomorrow.

6 MS. BELENKY: Okay. 4:00 p.m. tomorrow.
7 Thank you.

8 HEARING OFFICER KRAMER: Okay, moving
9 on. As I mentioned a minute ago, at the last
10 evidentiary hearing we kept the record open on the
11 topic of visual resources for the staff to respond
12 to that exhibit that the applicant introduced.

13 I just wanted to ask the staff if they
14 intended to make some sort of response?

15 MR. RATLIFF: Yes, my intent was to have
16 our witness take the stand very briefly. And in
17 about three minutes, summarize his comments on the
18 document which the applicant filed at the hearing
19 without prefiling.

20 We did not prepare any prefiled
21 testimony to reflect that summary. I didn't
22 understand that to be your directive at the time.

23 If you would like, then tomorrow we
24 would file some form of prefiled testimony for Mr.
25 Kanemoto.

1 HEARING OFFICER KRAMER: I'd say that's
2 your choice. If you were simply meaning to have
3 him respond orally, I think that's perfectly
4 appropriate.

5 MR. RATLIFF: That was the intent.

6 HEARING OFFICER KRAMER: I don't think
7 that that has to be reduced to writing. It's just
8 a continuation of the --

9 MR. RATLIFF: Yes.

10 HEARING OFFICER KRAMER: -- dialogue
11 that went on in December.

12 Okay, so then visual resources will be
13 part of the mix during next week's hearings for a
14 brief period.

15 MR. HARRIS: Mr. Kramer, the Basin and
16 Range Watch filed testimony on visual. Is that
17 going to be taken at that time as well?

18 HEARING OFFICER KRAMER: They're not
19 here. Did they identify a witness?

20 MR. HARRIS: Yes, Laura --

21 MR. CONNOR: They identified Laura
22 Cunningham.

23 HEARING OFFICER KRAMER: Okay, you're
24 here now. So that's Kevin?

25 MR. CONNOR: No, this is Mike Connor.

1 HEARING OFFICER KRAMER: Oh, I'm sorry.

2 MR. CONNOR: (inaudible).

3 HEARING OFFICER KRAMER: I'll have to
4 admit, when I was preparing my list of witnesses I
5 didn't notice their identification. They were
6 here the last time, though, and they had an
7 opportunity. So I would suspect that their
8 opportunity has probably passed, unless they make
9 a compelling case to revisit the issue.

10 MS. BELENKY: This is Lisa Belenky. I
11 believe that they did intend to try and discuss it
12 at the next -- during the hearing. And I'm not
13 sure why they're not on today, but they do live in
14 a very rural area. And it's difficult for them to
15 get phone line.

16 HEARING OFFICER KRAMER: I'm trying to
17 recall, though, why they didn't bring that up at
18 the last hearing.

19 MS. BELENKY: They did actually bring it
20 up, I thought. But perhaps not in the correct
21 format.

22 HEARING OFFICER KRAMER: Okay, well, I
23 think we'll have to -- Mr. Harris, we'll both have
24 to go back and look at the transcript and see.
25 Perhaps there will be some testimony from them. I

1 can't imagine the whole thing taking more than
2 half an hour.

3 MR. HARRIS: Okay, so we're available to
4 -- we're able to file rebuttal testimony on that
5 subject, as well, towards Basin and Range Watch?

6 HEARING OFFICER KRAMER: Certainly.

7 MR. HARRIS: Okay, thank you.

8 HEARING OFFICER KRAMER: Okay, now
9 traffic and transportation. I also had a question
10 as to whether that record truly should be closed.
11 Because my notes show that staff was going to
12 submit to revise conditions trans-1 and -4.
13 And --

14 MR. RATLIFF: We have done so. I guess
15 I would ask Mr. Harris, have you received that?

16 MR. HARRIS: Received the revised --

17 MR. RATLIFF: Trans-4 --

18 MR. HARRIS: -- trans-4?

19 MR. RATLIFF: You perhaps have not seen
20 it.

21 MR. HARRIS: No, I would imagine that
22 was part of what John was going to file today.

23 MR. RATLIFF: Right.

24 MR. HARRIS: So, it'll be filed
25 tomorrow, I guess. So, no, I haven't seen it.

1 HEARING OFFICER KRAMER: Okay, so it
2 sounds like we may need to have a bit of a
3 discussion about transportation to just tie up
4 those loose ends.

5 MR. HARRIS: I'm not sure -- ask Mr.
6 Ratliff. I'm not sure --

7 MR. RATLIFF: I think we --

8 MR. HARRIS: -- that we need live
9 witnesses, but I guess I'd defer to you, Dick,
10 whether you think we do for those issues.

11 MR. RATLIFF: I don't think we do. I
12 think the condition has been changed in a way that
13 is unobjectionable to both CURE and the applicant.
14 But I'd like to confirm this by getting Mr.
15 Kessler to show you guys a copy of that so you can
16 look at it.

17 I think he may have it, or if he can't,
18 he can get it. And if you look at it you can tell
19 us if we need any further discussion of it. But I
20 don't think we do.

21 HEARING OFFICER KRAMER: Okay, so why
22 don't we leave it if it's on at all, it's just
23 about trans-1 and trans-4.

24 MR. HARRIS: Yeah, and I won't have all
25 my witnesses available. But, again, I don't think

1 we need witnesses to have that discussion.

2 HEARING OFFICER KRAMER: And this is one
3 of those kind of filler items we can push around
4 the agenda as needed, if you needed them on the
5 telephone, for instance.

6 MR. HARRIS: Okay, thank you.

7 HEARING OFFICER KRAMER: For the folks
8 on the telephone, --

9 MS. BELENKY: Yes.

10 HEARING OFFICER KRAMER: -- you should
11 have received in your email, from Rosemary Avalos,
12 a spreadsheet --

13 MR. SPEAKER: Yes, received it.

14 HEARING OFFICER KRAMER: Okay, this is
15 basically just a discussion tool that I prepared,
16 identifying the witnesses that various parties
17 have identified for the different topics that will
18 be on the table next week.

19 And so if you have not looked that up in
20 your email box, I think you'll find it helpful to
21 have that in front of you as we continue on today.

22 MS. BELENKY: I'm sorry. This is Lisa
23 Belenky. I notice that none of our witnesses from
24 the Center for Biological Diversity have made it
25 onto your list.

1 HEARING OFFICER KRAMER: And that may be
2 just -- I had a lot of papers and I must have
3 missed them.

4 MS. BELENKY: Okay.

5 HEARING OFFICER KRAMER: But, how many
6 were there?

7 MS. BELENKY: We have four witnesses.

8 HEARING OFFICER KRAMER: Okay. And were
9 they all under biological resources?

10 MS. BELENKY: No. Two are under
11 biological resources. One is alternatives. And
12 the other could be sort of a mixed category of the
13 project description and alternatives.

14 HEARING OFFICER KRAMER: The problem may
15 be that I don't think I received a prehearing
16 conference statement from you.

17 MS. BELENKY: Really? Well, I can re-
18 send it. I know that we served it.

19 HEARING OFFICER KRAMER: Okay, well,
20 when we get to the list I'll make sure we get
21 those names from you.

22 MR. CONNOR: Mr. Kramer, Western
23 Watersheds Project isn't on here, either.

24 HEARING OFFICER KRAMER: Dr. Connor,
25 you're under biological resources.

1 MR. CONNOR: (inaudible).

2 HEARING OFFICER KRAMER: See it?

3 MR. CONNOR: Where am I supposed to
4 look?

5 HEARING OFFICER KRAMER: Second page, --

6 MR. CONNOR: Second page.

7 HEARING OFFICER KRAMER: -- right above
8 soil and water resources.

9 MR. CONNOR: Oh, okay, sorry. Yeah.
10 Thanks.

11 HEARING OFFICER KRAMER: Okay.

12 MR. CONNOR: I got that -- I'm
13 scrolling.

14 HEARING OFFICER KRAMER: So before we
15 get to that in detail, several of the prehearing
16 conference statements mentioned that negotiations
17 were going on between staff and -- I guess the BLM
18 and Commission Staffs and the applicant about the
19 conditions of certification.

20 And my question for those parties is
21 whether we have, in the evidence, all of those
22 proposed changes at this point. Or is that
23 something we'll receive when we get the rebuttal
24 testimony tomorrow?

25 Mr. Harris, do you want to go first?

1 MR. HARRIS: We've been having, as part
2 of the workshops, discussions about changes to
3 conditions. And I understand that staff has the
4 pen in terms of making those recommendations.

5 So we may have one or two conditions
6 we're going to suggest changes to in our rebuttal
7 testimony. But by and large what staff and
8 applicant are working on together is going to be
9 filed by staff tomorrow.

10 I guess I want to make the observation,
11 based upon one of the statements in the prehearing
12 conference statements, that those are moving
13 targets. People are not sure what's going on.

14 Those conditions are really just the
15 recommendations of the parties. They're not
16 binding on the Commission obviously.

17 And so I think those have been sort of
18 elevated a little bit in the rhetoric beyond what
19 they need to be. People will have an opportunity
20 to respond to conditions proposed by the
21 applicant, the staff or any of the parties jointly
22 in their briefs.

23 So I don't want to spend a whole lot of
24 time focusing on those recommendations. But we'll
25 be looking for the staff to file their document, I

1 guess, tomorrow to see where we are on those
2 conditions.

3 I don't think that we're going to
4 require live witness testimony on any of those
5 topics that were -- I don't think it changes your
6 list of topics for hearings. I think -- they're
7 not factual issues, they're some legal questions
8 that can be briefed.

9 HEARING OFFICER KRAMER: Okay, yeah, I
10 was more interested in the process and just trying
11 to keep track of all that, and find it in a
12 convenient place so it doesn't get lost with Ms.
13 Belenky's witness list, in my mind, anyway.

14 MR. CONNOR: I'm a little confused by
15 what was just said. Mr. Harris, is deletion of
16 conditions of certification considered legal, not
17 factual?

18 HEARING OFFICER KRAMER: Mr. Connor,
19 right?

20 MR. CONNOR: Yes.

21 MR. HARRIS: Michael, no, I didn't mean
22 to suggest that the conditions, themselves, were
23 legal or factual. Suggesting on some of the
24 issues that are closed out, you know, pick one of
25 them like one we didn't have any witness testimony

1 on, the reliability or socioeconomics. To the
2 extent we're trading conditions back and forth,
3 there aren't any factual questions.

4 There are questions about how those
5 conditions ought to be worded. But, Michael, I
6 was just speaking narrowly to the issue of whether
7 there's a factual dispute that required live
8 witness testimony. And for the most part, I think
9 those conditions do not.

10 Biology, I would see exception, and some
11 of the other open topics, there are exceptions to
12 that general statement. Does that help?

13 MR. CONNOR: To be clear, because, you
14 know, I'm not really -- I'm not a lawyer, and it's
15 not clear to me sometimes what is a factual
16 question versus what is considered a legal
17 question in this setting. So I just wanted
18 clarification.

19 HEARING OFFICER KRAMER: Well, and
20 lawyers will quite often argue about that, as
21 well. And courts will write long opinions trying
22 to sort that out.

23 MR. CONNOR: Okay.

24 HEARING OFFICER KRAMER: Okay.

25 MR. RATLIFF: Mr. Kramer, if I could,

1 and perhaps it's useful. Because this prehearing
2 conference occurs on the same afternoon when the
3 testimony is supposed to be filed, we think we
4 know what our testimony is, but nobody has it yet.

5 But the list of topics where we think
6 there has been resolution of the issues over the
7 conditions, is air quality; hazardous materials;
8 land use; soil and water resources, although we're
9 still, I guess, discussing soil and water-4;
10 traffic and transportation, although we're still
11 discussing, as we just said, transportation-4, but
12 I think that will be resolved; waste management;
13 and worker safety and fire protection.

14 We aren't aware of issues in those areas
15 other than what I just mentioned. Although I do
16 note that I think one or more of the intervenors
17 may have raised an issue about air quality, and
18 I'm not certain as to what that was. They may
19 have proposed some different condition.

20 MS. BELENKY: This is Lisa Belenky at
21 the Center. We actually have raised issues about
22 air quality. And I have some questions about the
23 analysis, some specific questions. And it's hard
24 to address the conditions without having the
25 resolution of the issues.

1 So, again, this is a little bit of the
2 chicken-and-egg sometimes for those of us who
3 haven't done this particular process before. But
4 my understanding from what was said just now is
5 that we're not closed out on responding to
6 conditions by tomorrow to the extent that some of
7 these issues remain open. But the substance of
8 the issues still remains open, is that correct?

9 HEARING OFFICER KRAMER: I think so,
10 yes.

11 MS. BELENKY: Thank you.

12 MR. RATLIFF: Maybe --

13 HEARING OFFICER KRAMER: Although I'm
14 seeing some puzzled looks here in the room.

15 MR. RATLIFF: Maybe what I could say
16 then is that at least with regard to air quality
17 is I think there are no disagreements between
18 staff and the applicant. Am I correct about that?
19 At least with regard to the conditions.

20 And there may be substantive issues
21 being raised by the Center that we're not quite
22 sure what they are, but actually it would be good
23 if today we get to find out what those are, or we
24 can discuss what those are and whether they need
25 to be adjudicated.

1 HEARING OFFICER KRAMER: Or to put it
2 another way, just because the applicant and staff
3 agree about something doesn't mean that's the way
4 it's going to be.

5 MR. RATLIFF: Right.

6 MR. HARRIS: I guess I would add, one of
7 my objectives today is to try to be able to
8 release some of my witnesses if we know we're not
9 going to need them for live testimony.

10 Air quality is a good example of that
11 class of categories. If I can let Mr. Rubenstein
12 and Mr. Hill from Sierra Research know that
13 they're not going to be needed, for example, live
14 witness testimony, that would be helpful.

15 So, that's one of my objectives today.
16 That's why I keep asking about what's open and
17 what's closed. Because people are scrambling to
18 try to make themselves available all next week.

19 HEARING OFFICER KRAMER: I understand.
20 And we're going to try to pick the days on my
21 blank calendar that I handed out to make that a
22 little bit easier on all of the witnesses. But
23 we'll get to that in a couple minutes.

24 I want to revisit the issue of witness
25 panels, something Mr. Ratliff raised the last

1 time. And, Mr. Harris, you were not quite a
2 convert, as I recall.

3 And part of our hearings were held by
4 the use of partial panels. I wanted to discuss
5 whether or what the current positions of the
6 parties are on the use of panels for some or all
7 of the contested hearings, issue hearings we're
8 going to have.

9 Mr. Ratliff, I think you're in favor?

10 MR. RATLIFF: Yes, Mr. Kramer. I think
11 Commissioner Byron remembers that we used informal
12 hearing procedure in the Russell City hearings on
13 one of the most difficult and complex issues of
14 that hearing, which was aviation safety.

15 And I think that is a demonstrable
16 example of how effectively that can work for a
17 complicated issue where you have different parties
18 with different testimonies and different points of
19 view.

20 It enables you and Mr. Kramer to
21 actively engage the parties and ask them
22 questions, yourself. And get, I think, to the
23 very bottom of a complicated issue.

24 And I think the biological issue here is
25 a complicated issue with a number of different

1 perspectives that are going to be expressed.

2 And I think fortunately, the good thing
3 about this is that you are going to have in the
4 room a great deal of biological expertise in one
5 place, which will enable you, I think, to get a
6 very very full discussion and picture of the
7 issues that we're dealing with.

8 I think I would at least urge you to try
9 this to see if it works. I think there's some
10 question as to how large a group of biologists
11 you'll have.

12 But what I would suggest is that you
13 start off by having each of the witnesses testify
14 that portion of the testimony for which they're
15 responsible, or the testimony that they have
16 sponsored, briefly to sponsor that testimony. And
17 to summarize it. And the points that they think
18 are most important.

19 And then allow it to turn into an
20 informal hearing where there is discussion and
21 interaction directly with you. If you do that I
22 think it could work very well.

23 If it doesn't work very well you can
24 change it back to a formal proceeding and have
25 cross-examination.

1 But if it works well I think it will
2 make the issue go much more quickly and
3 efficiently with your time. And I think you'll
4 get actually a better understanding of the issue
5 than you will through formal cross-examination
6 that the lawyers will subject all of us to. I
7 think sometimes we feel like we haven't earned our
8 pay if we don't do that.

9 But on the other hand, I think if you
10 let us participate, just at least peripherally,
11 maybe we can make some positive contribution to
12 what you're hearing. And round out issues that we
13 think you need to hear discussed.

14 MR. BASOFIN: Mr. Kramer, I'm a little
15 confused, just for clarification. Are we
16 contemplating here having expert witnesses from
17 multiple parties serve on one panel? Or is it
18 experts from one party serve on the same panel?

19 HEARING OFFICER KRAMER: Well, I think
20 we have a choice. Mr. Ratliff, what were you
21 proposing?

22 MR. RATLIFF: Well, the use of panels
23 where you have, for instance, you might -- I think
24 the term panels, I think, is something that is
25 often something we use in formal hearing procedure

1 where, for instance, we might put on all of the
2 staff biology witnesses simultaneously. And then
3 allow them to summarize their testimony, and then
4 be cross-examined by all the parties. And that's
5 one way, of course, of doing it.

6 The staff would put on its witnesses.
7 The applicant would put on its witnesses. They
8 would be cross-examined as a panel, rather than
9 individually.

10 This has the advantage of saving time.
11 It gets you some efficiency. You saw it at the
12 last proceeding, actually, on visual. The
13 applicant had a panel of witnesses.

14 But what we're talking about with
15 informal procedure would be essentially to have
16 all of the witnesses basically participate in a
17 conference in which they would summarize the
18 salient points of their testimony.

19 And then it becomes a discussion
20 conducted by you and the Commissioners,
21 themselves. So that you can actually find out
22 what are the most important issues, how are they
23 addressed, what is insufficient and what is, and
24 what is the, you know, is this impact significant
25 or not. If it is, what kind of mitigation is

1 there that's feasible.

2 I think with those fundamental questions
3 being the ones you're trying to answer, then I
4 think you might be able to get to it more quickly
5 and more, perhaps, intelligibly through an
6 informal process.

7 HEARING OFFICER KRAMER: Now, for
8 biology, I think we'd probably have to adjust the
9 tables in the room to seat all those people.

10 So that, I guess the answer to your
11 question, Mr. Basofin, is that it would be
12 multiple parties' witnesses, or could be.

13 MR. BASOFIN: Okay. That does answer my
14 question, then. And I guess to the extent that
15 that's the proposal that's under consideration
16 here, I think I would have to object.

17 You know, I think anything less than a
18 formal cross-examination is going to preclude me
19 from eliciting the information that I need to
20 elicit from some of the witnesses, particularly
21 the witness from the Department of Fish and Game.

22 I'm not sure how, notwithstanding cross-
23 examination, I can really question those witnesses
24 under this sort of paradigm.

25 HEARING OFFICER KRAMER: Well, you would

1 still be allowed to ask questions, as would
2 everyone else. I think one of the advantages is
3 that all of the witnesses are sitting there. So,
4 if we have a question about a particular subtopic
5 we can hear their answers, one after another,
6 rather than one person answering it in hour one,
7 and the second witness may be answering it half an
8 hour later. And so on throughout the day.

9 It creates more of a dialogue that I
10 think we have found -- I was the Hearing Officer
11 in Russell City, and it did seem to be more
12 helpful than the, you know, watching Perry Mason
13 at work.

14 MR. BASOFIN: Well, I mean I certainly
15 want, you know, desire a certain amount of
16 efficiency, as I think all the parties do.

17 I'm just sort of trying to understand
18 this. If we'll have an opportunity to ask
19 multiple questions of witnesses during the panel
20 examination, or multiple questions of one
21 particular witness during the panel examination, I
22 think that would be fine.

23 HEARING OFFICER KRAMER: That certainly
24 could be part of the design. I think that's a
25 reasonable request.

1 MR. BASOFIN: Okay.

2 MR. RATLIFF: Yes, I don't know how Mr.
3 Basofin intends to discomfort my witnesses at the
4 hearing, but I would hope that he could answer
5 those questions, assuming they're legitimate
6 questions. And get them answered.

7 I mean, there shouldn't be more room for
8 evasion in an informal hearing than there is in a
9 formal hearing. In fact, I would think that there
10 is less. I think you've got the ability to go
11 directly to the source, and hopefully without a
12 lot of intervention from the lawyers trying to
13 protect their witnesses from cross-examination or
14 awkward questions.

15 So, I mean the advantage is, I think,
16 you can actually have a more meaningful and less
17 obstructive discussion.

18 That would not, I hope, preclude Mr.
19 Basofin from asking his questions of my witnesses,
20 whatever they might be.

21 HEARING OFFICER KRAMER: No, I don't
22 think the Committee wants to fully take over the
23 job of extracting truth from the witnesses.

24 MS. SMITH: Mr. Kramer.

25 HEARING OFFICER KRAMER: Ms. Smith.

1 MS. SMITH: I think the Sierra Club
2 provisionally supports this method. I'm very
3 concerned, based on the uncontested issue hearings
4 that we had, that the contested issues could drag
5 on for the entire week, and maybe into a second
6 week. And I think this seems the most efficient
7 way to proceed.

8 So, you know, I'd like to -- we support
9 giving it a try.

10 HEARING OFFICER KRAMER: Okay, Mr.
11 Basofin, where did you settle out on that?

12 MR. BASOFIN: I guess if I'll have the
13 opportunity to ask multiple questions of a
14 particular witness on the panel then I will
15 withdraw my objection.

16 HEARING OFFICER KRAMER: Mr. Harris?

17 MR. HARRIS: Depends on the subject
18 matter, frankly. I think biology is going to be a
19 difficult subject to conduct this type of informal
20 process. There are probably 15 witnesses, you
21 know. There are three from CBD, there's several
22 from us, there's several from the staff. And
23 that's the contested issue in the case.

24 And I share Mr. Basofin's concern about
25 being able to follow a line of questioning to its

1 logical end. If I start down a set of questions
2 on rare plants and Mr. Ratliff jumps in with a
3 question on desert tortoise, then at some point
4 I've got to try to get back to finish my line of
5 questioning on rare plants. And so I think for
6 the biology issue it would be quite cumbersome.

7 I think the other difference between
8 this case and Russell City -- well, there's
9 several. One is that there are ten parties in
10 this case. I think there were only four at
11 Russell City. And staff and applicant were pretty
12 much aligned on a lot of those issues.

13 There was, you know, two panels of
14 applicant and staff witnesses that were basically
15 saying the same thing, so it was a little easier
16 to conduct it in that setting.

17 I guess we'd be amenable to thinking
18 about that in the discussions of project
19 description, purpose and need, alternatives and
20 cumulatives. Those three areas, which were
21 identified by several parties, really seem kind of
22 like they're part and parcel of one set of
23 discussions about, you know, is this the right
24 project in the right spot. And are there
25 alternatives.

1 Maybe for a grouping of those three
2 topics together, a panel might make sense. You
3 know, I don't expect a lot of direct testimony on
4 alternatives, for example. But I'll make my folks
5 available to answer questions.

6 Same thing with project description and
7 with cumulative impacts. And cumulative is
8 another strange one, since it's not really
9 typically a subject the Commission does. But
10 there is a section of that. So, maybe on those
11 three, grouping together as a panel makes sense.

12 If there's going to be some hearing on
13 air quality issues, I think there's only a couple
14 of people who have questions, and those are pretty
15 straightforward. That might be a good one to put
16 an entire panel on for air quality, if we have to
17 have air quality witnesses.

18 Same thing with water and land use, if
19 we're doing those. And maybe visual.

20 But bio just seems to be the outlier for
21 me in that respect. There are a lot of issues and
22 a lot of parties. And if people are concerned
23 about getting this done on time, I think one of
24 the things the Committee has at its disposal is
25 the ability to set pretty strict time limits for

1 direct testimony and cross-examination. And then
2 people are going to have to live within those.
3 But, you know, there are ways to handle the length
4 of the hearing on those issues.

5 So, I guess, as to bio, no. As to the
6 rest, we'd be open to thinking about it.

7 HEARING OFFICER KRAMER: Let me ask you
8 this about your concern about bio. Is your
9 concern that you wouldn't be able to ask all the
10 questions that you want before somebody else is
11 asking them?

12 Or are you concerned that answers would
13 come from more than a single witness at a time to
14 each of the questions?

15 MR. HARRIS: Well, I guess my concern is
16 about being able to follow a line of questioning
17 all --

18 HEARING OFFICER KRAMER: With a single
19 witness?

20 MR. HARRIS: -- the way to the end, the
21 same witness on the same topic.

22 Within biology there's like three or
23 four areas that are controverted, desert tortoise
24 mitigation and rare plants being two of the more
25 prominent ones.

1 If we start having a discussion about
2 desert tortoise and the conversation flips back to
3 rare plants, we're going to have to try to bring
4 it back to make sure that we get all the line of
5 questioning pursued.

6 And I think cross-examination really
7 helps us to do that. And a panel is going to make
8 it very difficult. And, you know, quite frankly,
9 if Josh has a set of questions that he's in the
10 middle of, if I jump in with a question on a
11 related topic I might take him off course.

12 ASSOCIATE MEMBER BOYD: Is it possible
13 to, once a topic's introduced, to limit the entire
14 discussion of that topic till everybody's
15 satisfied that it's finished before moving to
16 another topic?

17 I mean to me the advantage of this is
18 not having people jump up and down from the
19 audience back to the table. And you've got
20 everybody there.

21 If we could commit to address your
22 concern of jumping topics and finish a topic, it
23 seems to me that it might work smoothly.

24 MR. RATLIFF: Commissioner, I think the
25 answer is yes. I mean the informal hearing

1 procedure is really what you decide to make it.

2 And if you --

3 ASSOCIATE MEMBER BOYD: Informal, but
4 structured.

5 MR. RATLIFF: Right. I mean you give it
6 the structure that you think works and you set the
7 rules. And you can intervene and ask the
8 questions if you feel like one hasn't been
9 answered satisfactorily.

10 It really does require, I think, more of
11 the decisionmaker and more of the Hearing Adviser
12 to basically --

13 ASSOCIATE MEMBER BOYD: Referee.

14 MR. RATLIFF: -- give it structure and
15 referee it. And also get the bottomline answers
16 that you seek.

17 But, there's no reason why, for
18 instance, you couldn't do desert tortoise impacts,
19 and then desert tortoise mitigation. And then do
20 plants separately, or however you chose to do it.
21 You could subdivide it even further.

22 I think Mr. Harris does make good
23 points, though. I think you do have a number of
24 witnesses. That does make it more complicated.
25 You do have a number of parties that those

1 witnesses represent, likewise more complicated.

2 You also have the cross-over issues of
3 alternatives which are closely related with the
4 biological issues, since that is an impact which
5 parties seem to mitigate or avoid.

6 So, I think those are genuine
7 complications, and I don't want to downplay that.
8 I think those are things that have to be
9 considered.

10 I don't think, for instance, if you were
11 to hold alternatives as a completely separate
12 issue, that you could really do it without the
13 biologists participating in that discussion, as
14 well, because they are so closely linked.

15 So, even though I see those as
16 complications, complicating factors, I don't think
17 it should deter you from trying it. And I suppose
18 if Mr. Harris or Mr. Basofin or I feel like
19 something important is getting left out, we can
20 say so. And then ask for your help in getting to
21 the bottom of an issue.

22 Or if you decide it's not working out
23 satisfactorily, it just isn't, there are too many
24 witnesses, there are too many parties, the
25 witnesses are fighting with each other, or

1 whatever, then you could turn it into a formal
2 hearing and we could do the more traditional and
3 structured way.

4 But I do think it would offer the
5 possibility that in one long hearing day we could
6 do the most difficult issue in this case, and
7 perhaps get a better resolution from your point of
8 view than would otherwise be possible.

9 HEARING OFFICER KRAMER: Anyone on the
10 telephone wish to comment?

11 MR. CONNOR: Yeah. This is Mike Connor.
12 I have a question here, sort of a logistic
13 question. And a concern about this panel. If I'm
14 a witness on the tortoise panel or the biology
15 panel, or whatever you call it, am I free to ask
16 questions of the other witnesses?

17 HEARING OFFICER KRAMER: You'll have
18 to --

19 MR. CONNOR: Have to move back and
20 forward from the table?

21 MS. BELENKY: You have to have a
22 different hat.

23 (Laughter.)

24 MR. CONNOR: I just want to be clear,
25 you know, that being on a panel is not going to

1 preclude me from asking questions.

2 HEARING OFFICER KRAMER: No, you'll just
3 have to honor -- you know, you'll have to wear the
4 appropriate hat at the right time, and we'll let
5 you know if you have the wrong hat on.

6 Anyone else on the telephone?

7 MS. BELENKY: This is Lisa Belenky with
8 the Center. I think actually it sounds like it's
9 worth trying, especially for the biological and
10 maybe we could do some of the, for example, desert
11 tortoise, and the rare plants each as separate
12 panels.

13 I did want to -- someone mentioned the
14 table, and I did -- not to get off topic, but I
15 did notice last time we were sitting almost with
16 our backs to the Commissioners. And I would
17 prefer if we could find a way to move the table so
18 that works.

19 HEARING OFFICER KRAMER: Yeah, I think
20 if we do this we're going to have to have a couple
21 rows. It will be more like a college lecture
22 hall. Hopefully that won't bring back nightmares
23 for anyone.

24 Anyone else on the telephone? Mr.
25 Harris.

1 MR. HARRIS: I'm trying to think about
2 how I'm going to prepare my witnesses now if you
3 go this route. They ask me what does it look like
4 when I show at the hearing; you know, what's the
5 room look like, how does it start, how does it
6 end, what happens in the middle.

7 I've already got a difficult task to try
8 to figure out how to put on this case, and to turn
9 it into a open, more of an open format like this,
10 really doesn't give me a clear picture of how I
11 answer that question tomorrow when I try to start
12 prepping my witnesses about what is this going to
13 look like, what should they expect.

14 I mean, are we going to have our
15 witnesses go first and let everybody fire
16 questions at them and then they sit down? And
17 then the staff's witnesses? Are we going to have
18 all the desert tortoise experts up there?

19 It sounds to me like it's not going to
20 save us any time. In fact, I think it's got a
21 real potential to push the hearings out.

22 So I think, at this point, without a
23 clear specified structure that I can take to my
24 witnesses and prepare them around, I think the
25 applicant does object, at least as to the biology

1 issue, for an informal hearing.

2 I mean, you know, I'm already worried
3 about who my witnesses are, what their testimony
4 is going to be on cross. If I have to now tell my
5 own witnesses I'm not sure what the format is, on
6 an important case like this, that's a big problem.

7 MR. BASOFIN: Yeah, I think just to
8 follow on Mr. Harris' concerns, you know, I think
9 most of the parties are probably going to prepare
10 very specifically our cases, both our direct
11 examinations and cross-examinations and all of the
12 various contingencies that could occur in the
13 hearing.

14 And, you know, to not be clear on the
15 format before we sort of walk into the hearing on
16 the day of, I think maybe produces some anxiety
17 for us. Sort of like fitting a square peg in a
18 round hole, because we have, you know, the sort of
19 highly developed way to proceed on the day of the
20 hearing, and we're just not sure if we're going to
21 be able to do it.

22 MR. RATLIFF: Mr. Kramer, if I could I'd
23 just offer that again, I think, we always, you
24 know, in formal hearings, allow witnesses to make
25 an opening, usually a summary of their testimony

1 and the high points of their testimony.

2 I don't know, certainly we don't have to
3 forego that here. I think you need something like
4 that, really, for your own benefit. And in that
5 way the informal hearing need not be a departure
6 from that aspect of formal hearing procedure.

7 Whether you want to hear 20 different
8 people summarize their testimony, or however many
9 witnesses you have, summarize their testimony at
10 once, and then go into a discussion of it, I
11 guess, is up to you.

12 But I do think you'd want to stage it
13 topic by topic in some manner that would allow it
14 to be focused on one particular issue at a time.

15 PRESIDING MEMBER BYRON: Mr. Kramer --
16 first of all, Mr. Ratliff, thank you for your
17 suggestion, I think it's very good. And, of
18 course, I know you have many years of experience
19 in this regard. And you're correct, this did
20 really benefit the contentious set of evidentiary
21 hearings that we conducted on another case.

22 I am always a little bit concerned when
23 attorneys sit here and tell me that they're going
24 to prepare highly developed testimony for the
25 Commissioners to hear.

1 We really are interested in getting
2 evidence and getting to the bottom of
3 understanding these issues. So, this kind of
4 discussion, this more informal approach, tends to
5 have less arguments around the process and
6 procedure, and allows us to get more to the bottom
7 of these issues, which I think we're all
8 interested in.

9 So I'm inclined for us to give this a
10 try in those areas that we don't have disagreement
11 from the parties.

12 Really, we want you to be comfortable
13 with this. And I'm surprised, but willing to
14 accept that the applicant's quite concerned a this
15 on the biological issues, because we have so many
16 witnesses.

17 We're interested in accomplishing two
18 objectives here. One is reducing the amount of
19 time that we're all going to be here. And second
20 is making sure we get to the bottom -- maybe I'm
21 using the wrong phrase -- that we get all of the
22 evidence out on the table for our consideration.

23 So, Commissioner Boyd, unless you object
24 I'd be inclined to make sure we try this at least,
25 early on, on some of those issues that I believe

1 Mr. Harris described earlier, that we could
2 probably proceed with panel discussions on.

3 And if, indeed, others are comfortable
4 with that approach, that we proceed that way with
5 all of the evidentiary hearings.

6 But again, everybody's comfort level
7 needs to be high; that you have an opportunity to
8 make sure your case is presented the way you wish
9 to present it.

10 But please keep those two objectives in
11 mind, what we're trying to accomplish here.

12 Commissioner Boyd, did you want to add
13 anything?

14 ASSOCIATE MEMBER BOYD: No. I think, as
15 you and I discussed, I'm open to -- let's
16 experiment with it in the easier area, and we'll
17 see how everybody adjusts to it.

18 MS. SMITH: Mr. Kramer, --

19 PRESIDING MEMBER BYRON: So how does
20 that work for you, Mr. Kramer?

21 HEARING OFFICER KRAMER: That's fine.
22 What I wrote down is we will try it on issues
23 other than biology.

24 ASSOCIATE MEMBER BOYD: You mean saving
25 the best for last, right?

1 HEARING OFFICER KRAMER: Ms. Smith.

2 MS. SMITH: Yeah, I just wanted to make
3 one point. I do support this approach, but Mr.
4 Harris did make the suggestion that some of those
5 issues could be lumped together. And I do have a
6 problem with that.

7 We're very interested in alternatives
8 and we'd like to single out alternatives and have
9 that be a separate discussion, panel or otherwise.
10 Just make sure that that's all we're talking
11 about, rather than putting in project description
12 and visuals and other things.

13 Thank you.

14 HEARING OFFICER KRAMER: Okay, well, I
15 think that does bring us to the actual topic areas
16 to be heard next week. And so we go back to the
17 spreadsheet, our visual aid.

18 We've already decided that traffic and
19 transportation will be just about the conditions
20 trans-1 and -4. Visual resources will be about
21 the staff's response to the draft or final EIS
22 that was presented as an exhibit impeachment at
23 the last hearing. And possibly about the Basin
24 and Range Watch testimony that was previously
25 filed.

1 And that takes us to project
2 description.

3 MR. HARRIS: Mr. Kramer, before we do
4 visual, --

5 HEARING OFFICER KRAMER: Okay.

6 MR. HARRIS: -- the staff is going to be
7 offering rebuttal testimony on the applicant's, I
8 think, exhibit 69, is that correct? Is that what
9 was left open?

10 HEARING OFFICER KRAMER: I think 69 was
11 that map, so it --

12 MR. HARRIS: The map, yeah, the map that
13 has the viewsheds on it.

14 HEARING OFFICER KRAMER: So that wasn't
15 the exhibit, it was --

16 MR. HARRIS: No. There was one piece of
17 the staff's testimony that was new to us, and I
18 pejoratively referred to it as the measles map.
19 It's near the very end of Mr. Kanemoto's
20 presentation. His map showing, I think, roads and
21 various projects.

22 We'd be very interested in receiving
23 that map with some additional detail as to what
24 exactly those red dots are on that map. Because
25 there's been some conversations back and forth

1 between Mr. Kanemoto and Mr. Priestley about that
2 map and why it was intended to be introduced. And
3 it would be very helpful for the staff to label
4 what those red dots are, at a minimum, on that
5 map.

6 It's the next-to-the-last page of his
7 PowerPoint, or somewhere thereabouts. So could we
8 ask staff to label that map and provide that, as
9 well, as part of their filing tomorrow?

10 HEARING OFFICER KRAMER: Staff, do you
11 have any objection?

12 MR. RATLIFF: I don't know. This is the
13 first I've heard of that. The map was a map of
14 alternative projects in, I believe, the greater
15 CDRA area. I thought it was part of our -- I had
16 thought that it was part of our alternatives
17 analysis, which included maps. But I don't know
18 if it was or not. I haven't been able to
19 determine that.

20 I'm not certain what we're doing here,
21 but maybe I should talk about it with Mr. Harris
22 to see if we can figure out what the point of this
23 exercise is. If he's unhappy with the map, then
24 perhaps we can find one from our alternatives
25 analysis.

1 I think we identified other energy
2 renewable projects that affect the cumulative
3 impact analysis elsewhere, either under cumulative
4 impact analysis or under alternatives. And if he
5 would prefer that we also enter that map, as
6 opposed to the one that appeared in the slide show
7 that Mr. Kanemoto did, we could do that, of
8 course. It's already in evidence.

9 But I take it maybe he wants the
10 identification, what the name of the project is,
11 where the red dots occur, or some such thing?

12 ASSOCIATE MEMBER BOYD: Well, I infer
13 that some legend was missing or something from the
14 map?

15 MR. HARRIS: There was a map that showed
16 some roads and the dots were various projects.
17 And we asked several times which project is that .

18 And all I'm asking really is that we add
19 names to those red dots. And this goes -- and
20 I'll pull the curtain back, it goes to the
21 question of reasonable foreseeability. I don't
22 know whether all those projects are still on the
23 board. I don't know whether some of those
24 projects are in the Feinsein National Monument.
25 And I can't make those arguments without knowing

1 the names of the dots, the projects that are
2 associated with the red dots.

3 And so all I'm asking staff to do is
4 identify with specificity the names of the
5 projects that are the red dots on that map.

6 HEARING OFFICER KRAMER: Well, if staff
7 can do that, I think that would be helpful to the
8 Committee, as well.

9 PRESIDING MEMBER BYRON: Absolutely. In
10 fact, there's some new information that's come out
11 in just the last month, not necessarily related to
12 this case, but I believe on our website there is
13 now a bunch of additional information that's
14 available, including maps that shows over 200
15 renewable projects. So they may be identified
16 there.

17 Also, Mr. Harris, I'd just correct you
18 in one regard. Senator Feinstein's proposed
19 national monument.

20 MR. HARRIS: Thank you, yes.

21 HEARING OFFICER KRAMER: Okay.

22 MR. RATLIFF: So we should then provide
23 that map with the identities of what the red dots
24 stood for, is that then what you're asking for?

25 HEARING OFFICER KRAMER: Yes.

1 MR. RATLIFF: Okay.

2 MR. HARRIS: Thank you.

3 MS. BELENKY: I'm sorry. This is Lisa
4 Belenky on the phone. We did finally receive the
5 map that applicant put into the record during that
6 hearing, as well, the visual resources map.

7 However, we had asked what one of the --
8 it says areas from which the project is not
9 visible. And we had asked for the applicant to at
10 least explain what that meant. If it means the
11 surface of the valley floor there, or the whole
12 project, the full height of the towers. And we
13 still haven't gotten clarification on that.

14 HEARING OFFICER KRAMER: Is that
15 something you're going to provide, Mr. Harris?

16 MR. HARRIS: Yes. I'll provide that in
17 the form of Dr. Priestley.

18 HEARING OFFICER KRAMER: To testify at
19 the --

20 MR. HARRIS: Well, to answer any
21 questions Ms. --

22 HEARING OFFICER KRAMER: Okay During
23 the next hearing?

24 MR. HARRIS: Yeah.

25 HEARING OFFICER KRAMER: Okay. Next is

1 project description, and that was not intended to
2 be closed the last hearing; it was basically a
3 context provider for the rest of the hearings on
4 that day.

5 Mr. Harris, you've got several witnesses
6 identified here. Do you expect any more of them
7 to testify?

8 MR. HARRIS: No, I do not. I actually
9 didn't think this topic was a separate topic that
10 was still open. We can have those witnesses show
11 up, because I think they're pretty much the same.

12 HEARING OFFICER KRAMER: Well, let me
13 ask. Let me set the context and we'll try to
14 apply this approach to all of your topics.

15 Basically in your prehearing conference
16 statement you said all our witnesses have been
17 identified in our filed testimony. So all I could
18 do was then pull all those names out.

19 And we're now at the point to find out
20 how many of them are actually, you're planning on
21 having come to testify.

22 And also to hear from the other parties
23 of whether they want to have witnesses available
24 to cross-examine on any of these topics.

25 So, I'm gathering then unless somebody

1 wants one of your witnesses to be here on project
2 description, you feel as if you're done, is that
3 correct?

4 MR. HARRIS: We would be pleased to
5 release those witnesses, yes.

6 HEARING OFFICER KRAMER: Okay. So a
7 question of all the other parties. Do you desire
8 to cross-examine any of the applicant's -- and
9 let's extend that to the staff's witnesses about
10 project description?

11 MS. BELENKY: This is Lisa from the
12 Center for Biological Diversity. We would like to
13 have a more full discussion about project
14 description. And my understanding was that at the
15 earlier hearing it was only being provided as sort
16 of a setup, so that we could talk about other
17 issues.

18 So I didn't -- do you need me to
19 identify which of these people? I have no way of
20 knowing which of these people I'm supposed to --

21 HEARING OFFICER KRAMER: Well, in very
22 brief form, what are you issues? If you just want
23 to argue about something, if it's not in the
24 nature of actual or expert opinion testimony from
25 one of the witnesses, we really don't need the

1 witnesses to be there. That's something you would
2 do either in oral argument portion of the hearing,
3 or in your briefs.

4 MS. BELENKY: Well, there are some
5 specific questions we have; in fact, even some
6 things that were mentioned at the earlier hearing,
7 as far as the operation when there is either cloud
8 cover or shadow on the site. And we have a
9 witness on that issue. And then on the issue of
10 when there may be shadow on the site.

11 And I also have some specific questions
12 about the use of the gas-fired plant, and the
13 amount, which also goes to the air quality issue.
14 Because there seems to be some inconsistency that
15 I have perceived, at least, in the documents about
16 the actual use that's intended for that, for those
17 both -- description. I think there are some other
18 specifics about the description, but I didn't
19 prepare all my notes for this right now. I could
20 do that if --

21 HEARING OFFICER KRAMER: Mr. Harris, can
22 one or two of your witnesses address each of those
23 topic areas, subtopic areas?

24 MR. HARRIS: I'm sorry, it wasn't clear
25 to me what those subtopic areas were. But I

1 thought she jumped to air quality. I'm sorry --

2 HEARING OFFICER KRAMER: She was talking
3 about how the plant was operating, as well.

4 MS. BELENKY: Which is the project
5 description.

6 MR. HARRIS: It's cloud cover she's
7 concerned about?

8 HEARING OFFICER KRAMER: How it would
9 operate during cloud cover. How much the gas
10 boilers would be used.

11 MR. HARRIS: I know she's got witnesses
12 that are dealing with those issues. Lisa, you've
13 got a series of black-and-white maps on shading.
14 Is that what you're talking about?

15 MS. BELENKY: That's not the only issue
16 we have with the project description. You know,
17 I'm happy to write something up. I didn't -- I'm
18 not prepared right now to give you every single
19 issue I was going to raise on project description
20 right this minute. If you would like me to write
21 something up?

22 I assumed that your witnesses would be
23 there, and that we were still going to actually
24 discuss this issue. If you're trying to take it
25 off the table, then --

1 HEARING OFFICER KRAMER: No, we're not
2 necessarily trying to take it off the table.
3 We're trying to identify situations where there
4 are no real questions so that those people are not
5 brought here unnecessarily.

6 It sounds then as if the applicant will
7 need to bring witnesses, not necessarily all of
8 them, but witnesses that can answer your
9 questions.

10 Would you object to any of these
11 witnesses testifying by telephone, Lisa?

12 MS. BELENKY: No, I don't, especially if
13 they would not object to my witness testifying by
14 telephone. Because he has to come from Arizona.
15 That would actually be a very good solution for
16 us, as well.

17 HEARING OFFICER KRAMER: Your witness is
18 Curt Bradley on this topic?

19 MS. BELENKY: That's right; um-hum.

20 HEARING OFFICER KRAMER: I have your
21 email so I have the list now.

22 MS. BELENKY: Thank you.

23 MR. HARRIS: So is this -- we're going
24 to be putting on a panel for alternatives. And
25 Ms. Smith has already said she wants that to be a

1 separate subject.

2 Are the questions that Lisa's identified
3 as project description questions things that they
4 could be asked of my alternatives panel, so I can
5 release my project description witnesses? Or air
6 quality, if we're going to do air quality?

7 HEARING OFFICER KRAMER: Well, it looks
8 like Mr. DeYoung is the only person who's -- oh,
9 no, and Mr. Carrier are on both project
10 description and --

11 MS. BELENKY: Yeah, I just have no way
12 of knowing who on your panel knows what because of
13 the way, you know, you put them all on each set of
14 testimony.

15 I'm happy to, if you feel like they can
16 address the issues, that's fine. I'm not attached
17 to having them be there, the other people be there
18 if you don't think they're necessary.

19 HEARING OFFICER KRAMER: Well, Mr.
20 Harris, I'm suspecting that Mr. DeYoung and Mr.
21 Carrier are going to be there anyway, right?

22 MR. HARRIS: Yeah, they won't be
23 released, sure.

24 HEARING OFFICER KRAMER: So what you
25 could probably do then is have the others

1 available by telephone if you need them. And we
2 can offer some flexibility during the course of
3 the day to bring them up on the telephone if
4 necessary.

5 MR. HARRIS: Well, if Lisa is suggesting
6 that she needs my panel for project description in
7 full to show up, we will have our whole panel show
8 up. And I don't anticipate putting on any direct
9 testimony. I'm likely just to make those people
10 available for cross-examination at that point.

11 HEARING OFFICER KRAMER: Okay, thank
12 you. Anybody else interested in cross-examining
13 either the applicant's or staff's or the Center
14 for Biological Diversity's witnesses on project
15 description?

16 MR. CONNOR: This is Mike Connor with
17 Western Watershed Project. I might have some
18 questions.

19 HEARING OFFICER KRAMER: Okay, but you
20 have a witness of your own, correct?

21 MR. CONNOR: I don't have a witness of
22 my own, no.

23 HEARING OFFICER KRAMER: Okay. Did
24 somebody else chime in there? No?

25 Project alternatives.

1 MS. BELENKY: Well, does this mean my
2 witness can be on the phone, as well? Or are we
3 all -- I just got confused in the middle of that
4 conversation.

5 HEARING OFFICER KRAMER: Mr. Harris, did
6 you have any objections?

7 MR. HARRIS: Obviously our preference
8 would be for the witness to be here, but, you
9 know, we understand if that's impossible, that it
10 could be then over the phone.

11 HEARING OFFICER KRAMER: Any other
12 party?

13 MR. HARRIS: So no objection, I guess.

14 MS. BELENKY: If we knew what day it
15 was, but I suppose at the end of the process we
16 may know which day, and would help.

17 HEARING OFFICER KRAMER: Yeah, we're
18 going to try to do that.

19 MS. BELENKY: Thank you.

20 HEARING OFFICER KRAMER: And the
21 witnesses that fly in, you know, they'll have at
22 least a little extra point or two on the priority
23 scale.

24 MR. HARRIS: On alternatives we do have
25 a constraint on the 13th. We have one witness who

1 will not be available on the 13th. So 11, 12 or
2 14 for our panel on alternatives.

3 HEARING OFFICER KRAMER: How long do you
4 think the alternatives discussion is going to
5 take? Half a day, perhaps?

6 MR. HARRIS: It's going to depend on how
7 many questions the other parties have for my
8 panel, because I can't imagine we'd have more than
9 five minutes of direct testimony.

10 HEARING OFFICER KRAMER: Okay. So no
11 alternatives on the 13th, you said. And that's
12 only a half-a-day hearing anyway, so that may not
13 be the best place to put something like that.

14 MS. BELENKY: Which is only half a day?

15 HEARING OFFICER KRAMER: Wednesday the
16 13th. It's in the afternoon following the
17 Commission's business meeting.

18 I think we said it starts at 1:00. Yes.
19 The other days are all day.

20 MS. BELENKY: Well, and our alternatives
21 witness cannot make it on the 14th, which we did
22 put in our prehearing conference statement.

23 HEARING OFFICER KRAMER: Because
24 alternatives relates so closely to biology, it
25 makes sense to me that biology should probably go

1 first to set the context.

2 Otherwise I'd be inclined to say that
3 this alternative discussion could be worked as a
4 panel, and might offer a useful test run for some
5 of the other potential uses of a panel, perhaps
6 even including biology.

7 Do the parties disagree with my
8 assumption that biology should probably go first?

9 MR. RATLIFF: As the first issue you
10 mean, or --

11 HEARING OFFICER KRAMER: Well, before
12 alternatives, because, after all, alternatives is
13 discussing variations on or comparing the
14 biological and other impacts at other sites and --

15 MR. RATLIFF: Okay.

16 HEARING OFFICER KRAMER: -- technologies
17 to the biological impacts at the project site,
18 which would be discussed in depth during the
19 biological discussion.

20 MS. SMITH: Mr. Kramer, I definitely
21 agree. I think that a big portion of our witness'
22 time would go to describing the various impacts of
23 the project, as proposed, on biological resources.

24 So if we could have the project setting
25 and the biological setting beforehand, I think it

1 would make the alternatives discussion more
2 streamlined. We'd all be on the same page about
3 what we were talking about.

4 HEARING OFFICER KRAMER: Okay. So,
5 looks like alternatives will probably be
6 tentatively on the 12th, then.

7 MS. BELENKY: Alternatives on the 12th?

8 HEARING OFFICER KRAMER: Tentatively.
9 We have a whole page of calendars, so we can write
10 things and cross them out many times --

11 MS. BELENKY: Okay.

12 HEARING OFFICER KRAMER: -- formula
13 here.

14 MR. RATLIFF: Mr. Kramer, did we have
15 something on the 11th yet already, or did I miss
16 something?

17 HEARING OFFICER KRAMER: I'm thinking
18 project description, --

19 MR. RATLIFF: Okay.

20 HEARING OFFICER KRAMER: -- and biology.

21 MR. RATLIFF: And biology?

22 HEARING OFFICER KRAMER: Yes. But I may
23 be getting ahead of myself.

24 MR. RATLIFF: Does that mean we'll be
25 doing biology by informal hearing or by formal

1 hearing?

2 HEARING OFFICER KRAMER: Because we
3 didn't, in our notice, give the Committee the
4 opportunity to impose --

5 MR. RATLIFF: Oh, I thought you did.

6 HEARING OFFICER KRAMER: That was the
7 other case we're on.

8 MR. RATLIFF: Oh, I thought you'd done
9 it in both cases. You have not done it in this
10 case?

11 HEARING OFFICER KRAMER: No.

12 MR. RATLIFF: Okay.

13 HEARING OFFICER KRAMER: It came too
14 late, the request.

15 MR. RATLIFF: Okay.

16 MR. BASOFIN: I'm sorry, just a point of
17 information. I'm a little confused. I think I
18 just heard that we'd be doing project description
19 and biological resources first, on the 11th?

20 HEARING OFFICER KRAMER: That's
21 tentative, yes.

22 MR. BASOFIN: Tentative. But previously
23 when we had discussed the informal hearing
24 procedure we had said we would do a test run with
25 the sort of more uncontested subjects, which

1 wouldn't seem possible if we were doing the most
2 contested --

3 HEARING OFFICER KRAMER: No, but for the
4 reasons I alluded to a minute ago, I don't think
5 logically it'll work very well to have
6 alternatives come before biology. In a way,
7 biology, an in-depth discussion of the impacts of
8 the project site educates us and provides a
9 shorthand sort of way for us to then discuss
10 alternatives probably more efficiently.

11 MR. BASOFIN: I understand the strategy
12 there. I'm just wondering if it wouldn't be more
13 useful to take something like traffic and
14 transportation or --

15 HEARING OFFICER KRAMER: Well, those are
16 pretty much done as far as panels go.

17 MR. BASOFIN: Okay.

18 MR. RATLIFF: We think we're done with
19 those. Almost done with those.

20 HEARING OFFICER KRAMER: Mr. Ratliff?

21 MR. RATLIFF: Well, I don't want to
22 belabor this. If the Committee decides it doesn't
23 want to use informal hearing procedure, then --
24 for biology, then certainly I understand that
25 decision.

1 But I do want to point out that under
2 section 25521 the Commission has the discretion to
3 determine whether it will have formal hearings,
4 and how it's going to hold the hearing process.

5 So, you have that authority, I think,
6 independently of the provision in the
7 Administrative Procedure Act. I think you can
8 hold the hearings in whatever manner you feel
9 provides you with the best information.

10 So I would like just to make sure that
11 you're aware that you may have greater authority
12 than simply that offered by the APA.

13 HEARING OFFICER KRAMER: Well, I think a
14 little while ago we decided that we were not going
15 to override the applicant's objection on the issue
16 of biology. And we would try it on the other
17 topic areas.

18 MR. RATLIFF: But I notice you're
19 starting with biology, though, on the first day.
20 So if you don't override it then you are doing it
21 by formal hearing procedure.

22 HEARING OFFICER KRAMER: Well, just for
23 biology.

24 MR. RATLIFF: Well, right, but --

25 HEARING OFFICER KRAMER: I mean --

1 MR. RATLIFF: -- but that's the one
2 where you might get the greatest bang for the buck
3 if you go to informal hearing procedure. That's
4 my point.

5 HEARING OFFICER KRAMER: No, I
6 understand, but -- actually I think your advice to
7 us has changed.

8 MR. RATLIFF: Well, I told you
9 originally, that informal hearing procedure has to
10 be noticed to be utilized. And that was my
11 understanding at the time from reading that
12 provision in the APA.

13 But I've also since become aware that
14 our own statute provides us, I think, ample
15 discretion to determine how to run our hearings,
16 our evidentiary hearings.

17 So I think you can have your hearings in
18 whatever manner you choose, even if the APA didn't
19 exist. That was my point.

20 (Pause.)

21 HEARING OFFICER KRAMER: Well, we're
22 reluctant to, especially at this point, given the
23 applicant's preparation and reluctance to switch
24 to panels, we're not going to have the informal
25 process for biology. We will for the subsequent.

1 ASSOCIATE MEMBER BOYD: Let me just say,
2 I'm going along with this because I've been
3 persuaded that with regard to the argument that
4 alternatives needs to follow biology, and the
5 arguments were persuasive. Because earlier I'd
6 suggested saving it for last and trying the
7 informal process on everything else, and then
8 deciding.

9 But if there is a consensus, there seems
10 to be up here, that you've just got to do biology
11 in order to do alternatives. I don't know what
12 your views are on that. Then that kind of gives
13 us no choice but to proceed with biology first in
14 a formal way, and then switch to informal for
15 everything else.

16 But I, you know, I see a 12-hour hearing
17 on the 11th, but, anyway I just wanted to share my
18 thoughts.

19 HEARING OFFICER KRAMER: And the parties
20 can think about perhaps some kind of, after the
21 formal testimony is produced, something that's a
22 little less formal.

23 Because one of the places you can waste
24 a lot of time is if you have to, when you're
25 cross-examining someone if you have to first

1 remind them of what was said four hours ago.

2 I've seen people get into a loop, you
3 know, where they'll spend 20 minutes arguing about
4 what their remembrance of that was. And we have
5 no court reporter to read things back. And that's
6 certainly something we want to avoid.

7 But we are also sensitive that the
8 parties should be able to tell their story, at
9 least initially, and in the way that they want to,
10 and in the way that they prepared it. Mindful
11 that our job is not, you know, to -- our job is to
12 get at the truth, which means we want to hear
13 everything and decide what, you know, what we
14 think is relevant and what we believe is
15 compelling testimony. And then decide on that
16 basis, rather than on technicalities and
17 procedural events.

18 PRESIDING MEMBER BYRON: Commissioner
19 Boyd, as we get into the 11th and 12th hour on
20 Monday, I'll just remind you that it was the
21 applicant, Mr. Harris, that made that suggestion
22 that we maintain a formal hearing process.

23 But that's anticipating where we're
24 going, and who knows, maybe it will go a lot
25 quicker than that.

1 HEARING OFFICER KRAMER: Okay, can we
2 move on to power plant reliability? Mr. Harris, I
3 couldn't figure out which -- you divided your
4 topics somewhat differently, so I wasn't quite
5 sure who your witness would be, if we need one.

6 Rather than having you identify one, let
7 me ask, are any of the parties interested in
8 cross-examining or examining witnesses on the
9 topic of reliability?

10 MR. BASOFIN: Defenders is.

11 HEARING OFFICER KRAMER: And could you
12 be more specific about the subtopics involved?

13 MR. BASOFIN: Well, at the previous
14 prehearing conference we had cited power plant
15 reliability as a somewhat disputed issue in terms
16 of -- and it was somewhat related to soil and
17 water resources, but the effect of stormwater
18 scouring on the heliostat units was initially
19 disputed based on the modeling results for
20 stormwater.

21 HEARING OFFICER KRAMER: So then it
22 would really be the soil and water witnesses
23 there, even though it's a cross-over issue you're
24 talking about soil and water basically.

25 MR. HARRIS: If the issue is scour that

1 would definitely be our soil and water witnesses,
2 yes.

3 MR. RATLIFF: Could we agree to put it
4 under that topic perhaps?

5 HEARING OFFICER KRAMER: Do you have any
6 objection to combining it with --

7 MR. BASOFIN: No, I mean I agree with
8 you, Mr. Kramer, it's a cross-over issue. I don't
9 have an objection to putting it under soil and
10 water resources.

11 HEARING OFFICER KRAMER: Okay, so
12 anybody else want to cross-examine, on the
13 telephone or in the room here?

14 Okay, so power plant reliability will be
15 combined with soil and water.

16 MR. RATLIFF: Rather than combining it,
17 making it worse, can't we just let it go and put
18 it under soil and water? I mean do we really have
19 a reliability -- when our witness testifies he
20 knows nothing about scouring. We'll say that
21 right now.

22 HEARING OFFICER KRAMER: Right. Well, I
23 think just as Mr. Harris is going to be bringing
24 soil and water witnesses to this discussion, you
25 probably would, as well.

1 MR. RATLIFF: Do we need our reliability
2 -- the witness for our reliability testimony to
3 attend the hearing?

4 HEARING OFFICER KRAMER: That's a
5 question for Mr. Basofin. Do you want to ask any
6 questions of the person who wrote the section on
7 reliability?

8 MR. BASOFIN: I mean to the extent that
9 there's statements in the final staff assessment
10 regarding the stormwater modeling and scour, I
11 think it's appropriate to have the staff person
12 who worked on that testify.

13 MR. RATLIFF: That would be our soil and
14 water witness.

15 MR. BASOFIN: That's fine.

16 HEARING OFFICER KRAMER: Okay.

17 MR. HARRIS: So your question, Dick, was
18 can we close out that and release our witnesses?
19 Is that --

20 MR. RATLIFF: We don't have anything in
21 our reliability testimony that has to do with
22 scouring. I think it assumes that the project
23 doesn't wash away.

24 But the soil and water testimony does go
25 to the issue of scouring, and we did, you know,

1 discuss that possibility in that testimony. So, I
2 guess I'd just like to have our -- I guess I'd
3 rather call it soil and water and say that we are
4 adjudicating power plant reliability.

5 HEARING OFFICER KRAMER: Well, I think
6 you are, in a way; but, it's really -- but it
7 doesn't sound as if the author of that section
8 needs to come to the discussion.

9 MR. HARRIS: Okay, so are we closed on
10 that issue, because I've got witnesses I'd like to
11 release on that one, as well.

12 HEARING OFFICER KRAMER: Any other
13 parties want to talk to the authors of the AFC or
14 the FSA on reliability? Hearing none.

15 MR. HARRIS: Thank you.

16 HEARING OFFICER KRAMER: Air quality.
17 Mr. Harris, from what you said earlier I gather
18 that both your witnesses will be attending?

19 MR. HARRIS: Yeah, but I guess I'd like
20 to probe a little bit as to whether we need live
21 witness testimony on these issues. And then maybe
22 that's for Lisa -- Lisa, how come I can't say your
23 name right?

24 MS. BELENKY: That's no big -- don't
25 worry. It's like a bell and a key, that's what my

1 grandfather always said, bell and key.

2 MR. HARRIS: Okay. You cut out a little
3 bit, so I'll believe my hearing on that. But, so
4 I've seen your statement a couple times and I'm
5 not really sure whether there are factual
6 questions that you need my witnesses to cross-
7 examine, or whether those are legal arguments.
8 And if I can release those guys I'd be glad to do
9 that, as well.

10 MS. BELENKY: Well, I just went back
11 through this on Friday, and I do have really
12 specific questions. So I'm happy to forward them
13 to you and see if you think you could answer them
14 on paper instead of bringing your witnesses. I'm
15 happy to do that.

16 Does that answer the question?

17 HEARING OFFICER KRAMER: What's the
18 general area of your questions?

19 MS. BELENKY: Well, some of the numbers,
20 and then the way the conditions are set up they
21 don't seem to match up. For this project our main
22 issue with air quality is the way the staff
23 analysis was performed and put together.

24 And one of the basic questions is how
25 they reached some of the numbers they're using.

1 Because it doesn't actually say what assumptions
2 they're using. Or in one place it says one thing
3 and in another place it says something different.

4 And then that the conditions don't
5 necessarily match what is said in the text, the
6 actual conditions don't match them.

7 So just trying to tease out all those
8 questions, because it doesn't -- they are factual
9 questions, they just simply don't add up, as we're
10 reading it.

11 So I wouldn't know how else to deal with
12 this, if not during the hearing. I'm happy to do
13 it a different way if that's easier for everybody.

14 MR. RATLIFF: Lisa, Dick Ratliff here.
15 Is that also the staff testimony you're talking
16 about, or is it just the applicant testimony?

17 MS. BELENKY: Well, it's very hard to
18 tell who -- it's in the FSA. It's what it says in
19 the FSA. Whether it's someone said it's depending
20 on numbers that came from the applicant.

21 So, to the extent that that's who
22 prepared the actual numbers, then I would imagine
23 you would want to have the applicant experts
24 there, as well.

25 MR. RATLIFF: But it is based on what

1 the staff said in the FSA then?

2 MS. BELENKY: It is based on the text of
3 the FSA.

4 MR. RATLIFF: Okay, thank you.

5 HEARING OFFICER KRAMER: I think it's
6 always dangerous to not have an air quality
7 witness around during hearings. Stuff always
8 comes up.

9 PRESIDING MEMBER BYRON: Even on
10 renewable projects.

11 HEARING OFFICER KRAMER: Yes, believe it
12 or not.

13 PRESIDING MEMBER BYRON: Well, at our
14 New Years Eve party, Mr. Kramer, we have an annual
15 questionnaire we do. And we have a saying that
16 winners must be present to win and losers are
17 losers wherever they are. So I think we'd like to
18 have the witnesses present --

19 (Laughter.)

20 PRESIDING MEMBER BYRON: -- so that
21 we're not precluded from hearing their testimony.

22 MR. HARRIS: I'll have our winners show
23 up.

24 HEARING OFFICER KRAMER: Okay, we'll
25 pick a more precise time in a little while. Oh,

1 by the way, do we have the appropriate declaration
2 from the air district to meet the requirements of
3 25023, is it? That all the offsets are, they meet
4 -- you know what I'm talking about, Mr. Harris.

5 MR. HARRIS: The ERCs certification?
6 We've got the FDOC, so that would say that the
7 offsets have been identified and -- no, right,
8 there isn't any offsets for this project, that's
9 right.

10 HEARING OFFICER KRAMER: FDOCs, quite
11 often you really have to reach in them to find
12 them, you know, all the elements that the statute
13 requires.

14 MR. HARRIS: Right, --

15 MR. DE YOUNG: Is there a question about
16 whether offsets are required for this project, and
17 if so, have they been identified?

18 HEARING OFFICER KRAMER: It's the
19 information -- I don't have the magic words on the
20 tip of my tongue, but it's a statement, a
21 certification I think is the word the statute
22 uses, from the air district that it meets their
23 requirements, and all of the -- I think it's all
24 of the offsets either have been obtained or
25 provided, or will be, within the time provided by

1 the district's rules.

2 It's more of a formality; it's a --

3 MR. DE YOUNG: Yeah, we --

4 HEARING OFFICER KRAMER: -- we're
5 dotting an "i" and crossing a "t" here.

6 MR. DE YOUNG: We can find the comment
7 in the FDOC and point that out to you. We did not
8 trigger offsets for this project, sir.

9 HEARING OFFICER KRAMER: Okay.

10 MR. DE YOUNG: No ERCs have been
11 required.

12 HEARING OFFICER KRAMER: That might be
13 good enough. It's a detail more than anything
14 else. And I'm sorry, I didn't look specifically,
15 but is one of the parties introducing the FDOC as
16 an exhibit?

17 MR. RATLIFF: We typically do that. I
18 don't think we have yet, but we can do that.

19 HEARING OFFICER KRAMER: Okay. So if
20 you could put that on your list for tomorrow's
21 filing.

22 Okay, worker safety/fire protection.
23 Who wants to cross-examine, if anyone, staff or
24 the applicant's witnesses on that topic?

25 MS. BELENKY: Oh, I'm sorry, fire

1 safety, is that what you said?

2 HEARING OFFICER KRAMER: Yes.

3 MS. BELENKY: I believe fire safety is
4 an issue that we have some questions about, as
5 well. But it's not worker safety/fire safety. So
6 maybe it's two different things, I'm sorry.

7 HEARING OFFICER KRAMER: No, it's a
8 combined topic, worker safety and fire protection
9 of the project. So if you --

10 MS. BELENKY: So fire impacts on
11 surroundings, the likelihood of increase impacts
12 of fire on the surrounding areas, I think is how
13 we phrased it.

14 HEARING OFFICER KRAMER: Okay. Do you
15 anticipate that would take more than a couple
16 minutes?

17 MS. BELENKY: I don't think it would
18 take that long.

19 HEARING OFFICER KRAMER: Okay.

20 MR. HARRIS: Lisa, didn't you identify
21 that as an issue related to the biology and fire,
22 not to, you know, like the fire suppression plants
23 or programs --

24 MS. BELENKY: Right, but I don't know
25 how much it overlaps. I just -- it is an issue

1 that we raised, how it would affect biology, but I
2 also think it may overlap, that's all. I just
3 wanted to make sure that if it's going to be
4 discussed, we have a few minutes.

5 MR. HARRIS: On page 11 of your second
6 prehearing conference statement, you identified it
7 under bio. And I think we have got the right
8 people on our bio panel to be able to answer those
9 questions.

10 MS. BELENKY: Okay, great.

11 HEARING OFFICER KRAMER: Okay, so then
12 you will not need anyone from -- Mr. DeYoung's
13 going to be here anyway. Do you think you'll need
14 anyone from the Commission Staff? That is who
15 wrote the worker safety/fire protection section.
16 They're not biologists.

17 MS. BELENKY: Right. I don't think so.
18 I mean I think -- but it's sort of hard for me to
19 say. So does that -- then you would take it off
20 the, you would take it off all together, though,
21 and it would be --

22 HEARING OFFICER KRAMER: No, I think you
23 could ask your --

24 MS. BELENKY: Okay.

25 HEARING OFFICER KRAMER: What we can do

1 is if you're, for some reason since biology's
2 going to go before this, --

3 MS. BELENKY: Right.

4 HEARING OFFICER KRAMER: -- if for some
5 reason your questions aren't answered, we should
6 be able to have staff available on call at some
7 point later in the week to answer them. Will that
8 work for you --

9 MS. BELENKY: That would be fine.

10 HEARING OFFICER KRAMER: Because after
11 all, our staff is, unless they're on vacation,
12 they're here in the building. That's not a -- and
13 we have elevators, so it's not a long trip for
14 them.

15 Okay, so worker safety will be only if
16 biology doesn't answer it.

17 Are your questions more about the
18 likelihood of the plant spreading fire to the
19 neighborhood, or just what the effects would be of
20 a fire on the plants in the area?

21 MS. BELENKY: It's both the likelihood
22 of fire and then the impacts, both of them.

23 HEARING OFFICER KRAMER: Okay, well --

24 MS. BELENKY: And what measures are
25 directly related to the spread of fire out into

1 the plants.

2 HEARING OFFICER KRAMER: So you're
3 really asking about how well the plant is
4 protected from, I guess, causing a fire in the
5 vicinity.

6 MS. BELENKY: I guess that's one way to
7 look at it. I mean I think we also had noticed
8 that there's no discussion of how all of the
9 equipment and, you know, cars and trucks coming on
10 and off would or may increase fire risk, as well.

11 But there's just some big gaps in the
12 fire discussion.

13 HEARING OFFICER KRAMER: Okay, well, I
14 think the traffic going to and from the site would
15 be biology, not the worker safety/fire protection.
16 Okay, so they'll be on call if your questions are
17 not answered in the biological resources
18 discussion, which is the next topic on the second
19 page of the spreadsheet.

20 Mr. Harris, you have quite a few
21 witnesses identified. Are you expecting all of
22 them to testify?

23 MR. HARRIS: We're going to present them
24 as a panel, will probably have one or two take the
25 lead in describing and answering questions for

1 direct testimony. And then make them all
2 available for cross. So I don't need, you know, a
3 set time for all of them, you know, ten minutes
4 for each of them or anything along those lines.

5 MR. RATLIFF: I'm sorry, which topic are
6 we discussing?

7 HEARING OFFICER KRAMER: Biology.
8 Sounds like we're drifting towards a modified
9 version of your panel.

10 Staff, we should add Mr. Flint or Mr.
11 Hunting.

12 MR. RATLIFF: Yes. And then the
13 rebuttal testimony we have had two staff
14 witnesses, Carolyn Chainey-Davis on plants, and
15 Richard Anderson on tortoise habitat. Both of
16 these witnesses were involved in trying to look at
17 alternatives, particularly in the I-15 portion.
18 So we wanted to add them as witnesses for that
19 purpose.

20 HEARING OFFICER KRAMER: You said
21 alternatives, so is that --

22 MR. RATLIFF: I'm sorry, it's -- yeah,
23 but it's, well, I guess they could be witnesses in
24 either area. But their testimony, I think I'm
25 correct in saying their testimony was focused on

1 the alternatives aspect of the biological issue.
2 Because they looked specifically at the I-15
3 alternative. Am I correct about that, John?

4 MR. KESSLER: Yes.

5 MR. RATLIFF: And so if it made more
6 sense they could testify under alternatives, but
7 they're biologists who did work on alternatives.

8 HEARING OFFICER KRAMER: And is there
9 going to be written testimony associated with
10 their rebuttal?

11 MR. RATLIFF: Yes, it's being filed
12 today.

13 HEARING OFFICER KRAMER: Okay, could you
14 spell their names for us again, the reporter and
15 me?

16 MR. RATLIFF: Carolyn Chainey-Davis is
17 C-a-r-o-l-y-n, Carolyn, Chainey, C-h-a-i-n-e-y -
18 dash- Davis.

19 HEARING OFFICER KRAMER: C-h-a-n-e-y?

20 MR. RATLIFF: C-h-a-i-n-e-y.

21 HEARING OFFICER KRAMER: Davis, okay.

22 MR. RATLIFF: And then either Richard or
23 Dick Anderson, I think he goes by Dick, but
24 Richard Anderson.

25 HEARING OFFICER KRAMER: Okay, former

1 full-time employee here?

2 MR. RATLIFF: Yes.

3 HEARING OFFICER KRAMER: And is that e-n
4 or s-o-n?

5 MR. RATLIFF: O.

6 HEARING OFFICER KRAMER: Okay, so would
7 it be better to include them in both alternatives
8 and biology?

9 MR. RATLIFF: Well, certainly on the
10 alternatives issue. They're really witnesses that
11 can be in either area, but their testimony is
12 largely directed, if not entirely directed, to the
13 I-15 alternative.

14 HEARING OFFICER KRAMER: Okay. So I
15 think we'll put them on both lists then.

16 Sierra Club had Scott Cashen.
17 California Native Plant Society, Jim Andre.
18 Defenders of Wildlife, Dr. Ronald Marlow. Western
19 Watersheds Dr. Michael Connor. And Center for
20 Biological Diversity had Mark Jorgensen, J-o-r-g,
21 as in golf, -e-n-s-e-n. And Iieene Anderson,
22 I-i-e-e-n --

23 MS. BELENKY: No, I-l.

24 HEARING OFFICER KRAMER: I'm sorry,
25 I-l-e-e-n-e, Anderson spelled -o-n at the end.

1 MR. RATLIFF: And John Kessler just
2 corrected me. He said that at least with regard
3 to Carolyn Chainey-Davis, her testimony goes to
4 rare plants more generally than just for
5 alternatives. Although I'm correct that Dick
6 Anderson's work is on the I-15 alternative
7 exclusively.

8 HEARING OFFICER KRAMER: Okay, well, to
9 the extent the issues are going to cross over, --

10 MR. RATLIFF: Okay.

11 HEARING OFFICER KRAMER: -- we'll leave
12 them in both places.

13 Okay, did I miss any witnesses?

14 MR. HARRIS: Just a point of
15 clarification, Mr. Kramer, in some of the rebuttal
16 testimony today I think there may be one or two
17 witnesses, new witnesses that we'll be adding with
18 our rebuttal testimony. But again, as parts of
19 panels. You'll see those when we file tomorrow.

20 HEARING OFFICER KRAMER: Okay, when you
21 send it out, could you email me perhaps separately
22 just to call out those names to make sure I don't
23 miss them? Because they kind of fall off my radar
24 screen.

25 MR. HARRIS: Okay. Mr. Carrier is not

1 here, but I'll see that we do that, so.

2 HEARING OFFICER KRAMER: Okay. Just
3 adding up the time, Mr. Harris, in your prehearing
4 conference statement that you estimated for direct
5 and cross-examination, I came up with about seven
6 or eight hours.

7 MR. RATLIFF: Which is one of the
8 reasons why we urged you to use informal hearing
9 procedure. Just looking at Mr. Harris' cross-
10 examination time alone, it was a whole day.

11 So, I mean I don't know how we get
12 through hearings at that -- the cross-examination
13 goes on at that length.

14 HEARING OFFICER KRAMER: Well, I think
15 what we'll have to do is --

16 MS. SMITH: Mr. Kramer, could I just add
17 a wrinkle?

18 HEARING OFFICER KRAMER: Sure.

19 MS. SMITH: Sierra Club assumes that
20 Ms. Susan Lee was going to be testifying on
21 alternatives. And I guess we'd just like maybe
22 clarification on whether or not Mr. Anderson will
23 be offering something new, or sort of what's
24 happening here.

25 Because we're not going to have an

1 opportunity to rebut this testimony that we'll see
2 today. So I'm just not sure if this is something
3 new.

4 MR. RATLIFF: It's in testimony that
5 we're filing today, yes. New meaning?

6 MS. SMITH: Well, you know, I've spoken
7 with Ms. Lee at the workshops at length, and then
8 also --

9 MR. RATLIFF: Yes.

10 MS. SMITH: -- I was able to review her
11 testimony in the FSA. And now it sounds like you
12 have a new witness on the I-15 alternative that
13 may have -- need to be discussing a different
14 aspect of the alternative. I have no idea.

15 MR. RATLIFF: Well, in the workshops we
16 did discuss the fact that staff had done field
17 work in the I-15 area. One of the principal
18 persons who did that was Dick Anderson.

19 And I think you've heard, at the
20 workshops, discussions of what he found
21 principally through Susan. But I don't know if
22 it's new information to you or not. It may be
23 more specific information that he can offer about
24 what the result of the survey was.

25 But it's an effort to try to summarize.

1 Both he and Ms. Davis were looking at the areas in
2 the proximity to I-15 to try to determine its
3 suitability for habitat, to try to further the
4 discussion of alternatives. So it's offered in
5 that vein.

6 MS. SMITH: I think that's fine. It
7 doesn't sound like it's anything new, and it
8 sounds consistent with what we were talking about
9 at the workshops. Mr. Kessler's nodding his head.

10 HEARING OFFICER KRAMER: Thank you. I
11 noticed the one witness I forgot to mention, the
12 Center for Biological Diversity. Back again in
13 the area of alternatives is Bill Powers.

14 MS. BELENKY: Yes.

15 HEARING OFFICER KRAMER: And is that the
16 gentleman from San Diego, he's an engineer?

17 MS. BELENKY: Yes.

18 HEARING OFFICER KRAMER: So he's
19 testified in some of our proceedings before?

20 MS. BELENKY: Yes.

21 HEARING OFFICER KRAMER: Okay, so in
22 biology, we now have all the witnesses identified,
23 as far as I can tell.

24 Is there any other issues any of the
25 parties wish to raise with regard to biology?

1 Hearing and seeing none, let's move on to soil and
2 water resources.

3 There Mr. Harris estimated about a half
4 an hour for his direct and cross, I believe it
5 was. And we've heard earlier that there are
6 certainly going to be questioning from Mr. Basofin
7 about scour. Are there any other issues, specific
8 issues, we should note in the minds of any of the
9 parties.

10 MR. CONNOR: This is Mike Connor. Is
11 bio-20 going to be dealt with under biology or
12 under water?

13 HEARING OFFICER KRAMER: I don't have
14 that one in front of me.

15 MR. RATLIFF: Bio-20, I believe, is the
16 requirement that staff proposed to incorporate
17 provisions of what the Department of Fish and Game
18 would require in the form of a stream-alteration
19 agreement to put it into our license.

20 So we had proposed specific conditions
21 in the staff testimony for that, based on
22 discussions with Fish and Game. And I think if
23 there's an issue, it's the issues that the
24 applicant suggested that they didn't think there
25 should be a condition, so.

1 HEARING OFFICER KRAMER: Okay, so it
2 sounds like it will be discussed in the biological
3 topic. Does that answer your question, Mr.
4 Connor?

5 MR. CONNOR: Yeah, as long as I get an
6 opportunity to ask questions about it.

7 HEARING OFFICER KRAMER: Okay, so is
8 there anything else besides the sort of wash away,
9 the scour issue, that any party is planning on
10 discussing?

11 MS. BELENKY: Yes. This is Lisa
12 Belenky. On the water resources we still have
13 some questions about the recharge in the basin,
14 the numbers that were collected by staff. And
15 some of the basis for those determinations. We
16 just have a few questions on that.

17 HEARING OFFICER KRAMER: Okay, so it
18 sounds like staff will need to have those
19 witnesses here, as well.

20 MR. RATLIFF: Do you anticipate that
21 that would be on Tuesday or on Wednesday?

22 HEARING OFFICER KRAMER: We'll have to
23 see. We're going to have to juggle these things
24 in a moment.

25 Cultural resources. Two witnesses each

1 from the applicant and the staff. Do we have any
2 plans, any need to cross-examine them from any
3 party?

4 MR. CONNOR: This is Mike Connor. I
5 would like to ask some questions of staff
6 regarding some of the cultural resources that are
7 found on the site.

8 HEARING OFFICER KRAMER: Are you going
9 to need to get into any sort of information that
10 might be confidential, do you think?

11 MR. CONNOR: No. I'm, you know, I'm
12 cognizant of that kind of issue.

13 HEARING OFFICER KRAMER: So you would be
14 speaking generically?

15 MR. CONNOR: It will be more general,
16 although I will be asking questions about specific
17 sites.

18 HEARING OFFICER KRAMER: Okay. Do you
19 have any specific witnesses in mind, the applicant
20 versus staff witnesses, for instance?

21 MR. CONNOR: I don't know. I don't know
22 who was responsible for the statements in the FSA.

23 MR. RATLIFF: The staff.

24 MR. CONNOR: Well, then it would be
25 staff.

1 HEARING OFFICER KRAMER: Although
2 sometimes staff does rely on work that was done by
3 the applicant.

4 How long do you think your examination
5 will take?

6 MR. CONNOR: I'm not expecting to ask
7 more than a couple of questions.

8 HEARING OFFICER KRAMER: Okay. I'll
9 give you .2 hours.

10 MR. CONNOR: I think less than that.

11 HEARING OFFICER KRAMER: Well, then you
12 get a credit somewhere else, how's that?

13 (Laughter.)

14 HEARING OFFICER KRAMER: Okay, land use.
15 That's kind of a cross-over issue with visual, as
16 I understand it. And -- to some degree, or at
17 least the argument is that the visual impacts of
18 the project conflict with some general plan
19 policies of the county, for instance. But I think
20 there's more to it than that, possibly.

21 So, does anyone need to or desire to
22 cross-examine any of the land use witnesses for
23 either party, the applicant or staff?

24 MS. BELENKY: Well, this is Lisa from
25 the Center. We may have some questions. I'd have

1 to go back over it. It is a contested issue,
2 whether there's a specific fact that I know of
3 today that I need to cross-examine on.

4 I believe there are some questions that
5 we have.

6 HEARING OFFICER KRAMER: Okay, well, we
7 will put that down then as a need. If you
8 discover that you no longer have a need to
9 question the witnesses, as a courtesy to the
10 parties if you could let them know. And let me
11 know, as well. And perhaps we can save them a
12 trip.

13 MS. BELENKY: Yes.

14 MR. CONNOR: There's also some overlap
15 between land use and the alternatives issue.

16 MS. BELENKY: I believe there is.

17 HEARING OFFICER KRAMER: In what sense?

18 MR. CONNOR: Well, in the applicant's
19 testimony they argue that the no-project
20 alternative was felt to implement the multiple use
21 goals of FLPMA. And I'd like an explanation of
22 that.

23 HEARING OFFICER KRAMER: I'm not sure
24 that would be a land use issue, though.

25 MR. CONNOR: What are the multiple use

1 goals of FLPMA? I mean that's all about land use.

2 HEARING OFFICER KRAMER: Right, but land
3 use is about the project's conformance with the
4 applicable laws and standards. And I mean land
5 use environmental impacts.

6 And it does sound like it's an
7 alternative issue, because if you're talking about
8 whether an alternative site or an alternative
9 technology, or some other kind of alternative,
10 fails to meet a land use plan, that really is -- I
11 think, you know, it's properly dealt with in the
12 alternative section, or the part of the
13 discussion.

14 MR. RATLIFF: It can be dealt with
15 either place, I suppose. But, --

16 MR. CONNOR: I have no problem as long
17 as we can, you know, raise the issue in the
18 discussion of the alternatives.

19 HEARING OFFICER KRAMER: Yeah, --

20 MR. RATLIFF: FLPMA is a land use, the
21 federal statute regarding the land use for federal
22 lands. And it does have revisions, in addition,
23 that it recognizes the need for congruity with
24 state and federal laws. So it has a very strong
25 land use aspect. And that may be what Mr.

1 Connor's referring to.

2 I think it could be, you know, -- but
3 I'm unfamiliar with the testimony to which he's
4 referring where the applicant said that the no-
5 project alternative would be more consistent with
6 FLPMA.

7 But, in any case, I can see the
8 discussion of FLPMA would come under land use
9 perhaps more appropriately than under
10 alternatives.

11 HEARING OFFICER KRAMER: Even if it's a
12 discussion about an alternative as opposed to the
13 project site, itself?

14 MR. RATLIFF: Well, I don't know then.
15 I mean I --

16 HEARING OFFICER KRAMER: Well, so I
17 guess the message --

18 MS. BELENKY: (inaudible) --

19 HEARING OFFICER KRAMER: Go ahead.

20 MS. BELENKY: I do think it's trying to
21 compare one to the other. So if you're saying
22 another area is not appropriate but this area is,
23 there may be ways in which you're making arguments
24 that actually goes to both issues.

25 So I do think that there is a need to

1 discuss land use and the way it's dealt with in
2 the FSA. And I do think it goes also to the
3 alternatives.

4 HEARING OFFICER KRAMER: Well, it does
5 sound as if you're asking for a land use expert to
6 be there to answer questions about land use
7 opinions that are offered in connection with the
8 alternatives.

9 MS. BELENKY: As well as the site,
10 itself. I think there are --

11 HEARING OFFICER KRAMER: Okay.

12 MS. BELENKY: -- anyway, I think it
13 shouldn't take very long, but I don't think
14 anyone's ready to let go and preclude any
15 discussion.

16 HEARING OFFICER KRAMER: Okay. Well, --

17 MR. HARRIS: I don't see the issue that
18 we're talking about identified in any of these
19 prehearing conference statements. So what is the
20 issue? And, again, do I have to have my witnesses
21 here for that panel?

22 By the way, Michael, I don't remember
23 making that statement about FLPMA and the no-
24 project alternative the way you described it.

25 MR. CONNOR: It's on the first page of

1 the applicant's testimony on alternatives.

2 MR. HARRIS: I guess, again I'm trying
3 to save my witnesses the burden of having to be
4 here if we've got legal questions about FLPMA, you
5 know, that doesn't require witness testimony.

6 And these other issues I don't think are
7 land use issues. So I'm just trying to avoid
8 having my panel show up for questions that can be
9 answered by alternatives.

10 HEARING OFFICER KRAMER: Well, do you
11 have a panel? Because I only have one person down
12 as your witness.

13 MR. HARRIS: No, I'm talking about if
14 it's an alternatives issue and not a land use
15 issue, that someone on my alternatives panel could
16 probably answer it. But I don't even know what it
17 is, really, with any specificity here.

18 What is the land use issue that they
19 want to ask my witnesses about? Poorly phrased.

20 HEARING OFFICER KRAMER: Mr. Connor, or
21 Ms. Belenky. Did I get it right, close?

22 MS. BELENKY: Um-hum, yeah. Well, I
23 mean I think we've raised this repeatedly.
24 There's, you know, whether this is an appropriate
25 use under the plans.

1 And actually I believe that -- even
2 raised this other question, as well. So, it seems
3 to me there's some -- we would want to be able to
4 at least ask some specific questions about that.

5 If you need a list of the questions
6 before the hearing, I didn't realize that was
7 necessary to have every question written out
8 already.

9 HEARING OFFICER KRAMER: Well, no, you
10 don't have to submit them in advance, but we are
11 trying to get people to describe the general area
12 of their interest and concern so that the parties
13 can bring the proper witness, and not
14 unnecessarily bring witnesses who have nothing to
15 contribute.

16 MR. HARRIS: Yeah, the prehearing
17 conference statements make statements like whether
18 this could become a de facto solar zone. And so I
19 mean, are they going to ask my witness, do you
20 think this should be a de facto solar zone.

21 I don't know what topics they want to
22 ask questions on for my witnesses. Their
23 statements are nearly identical. Page 4 and page
24 11 of Center for Biological Diversity. It talks
25 about FLPMA policy and then it talks about de

1 facto solar zones, and interfering with the PEIS.

2 And on page 4 of Western Watersheds
3 Project, the same arguments almost verbatim.

4 I don't think any of those issues are
5 factual issues that require my witnesses to show
6 up. I'd like to release them. But if I'm wrong,
7 you know, I'm willing to hear the other side.

8 MR. CONNOR: You know, the issue from my
9 perspective is that the project basically ends
10 multiple use on that site.

11 MR. HARRIS: So are you going to ask
12 my --

13 MR. CONNOR: That's where I'm coming
14 from.

15 MR. HARRIS: Yeah, I think --

16 MS. BELENKY: Well, I think that -- I
17 just want to say I think that you presented your
18 position and the FSA present what is considered
19 expert opinion about these questions.

20 And so to the extent that we want to
21 understand what the basis of that opinion is, I
22 think we have to do it in this forum of the
23 evidentiary hearings.

24 The fact that we may have a different
25 interpretation of the law is also at issue.

1 But the question for this hearing, as I
2 understood it, was that we are entitled to probe
3 the factual basis of the opinion that is provided
4 by the staff, and the opinion that is provided by
5 the applicant in their filings on these issues.

6 And you are presenting these people as
7 experts on these issues. And therefore we are
8 entitled to cross-examine them on those issues.
9 Is that not correct?

10 MR. HARRIS: Well, maybe there's some
11 misunderstanding. Just because there's no live
12 witness testimony doesn't mean the issue is
13 resolved in the applicant's favor. I mean those
14 are legal questions for briefing.

15 Again, I'm just trying to release people
16 from having to prepare to answer the question, do
17 you think this should be a de facto solar zone, or
18 do you think this is consistent with FLPMA, when
19 those look like legal issues to me, and not
20 factual questions for live witness testimony.

21 HEARING OFFICER KRAMER: Well, Mr.
22 Harris, I think these parties certainly are
23 entitled to probe the underlying assumptions that
24 witnesses made in rendering their expert opinions.

25 MR. HARRIS: I don't disagree, Mr.

1 Kramer. But this is not our testimony. Our
2 testimony does not say de facto solar zone. This
3 is their characterization of what the site looks
4 like after. Which part of our testimony factually
5 are they disputing?

6 And you know, with all due respect, the
7 Sierra Club has made it very clear, they don't
8 want to delay the proceedings. But other people
9 seem to be interested in bringing panels for
10 things that don't have any factual basis here.

11 HEARING OFFICER KRAMER: Well, wait, you
12 have --

13 (Parties speaking simultaneously.)

14 HEARING OFFICER KRAMER: -- one witness
15 and the staff has one witness. So, this isn't
16 a --

17 MR. HARRIS: We were prepared not to
18 have live witnesses, even though we want to
19 litigate this issue. Again, I'm trying to keep a
20 panel away from -- having a panel here to answer
21 the question of should this be a de facto solar
22 zone.

23 HEARING OFFICER KRAMER: Well, I think
24 you can object to that question at the appropriate
25 time, if that's what they ask. But they're also

1 talking about asking other questions that perhaps
2 are appropriate.

3 MR. HARRIS: Well, you know, we've heard
4 a lot of discussion about how long these hearings
5 are going to be, and potentially wasting time, and
6 eight hours of cross on that.

7 Having panels on non-factual issues that
8 are not disputed will waste the applicant's time
9 and money in preparation. It will waste other
10 people's time in hearings.

11 And so what is the factual issue on land
12 use that they want to probe? And why do they need
13 to ask a question of my witnesses? Why do I have
14 to prepare witnesses, and why does BrightSource
15 have to pay for those witnesses to be prepared and
16 show up if there are no factual disputes?

17 HEARING OFFICER KRAMER: Well, they
18 refer to the FSA, which was authored by staff.

19 MR. RATLIFF: I guess I'm curious, are
20 you saying, Mr. Harris, that you don't want to
21 cross-examine our witness on land use?

22 MR. HARRIS: I was prepared to do it all
23 in briefs. We have a legal, you know, we have a
24 legal question. I wasn't going to put my
25 witnesses on, and I'm not going to cross yours.

1 MR. RATLIFF: Okay. I can agree to
2 that.

3 MR. HARRIS: And so the only purpose of
4 bringing the witnesses in, it seems to be to
5 answer Lisa's questions. And if that wasn't
6 clear, I apologize. I had not planned on putting
7 on live witness testimony nor cross-examining your
8 witnesses on land use. Although I will brief the
9 issues.

10 But, you know, if her questions are for
11 staff, then I'll shut up and you can bring your
12 panel.

13 HEARING OFFICER KRAMER: Well, I think
14 staff should have their witness ready. Again, Ms.
15 Belenky is going to review her notes. And if she
16 decides that she doesn't have any questions,
17 she'll let people know.

18 Nobody else, correct me if I'm wrong, in
19 the room and on the telephone has any questions on
20 the topic of land use? So, hearing none -- Mr.
21 Connor --

22 MR. CONNOR: Just to be clear, I will,
23 if there is no discussion, specific discussion, of
24 land use, I would be able to raise my questions
25 during the discussion of alternatives?

1 HEARING OFFICER KRAMER: If your
2 questions are about the land use implications and
3 impacts and conformity of the alternatives, that
4 would be the place to raise it, would be in the
5 alternatives discussion.

6 If your questions are about the
7 conformity of the project site, then that is
8 analyzed in the land use section.

9 So which category do they fall into?

10 (Pause.)

11 HEARING OFFICER KRAMER: Are you there?

12 MR. CONNOR: Yeah, yeah, I'm thinking
13 about it.

14 MS. BELENKY: Yeah, and I'm thinking
15 about it, as well. I guess it didn't occur to me
16 that we weren't going to discuss land use during
17 these hearings. And I will have to go through and
18 prepare those questions now at the beginning, and
19 make sure that I have enough sufficient questions
20 that I need to have all of these people there.
21 Because it's apparently a huge burden to the
22 applicant to have the person discuss land use.

23 But I am concerned that the statement
24 that our opinion, I want to make sure that I
25 understand the position. My understanding is that

1 opinion statements in testimony and in the FSA can
2 be probed during the hearing for their factual
3 basis. Is that not correct?

4 HEARING OFFICER KRAMER: It is. If it
5 looks like, at some point, that you've got a
6 fishing pole and you're just casting in every
7 direction, though, we will ask you to wrap it up
8 very quickly.

9 MS. BELENKY: Well, I don't think we've
10 put anything in our testimony that would make
11 anyone think that we are simply fishing. We are
12 trying to do the best that we can on a very short
13 timeframe. And not to omit issues that are
14 important, while at the same time letting go of
15 issues that we believe perhaps are not as
16 important.

17 But I do have to echo what's been said
18 by several other people, this is an extremely
19 short timeframe for a lot of factual background
20 and documentation. And even getting documents
21 from staff and getting all of the -- being able to
22 read all of these documents is very time
23 consuming.

24 And we are doing the best we can, but we
25 are not prepared to give up our right to probe on

1 certain issues at the beginning of the process
2 rather than later.

3 So I will, not wanting to waste anyone's
4 time, I will certainly put my needs at the top of
5 my list now, so that the applicant can be relieved
6 of having to have anyone at the hearings. Because
7 apparently this is a problem for them.

8 But I do object generally to the fact
9 that this prehearing conference is being used to
10 push us to make substantive statements, and to
11 provide all of our questions a week before we
12 thought we had to, when we're all rushing to get a
13 million things done, and get all this work done.
14 And I really feel that this is inappropriate.

15 HEARING OFFICER KRAMER: No, I don't
16 mean to imply that you're fishing in any way.
17 Just trying to tell everybody who's listening the
18 sort of standard that we apply to help you to
19 organize your work in this case.

20 And as I said a few minutes ago, we're
21 not looking for you to identify and list specific
22 questions, but we are trying to find out which
23 subtopic areas you're interested in to help the
24 parties make sure that they have the proper
25 witnesses there.

1 And then it helps them to prepare more
2 efficiently, as well. Because they have the same
3 time limits. They probably have more resources
4 than you do, I'm sure of that. But we want to
5 make sure that everybody is not wasting time in
6 their preparation.

7 So, land use, staff will certainly have
8 their witness available, is that correct?

9 MR. RATLIFF: Yes.

10 HEARING OFFICER KRAMER: Okay.

11 MR. HARRIS: Could we ask Lisa and
12 Michael to look at both land use, air quality and
13 let us know if between now and the hearings that
14 they decide they don't need to have live witness
15 testimony?

16 We'll bring witnesses and prepare for
17 it, but if, on further cool reflection, you guys
18 decide -- because you're the only people that
19 asked for land use or air quality. If you decide
20 that those could be dealt with under biology or
21 alternatives or some other section, that would be
22 helpful.

23 But, again, we'll bring whoever you guys
24 decide you need to question. Thank you.

25 HEARING OFFICER KRAMER: Well, I'd have

1 to say on several areas, land use is one that's a
2 likely candidate. Air quality, as I said earlier,
3 there always seems to be something that comes up.

4 Alternatives, certainly, the hotly
5 contested areas, alternatives and biology, the
6 Committee may have some questions, as well, that
7 we've not fully formulated.

8 So I would expect to at least have your
9 witnesses on call for those topics.

10 So that brings us to the end of the list
11 of topics we need to work through to complete the
12 hearings.

13 Now we need to put them in some sort of
14 order. Let me just throw out a suggestion and
15 then listen to any responses from the parties.

16 There are some areas that I think we can
17 just have as floaters, that we can use if we find
18 ourselves with an extra few minutes. So we won't
19 specifically place them on the timeline.

20 And I would say that would be traffic
21 and transportation, visual, project description --
22 well, that has a couple outside witnesses, we'd
23 better not do that one.

24 Worker safety, that's where everybody
25 will be in the building, so that would be easy to

1 move around.

2 MR. RATLIFF: Is that fire protection?

3 HEARING OFFICER KRAMER: Worker safety
4 and fire protection, right. I guess those would
5 be the floaters.

6 MR. RATLIFF: Could I ask that we put
7 our visual witness on at the outset so he can give
8 his reaction to the document that was introduced
9 at the last hearing? That should take three to
10 four minutes. And if the applicant wants to
11 cross-examine him, they can. If they don't, so
12 much the better. And then we can go on to the
13 next topic.

14 HEARING OFFICER KRAMER: Any objection
15 from another party?

16 Okay, visual will be first on Monday,
17 the 11th. Followed by project description.
18 Followed by biology. And I don't think we need to
19 put anything else on Monday.

20 MR. RATLIFF: Do we have the possibility
21 of going late Monday to try to finish the biology?

22 HEARING OFFICER KRAMER: I think yeah,
23 if we need to. Is that okay?

24 (Pause.)

25 MR. BASOFIN: Mr. Kramer, is there a

1 possibility of biology running over to Tuesday? I
2 just want to know in case I have to have my
3 witness available Tuesday.

4 It seems to me that having those three
5 topics on Monday is ambitious, to my mind. I
6 think biology might, probably merits an entire
7 day.

8 HEARING OFFICER KRAMER: Well, I think
9 the other two items there are only -- well, visual
10 will take 20 minutes; and project description
11 maybe the rest of an hour.

12 PRESIDING MEMBER BYRON: Mr. Basofin, it
13 also matters how many hours do you consider there
14 are in a day.

15 We are intent upon getting through these
16 in the time that we have allotted, or sooner. So
17 I think you'll find this Commission is happy to
18 continue into the evening hours to get through
19 these issues.

20 MR. BASOFIN: I'm happy to get -- and
21 hang around, too.

22 HEARING OFFICER KRAMER: Let's see,
23 alternatives we have to finish on the 12th.

24 So, Mr. Basofin, for your witness, would
25 you need your witness around for all of the

1 biology discussion, to the bitter end? Or if we
2 made sure and got his testimony in on the Monday,
3 would that take care of your concern about his
4 schedule?

5 MR. BASOFIN: Well, that's fine, I think
6 he just needs to be available for direct
7 examination and cross, which I assume there will
8 be some.

9 HEARING OFFICER KRAMER: And then not
10 rebuttal after rebuttal, surrebuttal, I guess they
11 call it?

12 MR. BASOFIN: Well, I imagine there will
13 be some redirect.

14 HEARING OFFICER KRAMER: Okay.

15 MR. BASOFIN: I'm sure there'll be some
16 redirect, let me rephrase. But I'm just
17 considering the entirety of the witnesses for
18 biological resources. I mean I think there's, I
19 don't know, how many --

20 HEARING OFFICER KRAMER: Well, hopefully
21 they're not all going to repeat each other.
22 Because I think we need to start alternatives on
23 Tuesday, so we can make sure and finish it. The
24 consensus seemed to be that we can finish
25 alternatives in a day. Half a day did somebody

1 say, I think. Does that sound fair to everyone?

2 It's a complicated issue, as well.

3 MS. BELENKY: I'm not sure half a day is
4 going to be enough, but a day.

5 HEARING OFFICER KRAMER: Well, and, Mr.
6 Basofin, your witness could, I supposed, finish up
7 on the telephone. That's an option, correct?

8 MR. BASOFIN: On the telephone?

9 HEARING OFFICER KRAMER: Yes, if he
10 needed to leave.

11 MR. BASOFIN: Sure.

12 HEARING OFFICER KRAMER: Okay. All
13 right, so let's go with alternatives starting on
14 Tuesday. And then we'll take -- hopefully we can
15 finish biology before or into the evening on the
16 11th. And alternatives on Tuesday beginning at
17 the beginning of the day.

18 Air quality trail at the end of the day.
19 Well, let me ask this. Do the parties feel a need
20 to specifically schedule any of the other
21 witnesses? I guess soil and water is the other
22 big one, relatively large, after alternatives.

23 So why don't we have soil and water
24 follow alternatives on Tuesday afternoon. And
25 then Wednesday afternoon can be air quality to

1 start.

2 And then we can just fit in the others
3 when we have time, unless somebody wants to
4 request that we set a specific interval for some
5 of the other topics.

6 MR. HARRIS: We're going to need to know
7 what days to make our witnesses available. So,
8 can we kind of fill it out so I can at least give
9 my guys an idea of -- guys and gals, sorry.

10 HEARING OFFICER KRAMER: We're trying to
11 avoid -- you received my email that said mark your
12 calendars, the 14th is reserved on the Committee's
13 calendars and we have the room and everything. So
14 we have that day available.

15 But I don't think we want to schedule in
16 for that day until we know we need it. But what
17 we can do is adjust the schedule as we go. So, if
18 biology finishes early, we'll try to do some of
19 the little things.

20 And if, for some reason, I hate to even
21 say it, but if things get less quick than we were
22 hoping, we can -- for instance, if we know air
23 quality is not going to be possible on the 13th,
24 by the middle of the day on the 12th, then we can
25 reschedule on the fly so that you'll have a little

1 bit of notice. I think that's about the best we
2 can do.

3 But did you have a specific topic, Mr.
4 Harris, or witness who you really need to time?

5 MR. HARRIS: You've already accommodated
6 my major concern about no alternatives on the
7 13th. I'm just trying to figure out what to do
8 about like land use and cultural and whether those
9 folks are -- worker safety and fire protection,
10 whether we're even going to have hearings on those
11 issues. And it sounds like they would be
12 Wednesday or Thursday, regardless. So I can at
13 least let my witnesses know that. The ones you're
14 calling the floaters are not going to happen
15 before Wednesday.

16 HEARING OFFICER KRAMER: Yeah, air
17 quality -- what's a fair estimate of air quality
18 again? Half an hour?

19 MR. HARRIS: Is that for direct? We'll
20 have very little on direct.

21 HEARING OFFICER KRAMER: Okay, so just
22 the questions from the other parties. Yeah, so I
23 think we could assume, unless it becomes more
24 convenient, that the remaining items will be on
25 Wednesday afternoon.

1 MR. HARRIS: Which half of the day do we
2 have on Wednesday? Is it the --

3 HEARING OFFICER KRAMER: The afternoon.

4 MR. HARRIS: It's the afternoon.

5 HEARING OFFICER KRAMER: It's following
6 the business meeting.

7 MR. HARRIS: Okay, so 1:00? Or
8 immediately following the business meeting.

9 HEARING OFFICER KRAMER: I think I had a
10 specific time. Yeah, 1:00.

11 Okay, so we could go into the evening
12 again to finish up those items if we needed to,
13 the floaters or the --

14 MR. RATLIFF: I think -- Mr. Kramer, I
15 think on some of those issues we -- I mean I'm not
16 going to be cross-examining their witness about
17 air quality, for instance. And I don't think
18 they're going to be cross-examining the staff
19 witness. So it's really --

20 HEARING OFFICER KRAMER: The
21 intervenors.

22 MR. RATLIFF: -- whatever the
23 intervenors want to make of it, I think. And by
24 the way, I wanted to confirm that our air quality
25 witness, who is in southern California, can

1 testify by telephone on that, or?

2 HEARING OFFICER KRAMER: Does any party
3 have an objection to Mr. Walters, staff's air
4 quality witness, testifying by telephone?

5 MS. BELENKY: No.

6 MR. CONNOR: No.

7 HEARING OFFICER KRAMER: Okay, then that
8 will be fine.

9 MR. HARRIS: We may need similar
10 accommodations on land use. We're not sure
11 there's going to be a panel on land use, and our
12 witness is in Santa Barbara. So, we'd like the
13 same kind of flexibility for our land use witness.
14 I think everybody else is local.

15 HEARING OFFICER KRAMER: Okay, so you're
16 thinking about additional witnesses to Ms. Scholl?

17 MR. HARRIS: No, just Ms. Scholl. I'm
18 sorry. Mr. Scholl is --

19 HEARING OFFICER KRAMER: Okay.

20 MR. HARRIS: -- she's in Santa Barbara,
21 so.

22 HEARING OFFICER KRAMER: Okay.

23 MR. HARRIS: And, again, I'm not
24 intending on putting on any direct testimony on
25 land use or air quality unless required.

1 HEARING OFFICER KRAMER: I understand.
2 Okay, so does any party object to applicant's land
3 use witness, Ms. Scholl, testifying by telephone?

4 MR. RATLIFF: No.

5 MS. BELENKY: No.

6 HEARING OFFICER KRAMER: Thank you.

7 So, to recap, and I'll put out at least
8 an outline. I don't know that I'll make it a
9 formal Committee order, but I will email something
10 around hopefully tomorrow to summarize all this.

11 But on Monday morning, the 11th, we'll
12 start with visual for just a few minutes. Project
13 description for a few more minutes.

14 Then we'll jump into biology; and take a
15 lunch break; jump back in. Maybe a dinner break
16 and try to finish up biology on Monday.

17 We'll start on Tuesday morning with
18 alternatives. And then finish the day with soil
19 and water.

20 And on Wednesday we'll take up the
21 remaining items beginning with air quality.
22 Allowing the possibility that if Monday or Tuesday
23 goes really smoothly and we have a few minutes,
24 and it is possible without inconveniencing any
25 party to bring some witnesses in, that we may

1 cover some of those other topics on those days, as
2 well.

3 MR. HARRIS: Mr. Kramer, Mr. DeYoung has
4 generously offered to have food brought in, as
5 needed. Because we know it's hard to find stuff
6 around here, especially in the evenings. So on
7 Steve's behalf I'll make that offer for at least
8 dinners, and maybe lunches, as well, if it will
9 help facilitate the hearings.

10 HEARING OFFICER KRAMER: Thank you.

11 PRESIDING MEMBER BYRON: I appreciate
12 that. Of course, you'll need to make that
13 available to everyone. I'm inclined to not say
14 lunch, just because --

15 HEARING OFFICER KRAMER: We have a
16 vendor in the building.

17 PRESIDING MEMBER BYRON: Yeah, and
18 that's when we have the opportunity to break and
19 we'll need that break.

20 But since I've interrupted, if I could,
21 I just want to add a couple of other things. You
22 know, I appreciate all the efforts to reduce the
23 time, and that's the purpose of today's prehearing
24 conference, the efforts to release witnesses,
25 extremely important. In fact, it goes without

1 saying we're conducting the hearings here because
2 we are under enormous constraints with regard to
3 staff time and availability and cost.

4 So I'm completely sympathetic to that.
5 But as they say in Hollywood, this is showtime.
6 And we need to make sure we have the right people
7 here. So, when in doubt, let's make sure they're
8 here.

9 And I guess my comment applies mostly to
10 the applicant. There's been every effort on the
11 part of the intervenors to release witnesses. But
12 we don't want to come up short.

13 The second is, or maybe the third item.
14 I consider myself a technologist. I love to use
15 the technology, the phones work great most all the
16 time. But we are taking some risk there that we
17 should also consider.

18 And we will do our best to make sure
19 that this technology works to our advantage. But
20 as we all know, that fails occasionally.
21 Nevertheless, we will press on on the other topics
22 until we can fix those things.

23 So, I just want to make sure everybody
24 understands, that's not a purpose for delay or not
25 continuing with the evidentiary hearing. We will

1 continue. At least that's my plan.

2 Mr. Kramer.

3 HEARING OFFICER KRAMER: Thank you. Two
4 more little housekeeping items. One is the
5 briefing schedule. Reviewing the suggestions of
6 the parties, it appears that everyone would agree
7 with the applicant's proposal that opening briefs
8 be scheduled for three weeks after the last
9 transcript is made available. So we'll adopt that
10 approach.

11 As a practical matter, we may have to
12 set dates before we know when the transcripts are
13 going to be available. It's generally two weeks,
14 so we may say five weeks from the end of the
15 hearing or something like that. But to go along
16 with that formula. And unfortunately, there's no
17 way to expedite the transcripts.

18 And then that also suggested reply
19 briefs ten days after the opening briefs, optional
20 reply briefs. So you're not required to file one.

21 So does any party object to that
22 briefing schedule? Hearing none, that's what we
23 will do. We will formalize that when we pick a
24 date at the end of the hearings to be clear to
25 everyone what that's going to be.

1 And then a simple housekeeping matter.
2 At the last hearing the applicant provided us with
3 exhibit 69, which was the viewshed map that Ms.
4 Belenky was asking about clarification for.

5 And I notice that since then in my
6 email, I guess they produced a cleaned-up version
7 that no longer has handwritten corrections to the
8 KOP numbers.

9 So I wondered if we couldn't just get
10 another, was that 11-by-17, copy, a couple copies
11 of that for the record. And if the parties would
12 stipulate to the substitution of the newer
13 cleaned-up version for the exhibit that was passed
14 out at the last hearing? Any objection to that?

15 Hearing none, that is all that I had on
16 my list to cover today. Is there any other issue
17 any party wishes to raise with the Committee?

18 Mr. Suba.

19 MR. SUBA: Yes, Mr. Kramer. Could you
20 just review which of the agenda items are going to
21 be informal versus which ones are formal? Is
22 biology the only formal hearing process?

23 HEARING OFFICER KRAMER: It may be that
24 some of them, like land use where there's only one
25 witness for each party, we may just handle that in

1 a somewhat more formal way where everybody
2 questions one witness at a time.

3 So it'll be somewhat situational. But
4 where we have a contested issue, where there are
5 multiple, more than two, say. And maybe even in
6 those cases, even two witnesses, those will be
7 held as the panels.

8 But the plan there will be that each
9 party initially will be able to ask all of their
10 questions without interruption of the panel. And
11 then once all the, basically the opening to the
12 direct testimonies has been taken, then we'll have
13 a more free-form exchange.

14 But even at that point I'll be calling
15 on people to ask the questions. Although on
16 occasion people will just ask them of each other.

17 So it'll be kind of a hybrid. As
18 necessary, we'll modify the process as we work
19 through it and learn. And try to make it better,
20 and even more effective.

21 But, as you've heard, in the prior case,
22 certainly Commissioner Byron and I found it to be
23 a very effective way to get at all the details of
24 a rather sticky issue.

25 No issues, other issues?

1 MR. HARRIS: Could I just --

2 HEARING OFFICER KRAMER: Mr. Harris.

3 MR. HARRIS: -- make a comment?

4 HEARING OFFICER KRAMER: Certainly.

5 MR. HARRIS: I want to thank the staff
6 and Mr. Kessler, in particular, John, thank you
7 for facilitating the workshop on the 15th, and the
8 subsequent phone calls. I thought those were very
9 helpful, and went a long way to both putting
10 issues on the table; and I think it also kind of
11 broke down some of the barriers between the
12 parties as combatants versus individuals. So I
13 thought that was very useful. So I want to thank
14 them, the staff, for that.

15 I guess the one other procedural thing
16 that I've just been handed a note to remind me of,
17 is that I'm anticipating that the applicant will
18 want to go last on all these subjects. So on
19 biology I'd like our witnesses to be the last
20 panel. We've got the burden of proof.

21 And I think that would potentially cut
22 down on the amount of time I'm going to need on
23 direct, for example, if some of the issues are
24 played out by some of the other parties. So
25 carving our analysis down, I think it will help us

1 to go last on those topics.

2 So that's the applicant's request. So I
3 think that's the way we'd like to proceed in terms
4 of order of witness presentation.

5 HEARING OFFICER KRAMER: Does any party
6 object to the applicant going last?

7 MR. BASOFIN: It seems to me that the
8 party with the burden of proof would want to have
9 their witnesses go first.

10 HEARING OFFICER KRAMER: Well, he's
11 saying otherwise. So, do you object is my
12 question for you and the other parties.

13 MS. BELENKY: This is Lisa Belenky. I
14 also am a little bit confused why they would go --
15 have their panel go last. To the extent that
16 several of our -- the witnesses from the
17 intervenors are going to be discussing that
18 testimony that they've already put in the record,
19 I think it may be confusing to have them go last,
20 actually.

21 MR. HARRIS: Let me be real clear about
22 why we're making the request. We've got the
23 burden of proof, which I think means that we ought
24 to have the opportunity to present a full case.

25 And some of the intervenors will be

1 providing for each other what's essentially
2 friendly cross-examination, bolstering arguments
3 that they share against the project.

4 And I think for us to fully meet our
5 burden of proof, that it's important that the
6 entire record on biology, for example, be put out
7 there so that we have an opportunity to respond.

8 Otherwise, if we go first, there will be
9 a chance for parties to basically rehabilitate
10 their witnesses back and forth, without another
11 change for the applicant to put their case on, in
12 chief.

13 So that's exactly why we've asked to go
14 last. And I think it's a procedure that they
15 typically follow at the California Public
16 Utilities Commission and regularly follow there in
17 circumstances where you have multiple intervenors
18 with, you know, common goals that in apposite to
19 the applicant's position.

20 So that's why I made the request.

21 MR. RATLIFF: If I could just interject.
22 I mean it's always the applicant's burden of
23 proof. Typically, I mean the typical fashion in
24 which we -- the order in which we produce our
25 testimony is typically that either the staff or

1 the applicant goes first. And then the
2 intervenors follow.

3 I don't think there's any, you know,
4 order that is required. It's really whatever
5 makes sense to you. In a way, staggering the
6 testimony, I think there's a sense that whoever
7 gets the last word, you know, wins.

8 But I -- to me it emphasizes sort of
9 the, perhaps the disadvantage of the formal
10 approach is that when you do have the informality
11 of people in a discussion, then there's always the
12 opportunity to respond or to supplement.

13 But when you take it sequentially,
14 party-by-party, then you always have the
15 disadvantage of, oh, if only I'd had a chance to
16 address that.

17 And that is the disadvantage, I suppose,
18 in doing it in the formal way. And I realize that
19 maybe we aren't going to do it that way.

20 But we don't object to them going last.
21 But we don't prefer it, either. We leave it to
22 your decision.

23 MR. BASOFIN: I think on further
24 consideration I would object. It seems to me that
25 the intervenors' testimony is sort of in the

1 nature of rebuttal testimony, in that we are
2 reacting and responding to what's included in the
3 FSA as a seminal document and the applicant's
4 testimony, as the project proponent.

5 So I think it might be a little bit
6 awkward for us to be examining our witnesses who
7 are, you know, really responding to what the
8 applicant and staff have put into the record.

9 I would also add that I think that if
10 intervenors are examining each other's witnesses
11 it would not be in the nature of cross-
12 examination, as Mr. Kramer has said, has
13 requested, that the intervenors coordinate amongst
14 each other, so that there isn't any duplication.

15 And so if the intervenors are examining
16 each other's witnesses, I think that would be in
17 the nature of direct examination.

18 MS. SMITH: Right, I completely agree. I
19 mean I'm not trying to game some kind of a
20 litigation strategy here. Mostly just as a
21 practical matter we are responding to an
22 application. And then the AFC. And typically
23 that's the baseline of what was presented.

24 And then the intervenors follow up with
25 any issues that they have as a result of that

1 testimony. So, it just seems awkward to me and
2 not really all that productive.

3 Thanks.

4 HEARING OFFICER KRAMER: There's another
5 model where parties want to go first, and then
6 have the ability to rebut. So they still get the
7 last word, but they get to frame, to the extent
8 they can, the discussion by going first.

9 As I hinted earlier, the Committee's
10 more interested in getting the truth and rather
11 than just relying on the evidence that came out,
12 because, you know, we had a particular order, and
13 we went through the order and there was no more
14 ability for anybody to talk and address some
15 unanswered questions.

16 So, I don't know, as a practical matter,
17 that it's going to matter much, for us, who goes
18 first or who goes last. Because we're likely to
19 have rounds, and especially when we get into the
20 panel discussions, we're going to have, you know,
21 back and forth, and back and forth, until we've
22 heard everything. And in a very efficient time,
23 of course. And so I don't know that there's any
24 tactical advantage to that.

25 PRESIDING MEMBER BYRON: Mr. Kramer, I

1 would always think, as the Presiding Member, I
2 have the last word. But I'm reminded there are
3 four other Commissioners that will likely have the
4 last word, too.

5 Mr. Harris, let's take this as a
6 suggestion. We're not going to decide this here.
7 I'll certainly rely upon my fellow Commissioner
8 and Mr. Kramer on how we'll proceed. Maybe we'll
9 even mix it up a little bit.

10 But my recommendation, Mr. Kramer, is
11 that we take the suggestion and consider it prior
12 to the evidentiary hearing next week.

13 HEARING OFFICER KRAMER: Okay. So, look
14 for a footnote on the informal outline of the
15 events.

16 Any other issues?

17 Okay, well, thank you all for coming.
18 Anybody on the telephone -- do we have any public
19 comments that anyone wishes to make, either in the
20 audience or on the telephone?

21 Hearing none, thank you all for
22 participating. And we will see you next week.

23 And we're adjourned.

24 (Whereupon, at 4:05 p.m., the conference
25 was adjourned.)

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of January, 2010.

PETER PETTY

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I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

January 11, 2010

Margo D. Hewitt,

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