

ADDITIONAL EVIDENTIARY HEARING
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, MARCH 22, 2010

9:53 A.M.

Reporter - John Cota
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

Tim Olson, Adviser

STAFF AND CONSULTANTS PRESENT

John Kessler, Project Manager

Kevin Bell, Senior Staff Counsel

Susan Sanders

Misa Milliron

Brenner Munger

PUBLIC ADVISER

Jennifer Jennings

APPLICANT

Jeffery D. Harris, Attorney
Greggory Wheatland, Attorney
Samantha Pottenger, Attorney
Ellison, Schneider and Harris, LLP
on behalf of BrightSourceEnergy

Steve De Young, Vice President
Todd Stewart, Project Manager
BrightSourceEnergy

John L. Carrier, JD, Program Manager
Geoffrey Spaulding, Program Manager
Mark Cochran
Wendy E. Haydon
Thomas Priestley
CH2MHILL

Steve Hill
Sierra Research

Arne Olson
Energy and Environmental Economics

INTERVENORS

Greg Suba
California Native Plant Society

Joshua Basofin
Defenders of Wildlife

Lisa Belenky, Senior Attorney
Ileene Anderson (via teleconference)
Center for Biological Diversity

Michael Connor, PhD (via teleconference)
Western Watersheds Project

Laura Cunningham (via teleconference)
Kevin Emmerich (via teleconference)
Basin and Range Watch

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

Gloria Smith, Senior Staff Attorney
(via teleconference)
Sierra Club

Bill Powers (via teleconference)
Powers Engineering

ALSO PRESENT

Mark Silverstein (via teleconference)
Clark County Department of Aviation

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

Ray Kelly (via teleconference)

Joe Howard (via teleconference)
Howard Engineering

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Presiding Member Byron	1
Hearing Officer Kramer	3
Introductions	1
Background and Procedure	7
Topic	8
Biological Mitigation Proposal, Reduced Project Footprint Alternative, Ivanpah 3	9
Additional Written Testimony	9
Center for Biological Diversity Exhibits 941 through 946	11/18
Exhibit 947	15/rejected-18
Western Watersheds Project Exhibit 519	19/20
Applicant Exhibit 88 and 89	21/25
Sierra Club Exhibit 612	22/25
Basin and Range Watch Exhibit 801	27/28
California Native Plant Society Exhibit 1015	28/28
Defenders of Wildlife	28
No Exhibits	29
CEC Staff Exhibit 315	29/29

I N D E X

	Page
Applicant Witnesses G.Spaulding,M.Cochran, T.Stewart,S.Hill,S.De Young,J.Carrier, W.Haydon,T. Priestley	32
Direct Examination by Mr. Harris	32
Cross-Examination by Mr. Bell	54
Cross-Examination by Dr. Connor	87
Cross-Examination by Ms. Smith	90
Cross-Examination by Mr. Emmerich	92
Cross-Examination by Mr. Suba	95
Cross-Examination by Mr. Basofin	101
Cross-Examination by Ms. Belenky	109
Examination by Committee	135
 CEC Staff Witness S. Sanders	 58
Cross-Examination by Mr. Basofin	60
Cross-Examination by Ms. Belenky	62
Cross-Examination by Dr. Connor	65
Cross-Examination by Mr. Emmerich	68
Cross-Examination by Ms. Smith	70
Recross-Examination by Mr. Basofin	78
Cross-Examination by Mr. Harris	79
Recross-Examination by Ms. Belenky	81
Recross-Examination by Ms. Smith	82
Further Recross-Examination by Mr. Basofin	83
 Afternoon Session	 113
 CEC Staff Witnesses J.Kessler,M.Milliron, B.Munger	 148
Direct Examination by Mr. Bell	148
Cross-Examination by Ms. Belenky	153
 Intervenor Witness M. Connor	 183
Direct Examination by Ms. Belenky	183
 Housekeeping Items	 189
 Briefing Schedule	 207
 Public Comment	 228
 Closing Remarks	 229
Presiding Member Byron	229
Associate Member Boyd	230
 Adjournment	 232
 Reporter Certificate	 233

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

2 9:53 a.m.

3 PRESIDING MEMBER BYRON: Good morning,
4 everyone, and welcome to the Energy Commission
5 Hearing Room A. It is a little bit later than we
6 had intended to start this morning and I
7 apologize.

8 This is an additional evidentiary
9 hearing; I believe our fifth day of the Ivanpah
10 Solar Electric Generating System project.

11 I'm Commissioner Jeff Byron, the
12 Presiding Member of the Committee. With me is the
13 Associate Member Vice Chairman Boyd, and his
14 Adviser Tim Olson. To my right is my Adviser
15 Kristy Chew. And our Hearing Officer is the busy
16 Mr. Paul Kramer. Now the Chief Hearing Officer
17 here at the Commission.

18 But, again, I apologize. We had
19 intended to try and start 9:30 Monday, so that was
20 a little bit difficult for everyone. And I know
21 that many of you have traveled this morning or
22 last night, and we appreciate that very much.
23 We're eager to see how much we get accomplished
24 today, hopefully everything we need to.

25 I'm going to go ahead and turn this

1 evidentiary hearing over to Mr. Kramer who will
2 take us through a number of different issues. But
3 we're primarily here to look at the prefiled
4 written testimony and direct and cross-examination
5 of witnesses relevant to the reduced project
6 footprint alternative described in the applicant's
7 biological mitigation proposal. What we'll refer
8 to as mitigated Ivanpah 3. Mr. Kramer.

9 HEARING OFFICER KRAMER: Thank you.
10 Good morning, everyone. Again, sorry for the
11 delay. We're working out the bugs of WebEx --
12 actually I think WebEx is working okay -- we're
13 working out the bugs of my understanding of WebEx.
14 Maybe that's the best way to put it. And I'm sure
15 future events will be much less chaotic.

16 Let's begin by having everyone introduce
17 themselves. We'll start in the room and then
18 we'll go to the telephone. So we'll begin on my
19 left with Ms. Belenky.

20 MS. BELENKY: Lisa Belenky for
21 intervenor Center for Biological Diversity.

22 MR. BASOFIN: Joshua Basofin on behalf
23 of Defenders of Wildlife.

24 MR. SUBA: Greg Suba on behalf of
25 California Native Plant Society.

1 MR. CARRIER: John Carrier with
2 CH2MHILL, environmental consultant for the
3 applicant.

4 MR. De YOUNG: Steve De Young with
5 BrightSource.

6 MR. HARRIS: Jeff Harris, attorney for
7 the applicant. Mr. Wheatland and Ms. Pottenger
8 from my office are here, as well. As well as
9 several members of our team who will be part of
10 our panel and will introduce themselves at that
11 time.

12 MR. STEWART: I'm Todd Stewart from
13 BrightSource.

14 HEARING OFFICER KRAMER: Okay, on the
15 telephone just hold up for now. Go ahead, sir, in
16 the room.

17 MR. STEWART: Todd Stewart with
18 BrightSource.

19 HEARING OFFICER KRAMER: It was Todd?

20 MR. STEWART: Yes.

21 HEARING OFFICER KRAMER: Thank you.

22 MS. MILLIRON: Misa Milliron, staff,
23 biological resources.

24 MR. KESSLER: John Kessler, Project
25 Manager, staff.

1 MR. BELL: Kevin W. Bell, Senior Staff
2 Counsel on behalf of staff.

3 HEARING OFFICER KRAMER: Okay. And then
4 on the telephone who do we have. I think we heard
5 from -- the gentleman who spoke earlier, go ahead
6 first.

7 MR. SILVERSTEIN: Okay, sorry about that
8 before. Mark Silverstein, Clark County Department
9 of Aviation.

10 DR. CONNOR: Michael Connor, intervenor
11 for the Western Watersheds Project.

12 MR. EMMERICH: Kevin Emmerich --

13 HEARING OFFICER KRAMER: I'm sorry, you
14 need to speak up.

15 MR. EMMERICH: Kevin Emmerich, Laura
16 Cunningham, intervenor, Basin and Range Watch.

17 HEARING OFFICER KRAMER: Okay.

18 DR. PRIESTLEY: Yeah, this is Tom
19 Priestley from CH2MHILL.

20 HEARING OFFICER KRAMER: Okay, it was
21 Tom Priestley?

22 DR. PRIESTLEY: Yes.

23 HEARING OFFICER KRAMER: Go ahead.

24 MS. ANDERSON: Ileene Anderson, Center
25 for Biological Diversity.

1 HEARING OFFICER KRAMER: You need to
2 speak up a little.

3 MS. ANDERSON: Ileene Anderson, Center
4 for Biological Diversity.

5 HEARING OFFICER KRAMER: Thank you.
6 Anyone else on the telephone?

7 MR. BRIZZEE: Bart Brizzee from the
8 County of San Bernardino.

9 MR. HOWARD: Joe Howard (phonetic),
10 Howard Engineering.

11 MR. HURSHMAN: Tom Hurshman, BLM.

12 HEARING OFFICER KRAMER: Good morning,
13 Tom.

14 MR. HURSHMAN: Good morning.

15 HEARING OFFICER KRAMER: Anyone else?

16 MR. KELLY: Ray Kelly.

17 HEARING OFFICER KRAMER: Ray Kelly with?

18 MR. KELLY: I'm just an interested
19 observer.

20 HEARING OFFICER KRAMER: Okay. Are you
21 going to be wishing to make a public comment
22 later, do you know?

23 MR. KELLY: No, I will not.

24 HEARING OFFICER KRAMER: Okay, thank
25 you. Anyone else on the telephone?

1 MS. SMITH: Gloria Smith, Sierra Club.

2 HEARING OFFICER KRAMER: Good morning.

3 Is my voice coming across okay on the telephone,
4 by the way.

5 MS. SMITH: Yes.

6 MR. SPEAKER: It's just fine.

7 HEARING OFFICER KRAMER: Okay, good. I
8 don't want to accuse you of not speaking up and
9 being an offender, myself.

10 Mr. Reporter, did you need any
11 spellings?

12 THE REPORTER: The one gentleman that
13 was about three or four back was very light. I
14 didn't get his name at all. The one you said to
15 speak up, but he didn't, he went on to the next
16 name. I don't know who it was.

17 HEARING OFFICER KRAMER: Oh, was that
18 perhaps Kevin Emmerich? Okay. I can give you his
19 spelling later.

20 MR. EMMERICH: I can spell it now. It's
21 E-m-m-e-r-i-c-h.

22 HEARING OFFICER KRAMER: Okay, thank
23 you. Hold on a second. Okay, anyone else on the
24 telephone or in the room who wishes to identify
25 themselves? Okay.

1 The purpose of today's hearing is to
2 take evidence as that little sound bite from the
3 notice that Commissioner Byron read suggests. On
4 the proposed mitigated Ivanpah 3, some people call
5 them alternatives, some people just call it
6 project modification.

7 But in any event, the modifications to
8 the project that were described in the applicant's
9 filing of February. And then were subsequently
10 addressed in the staff's supplement to their, or
11 rather they call it a final staff assessment
12 addendum that was published on March 16th.

13 We're not here to talk about new
14 alternatives, additional alternatives the parties
15 might want to propose at this point in time.
16 We're not here to rehash aspects of the testimony
17 that we received at our, I believe it was five,
18 actually, Commissioner Byron, previous hearings.

19 We're simply here to talk about that
20 refinement to an alternative that was discussed
21 during the oral testimony, at least, portion of
22 the January hearings.

23 So, one of the things we will need to
24 tackle perhaps are whether some of the testimony
25 that's been proposed by the parties is relevant

1 and admissible in that context.

2 I know that the environmental
3 intervenors have requested to speak to Susan
4 Sanders. And, Mr. Kessler, she's available for a
5 limited time, is that correct?

6 MR. KESSLER: Yes, that's correct. She,
7 unfortunately, is also double-booked for the
8 Beacon hearing in southern California today. She
9 expected she would more likely be available early
10 this afternoon, because that proceeding is
11 underway at 10:00 this morning.

12 HEARING OFFICER KRAMER: Okay, I
13 understood from Mr. Celli, that Hearing Officer,
14 that they'd be doing about an hour's worth of
15 housekeeping details before they got into biology.
16 So --

17 MR. KESSLER: We can try to get word to
18 her if we wanted to try to work her in earlier
19 this morning, Mr. Kramer.

20 HEARING OFFICER KRAMER: Okay. Well,
21 let me just hear briefly from the parties about
22 what they believe would be the appropriate
23 approach.

24 Mr. Harris had proposed that the written
25 testimony that had been previously filed last week

1 come in by stipulation of the parties. Let me ask
2 first, does any party have any objection to
3 receiving all that testimony by stipulation?

4 MR. BELL: Not on behalf of staff.

5 MR. HARRIS: Mr. Kramer, in our filing
6 last Thursday we raised a couple issues about
7 whether some of the testimony is within the scope
8 of the proceeding. So with that caveat everything
9 else though seems okay. And so do you want those
10 numbers?

11 HEARING OFFICER KRAMER: And that is a
12 housekeeping detail. We're going to have to put
13 numbers on some of that testimony because it was
14 not all numbered.

15 But let me ask generally, do any of the
16 other parties object to that approach?

17 MS. BELENKY: I'm sorry, I'm not sure I
18 completely understand what you're asking. Are you
19 saying that we would still be able to cross-
20 examine on all of that testimony?

21 HEARING OFFICER KRAMER: Yes. I think
22 that would be appropriate.

23 MS. BELENKY: And there would still be
24 direct testimony on all that testimony?

25 HEARING OFFICER KRAMER: Well, if it's

1 necessary. I don't think we want to have you put
2 somebody up here to just repeat what they've
3 written.

4 Are you suggesting that some of your
5 witnesses would be supplementing what they --

6 MS. BELENKY: I'm just trying to
7 understand what the scope is that you're asking us
8 to agree with.

9 HEARING OFFICER KRAMER: It would be --
10 Mr. Harris, did you want to add something before I
11 go on?

12 MR. HARRIS: I guess we could narrow
13 this substantially if you'd like. The one
14 exhibit, the CBD exhibit, which is 946, which is a
15 video, or the transcript of a video. That
16 particular item, obviously there'd be no one here
17 to testify to the truth of the matter asserted.
18 And there's no one here to be able to be cross-
19 examined on that video.

20 That's the one that I think gives us the
21 most pause. And in the interest of moving
22 everything else along, we would waive our
23 objections -- to the rest of the testimony, and
24 allow everything else in. So really we're down to
25 946, that video, if that helps.

1 HEARING OFFICER KRAMER: Okay, I did
2 have a question about Mr. Powers' testimony, which
3 seemed to be proposing another alternative. Did
4 the applicant or staff object to that at all?

5 MR. HARRIS: We did raise that issue in
6 our filing of last Thursday. But, again in the
7 interests of moving the proceeding along we'd be
8 willing to allow that one to come in and just
9 brief the issues, frankly. It is outside the
10 scope of the hearing, but there's nothing in there
11 that bothers me that I can't brief.

12 So it's outside the scope, but we leave
13 it up to the Committee as to whether they want to
14 exclude it.

15 MS. BELENKY: Can I respond?

16 HEARING OFFICER KRAMER: Sure.

17 MS. BELENKY: -- my exhibits. Thank
18 you. I think I'll take them in order. First of
19 all, the transcript was made by Ms. Anderson in
20 her testimony. And it is a document that is
21 available and anyone can look at it. And we
22 provided the transcript as well as a link to the
23 video.

24 Whether when an expert puts in a
25 document and cites it for a particular thing, then

1 it is generally accepted as part of the testimony.

2 Now, are you saying that the producer of
3 the video would need to be present in order for
4 the video and the text of it to be considered by
5 the Commission?

6 HEARING OFFICER KRAMER: Actually it
7 maybe can help by referring to the portion of Ms.
8 Anderson's testimony where she does refer to that
9 document. Because I didn't see that, Lisa,
10 frankly.

11 MS. BELENKY: I'll pull it up. Ms.
12 Anderson, are you on the phone?

13 MS. ANDERSON: Yes, I am.

14 MS. BELENKY: It's page, I think it's on
15 page 4 of Ms. Anderson's testimony. And she
16 specifically cites to a statement made in the
17 video. The video was produced by the United
18 States Geological Survey. It has been publicly
19 provided. The statement was made by BLM wildlife
20 biologist. And I just don't see what the
21 objection is to.

22 MR. HARRIS: Well, maybe we can narrow
23 it further. The reference is to, I believe, page
24 39 of that exhibit. We would not object to the
25 admission of page 39 alone.

1 MS. BELENKY: I actually do object to
2 admitting part of a document more than I don't
3 understand what exactly it is that you are -- it
4 is in the context of the video. The video
5 discusses the desert tortoise and how it is faring
6 out in the desert these days. It's about tortoise
7 survival, which is completely relevant to this
8 hearing.

9 MR. HARRIS: Well, I guess I'd offer one
10 of two or more compromises. Either page 39, which
11 is the reference cited by the witness. Or accept
12 the document as public comment, not move it into
13 evidence. So it would be in the record, but not
14 as an exhibit to form the basis for a decision of
15 the Commission.

16 I think it is very important, it would
17 be like here it is in the entire encyclopedia, if
18 I have a reference to the encyclopedia that
19 reference is relevant because that's reference
20 that's relevant to the opinion offered.

21 So either public comment or page 39
22 would be fine with me.

23 MS. BELENKY: I believe that the entire
24 exhibit should be accepted into the record.

25 HEARING OFFICER KRAMER: Well, is Ms.

1 Anderson offering this BLM biologist statement as
2 expert testimony from the biologist? Or as simply
3 as part of the basis for an opinion that she's
4 formed and is offering?

5 MS. ANDERSON: That would be --
6 including it in my testimony because it does
7 inform my expert opinion.

8 MR. HARRIS: And also this comment is
9 from Larry LaPre of the BLM, not from the USGS,
10 itself. But Mr. Lapre is not here and available
11 for cross. He could have been made available.

12 MS. BELENKY: You didn't ask for him to
13 be made available for cross-examination.

14 MR. HARRIS: Again, I don't have a
15 problem with admitting that portion of that larger
16 document that she relied upon.

17 HEARING OFFICER KRAMER: Okay, and the
18 whole point he's making is it would be better to
19 cite projects on disturbed land. And that
20 fragmentation is an issue.

21 Mr. Harris, I think we'll let this in,
22 actually we will let this in. But we'll give it
23 the weight that it's entitled to.

24 MR. HARRIS: We're clear that's the
25 opinion of one BLM staffer, not a BLM policy

1 statement. So that's fine, thank you.

2 HEARING OFFICER KRAMER: Okay, so that
3 was your -- was that your only objection to the --

4 MR. HARRIS: Well, again, you know,
5 that's the Powers' testimony and that portion of
6 the attached testimony, as well, that seems to
7 offer an exhibit outside of M3. Again, these are
8 cited in our filing last Thursday. We believe
9 it's within the Committee's proper exercise of its
10 discretion to exclude those, but we're not going
11 to press the issue here. I know your time is
12 valuable.

13 HEARING OFFICER KRAMER: Ms. Belenky, do
14 you want to -- I'm not sure you guys are arguing
15 about the powers vested in that, so did you want
16 to respond about its relevance?

17 MS. BELENKY: Yes, I would like to
18 respond. You, yourself, said at the very
19 beginning of this hearing a few moments ago, the
20 issue that we reopened the hearings on was
21 entirely unclear whether it would consider an
22 alternative or somehow a mitigation proposal.
23 That remains unclear, I would say, at this time.

24 I believe that the new information and
25 the scope of this hearing does actually implicate

1 alternatives. And I think Mr. Powers' testimony
2 is perfectly on point.

3 HEARING OFFICER KRAMER: In what way?

4 MS. BELENKY: Because it shows that
5 there are not only the alternatives that we
6 already suggested in the record, but that there
7 continue to be new opportunities for citing these
8 plants in places that are far more appropriate
9 than the place that it's proposed here.

10 Places that do not have endangered
11 species habitat and will not fragment that
12 habitat, and have other very high environmental
13 impact.

14 HEARING OFFICER KRAMER: Okay, now Mr.
15 Powers has, of course, conducted an exhaustive
16 analysis of how a power plant of this sort would
17 fit into that particular area in the several pages
18 that his testimony encompasses? I'm being a
19 little pejorative there because in essence all
20 he's done is tossed another possible alternative
21 on the table, in the way I view his testimony.

22 MS. BELENKY: Well, I think it actually
23 follows up very closely with his earlier testimony
24 which shows that there are many other places that
25 these could be cited. I don't understand if the

1 implication of your question is that Mr. Powers
2 needs to go out and do a full engineering model
3 for the alternative site. Or if it is enough to
4 say there are alternative sites that have not been
5 fully explored, and that is what he's saying?

6 HEARING OFFICER KRAMER: Well, and the
7 world contains an infinite number of alternative
8 sites. So, at some point it's the Committee's and
9 the Commission's job to say enough; we've looked
10 at enough alternative sites, or, you know, a
11 reasonable range of alternatives, including
12 alternative sites and to move on.

13 And I think this is the time to do that,
14 move on. And because what Mr. Powers offers would
15 not, by itself, be an adequate full analysis,
16 admittedly a less than project-specific level that
17 we would need to be able to use it as an
18 alternative in our analysis, at this point it's
19 really not helpful.

20 And what we don't want to do is get into
21 another round of testimony to evaluate this newly
22 proposed alternative, or even more alternatives
23 that might be proposed, you know, after today.

24 So we will exclude the Powers testimony,
25 which would be exhibit 947.

1 MS. BELENKY: I would like the record to
2 show that I would continue to object to that, and
3 preserve my objection.

4 HEARING OFFICER KRAMER: Okay. The
5 record will show that.

6 Okay, then as far as the other exhibits
7 go, -- I'm trying to find my master exhibit list
8 so I can -- I think that's on my desk, so what
9 we'll do is -- oh, here it is.

10 So, Ms. Belenky, you have helpfully
11 numbered your exhibits from 941 to 947, correct.
12 That's what I have.

13 MS. BELENKY: That's right.

14 HEARING OFFICER KRAMER: Okay. And so
15 is there any objection to receiving into evidence
16 exhibits 941 through 946 at this point? Seeing
17 none, those will be accepted. 947 will not be
18 accepted into evidence for the reasons we have
19 specified.

20 Okay, Western Watersheds Project. Mr.
21 Connor, you've had the one document, correct?

22 DR. CONNOR: That's correct.

23 HEARING OFFICER KRAMER: Okay.

24 DR. CONNOR: Could I ask a question?

25 HEARING OFFICER KRAMER: Go ahead.

1 DR. CONNOR: Is it possible for us to
2 actually get an updated exhibit list?

3 HEARING OFFICER KRAMER: Yes, there will
4 be one produced in the next few days after this.

5 DR. CONNOR: The brief is due on
6 Wednesday. I just want to make sure that I don't
7 assign the wrong exhibit.

8 HEARING OFFICER KRAMER: Okay, I'll try
9 to send it out today.

10 DR. CONNOR: Okay.

11 HEARING OFFICER KRAMER: Depending on
12 when we finish. We're still wrestling with typos
13 and stuff, but the numbers should be solid.

14 And just as a highlight for everyone,
15 one of the things we will be discussing, one of
16 the issues, after we conclude with the receipt of
17 evidence, is the briefing schedule and the motion
18 that was made to extend that.

19 So, Mr. Connor, if I have it correct
20 your next exhibit number would be 519; that would
21 follow your map excerpts that you submitted at the
22 close of the, or following the close of the
23 January hearings. Does that sound correct to you?

24 DR. CONNOR: Correct. I wasn't clear. I
25 thought that in fact that some of the testimony

1 was added in at the end. And I wasn't sure
2 actually what the exhibit number should be.

3 HEARING OFFICER KRAMER: Okay, well,
4 your opening testimony that was originally un-
5 numbered, and your rebuttal testimony, those were,
6 your rebuttal was 516; your opening testimony was
7 517.

8 DR. CONNOR: Okay, then this would be
9 the next one.

10 HEARING OFFICER KRAMER: And then you
11 had 518 was already in; that was resubmitted.
12 That was a series of maps showing the contours of
13 the tortoise protection areas.

14 DR. CONNOR: That's correct.

15 HEARING OFFICER KRAMER: Okay, so this,
16 your testimony that you filed last week then will
17 be, as a single document, will be exhibit 519.

18 DR. CONNOR: Okay.

19 HEARING OFFICER KRAMER: Do we have any
20 objection to the acceptance of exhibit 519 into
21 evidence? Seeing none, hearing none on the
22 telephone, that's accepted.

23 Mr. Harris, the applicant's mitigated --
24 what's the term we're using?

25 MR. HARRIS: We called it biological

1 mitigation proposal.

2 HEARING OFFICER KRAMER: Right. That,
3 according to my scorecard, would be exhibit 88.
4 Does that sound correct?

5 MR. HARRIS: Yes, I think you identified
6 it as such in the order, as well.

7 HEARING OFFICER KRAMER: That's correct,
8 yes. I was ahead of myself. Okay. And that is
9 your only exhibit at this point, is that correct?

10 MR. HARRIS: Actually there's a map that
11 was filed on Thursday, as well.

12 HEARING OFFICER KRAMER: That's right.

13 MR. HARRIS: A one-page map. We don't
14 need to include the statement that accompanies
15 that, so it would be number 89.

16 HEARING OFFICER KRAMER: It would just
17 be the map, itself?

18 MR. HARRIS: Just the map, itself.

19 HEARING OFFICER KRAMER: Does any party
20 have any objection to the entry of exhibits 88 or
21 89 accepted into the evidence at this point in
22 time?

23 MR. BELL: None on behalf of staff.

24 MS. BELENKY: I'm not sure I've seen 89.

25 HEARING OFFICER KRAMER: It's a color

1 map, I'm holding it up here. And it was attached
2 to a letter from Mr. Harris dated March 18th.

3 MS. SMITH: Mr. Kramer. This is Gloria
4 Smith from the Sierra Club.

5 HEARING OFFICER KRAMER: Go ahead.

6 MS. SMITH: I think that discussing this
7 map may be premature since we haven't discussed
8 whether or not the Sierra Club supplemental
9 testimony will be allowed. We would move that in
10 as exhibit 612.

11 I think that the idea of this map was --
12 if the Sierra Club's supplemental testimony is
13 excluded then the map is not necessary. But if
14 the Sierra Club's testimony was allowed, then this
15 map was offered in retaliation.

16 (Laughter.)

17 HEARING OFFICER KRAMER: So that's a
18 very -- that's what we call in-your-face rebuttal,
19 as retaliation or --

20 MS. SMITH: Yeah.

21 HEARING OFFICER KRAMER: Okay. Well,
22 then, okay, let's move to the prerequisite then.
23 Is there any objection to accepting the Sierra
24 Club's prefiled testimony? That's a single
25 document, correct.

1 MS. SMITH: Yes.

2 MR. HARRIS: Is that conditioned upon
3 the acceptance of our -- actually these were
4 rebuttal.

5 HEARING OFFICER KRAMER: It's a more
6 traditional word.

7 MR. HARRIS: With that linking the two,
8 we have no objection.

9 HEARING OFFICER KRAMER: Okay, so
10 anybody --

11 MS. SMITH: I don't that -- it's
12 premature to link the two. One has nothing to do
13 with the other. The Sierra Club in good faith
14 proffered intervenor's supplemental testimony.
15 I'd like to have a stand-alone ruling on that.
16 It's not connected in any way to something that
17 the applicant would like to presume.

18 HEARING OFFICER KRAMER: Okay. So that
19 would be exhibit 612; and did anyone object to its
20 acceptance into evidence?

21 MR. HARRIS: Again, I only object if
22 she's going to object to 89 coming in, the
23 rebuttal testimony to that.

24 HEARING OFFICER KRAMER: Do we have to
25 link these two to --

1 MR. HARRIS: I think Ms. Smith already
2 called them very much linked, and I think that --

3 HEARING OFFICER KRAMER: Okay.

4 MR. HARRIS: -- one is necessary without
5 the other. So, basically, Mr. Cashen's testimony,
6 we can exclude 89, as well.

7 HEARING OFFICER KRAMER: Okay, well, let
8 me try it -- let's try to link it then and get an
9 answer. Does anybody object to the entry of
10 exhibits 88, 89 and 612 as together? Ms. Smith,
11 you're okay with that?

12 MS. SMITH: I'd like the record to
13 reflect -- no, I will not object to the
14 applicant's maps. But I do not want them
15 inextricably linked, or linked in any way in the
16 record or anyone's mind.

17 Again, the Sierra Club offered its
18 supplemental testimony. It has nothing to do.
19 It's not linked in any way to whatever it is the
20 applicant has crafted.

21 No one else's exhibits or maps are
22 linked to one another. We don't want our maps and
23 our testimony linked in any way with the
24 applicant's.

25 HEARING OFFICER KRAMER: Okay, well,

1 so --

2 MS. SMITH: Fair request.

3 HEARING OFFICER KRAMER: Okay. I think
4 we understand that the applicant exhibit is the
5 applicant's characterization of what you've said.
6 And they are allowed to characterize the testimony
7 of others. It's up to the Committee to decide if
8 the characterizations are correct.

9 So, with that understanding that they're
10 linked only in the sense that they're purporting
11 to talk about the same issue, is there any
12 objection to the entry of 88, 89 and 612?

13 And, Ms. Smith, you can be clear again
14 in your brief, you know, to make whatever points
15 you need to do to separate the two.

16 MS. SMITH: I have no objection.

17 HEARING OFFICER KRAMER: Okay, then
18 those will be accepted into evidence.

19 Basin and Range Watch.

20 MS. CUNNINGHAM: Laura Cunningham here.
21 I'd like to request, we received a new document on
22 March 19th that we would like to request as an
23 exhibit. And -- we just received this in the mail
24 and we can email it right now. It's a CH2MHILL
25 contractor biological report on tortoise surveys

1 for the Next Light Silver State project across
2 Ivanpah Valley.

3 HEARING OFFICER KRAMER: Okay, this is
4 Laura Cunningham, right?

5 MS. CUNNINGHAM: Yes.

6 HEARING OFFICER KRAMER: Okay. Now
7 you've not shared this with any other party I
8 presume?

9 MS. CUNNINGHAM: How do you mean that?

10 HEARING OFFICER KRAMER: Well, you
11 haven't sent it out to anybody as a proposed
12 exhibit, correct?

13 MS. CUNNINGHAM: No.

14 HEARING OFFICER KRAMER: And how is it
15 relevant to the mitigated Ivanpah 3 filing of the
16 applicant and the discussion of the impacts of the
17 reduced footprint project?

18 MS. CUNNINGHAM: It relates to the
19 cumulative impacts of the reduced footprint for
20 the Ivanpah project in relation to another large
21 solar project nearby for cumulative impacts to
22 specifically tortoises and tortoise habitat.

23 HEARING OFFICER KRAMER: Well, I think
24 it's unfortunate, but given that we don't even
25 have it in front of us right now, and we are

1 trying to finish the hearing today, I think it's
2 too late to try to submit that.

3 There is a rather extensive, you know,
4 parties, I'm sure, will argue about the quality of
5 the analysis of cumulative impacts. But that has
6 been discussed rather extensively to this point.

7 So, without seeing this study it may be
8 it is simply, I hate to use the word, but
9 cumulative. And otherwise just more information
10 of the same sort that has already been presented.

11 But because you just received it and we're
12 not able -- we will need to exclude it.

13 But you did file one document by way of
14 testimony last week, correct?

15 MS. CUNNINGHAM: That's correct.

16 HEARING OFFICER KRAMER: Okay, and what
17 I wanted to do was deal with that document, just
18 as a matter of form, to make sure that that is
19 determined to be a part of the record or not.

20 So, -- need to find your exhibits.
21 There we are, 800 series. You previously just had
22 the one exhibit, 800, your photographic database.
23 So this, your new filing, would be exhibit 801.
24 Do I have any objection from the parties to its
25 acceptance into evidence?

1 Hearing none, that's accepted.

2 Okay, we've dealt with the Center for
3 Biological Diversity. California Native Plant
4 Society.

5 Mr. Suba, am I correct, you have one
6 document?

7 MR. SUBA: That's correct.

8 HEARING OFFICER KRAMER: Okay, and
9 that's the testimony of the Native Plant Society
10 dated March 16, 2010.

11 MR. SUBA: Yes.

12 HEARING OFFICER KRAMER: That would be
13 exhibit --

14 MR. SUBA: It's 1014.

15 HEARING OFFICER KRAMER: Actually 1015,
16 I think, because 1014 was your opening testimony
17 that wasn't numbered the last time.

18 MR. SUBA: Okay.

19 HEARING OFFICER KRAMER: So, any
20 objection to receiving exhibit 1015?

21 Hearing none and seeing none, that will
22 be received into evidence,

23 Defenders of Wildlife. Do I have it
24 correctly that you did not submit any additional
25 documents?

1 MR. BASOFIN: That's correct, we did not
2 submit testimony pursuant to this hearing.

3 HEARING OFFICER KRAMER: Thank you.
4 Okay, the Sierra Club, we took care of you.

5 I think that -- oh, staff. The winner
6 of the page count, I believe.

7 MR. BELL: We like to be a part of the
8 process.

9 HEARING OFFICER KRAMER: No, I'm sorry,
10 somebody else, okay. For an individual document
11 perhaps. The final staff assessment addendum
12 dated March 16th. That would be exhibit number
13 315. Do we have any objection to receiving it
14 into evidence?

15 Hearing none, okay.

16 We'll ask again at the end just to make
17 sure we didn't miss something. But I believe that
18 covers all the documents. And I think I cut
19 myself off there just a minute ago.

20 Hearing none then the staff assessment,
21 exhibit 315, is accepted into evidence.

22 So we will go forward then with the
23 receipt of testimony, although I think it's
24 largely, from what the parties have filed, will be
25 perhaps exclusive by way of cross-examination.

1 Mr. Kessler, you think Ms. Sanders is
2 occupied in the other -- is she available?

3 MR. KESSLER: I haven't been able to get
4 -- I did send her a message, Mr. Kramer. I
5 haven't heard back yet. So my understanding was
6 she was going to turn her phone off and try to
7 engage in Beacon and get back to us when she had a
8 window of opportunity. I have not heard back yet.

9 HEARING OFFICER KRAMER: Okay, well,
10 keep trying to contact her.

11 MR. KESSLER: Yes, sir, will do.

12 HEARING OFFICER KRAMER: Okay. Mr.
13 Harris, I gather that you would prefer to follow
14 the others in your cross-examination, would that
15 be correct?

16 MR. HARRIS: Yeah, it would be correct.
17 We don't mind going first, if you'd like us to go
18 first with our direct. But given that the
19 intervenors are now the joint intervenors, I think
20 it's only fair to prevent unfair cross that we be
21 allowed to go last for cross-examination of the
22 parties who are not the applicants.

23 MS. BELENKY: Objection. I object to
24 being characterized as the group intervenors. We
25 are still independent separate intervenors. We

1 are not acting as a group just because we filed
2 certain motions as a group.

3 MR. HARRIS: I would agree with that
4 characterization and meant no offense by it. I
5 really just meant you filed together so, thank
6 you. Sorry.

7 HEARING OFFICER KRAMER: Okay, but as
8 far as the order of presentation, did you have
9 some direct testimony you still wish to offer in
10 light of the stipulations?

11 MR. HARRIS: We think we have about ten
12 minutes. It would be beneficial just to kind of
13 set the context -- panel available for cross-
14 examination. So, yes, we think it would be
15 helpful.

16 HEARING OFFICER KRAMER: Okay. And I
17 think that would be helpful especially to set the
18 context to go forward. So, go ahead at this
19 point.

20 MR. HARRIS: Okay. I'd ask the panel
21 members to come up. We'll have to kind of squeeze
22 extra chairs around the microphones to share
23 microphones. Have those folks come forward
24 please.

25 (Pause.)

1 MR. HARRIS: So all the members of the
2 panel were previously sworn and they were
3 identified in our filing last Thursday, so.

4 Mr. Olson was offered as rebuttal to
5 Mr. Powers, so he will not be on the panel. He is
6 in the room, but his role was to offer rebuttal
7 testimony.

8 Whereupon,

9 GEOFFREY SPAULDING, MARK COCHRAN, TODD STEWART

10 STEVE HILL, STEVE DE YOUNG, JOHN CARRIER

11 WENDY HAYDON and THOMAS PRIESTLEY

12 were recalled as witnesses herein, and having been
13 previously duly sworn, were examined and testified
14 further as follows:

15 DIRECT EXAMINATION

16 BY MR. HARRIS:

17 Q So I'd like the rest of the members of
18 the panel to introduce yourselves and spell your
19 name for the court reporter, please.

20 DR. SPAULDING: Dr. Geof Spaulding.

21 That's G-e-o-f S-p-a-u-l-d-i-n-g, CH2MHILL,
22 consultants to the applicant.

23 MR. COCHRAN: Hi, Mark Cochran,
24 M-a-r-k C-o-c-h-r-a-n, CH2MHILL, consultants to
25 applicant.

1 MR. STEWART: Todd Stewart with
2 BrightSource Energy.

3 MR. HILL: And Steve Hill, H-i-l-l, with
4 Sierra Research, consultant.

5 MR. De YOUNG: Steve De Young with
6 BrightSource Energy. D-e Y-o-u-n-g.

7 MR. CARRIER: John Carrier with
8 CH2MHILL. C-a-r-r-i-e-r.

9 MR. HARRIS: Okay, Mr. De Young, I'm
10 going to ask a series -- I'm sorry -- okay, Wendy,
11 please --

12 MS. HAYDON: Wendy Haydon, W-e-n-d-y
13 H-a-y-d-o-n. I'm with CH2MHILL, consultant to the
14 applicant.

15 HEARING OFFICER KRAMER: Before you go,
16 on the telephone can one person just confirm to us
17 that you're still hearing us just fine?

18 DR. PRIESTLEY: This is Tom Priestley; I
19 can hear you.

20 HEARING OFFICER KRAMER: Okay, thank
21 you. You've been very quiet and I was worried.

22 MR. HARRIS: Mr. Priestley, in addition
23 to providing that valuable service, is also a
24 member of the panel, part of our visual team.

25 DR. PRIESTLEY: Yeah, so I am -- my name

1 is Thomas Priestley, that's P-r-i-e-s-t-l-e-y.
2 And I'm with CH2MHILL, consultant to the
3 applicant.

4 MR. HARRIS: And that's Doctor
5 Priestley; sorry, Tom.

6 Okay, so I'll ask a series of questions,
7 on behalf of the panel. I'll ask Mr. De Young to
8 answer, again, on behalf of the entire panel.

9 So what subject matter testimony are you
10 here to sponsor today?

11 MR. DE YOUNG: The biological mitigation
12 proposal.

13 MR. HARRIS: And were the documents that
14 you sponsored as part of your testimony previously
15 identified?

16 MR. DE YOUNG: Yes, they were.

17 MR. HARRIS: And those are 88 and 89
18 which were moved in just a little bit ago. Any
19 changes or corrections to the testimony?

20 MR. DE YOUNG: No.

21 MR. HARRIS: And were the documents
22 prepared either by you or at your direction?

23 MR. DE YOUNG: Yes.

24 MR. HARRIS: Are the facts stated
25 therein true to the best of your knowledge?

1 MR. DE YOUNG: Yes.

2 MR. HARRIS: And are the opinions stated
3 therein your own?

4 MR. DE YOUNG: Yes.

5 MR. HARRIS: And do you adopt this as
6 your testimony for the proceeding?

7 MR. DE YOUNG: Yes, we do.

8 MR. HARRIS: Can you begin by
9 summarizing the mitigated Ivanpah 3 options
10 testimony, please?

11 MR. DE YOUNG: Yes. During the Energy
12 Commission evidentiary hearings on the project the
13 Commission Staff and intervenors focused heavily
14 on the impacts associated with Ivanpah 3, the
15 northernmost project of the three Ivanpah
16 projects.

17 For example, Commission Staff and
18 intervenors stated that Ivanpah 3 contains more
19 plant species and ephemeral washes than the
20 Ivanpah 1 and 2 sites.

21 I'll note that the layout of the project
22 with Ivanpah 3 is being shown on the screen as
23 figure 2.2-1. From our --

24 HEARING OFFICER KRAMER: And that
25 figure's from your new exhibit?

1 MR. DE YOUNG: It's from our M-3
2 proposal, correct.

3 HEARING OFFICER KRAMER: Okay, exhibit
4 88.

5 MR. DE YOUNG: Exhibit 88.

6 MR. HARRIS: Just for clarification all
7 the tables that Mr. De Young is going to refer to
8 in the direct testimony are all from exhibit 88,
9 and will use those reference number -- the
10 reference.

11 Go ahead, Steve.

12 MR. DE YOUNG: Similar to plants, the M-
13 3 area also contains 15 percent of the desert
14 tortoise that were located within the power plant
15 site during our 2007 and 2008 surveys. That was
16 three of the 20 live tortoises that were found on
17 the site. And two more tortoise that were just
18 located south of the -- actually very close to the
19 boundary, the southern boundary, of our proposed
20 Ivanpah 3, M-3.

21 MR. HARRIS: So what are some of the
22 benefits associated with your mitigated-3
23 proposal?

24 MR. DE YOUNG: Among the more important
25 benefits this proposal removes approximately 433

1 acres from the northern portion of Ivanpah 3, and
2 also reduces the number of heliostats used in the
3 project by about 40,000.

4 And to pull that into perspective, 433
5 acres represents about 24 percent of the
6 originally proposed Ivanpah 3. And reduces the
7 overall footprint of all three projects by
8 approximately 12 percent.

9 MR. HARRIS: And again, for the benefit
10 of the audience, can you use the laser pointer and
11 point to the area of the 433 acres that have been
12 removed from the northern portion? And, Geof, you
13 may want to duck or not look directly into the
14 light.

15 (Laughter.)

16 MR. DE YOUNG: Yeah, actually, Geof, can
17 you move a little. There you go. I don't want to
18 zap you.

19 Removes approximately 109 acres from the
20 construction logistics area. Construction
21 logistics is this area here. I'm sorry --

22 MR. HARRIS: -- the 433 acres, the
23 northern portion, as well.

24 MR. DE YOUNG: Absolutely; 433 acres are
25 up in this area. The construction logistics area,

1 as I said, we remove 109 acres from the original
2 377 acres proposed in the construction logistics
3 area. These avoided areas in the construction
4 logistics area will be used for plant relocation,
5 nursery for salvaged cacti and rare plants.

6 Further M-3 avoids and minimizes
7 potential impacts to significant number of large
8 ephemeral washes that are, again, located up in
9 this area of Ivanpah 3, helping the project meet
10 our low-impact design, or LID, objectives by
11 allowing stormwater to freely flow through the
12 project site.

13 MR. HARRIS: And it puts a lot of the
14 issue of plants in the M-3 configuration -- can we
15 have figure 3-2.

16 MR. DE YOUNG: Maybe you can blow that
17 up just a little bit? As shown on this figure,
18 our M-3 proposal would further avoid minimized
19 potential impacts to plant species by completely
20 avoiding the most densely populated rare plant
21 communities in the northernmost portion of Ivanpah
22 3. And this allows for set-aside of a large
23 contiguous area of land containing plants.

24 And based on testimony that was
25 previously provided by Commission Staff, this was

1 preferable to the halo where we had proposed
2 smaller areas within the heliostat fields to be
3 fenced off and avoided.

4 MR. HARRIS: By way of clarification,
5 the portion of M-3 you're showing, the 433 acres,
6 has a whole lot of different symbols and figures.
7 Can you -- I know you can't see the legend on
8 this, but can you briefly describe what those
9 symbols stand for?

10 MR. DE YOUNG: They stand for various
11 rare plants that were found on the site, including
12 desert pin cushion, desert mallow. One of my
13 biologists is going to have to jump in here and
14 help me with the rest of these.

15 MR. HARRIS: Okay, all those areas are
16 avoided, the shaded area?

17 MR. DE YOUNG: All of the area within
18 our M-3 proposal are completely avoided. There
19 will be no construction other than the gas line
20 that goes through the area, there will be no
21 construction in this area.

22 MR. HARRIS: Okay. Let's put up figure
23 3.1 --

24 HEARING OFFICER KRAMER: Before you
25 leave that one, what's the route of the gas line

1 going to be roughly?

2 MR. DE YOUNG: The gas line originally
3 down this way. I believe the gas line now will go
4 through from this corner of Ivanpah 3 up to the
5 interconnect right at that point.

6 We've done an evaluation of the pipeline
7 corridor, 75-foot pipeline corridor. We had
8 previously committed to a hundred percent
9 avoidance of, during construction, of the gas
10 pipeline. And with this configuration we'll still
11 maintain a hundred percent avoidance of all plants
12 in that area.

13 HEARING OFFICER KRAMER: And how would
14 you do that, by just land filling or --

15 MR. DE YOUNG: The, I'll call them the
16 lucky charms, the lucky charms that show the
17 different type of plants in here are obviously
18 much larger than the plants as they exist today.
19 So there is an easy way to do a 75-foot
20 construction corridor and avoid the rare plants.

21 HEARING OFFICER KRAMER: Okay, thanks.

22 PRESIDING MEMBER BYRON: And if I may
23 ask a quick question, as well. Is the relative
24 density of rare plants, as indicated on figure 3-
25 2, representative for the area that is no longer

1 in the proposed project and the area that's still
2 designated as part of the project?

3 In other words, you're showing the
4 density of rare plants in that mitigated area.

5 MR. DE YOUNG: Yes, this is
6 representative of the plants that were found
7 during surveys conducted over two years. Perhaps,
8 John, if you can back out a bit?

9 PRESIDING MEMBER BYRON: And all the
10 results from the survey are also shown in the area
11 labeled Ivanpah 3, as well?

12 MR. DE YOUNG: Correct, as well as
13 Ivanpah 1 and 2 in the construction logistics
14 area.

15 PRESIDING MEMBER BYRON: Thank you.

16 MR. HARRIS: Okay, just give a quick
17 explanation, if you would, on the corridor, the
18 gas line corridor. You see there's an area with a
19 lot of -- John, can you go back up to the north.

20 Can you explain why that map appears to
21 show only plants within that area, in that one
22 little contiguous area there?

23 MR. DE YOUNG: This area up here?

24 MR. HARRIS: Yes.

25 MR. DE YOUNG: That area was previously

1 identified. It's a 1000-foot corridor previously
2 identified as the pipeline route. What we
3 proposed is somewhere within that 1000-foot
4 corridor, and it's a bit hard to see, but it's
5 there. There's a green line --

6 MR. HARRIS: Let me ask the question,
7 are there no plants shown -- there's no plants
8 shown, I guess, to the west, to east of that
9 corridor. Back out a little bit again, John, if
10 you can.

11 Is that because there's no plants there
12 or is it because --

13 MR. DE YOUNG: No, no, --

14 MR. HARRIS: -- the surveys were only
15 done on the gas line corridor?

16 MR. DE YOUNG: -- certainly not. The
17 surveys were only done within that corridor. You
18 would expect to see, I suspect, the same types of
19 plants, and perhaps the same density to the east
20 and west of that corridor.

21 MR. HARRIS: And so the Committee
22 shouldn't look at that and decide that there
23 weren't plants on either side of the corridor.
24 The corridor just represents the information we
25 have, is that correct?

1 MR. DE YOUNG: That's correct.

2 ASSOCIATE MEMBER BOYD: That's a 1000-
3 foot corridor?

4 MR. DE YOUNG: Correct.

5 ASSOCIATE MEMBER BOYD: That's the 75-
6 foot-wide needed for the gas corridor?

7 MR. DE YOUNG: That's correct. We did
8 1000 feet to give us the ability to move within
9 that corridor to avoid plants, as necessary.

10 MR. HARRIS: If the Committee has no
11 more questions on this slide we'll go ahead and
12 move on to, I guess it's 3-1, John. Talk a little
13 bit about desert tortoise. What about the desert
14 tortoise issues?

15 MR. DE YOUNG: This figure shows the
16 location of desert tortoise that were discovered
17 during the various desert tortoise surveys, that
18 symbol.

19 Our proposed M-3 project reduces the
20 impacts to desert tortoise, reducing the total
21 tortoise relocation by approximately 15 percent.
22 And provides an additional area for relocation
23 that's within the home range of the tortoise.

24 It was high density of rare plants and
25 that the intervenors believe have comparatively

1 better habitat value. As noted previously, three
2 of the 25 tortoises observed within the project
3 boundary and two more just outside the boundary
4 were located in this M-3 proposed set-aside area.
5 So five of the 20 tortoise located during the
6 surveys were in this area.

7 MS. BELENKY: Excuse me. I just wanted
8 to clarify. Are you testifying as to what the
9 intervenors' testimony was?

10 MR. DE YOUNG: I'm giving my opinion as
11 to what I heard during the many days of hearings
12 regarding site 3 and the value of site 3.

13 MS. BELENKY: I'm going to object to
14 that. We can discuss it when we do cross-
15 examination. Thank you.

16 HEARING OFFICER KRAMER: Are you asking
17 that that portion of his testimony be struck,
18 then?

19 MS. BELENKY: Yes, I would ask that the
20 portion of his testimony where he's characterizing
21 someone else's testimony be struck. I wasn't
22 actually sure I heard him correctly.

23 HEARING OFFICER KRAMER: Okay, well, I
24 understood that as just simply to be a reference
25 to what he thought you were saying. We do not put

1 much weight, if any, in other witnesses'
2 characterizations of the testimony of others. So,
3 it can safely stay in the record with that caveat.

4 MR. HARRIS: Okay. Let's move on, John.
5 Could you put up figure 2-2 and I want to move on
6 to the issue of visual resources and the
7 significant reduction in the number of towers
8 associated with M-3.

9 So can you give us -- tell us about the
10 visual resources issue associated with M-3?

11 MR. DE YOUNG: The proposed project
12 further avoids and minimizes the potential visual
13 resources impacts associated with glare and
14 reflectivity by reducing the number of towers in
15 Ivanpah 3 from our previously proposed five
16 towers, now down to one tower in Ivanpah 3. And
17 for the entire project we're down to three towers
18 total. So originally seven, now down to three
19 towers.

20 In addition, the proposed M-3 increases
21 the distance between the site and the mountain
22 range to the north, increasing potential foraging
23 area and migration corridor for various species.

24 MR. HARRIS: Let's talk about the
25 realignment of Ivanpah 2 and 3. So can we have

1 figure 1, again, John, if we can.

2 This is the Ivanpah site plan. And
3 there has been a realignment of the boundaries
4 between 2 and 3. Can you explain the reasons for
5 that realignment of the boundary between 2 and 3?

6 MR. DE YOUNG: What you're referring to
7 is this realignment here. The northern heliostat,
8 in other words those that are south-facing
9 mirrors, are highly valued collectors, given their
10 ability to track the sun throughout the day.

11 Heliostats that were formerly in the
12 southern portion of Ivanpah 3, with this
13 realignment are now directed to the power tower in
14 Ivanpah 2.

15 MR. HARRIS: So essentially you've taken
16 the mirrors that were formerly part of --

17 MR. DE YOUNG: Yeah, the mirrors that
18 were formerly part of 3, the old boundary was in
19 this area, that would have been directed to power
20 towers in Ivanpah 3, are now directed to the power
21 tower in Ivanpah 2.

22 MR. HARRIS: And that, again, is because
23 that, in fact, gives you a northern heliostat and
24 makes a south-facing heliostat, which is a better
25 collector?

1 MR. DE YOUNG: It's a much more
2 efficient collector. Also in the previous layout
3 we had a power tower down in that quadrant, so it
4 made more sense to point those mirrors to that
5 power tower, one of the five. Since we're now
6 down to one tower, it's more efficient to use
7 those mirrors for Ivanpah 2 than Ivanpah 3.

8 MR. HARRIS: Let's talk about the
9 overall capacity of the project. So what is the
10 capacity of the project now with the M-3 proposal?

11 MR. DE YOUNG: In terms of overall
12 capacity we can make up some of the lost capacity
13 by adjusting the size of the steam turbines. And
14 that's actually not putting in a larger shell.
15 We're going with the same shell size for the
16 turbines. But the internal components provide a
17 more efficient turbine.

18 The total capacity of the three Ivanpah
19 projects would be reduced on a nominal basis from
20 400 to 370 megawatts. And on a gross basis from
21 440 to 392 megawatts.

22 MR. HARRIS: So overall, why did the
23 applicant advance the mitigated-3 proposal?

24 MR. DE YOUNG: We were looking for
25 opportunities to reduce impacts even further. The

1 mitigated Ivanpah 3 has the distinct advantage of
2 being located within an area that was previously
3 surveyed, evaluated and scrutinized by all parties
4 for this proceeding, including applicant, staff,
5 our biologist, intervenor biologists,
6 hydrologists, geologists, et cetera.

7 The only substantive issues that are
8 affected by the proposed Ivanpah 3 configuration,
9 we believe, are biological resources and visual
10 resources with the reduction in potential
11 environmental impacts in these areas being
12 decidedly possible.

13 MR. HARRIS: Okay, I think that's all we
14 have. I'd like to make the panel available for
15 cross-examination unless the Committee has any
16 questions first.

17 HEARING OFFICER KRAMER: The visual
18 representation that you showed, what was the
19 source of that, again?

20 MR. DE YOUNG: What is the source of
21 this?

22 HEARING OFFICER KRAMER: Yeah.

23 MR. HARRIS: I can answer that. Are you
24 asking for the table number or --

25 HEARING OFFICER KRAMER: Yeah, because

1 it -- I'm looking at my copy of your mitigated-3
2 proposal and it's not there as far as I can tell.

3 MR. HARRIS: Figure 2-2, artist's
4 rendering of the biological mitigation proposal.

5 HEARING OFFICER KRAMER: Oh.

6 MR. HARRIS: And the figures are all at
7 the end of the section. So, again, it's section
8 2.

9 HEARING OFFICER KRAMER: I was looking
10 at a different section, okay.

11 MR. HARRIS: Yeah, no, in fact, the
12 figures are at the end of each section.

13 HEARING OFFICER KRAMER: My problem is
14 solved, thank you.

15 MR. HARRIS: The panel's available for
16 cross.

17 HEARING OFFICER KRAMER: Okay. I
18 understand that Ms. Sanders may be with us now?

19 MR. KESSLER: Yes.

20 HEARING OFFICER KRAMER: Did she call
21 in?

22 MR. KESSLER: Yes, she could be
23 available shortly if that would help.

24 HEARING OFFICER KRAMER: Okay,
25 Ms. Sanders, are you on the telephone?

1 MR. KESSLER: My understanding is that
2 she was on the phone and she is back in the Beacon
3 hearing again because she was uncertain as to how
4 long the applicant might continue. But I can try
5 to text her and get her back if you would like.

6 HEARING OFFICER KRAMER: Okay, yeah, get
7 her queued up because I think when she's available
8 -- and let me ask that, let me suggest that it
9 might be useful to have the staff present their --
10 were you going to present any sort of summary of
11 your analysis, Mr. Bell?

12 MR. BELL: Mr. Kramer, the staff has
13 already filed its testimony. And along with that
14 testimony, containing the final staff assessment
15 addendum, is a summary of that testimony. Staff
16 doesn't feel that it would serve any purpose to
17 restate our testimony and restate the summary yet
18 again.

19 HEARING OFFICER KRAMER: Okay, so then
20 you'll just be available for cross-examination?

21 MR. BELL: That's correct

22 HEARING OFFICER KRAMER: Okay, so then
23 why don't we -- hopefully Ms. Sanders will get
24 back soon. Let me ask the parties, including Ms.
25 Smith, I know you were interested in speaking with

1 her, I believe. Do you have an estimate as to how
2 long your cross-examination of Ms. Sanders might
3 be?

4 MS. SMITH: -- the Sierra Club?

5 HEARING OFFICER KRAMER: Yes.

6 MS. SMITH: No, I don't. And I'm not
7 even certain that I'll have questions. I want to
8 hear -- I was keeping that open.

9 HEARING OFFICER KRAMER: Okay.

10 MS. SMITH: So we'll see if she has
11 anything opening to say, we'll see how this
12 evolves.

13 HEARING OFFICER KRAMER: Sounds like she
14 won't because she's simply another staff witness.
15 So, okay, when she does come back on we'll try to
16 find out what her time constraints are.

17 I'm a little hesitant to put her off
18 until after 1:00 because, depending on how things
19 go here, we may be wrapping up by then. I don't
20 want everyone to have to wait around for that, if
21 it's possible.

22 So, --

23 MR. BELL: Mr. Kramer, I will have a few
24 questions for Ms. Sanders. I don't anticipate my
25 questions will last longer than about 10, 15

1 minutes.

2 HEARING OFFICER KRAMER: And would you
3 be willing to ask those when she's available, even
4 if it's out of order?

5 MR. BELL: Sure.

6 HEARING OFFICER KRAMER: Okay, thank
7 you.

8 All right, for now then let's present
9 the applicant's panel for cross-examination by the
10 parties. Staff, did you have any questions?

11 MR. BELL: Yes, I have a couple
12 questions for Mr. De Young, but I'd like that map
13 that was up earlier put back up again.

14 HEARING OFFICER KRAMER: Which one, the
15 one showing all the plants?

16 MR. BELL: With the lucky charms, yes.

17 HEARING OFFICER KRAMER: Okay.

18 MR. BELL: I just wanted to be clear;
19 this isn't an item of evidence, this is just --

20 HEARING OFFICER KRAMER: Can you turn
21 down the lights, John.

22 MR. KESSLER: Was this just for
23 demonstrative purposes?

24 HEARING OFFICER KRAMER: This is a part
25 of their filing.

1 MR. KESSLER: Okay.

2 MR. DE YOUNG: This is evidence, has
3 been previously submitted. What's different on
4 this figure is the demarcation of Ivanpah 3.

5 MR. KESSLER: Correct, correct.

6 MR. HARRIS: But this is within our --
7 what's the figure number, John?

8 MR. CARRIER: It says right here, figure
9 3-2.

10 MR. HARRIS: Figure 3-2, rare plant
11 direct impact avoidance areas.

12 MR. BELL: No, I've seen the map before,
13 but the reason why I was asking that is during
14 direct examination of Mr. De Young somebody was
15 using -- well, there was both a laser pointer and
16 there was also --

17 HEARING OFFICER KRAMER: I think you're
18 going to have to be up at the mic, Kevin.

19 MR. BELL: Okay, that's why I'm speaking
20 loud. Is this acceptable, or should I --

21 HEARING OFFICER KRAMER: Can you hear
22 him on the telephone?

23 DR. PRIESTLEY: No.

24 MR. BELL: Okay.

25 (Pause.)

1 MR. BELL: I'll try not to point it in
2 anybody's eyes.

3 CROSS-EXAMINATION

4 BY MR. BELL:

5 Q The reason why I was asking was that I'm
6 familiar with this figure, Mr. De Young. But
7 there was both a laser pointer being used and also
8 a hand. I'm going to try to describe this with a
9 little more specificity for you.

10 Right now I'm pointing the laser pointer
11 at a point in the -- in the area that describes
12 the northern rare plant mitigation area. It's a
13 grey area to the north of mitigated Ivanpah 3, is
14 that correct? I'm now circling that with the
15 laser, correct?

16 MR. DE YOUNG: Yes.

17 MR. BELL: You had talked about a gas
18 line that starts at a point to the northern end of
19 this area. And the laser pointer, is it not
20 correct, that you had it going diagonally across
21 mitigated-3 to a point at the northeast corner --
22 I'm sorry, the southeast corner of the mitigated
23 area, is that correct?

24 MR. DE YOUNG: That is the alignment
25 that we're looking at, correct.

1 MR. BELL: Okay. And currently there's
2 no figure that shows the route of that gas line
3 going through the mitigated area, is that correct?

4 MR. DE YOUNG: That is correct.

5 MR. BELL: The previous gas line it
6 appears in a green line that borders the northern
7 portion of this mitigated area that's descending
8 south to that point of junction where it then
9 turns west. Is that the route that the gas line
10 originally took?

11 MR. DE YOUNG: That is correct.

12 MR. BELL: With the applicant's current
13 proposal to eliminate this area from
14 consideration, why did you feel it necessary to
15 move the gas line so that it now bisects a portion
16 of that mitigated area?

17 MR. DE YOUNG: It was simply an option
18 that we were looking at. And if I didn't
19 characterize it as an option, the current proposal
20 is to put the gas pipeline along the original
21 alignment.

22 One of the options that we evaluated to
23 have less construction impact, the proposed route
24 as we have it, is longer than the diagonal route
25 would be. Simply less construction impact, less

1 disturbance, that's essentially why.

2 MR. BELL: Is it true, though, that if
3 you bisect that area, that's been identified as
4 the northern rare plant mitigation area, that
5 you're not avoiding the rare plants in that area?
6 You're actually going right through the middle of
7 it?

8 MR. DE YOUNG: No, we'll be avoiding any
9 rare plant that's located within the M-3 area,
10 but --

11 MR. BELL: Wouldn't it be more effective
12 to go around that area as you originally proposed?

13 MR. DE YOUNG: I think what you have to
14 consider here is that those rare plants don't
15 exist only in the area that we've identified. So
16 that certainly along the original alignment there
17 would be rare plants there. That's a given.

18 MR. BELL: Okay, thank you. No further
19 questions.

20 MR. KESSLER: Hearing Officer Kramer, I
21 just want to let you know that it appears Susan
22 Sanders is back with us now.

23 HEARING OFFICER KRAMER: Ms. Sanders,
24 are you on the telephone? Mr. Kessler says you
25 are.

1 (Laughter.)

2 MR. KESSLER: She indicated she was
3 calling in.

4 MS. BELENKY: And we also will have some
5 questions for her.

6 HEARING OFFICER KRAMER: Okay. Susan
7 Sanders, can you hear us?

8 MS. SANDERS: Yes.

9 HEARING OFFICER KRAMER: Oh, good.
10 Okay, how much time do you have there?

11 MS. SANDERS: I don't know.

12 (Laughter.)

13 HEARING OFFICER KRAMER: Somebody's in
14 the room and will know to come get you, right?

15 MS. SANDERS: I hope so. I think so.

16 HEARING OFFICER KRAMER: Okay. Well,
17 we're going to break in the cross-examination of
18 the applicant's witnesses then so that we can
19 accommodate your schedule. We appreciate you
20 multi-tasking like this.

21 MS. SANDERS: Okay, thank you.

22 HEARING OFFICER KRAMER: Now, as I
23 recall you were previously sworn in this case,
24 correct?

25 MS. SANDERS: Correct.

1 HEARING OFFICER KRAMER: So consider
2 yourself to still be sworn as a witness.

3 Whereupon,

4 SUSAN SANDERS
5 was recalled as a witness herein, and having been
6 previously duly sworn, was examined and testified
7 further as follows:

8 HEARING OFFICER KRAMER: Could you spell
9 your last name for our court reporter.

10 MS. SANDERS: S-a-n-d-e-r-s.

11 HEARING OFFICER KRAMER: First name
12 Susan.

13 MS. SANDERS: Correct.

14 HEARING OFFICER KRAMER: Okay. And you
15 are a staff witness on the topic of biology?

16 MS. SANDERS: That's right.

17 HEARING OFFICER KRAMER: Okay. At least
18 two of the intervenors wish to cross-examine, so,
19 Mr. Basofin, do you want to go first?

20 MR. BASOFIN: Sure. Thank you.

21 MR. BELL: Preliminary before we go on,
22 Ms. Sanders should know that her testimony has
23 already been admitted into the record.

24 MS. SANDERS: I'm sorry -- interference
25 on the line here.

1 MR. BELL: That's okay. Hi, Susan.
2 Kevin Bell for -- for you. I just want to let you
3 know that -- to make it clear that your testimony
4 has already been admitted into the record by
5 stipulation.

6 MS. SANDERS: I heard part of that,
7 something about my testimony and stipulation, what
8 did you say?

9 MR. BELL: That's right. Your testimony
10 has already been admitted into the record, so we
11 don't need to do any of the preliminaries. So Mr.
12 Basofin and possibly one other party may have some
13 questions for you based on your testimony.

14 MS. SANDERS: Okay. I'm getting a lot
15 of a clicking sound. It's making it hard for me
16 to understand. I don't know what that's from.
17 It's better now.

18 PRESIDING MEMBER BYRON: Ms. Sanders,
19 this is Commissioner Byron. We could hear it, as
20 well. So let me ask if there's anyone that's on
21 the line, if they could be cognizant of the fact
22 they may be making noise. And if they would put
23 it on mute, that would be very helpful.

24 HEARING OFFICER KRAMER: Okay,
25 Mr. Basofin, go ahead.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MR. BASOFIN:

Q Good morning, Ms. Sanders. This is Joshua Basofin for Defenders of Wildlife.

MS. SANDERS: Good morning.

MR. BASOFIN: Thank you for joining us this morning, taking time out of your other engagement. I just have a few brief questions for you.

First, did you complete an analysis of the biological resources section for the final staff addendum?

MS. SANDERS: When you say complete an analysis, what do you mean?

MR. BASOFIN: I'm sorry, let me rephrase that. Did you do an analysis of biological resource impacts for the staff addendum?

MS. SANDERS: Well, we made a calculation, we took the calculations which the applicant had made to find the reduced number of acres and impact would be for desert tortoise, for the biological resources.

MR. BASOFIN: Okay. And --

MS. SANDERS: Is that what you mean?

MR. BASOFIN: Yes, thank you. And

1 according to your analysis how many individual
2 tortoises would be avoided based on the mitigation
3 proposal submitted by the applicant?

4 MS. SANDERS: I don't think that's a
5 useful calculation to make. You can't predict how
6 many tortoise you're going to find for numbers
7 that they found in the course of their survey.
8 It's a snapshot of when they did the survey. So I
9 wouldn't guess how to make sure tortoises they
10 would impact --

11 MR. BASOFIN: Okay, thank you. In your
12 opinion is the section, the mitigated unit 3
13 section, all suitable desert tortoise habitat?

14 MS. SANDERS: Yes.

15 HEARING OFFICER KRAMER: It wasn't clear
16 to me if you were asking about the excluded
17 portion or the portion that remains as part of --

18 MR. BASOFIN: I'm asking the excluded
19 portion.

20 MS. SANDERS: It's all suitable.

21 MR. BASOFIN: If that's the term you'd
22 like to use, I'll use that term, excluded area
23 pursuant to the mitigation proposal.

24 And according to your analysis does the
25 excluded portion reduce the overall land

1 acquisition mitigation requirement?

2 MS. SANDERS: Yes, the condition
3 stipulates that you have mitigation based on the
4 final project footprint. So if it's reduced, then
5 it would be for a lesser amount. The same ratios
6 would apply.

7 MR. BASOFIN: And so how much would that
8 reduction be, how many acres?

9 MS. SANDERS: Well, the 433 is what the
10 reduction would be, and in terms of impact of
11 suitable habitat, so 866 in terms of acquisition
12 the then remaining one-to-one for impacts --

13 MR. BASOFIN: Okay, I think that's all I
14 have.

15 HEARING OFFICER KRAMER: Ms. Belenky.

16 MS. BELENKY: Thank you. I just want to
17 make sure, I think we may be covering the same
18 ground.

19 CROSS-EXAMINATION

20 BY MS. BELENKY:

21 Q Ms. Sanders, when you reviewed the new
22 proposal did you look at any aspects that hadn't
23 been, any other biological aspects of this
24 proposal? Or only the ones that the applicant
25 flagged for you?

1 MS. SANDERS: I'm not sure what you mean

2 --

3 MS. BELENKY: Did you --

4 MS. SANDERS: -- by other aspects of it.

5 MS. BELENKY: Did you, for example, look
6 at impacts to birds or impacts to golden eagles in
7 particular? And other issues that have been
8 raised in these hearings? Did you look at impacts
9 to bighorn?

10 MS. SANDERS: I think we considered that
11 there would be an associated reduction in impacts
12 to all the species that are either inhabiting the
13 433 acres that would be avoided, or forage there,
14 or otherwise using it. There would be a whatever
15 percentage reduction in that much habitat loss
16 would be achieved by the revised mitigated
17 alternative.

18 MS. BELENKY: When you say you
19 considered it, did you actually identify and
20 analyze it? Or was this more of just a -- what
21 does that mean, the word considered?

22 MS. SANDERS: I'm sorry, identified --
23 would you repeat the question?

24 MS. BELENKY: Did you actually identify
25 the impact that would be, you're saying, reduced

1 by a certain percentage? Or --

2 MS. SANDERS: I'm not sure -- I'm not
3 sure how to answer that question -- we assign the
4 impact to every acre. I mean we looked at it from
5 the perspective of there is this much habitat loss
6 for these species. We haven't really changed our
7 conclusions except that it will be less. It will
8 be 433 acres less.

9 Does that answer your question? I'm not
10 sure I'm getting to your question the way you
11 want.

12 MS. BELENKY: Well, I think we're just
13 trying to make sure, you know, were all of the
14 aspects of the project analyzed under this, or you
15 are only analyzing this little strip of land at
16 the top.

17 So I guess that's the question. Were
18 you reviewing this as a whole, or you were only
19 looking at this top area?

20 MS. SANDERS: No. We considered the
21 entire project as a whole without the 433 acres
22 impacted above. Is that what you mean?

23 MS. BELENKY: Yeah, --

24 MS. SANDERS: As the impacts, yes. As
25 we did the entire analysis we looked again at what

1 the project was like without the 433 acres. Not
2 just with respect to plants, but with all. We
3 didn't repeat our analysis because it would have
4 been redundant in the supplemental filing. But we
5 have the same conclusions more or less, except
6 less by whatever acreage the mitigated that
7 Ivanpah 3 would result in.

8 MS. BELENKY: Thank you.

9 HEARING OFFICER KRAMER: Is that it?

10 MS. BELENKY: Sorry, I'm just trying to
11 check if Ms. Anderson has another question.

12 MS. ANDERSON: No, I don't.

13 MS. BELENKY: Okay.

14 DR. CONNOR: Mr. Kramer, this is Michael
15 Connor. I have a question.

16 HEARING OFFICER KRAMER: You done, Ms.
17 Belenky, then?

18 MS. BELENKY: Yes, thank you.

19 HEARING OFFICER KRAMER: Okay, go ahead,
20 Mr. Connor.

21 CROSS-EXAMINATION

22 BY DR. CONNOR:

23 Q Ms. Sanders, did you look at any changes
24 in habitat fragmentations that would result from
25 the new proposal?

1 MS. SANDERS: Only in the sense that it
2 would be less because you have a smaller
3 footprint.

4 DR. CONNOR: Are you saying in your
5 opinion that the new proposal would actually
6 result in less habitat fragmentation for desert
7 tortoise?

8 MS. SANDERS: Yeah, I think that's a
9 fair conclusion.

10 DR. CONNOR: And did you consider the
11 cumulative impacts in making that conclusion?

12 MS. SANDERS: I think the cumulative
13 impacts are the same as we described in our final
14 staff assessment.

15 DR. CONNOR: Are you aware of the
16 additional projects that are being proposed in the
17 area?

18 MS. SANDERS: Yes, we assessed those in
19 our final staff assessment.

20 DR. CONNOR: Okay. Isn't it correct
21 that there are projects immediately to the north
22 and to the east of that area?

23 MS. SANDERS: Yes, that's right.

24 DR. CONNOR: Okay, so would this revised
25 proposal reduce that fragmentation?

1 MS. SANDERS: I think some. Yes, I
2 think Desert Express, for example, it's farther
3 from the Desert Express and there's a wider
4 corridor between the project fence line and that
5 certain.

6 DR. CONNOR: The corridor?

7 MS. SANDERS: Well, --

8 DR. CONNOR: Would it be correct, that
9 blind alley? There is a project to the east.

10 MS. SANDERS: Right.

11 DR. CONNOR: So there would be no
12 connectivity to the east.

13 MS. SANDERS: I'm sorry, what's your
14 question -- your question is how is the current
15 reduced acreage different with respect to effect
16 to -- well, what is your question exactly?

17 DR. CONNOR: Yeah, what I'm trying to do
18 is to find out what your opinion is about how the
19 revised footprint would actually change the
20 fragmentation from a cumulative perspective when
21 we have a project that will be blocking the east
22 side of that area. And then we have the Desert
23 Express in the north.

24 MS. SANDERS: Well, we concluded in the
25 final staff assessment that it would be a

1 significant cumulative impact. And that opinion
2 has not changed with this reduced footprint.

3 DR. CONNOR: Okay, thank you.

4 MS. SANDERS: Same conclusion.

5 DR. CONNOR: Thank you.

6 HEARING OFFICER KRAMER: Any other
7 questions for Ms. Sanders?

8 MR. BASOFIN: Mr. Kramer, actually could
9 I just ask one more question that I forgot?

10 HEARING OFFICER KRAMER: Okay, let's see
11 if anyone else wants to ask one first.

12 MR. EMMERICH: Kevin from Basin and
13 Range Watch.

14 HEARING OFFICER KRAMER: Okay, Kevin, go
15 ahead, but speak up, please.

16 CROSS-EXAMINATION

17 BY MR. EMMERICH:

18 Q And that is that this mitigation
19 proposal, it says that the mitigation area
20 contains 15 percent of the desert tortoises
21 located within the power plant site. Is that 15
22 percent referring to the actual number of
23 tortoises or just number of tortoises found on the
24 preliminary present at the surveys?

25 MS. SANDERS: Is that a question for me?

1 HEARING OFFICER KRAMER: Yes.

2 MR. EMMERICH: Yes.

3 MS. SANDERS: I don't think that these
4 numbers in any case had any bearing on our
5 conclusions or analysis. Like I said before, I
6 don't think the number that was found is all that
7 informative as far as the impact analysis. I
8 don't think that tells you a whole lot. I think
9 they have decided 15 percent or three versus four
10 tortoises.

11 So, no, that didn't have much bearing on
12 our conclusion.

13 MR. EMMERICH: So you would agree that
14 maybe some more thorough surveys would be needed
15 to get a more accurate population?

16 MS. SANDERS: But I don't know what that
17 would get for you. Your mitigation measures and
18 your -- mitigation wouldn't be different if you
19 found 27 or 32 or 25 and 22, they would be the
20 same. So I don't know that that would be a
21 helpful thing to do.

22 MR. EMMERICH: Well, I might just like
23 to clarify this report. Seems to be a little bit
24 misleading in suggesting --

25 MR. HARRIS: Objection, argumentative.

1 MR. EMMERICH: -- total population
2 number as opposed to just a number based on
3 surveys. I think that answers my question. Thank
4 you.

5 HEARING OFFICER KRAMER: Mr. Emmerich,
6 which report were you referring to just in the
7 last --

8 MR. EMMERICH: Well, I was referring to
9 Mr. De Young's -- this is in the biological
10 mitigation proposal mitigated Ivanpah 3.

11 HEARING OFFICER KRAMER: Okay. Thank
12 you. The objection's overruled.

13 Okay, any other questions from folks on
14 the telephone?

15 MS. SMITH: Yes. This is Gloria Smith
16 from the Sierra Club.

17 CROSS-EXAMINATION

18 BY MS. SMITH:

19 Q Ms. Sanders, you probably recall there
20 was a lot of discussion about habitat
21 fragmentation of the desert tortoise when we had
22 the hearings in January, correct?

23 MS. SANDERS: Yes.

24 MS. SMITH: Can you describe for me what
25 you consider -- can you describe habitat

1 fragmentation the way it impacts desert tortoise
2 in the Ivanpah Valley, your understanding of that?

3 MS. SANDERS: And this is in relation to
4 what aspect of the new proposal, the mitigated
5 Ivanpah 3?

6 MS. SMITH: Well, that was in my next
7 question. This is a foundational question. Can
8 you describe for me how desert tortoise are
9 affected by habitat fragmentation in the Ivanpah
10 Valley?

11 MS. SANDERS: I think I said, when Dr.
12 Connor asked his question, how the new mitigated
13 Ivanpah 3 would change my conclusions on
14 fragmentation. And I concluded that there would
15 be some benefits, but our conclusion,
16 nevertheless, there was a significant impact of
17 this proposal and the old proposal to desert
18 tortoise connectivity, cumulative impact, et
19 cetera.

20 So, say your question again for me. I
21 don't want to re-plow old ground of what we
22 covered in --

23 MS. SMITH: I don't want to plow old
24 ground. I'm separating this from cumulative. I
25 just want to understand how the new alternative

1 mitigated Ivanpah 3 reduces habitat fragmentation
2 for the desert tortoise in the Ivanpah Valley.
3 Setting aside cumulative and any other close
4 projects, just for this particular proposed
5 project.

6 MS. SANDERS: Did I not answer that
7 satisfactorily when Dr. Connor asked the same
8 question?

9 HEARING OFFICER KRAMER: Well, go ahead
10 and give it to her one more time.

11 MS. SANDERS: Okay. I think there might
12 be some benefit because you're farther away from
13 the adjacent proposed project, for example, the
14 Desert Express.

15 But I think it's not enough so that we
16 change our conclusions as to the level of
17 significance.

18 MS. SMITH: So, again, you've connected
19 it to cumulative impacts. I'm trying to get away
20 from the cumulative impacts and just say does this
21 reduce habitat fragmentation just for this project
22 only? And what I understood you just said that,
23 no, it doesn't. There's still significant
24 fragmentation --

25 MS. SANDERS: Yes, absolutely.

1 MS. SMITH: Okay, --

2 MS. SANDERS: I'm sorry if that wasn't
3 clear. Yes, absolutely.

4 MS. SMITH: It wasn't clear. With
5 respect to the mitigated Ivanpah -- sorry, there
6 are a number of proposals on the table that would
7 site the project closer to I-15. There's the I-15
8 proposal and the Sierra Club proposal.

9 With those proposals in mind, those
10 alternatives, does this particular -- does the
11 mitigated Ivanpah 3 reduce fragmentation in the
12 Ivanpah Valley equal to what you would see to
13 those other alternatives? Is that clear?

14 MS. SANDERS: Kind of. So you're asking
15 me to compare the mitigated Ivanpah 3 with a
16 configuration where you have the two units where
17 they are now, but Ivanpah 3 placed down next to
18 the freeway?

19 MS. SMITH: In terms --

20 MS. SANDERS: Is that what you're
21 asking?

22 MS. SMITH: Yes, in terms of habitat
23 fragmentation for desert tortoise.

24 MS. SANDERS: You know, I have not
25 analyzed that. I just saw your reconfigured

1 Ivanpah 3 next to the freeway not that long ago,
2 and I did not include that in my analysis. No.

3 MS. SMITH: You don't feel comfortable
4 answering the question?

5 MS. SANDERS: Well, you're asking me to
6 come to conclusions about something I saw fairly
7 recently. About the Ivanpah 3 being placed down
8 near the freeway, and the remaining two units
9 where they are, correct?

10 MS. SMITH: Yes, --

11 MS. SANDERS: I guess I'm not that
12 comfortable to come to a conclusion over the phone
13 on that without giving it some more thought.

14 MS. SMITH: And what about the
15 mitigated, what about the I-15 --

16 MS. SANDERS: The entire I-15?

17 MS. SMITH: The I-15 proposal --

18 MR. BELL: Mr. Kramer, I'd have to
19 interpose an objection. Outside the scope of this
20 proceeding. The witness is being asked to now do
21 a comparison to an entirely separate alternative
22 that has nothing to do with the mitigated Ivanpah
23 3.

24 MS. SMITH: Mr. Kramer, I think one of
25 the questions I would have like answered further

1 in the beginning of this hearing is whether or not
2 this is an alternative.

3 The way the Sierra Club views mitigated
4 Ivanpah 3 is a new alternative. If it's a new
5 alternative, and I would argue that it is,
6 comparing the new alternative to existing analyzed
7 alternatives is absolutely valid, something that
8 we will have to address in our briefs.

9 We now have another alternative on the
10 table for the Commission to consider.

11 HEARING OFFICER KRAMER: I think it is
12 appropriate to compare and contrast this new
13 proposal regardless of the label, alternative or
14 project modification, to the alternatives that
15 have already been discussed in this case, as
16 opposed to in the case of Mr. Powers' testimony
17 earlier, what appears to be a new alternative.

18 It's okay to compare what we've already
19 discussed, but not to add new alternatives to the
20 mix. So the objection is overruled.

21 MS. SMITH: I can clarify the question
22 if that would be helpful?

23 MS. SANDERS: Okay.

24 MS. SMITH: Habitat fragmentation in the
25 Ivanpah Valley for the desert tortoise is on

1 record as being a major concern, I think, for all
2 parties.

3 My question is your review of the I-15
4 alternative and this new alternative, which
5 project fares better for the desert tortoise with
6 respect to habitat fragmentation in the Ivanpah
7 Valley?

8 MS. SANDERS: So back to the alternative
9 we considered, the Ivanpah 3 alternative, you're
10 asking just for that assessment, not for -- you
11 asked me to compare the mitigated Ivanpah 3 and
12 then the I-15 alternative, where the entire
13 project was down near the freeway, is that
14 correct?

15 MS. SMITH: Yes.

16 MS. SANDERS: I don't think it's
17 different from the project versus I-15 and the
18 mitigated project versus I-15. They're very
19 similar. Maybe a slight benefit in terms of
20 fragmentation with the mitigated Ivanpah 3.

21 Does that answer your question?

22 MS. SMITH: No.

23 MS. SANDERS: I'm sorry.

24 MS. SMITH: That's okay. We're both on
25 the phone so I think it makes it difficult.

1 Are you saying that mitigated Ivanpah 3,
2 with respect to habitat fragmentation for desert
3 tortoise in the Ivanpah Valley, --

4 MS. SANDERS: Um-hum.

5 MS. SMITH: -- the original proposal in
6 the AFC and mitigated Ivanpah 3 present
7 essentially the same amount of habitat
8 fragmentation as compared to the I-15 proposal in
9 the FSA?

10 MS. SANDERS: Okay.

11 MS. SMITH: Is your answer yes?

12 MS. SANDERS: I'm sorry, I didn't know
13 it was a question. I thought it was a
14 clarification. Can you ask it again? I'm sorry,
15 I apologize.

16 MS. SMITH: The original AFC has, you
17 know what that proposal was. That's what we've
18 been dealing with all along.

19 MS. SANDERS: Okay.

20 MS. SMITH: And now we have the
21 mitigated Ivanpah 3, which takes off some few
22 hundred acres at the top of Ivanpah 3.

23 MS. SANDERS: Um-hum.

24 MS. SMITH: In those two proposals as
25 compared to the I-15 alternative, does mitigated

1 Ivanpah 3 and the original proposal present
2 essentially the same amount of habitat
3 fragmentation?

4 MS. SANDERS: I'd say more or less,
5 yeah.

6 MS. SMITH: Thank you.

7 HEARING OFFICER KRAMER: Is that it?

8 MS. SMITH: Yes.

9 HEARING OFFICER KRAMER: Any other
10 questions? Mr. Basofin, did we get to you yet?

11 MR. BASOFIN: I just had one more, yeah.

12 HEARING OFFICER KRAMER: Okay, go ahead.

13 MR. BASOFIN: Just remembered it, thank
14 you.

15 RE-CROSS-EXAMINATION

16 BY MR. BASOFIN:

17 Q Ms. Sanders, is it your understanding
18 that the mitigated Ivanpah 3 proposal alters the
19 location of the desert tortoise translocation
20 areas?

21 MS. SANDERS: I don't know. I've been
22 operating on the numbers, sticking with the
23 transportation areas originally identified. But
24 that's what my analysis assumed.

25 MR. BASOFIN: Thank you.

1 HEARING OFFICER KRAMER: Mr. Harris.

2 MR. HARRIS: If I'm last, I've got one
3 question.

4 CROSS-EXAMINATION

5 BY MR. HARRIS:

6 Q And, Susan, you probably don't have your
7 testimony in front of you, or maybe yo do. Do you
8 have a hard copy of your testimony?

9 MS. SANDERS: I have nothing related to
10 Ivanpah with me right now.

11 MR. HARRIS: Okay. Well, let me
12 describe to you what I'll ask you about. Now,
13 there's a table, a summary table on page 1.3 of
14 the executive summary, which lists all the
15 technical areas. The question is whether it
16 complies with LORS, the second column is direct
17 and indirect impacts fully mitigated, and then the
18 third column is cumulative impacts fully
19 mitigated.

20 Now, I want to ask you a question,
21 because I was afraid that maybe you were a little
22 loose with some of the language here.

23 Under biological resources technical
24 area, under the question complies with LORS, the
25 staff finding that says yes.

1 Under the second column, direct and
2 indirect impacts fully mitigated. The testimony
3 struck out the word no and inserted the word yes.

4 And then under the cumulative impacts
5 fully mitigated, the testimony strikes out the
6 word no and inserts the word yes.

7 Do you have that generally in mind?

8 MS. SANDERS: Sure, yeah.

9 MR. HARRIS: Is that still your
10 testimony in this proceeding?

11 MS. SANDERS: Yes.

12 MR. HARRIS: Okay. That 's all I have.
13 Thank you.

14 MS. SANDERS: All right.

15 HEARING OFFICER KRAMER: Well, let me --
16 I was about to ask the same question. Ms.
17 Sanders, earlier I thought you said that staff
18 still considered there to be unmitigated
19 cumulative impacts --

20 MS. SANDERS: No, I said there were
21 cumulative impacts, but not unmitigated.

22 HEARING OFFICER KRAMER: Okay. I think
23 you might have said --

24 MS. SANDERS: I'm --

25 HEARING OFFICER KRAMER: -- significant.

1 Okay. But you believe that those fragmentation
2 impacts are insignificant?

3 MS. SANDERS: I believe with mitigation
4 they'll be reduced to less than significant.

5 HEARING OFFICER KRAMER: Okay, thank
6 you.

7 MS. SANDERS: I think this is our
8 original conclusion in the FSA, and that has not
9 changed.

10 HEARING OFFICER KRAMER: Okay, any
11 redirect questions from anyone or follow up?

12 MS. BELENKY: I would like to clarify,
13 because I thought this was a change from the
14 original FSA.

15 HEARING OFFICER KRAMER: I think it's
16 not with regard to tortoise, but with regard to
17 the plants, the changes. That's the way I
18 understand it.

19 MS. BELENKY: I guess I would like to
20 follow up with Ms. Sanders.

21 RE-CROSS-EXAMINATION

22 BY MS. BELENKY:

23 Q You just testified that fragmentation is
24 still significant. And then you later testified
25 that you think it has been reduced to

1 insignificance. What is the basis for that?

2 MS. SANDERS: The application of the
3 proposed mitigation measures.

4 MS. BELENKY: Can you explain what
5 mitigation measures you believe reduced the
6 fragmentation of desert tortoise habitat?

7 MS. SANDERS: The enhancement measures
8 proposed as part of the BLM one-to-one designation
9 will undertake activities that will enhance
10 connectivity and will reduce desert tortoise
11 mortality, enhance reproduction.

12 I think we went through that pretty well
13 in December. The proposed condition of
14 certification includes habitat acquisition and
15 other actions to mitigate the impacts of the
16 project's desert tortoise.

17 MS. SMITH: This is Gloria Smith.

18 REXCROSS-EXAMINATION

19 BY MS. SMITH:

20 Q How would say a seed program at another
21 side reduce impacts, severe impacts from habitat
22 fragmentation within the Ivanpah Valley?

23 MR. BELL: I'll object --

24 MS. SANDERS: BLM --

25 MR. BELL: I'm sorry. Outside the scope

1 of this proceeding. This is covering an area
2 that's already been covered extensively during the
3 December hearings.

4 Here we have a proposal that shrinks the
5 project site. There's no testimony that it's
6 increased impacts. And therefore this question is
7 outside the scope of this proceeding.

8 HEARING OFFICER KRAMER: The objection
9 is sustained. We've certainly plowed this ground
10 during the January hearings. And the testimony
11 has established that there's basically no change
12 in the staff's position in this regard. So there
13 really is nothing by way of a change to explore
14 further along these lines.

15 Mr. Basofin?

16 MR. BASOFIN: Yes, I just have a follow-
17 up question from Ms. Belenky's question.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. BASOFIN:

20 Q Ms. Sanders, can you specify the habitat
21 enhancement actions that you just mentioned that
22 will be included in the BLM's one-to-one
23 mitigation that would reduce the impact?

24 MS. SANDERS: I included those in my
25 rebuttal testimony. That was a list of actions

1 that the Fish and Wildlife Service, Fish and Game,
2 BLM, Energy Commission Staff developed. It
3 includes a variety of things, including fencing,
4 habitat enhancement, restoration in Ivanpah
5 Valley.

6 MR. BASOFIN: And that was in your
7 rebuttal --

8 MS. SANDERS: -- and that was in --

9 MR. BASOFIN: -- your rebuttal --

10 MS. SANDERS: That was in my rebuttal
11 testimony, yes.

12 MR. BASOFIN: From the original hearing?

13 MS. SANDERS: That's right.

14 MR. BASOFIN: Okay, but I'm asking
15 because your response to Ms. Belenky was that you
16 were able to state in the addendum that cumulative
17 impacts will be fully mitigated based on
18 enhancement action.

19 So I'm just asking specific to your
20 analysis in the addendum which enhancement actions
21 those were that would have -- that allowed you to
22 turn that from a no to a yes?

23 MS. SANDERS: Enhancement actions and
24 acquisition of habitat throughout the range of the
25 desert tortoise. And the change from no to yes

1 was relating to the change in the impacts to the
2 plants.

3 Is that what you're referring to? So it
4 was the executive summary column that Mr. Harris
5 outlined?

6 MR. BASOFIN: Yeah. I guess I'm looking
7 for specific actions. You characterized them as
8 enhancement actions. I'm just wondering if you
9 can give us specifics?

10 MS. SANDERS: Well, this --

11 HEARING OFFICER KRAMER: Now this is
12 relative to the tortoise? Hold on, Susan. This
13 is relative to the tortoise?

14 MR. BASOFIN: Yes, yes.

15 HEARING OFFICER KRAMER: You're
16 basically asking the same question in a slightly
17 different way that Mr. Bell objected to and the
18 objection was sustained.

19 MR. BELL: You see me reaching for my
20 button.

21 HEARING OFFICER KRAMER: At this point
22 -- actually I was wondering what took you so long.

23 (Laughter.)

24 HEARING OFFICER KRAMER: As I said a
25 minute ago, I think we fully explored this the

1 last time. There's nothing that's changed that
2 needs to be revisited at this point.

3 She's talking about, with regard to the
4 tortoise conclusion it has not changed since the
5 last set of hearings. It's not affected one way
6 or the other by the reduction of the area of unit
7 3. So we need to move on.

8 So, any other questions on any unrelated
9 to that last line of questioning subject for Ms.
10 Sanders?

11 Seeing none, then, Ms. Sanders, thank
12 you. Hopefully you can get back into the Beacon
13 hearings. Thank you for being able to accommodate
14 us today.

15 MS. SANDERS: Sure, thank you. Bye bye.

16 HEARING OFFICER KRAMER: Okay, so now
17 we're back in the middle of cross-examination of
18 the applicant's panel. Mr. Bell, you've concluded
19 your questioning, correct?

20 MR. BELL: I did, I have no further
21 questions.

22 HEARING OFFICER KRAMER: Okay. So,
23 let's begin then -- let's go to the telephone.
24 Ms. Smith, do you have any questions?

25 MS. SMITH: Sorry, I got distracted.

1 Can I wait for about five minutes?

2 HEARING OFFICER KRAMER: Okay. This is
3 the applicant's panel. But, okay. Dr. Connor,
4 any questions?

5 DR. CONNOR: I've got a question about
6 the tortoises that were found on the site a couple
7 years ago.

8 HEARING OFFICER KRAMER: Is that for the
9 applicant's panel?

10 DR. CONNOR: For the applicant's panel,
11 yes.

12 HEARING OFFICER KRAMER: Okay, go ahead
13 and ask your questions, and any others that you
14 might have for this panel.

15 DR. CONNOR: Okay.

16 CROSS-EXAMINATION

17 BY DR. CONNOR:

18 Q Good morning, panel members. Are you
19 aware of what the location of the three tortoises
20 that were in the area to be avoided under the
21 proposal in terms of whether they were in burrows,
22 whether they were walking across the ground, or,
23 you know, where the actual location was on the
24 grounds?

25 MR. CARRIER: That information was in

1 the AFC. There's a table --

2 MR. SPEAKER: Identify yourself, please.

3 MR. CARRIER: Oh, I'm sorry. John
4 Carrier, CH2MHILL. That information was in the
5 AFC in an appendix that had a table that listed
6 all the tortoises and where they were found.

7 DR. CONNOR: Okay, I did actually try to
8 look at that table. Can you tell me, -- that are
9 assigned to the tortoises in that table, do those
10 match the numbers that are on your map?

11 MR. CARRIER: No, the numbers on this
12 figure 3-1 are just numbers. We just numbered
13 them. You'd have to go back to the figure in the
14 AFC that lists the specific number that cross-
15 references to the table.

16 And we didn't do any -- when the surveys
17 were done we weren't scoping or anything, so all
18 those were either visible -- if they were in a
19 burrow they were visible to the searcher that
20 walked by, or they were outside the burrow.

21 DR. CONNOR: Okay. From what I could
22 tell from looking through the table it looked like
23 one of the tortoises was found above ground and
24 two were possibly in burrows. Does that sound
25 about right?

1 MR. DE YOUNG: This is Steve De Young.
2 Again, we did not do an intrusive survey, so if
3 they were in a burrow they were visible at the
4 edge of the burrow.

5 DR. CONNOR: Okay. Do you have any
6 evidence that suggests that those tortoises are
7 still at those locations?

8 MR. DE YOUNG: No. I think as I
9 indicated in my testimony, this was the location
10 and the numbers of tortoise found during our 2007
11 and 2008 tortoise surveys. Protocol, U.S. Fish
12 and Wildlife Service protocol level surveys.

13 DR. CONNOR: Okay, so we don't know if
14 those tortoises are still there, is that correct?

15 MR. HARRIS: Asked and answered.

16 DR. CONNOR: Okay.

17 HEARING OFFICER KRAMER: Anything else?

18 DR. CONNOR: That's it for now, thank
19 you.

20 HEARING OFFICER KRAMER: Okay.

21 MS. SMITH: Hi, this is Gloria. Sorry,
22 I had (inaudible). I have one question for the
23 applicant now.

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MS. SMITH:

Q Does the applicant agree with staff that mitigated Ivanpah 3 basically poses no added benefits to the desert tortoise in the Ivanpah Valley?

MR. HARRIS: Gloria, can you provide a reference to that characterization of the other party's testimony?

MS. SMITH: It was Ms. Sanders. She said that essentially that the status quo was the same. There was no change in the status for impacts to the desert tortoise.

MR. HARRIS: I'm going to object --

MS. SMITH: As a result of Ivanpah 3.

MR. HARRIS: I don't recall --

MR. BELL: I would object. That mischaracterizes staff's testimony.

MS. SMITH: All right. Let me get to the --

MR. BELL: For clarification I believe the testimony was that it doesn't change the ultimately conclusion. But since there's a reduction in acreage that there's a lessened impact with respect to wildlife.

1 HEARING OFFICER KRAMER: Objection

2 sustained. Go ahead, Ms. Smith.

3 BY MS. SMITH:

4 Q Does the applicant see any added
5 benefits to desert tortoise as a result of
6 mitigated Ivanpah 3?

7 MR. COCHRAN: I just see the primary
8 benefit as --

9 MR. SPEAKER: Please identify yourself.

10 MR. COCHRAN: Oh, excuse me. This is
11 Mark Cochran, CH2MHILL. The primary benefit, I
12 think, has been stated is that there's 433 acres
13 that would now not be subject to development in
14 desert tortoise habitat.

15 MS. SMITH: Mr. Cochran, did you prepare
16 the biological resource section of the mitigated
17 Ivanpah 3?

18 MR. COCHRAN: I was the primary author,
19 yes.

20 MS. SMITH: Thank you. I don't have
21 any --

22 MR. COCHRAN: Of the tortoise section.

23 MS. SMITH: -- other questions right
24 now. Sorry?

25 MR. COCHRAN: Excuse me, I just wanted

1 to clarify that that was on the tortoise section.

2 MS. SMITH: You prepared the tortoise
3 section of the mitigated Ivanpah 3 analysis?

4 MR. COCHRAN: Correct. I was the, say
5 the primary author.

6 MS. SMITH: Thank you.

7 HEARING OFFICER KRAMER: Okay, Basin and
8 Range Watch, Ms. Cunningham or Mr. Emmerich, any
9 questions for the applicant's panel?

10 MR. EMMERICH: Yeah, we have a few more
11 questions that we'd like to ask.

12 CROSS-EXAMINATION

13 BY MR. EMMERICH:

14 Q Referring to the biological opinion --

15 HEARING OFFICER KRAMER: Mr. Emmerich,
16 when you first speak after awhile you need to
17 state your name for the court reporter's benefit.

18 MR. EMMERICH: I'm sorry about that.
19 This is Kevin Emmerich with Basin and Range Watch.

20 And my first question is concerning the
21 biological mitigation proposal, mitigated Ivanpah
22 3. This involves the stormwater drainage. It
23 says here that a lot of the ephemeral washes will
24 now be avoided from development.

25 However, I'm wondering, do you have a

1 percentage of the amount of stormwater flow that
2 will be allowed to flow through the area with the
3 new proposal?

4 MR. DE YOUNG: Can you clarify what you
5 mean by the area?

6 MR. EMMERICH: Well, the mitigated area.
7 Apparently it says that ephemeral washes will be
8 now free from development, the ephemeral washes.
9 And I'm wondering with the new proposal has
10 anybody calculated a percentage of how much
11 stormwater flow will now be allowed to flow
12 through the entire project site with this new
13 mitigation proposal.

14 MR. CARRIER: This is John Carrier.
15 What we included in our testimony was that this
16 gas line gulch area which is in the north has the
17 highest potential of flood flows and erosion.

18 And under this alternative 470 acres of
19 the project that are within the gas line gulch
20 fan, only 135 remain. So that remaining area, 90
21 percent are located on the east side.

22 So it's a substantial reduction. We
23 haven't identified specifically for the project,
24 as a whole, what percentage change that is for
25 just removing that 433 acres.

1 MR. EMMERICH: Okay, thank you. My next
2 question I'm not sure who it would be for, maybe
3 it would be for Mr. Carrier. Can you tell us what
4 is the make and model of this steam turbine that's
5 in modified Ivanpah 3 proposal?

6 MR. HARRIS: Kevin, give us just a
7 minute to pull some documents here.

8 HEARING OFFICER KRAMER: Can you tell us
9 while we're waiting why you're interested in this
10 information, Mr. Emmerich?

11 MR. EMMERICH: I'm going to let Laura
12 answer that.

13 MS. CUNNINGHAM: This is Laura
14 Cunningham. We're just interested because there's
15 going to be a change, how this will affect the
16 efficiency and capacity of Ivanpah 3.

17 MR. STEWART: This is Todd Stewart. I
18 can give you the make of the steam turbine. It is
19 a Siemens steam turbine. But the specific model
20 number I don't have.

21 MS. CUNNINGHAM: Okay, thank you.

22 MR. EMMERICH: This is Kevin Emmerich
23 again. That's all we have.

24 HEARING OFFICER KRAMER: Thank you.
25 County of San Bernardino, always the strong,

1 silent one. I'll give you a shot, Mr. Brizzee.

2 MR. BRIZZEE: Thanks for the compliment,
3 Mr. Kramer, but I have no questions, thank you.

4 HEARING OFFICER KRAMER: Okay, is there
5 anyone else on the telephone I've missed
6 accidentally?

7 Okay, in the room now. Mr. Suba.

8 MR. SUBA: I have just a few questions
9 for the applicant.

10 CROSS-EXAMINATION

11 BY MR. SUBA:

12 Q I'd like to make sure I understand this
13 M-3 or MI-3 proposal -- M-3 proposal. With
14 respect to plants, you know, it is to avoid the
15 northern acreage and two other plots of acreage,
16 or you know, poly-- of acreage between 1 and 2.
17 And then implement the halo approach for milkweed
18 and (inaudible) throughout the other areas.

19 MR. DE YOUNG: That's correct.

20 MR. SUBA: So if we can divide the
21 claimed benefits to the plants between the
22 northern avoidance areas and the halo idea, do you
23 have an idea what -- well, this gets a little
24 tricky because there are two quantities of plants
25 that are sort of in play here.

1 The applicant has used localities, which
2 is a -- scale, so we can talk about localities
3 later with the staff. I think I'll try and
4 clarify that over the occurrence idea.

5 But if we look at localities, do you
6 have an idea of what percent for the milkweed
7 specifically the M-3 proposal avoids? In terms of
8 not the halo, so strip out the halo idea. What
9 percent of the milkweed is left in the avoided
10 poly-- areas?

11 MR. DE YOUNG: Give us a moment, please.

12 MR. SUBA: Sure. I mean I can help you,
13 I --

14 (Pause.)

15 MR. SUBA: Maybe I can move it along
16 faster. If I give the -- you can tell me whether
17 -- what I've looked at is the, on the map the
18 areas, the lucky charms that have the white around
19 them are the ones that are avoided one way or
20 another.

21 So, in the northern area of block 3 I've
22 got a count of nine or ten, between nine --
23 somewhere nine or ten, let's say ten, milkweed
24 haloed localities.

25 And on table 5.1 in exhibit 81 you've

1 got a total of 202 localities for milkweed
2 throughout the site. So I'm going to put the
3 amount of avoided localities, if we're going to
4 use that term, of milkweed for the reduced
5 footprint idea, minus the haloes, at about 5
6 percent.

7 Would you --

8 MR. HARRIS: Is there a question? I
9 mean it sounds like something you could brief, but
10 I'm not sure of the question.

11 MR. SUBA: Well, the question was what
12 percent of milkweed are you avoiding in that
13 reduced block 3 area. That's the question.

14 HEARING OFFICER KRAMER: As a percentage
15 of what?

16 MR. SUBA: Localities. Let's just start
17 there.

18 HEARING OFFICER KRAMER: I mean I just
19 have a feeling you guys, when you're talking at,
20 you know, consultant biologist level, it's going
21 to just go over the heads of all of --

22 MR. SUBA: Okay, --

23 HEARING OFFICER KRAMER: -- the
24 laypeople up here.

25 MR. SUBA: Let me do localities. So

1 just on the number of localities that have been
2 mapped, what percentage of them are in the
3 northern -- for milkweed, are in that northern
4 avoided block?

5 HEARING OFFICER KRAMER: And the
6 locality is an individual plant that was observed,
7 or --

8 MR. SUBA: Yeah, that's their
9 definition.

10 HEARING OFFICER KRAMER: Okay.

11 MR. DE YOUNG: What we have in our table
12 3.2-2 of our M-3 proposal is the original 200
13 megawatt Ivanpah 3, localities avoided was 86
14 percent. With the mitigated Ivanpah 3, it's 84
15 percent.

16 MR. SUBA: And that includes the halo
17 avoidance for milkweed? And I'm trying to tease
18 apart the halo avoidance versus the block -- the
19 acreage avoided.

20 DR. SPAULDING: This is Geof Spaulding.
21 The number, if you express it in a percent, is
22 would be less than 5 percent.

23 MR. SUBA: Thank you. I have another
24 question about the avoidance areas in between 1
25 and 2, Ivanpah 1 and 2. There's a five-acre

1 avoidance area and a 33-acre. Am I reading the
2 map correctly that the 5 percent avoidance area is
3 bounded on all sides by active project areas?

4 MR. DE YOUNG: Yes.

5 MR. SUBA: Thank you. I just have one
6 more question. And this is the maintenance trails
7 that are in between the heliostat fields in the
8 blocks. What happens -- that's where the trucks
9 that wash the mirrors go through and are --

10 MR. DE YOUNG: Are you talking within
11 the heliostat field or the trails around the
12 project?

13 MR. SUBA: No, no, within the heliostat
14 fields there are, and I've always wondered this, I
15 just never got it clarified in my own head. There
16 are heliostat field circles. And then between
17 each of those concentrically there's a maintenance
18 path.

19 MR. DE YOUNG: Correct.

20 MR. SUBA: And are those maintenance
21 paths vegetated or cleared?

22 DR. SPAULDING: The mirror-washing
23 maintenance paths will occur upon every fourth row
24 of --

25 MR. SUBA: Okay.

1 DR. SPAULDING: -- heliostats, or
2 circumferential row. Those paths will not be
3 graded. They will be mowed and then with the
4 vehicles traveling over them they will become
5 compacted over time.

6 MR. SUBA: And then in between the rows,
7 in between every fourth row the heliostat fields
8 are accessed, I guess, by foot?

9 MR. DE YOUNG: They're accessed one time
10 during construction of the pylon by insertion
11 equipment. And after that they're accessed
12 remotely from these maintenance paths.

13 MR. SUBA: So the mowing of the
14 vegetation under the heliostat fields, there's
15 going to be some far-reaching arm that can get in
16 there and mow --

17 MR. DE YOUNG: I'm sorry, if you're
18 talking about the original mowing of the site that
19 will obviously be done locally, not remotely. I
20 thought you were referring to during operations --

21 MR. SUBA: That, too --

22 MR. DE YOUNG: -- or during the rest of
23 construction.

24 MR. SUBA: That, too, under the mirrors
25 during operation. Under the mirrors.

1 MR. DE YOUNG: During operation under
2 the mirrors it will be done by hand. It will not
3 be done with some --

4 MR. SUBA: Okay.

5 MR. DE YOUNG: -- with a remote arm.

6 MR. SUBA: Thank you.

7 HEARING OFFICER KRAMER: Mr. Basofin,
8 any questions?

9 MR. BASOFIN: Yes, I think I have a few.

10 CROSS-EXAMINATION

11 BY MR. BASOFIN:

12 Q This is an interesting clarification
13 question from one of Mr. Connor's questions. Is
14 that the location of desert tortoises on figure 3-
15 1, is that from -- which protocol survey is that
16 from? I think Mr. Connor asked you, but I may
17 have missed it.

18 MR. DE YOUNG: There were two surveys
19 that were conducted, during those two surveys.

20 MR. BASOFIN: 2007 and 2008?

21 MR. DE YOUNG: Yes.

22 MR. BASOFIN: Okay.

23 MR. CARRIER: I was going to say that
24 the blue colored ones were from the 2008 survey;
25 the orange ones were from the 2007 survey.

1 MR. BASOFIN: Okay, thank you. And
2 based on the identification of desert tortoises,
3 individual desert tortoises in the excluded area,
4 how many actual desert tortoises would you expect
5 to find?

6 MR. DE YOUNG: There was one tortoise
7 found in the -- I'm sorry, are you talking about
8 the construction logistics area or are you talking
9 about the M-3 area --

10 MR. BASOFIN: Yes, in the M-3 area.

11 MR. DE YOUNG: As I previously stated
12 during our protocol level surveys in 2007 and 2008
13 we found three.

14 MR. BASOFIN: Right, but let me rephrase
15 my question. Based on the number of individuals
16 that you found, are you able to extrapolate to
17 estimate how many you would actually find during
18 translocation --

19 MR. DE YOUNG: I'd ask Mr. Cochran to
20 answer.

21 MR. COCHRAN: There's no way to know
22 that. They move.

23 MR. HARRIS: Does that answer your
24 question? I mean, it --

25 MR. BASOFIN: If the answer's no then

1 that's fine.

2 MR. COCHRAN: That's the answer, no.
3 There's no way of knowing how many tortoises are
4 in the M-3 area at this point in time.

5 MR. DE YOUNG: As you know, without a
6 take permit we're not allowed to scope the
7 burrows. So there could have been tortoise in the
8 burrows at that point. The burrows could have
9 been empty at that point.

10 MR. COCHRAN: Just to be clear, all I'm
11 pointing out is even if we had an absolute number
12 in 2007 and 2008 and we knew exactly how many were
13 there, we scoped all of the burrows and we were
14 confident we saw every hatchling and every
15 juvenile, we still would not know at this point in
16 time how many tortoises are there because they
17 move.

18 MR. BASOFIN: And you wouldn't be able
19 to estimate or extrapolate this on the
20 individuals, identification of individuals?

21 MR. COCHRAN: Estimate, extrapolate, I
22 just think all you can do is look at the numbers
23 you had and you could draw some reasonable
24 conclusions about how many might be there, but to
25 answer your question, no, you would not know until

1 you actually did the clearances and moved them of
2 how many there are there.

3 MR. BASOFIN: Okay, so then my question
4 is what would be a reasonable conclusion for an
5 estimation of how many individuals would be --

6 MR. HARRIS: I think you've answered the
7 question like five times now, so I'm going to
8 object on that basis.

9 MR. BASOFIN: I'm just trying to clarify
10 and understand the answer.

11 MR. HARRIS: The answer's been given
12 several times.

13 HEARING OFFICER KRAMER: And it was that
14 he can't.

15 MR. HARRIS: Should he give it one more
16 time?

17 MR. COCHRAN: Yeah, there's no way of
18 knowing how many tortoises are in the 3 area at
19 this point in time, or any given time in the
20 future.

21 MR. BASOFIN: Okay, thank you. Does the
22 mitigated unit 3 proposal alter the location of
23 the desert tortoise translocation areas?

24 MR. DE YOUNG: That will be a
25 determination that will be made by the Service in

1 their biological opinion. What we stated in our
2 proposal is that obviously the area is now
3 available should it be chosen for translocation.

4 MR. BASOFIN: Can you identify where in
5 the proposal that is?

6 MR. DE YOUNG: Yes. Give me a moment,
7 please.

8 (Pause.)

9 HEARING OFFICER KRAMER: It's page 3-3?
10 First add a partial barrier?

11 MR. COCHRAN: I'm Mark Cochran. I'm
12 just looking on page 3-5 where we make the
13 statement that it also opens this 433-acre area as
14 a site for potential tortoise relocation.

15 HEARING OFFICER KRAMER: Your pagination
16 is different than mine.

17 MR. COCHRAN: Also, I've just been told
18 it's also on page 1.1. The second bullet.

19 MR. DE YOUNG: And again, let me
20 clarify. We said it's available for that. That's
21 not our determination to make.

22 MR. BASOFIN: Okay. Have you submitted
23 an amended draft translocation relocation plan to
24 the Service?

25 MR. DE YOUNG: Geof.

1 DR. SPAULDING: Not yet.

2 MR. BASOFIN: Okay, thank you. Mr. De
3 Young, you stated in your testimony that the
4 mitigated unit 3 area would allow stormwater to
5 pass through the site, is that correct?

6 MR. DE YOUNG: What I said is that the
7 mitigated Ivanpah-3 area where the ephemeral
8 washes were previously graded, they'll quite
9 obviously not be graded now. And stormwater that
10 would flow into them today will not be changed by
11 the project. That's where we're moving that
12 project footprint.

13 MR. BASOFIN: Okay, thank you. Did you
14 perform a new stormwater modeling analysis using
15 the same model that was used in the original
16 proposal?

17 MR. DE YOUNG: Give us a moment, please.

18 (Pause.)

19 MR. DE YOUNG: Stormwater impacts are
20 presented in section 3-11.3 of our proposal.
21 That's the extent of the evaluation of stormwater
22 changes.

23 MR. BASOFIN: Okay, I'm looking for an
24 answer to my question which is did you perform a
25 new stormwater modeling analysis based on the same

1 model you used in the original proposal.

2 MR. DE YOUNG: No, we didn't.

3 MR. BASOFIN: Okay.

4 MR. DE YOUNG: We didn't deem it
5 necessary --

6 MR. BASOFIN: And you --

7 MR. DE YOUNG: -- in the areas removed
8 from the project footprint. Stormwater flows as
9 it is today.

10 MR. BASOFIN: Did you consider how the
11 removal of the exclusion of the mitigated unit 3
12 area might affect stormwater scour on the units,
13 on the remaining units?

14 MR. STEWART: It was considered and
15 there is no change.

16 MR. BASOFIN: Thank you. The new
17 location -- trying to understand how to
18 characterize it, the proposal to locate the gas
19 pipeline bisecting the mitigated unit 3 area, I'm
20 trying to understand, is that a proposal? Is that
21 the current --

22 MR. DE YOUNG: No, let me clarify. The
23 current gas line alignment is as it has always
24 been, along the northern area of Ivanpah 3.

25 What we did, what our biologist did was

1 to take a look, an evaluation of doing a diagonal
2 from the northern portion of Ivanpah 3, where it
3 entered the site previously, to the new northeast
4 corner of Ivanpah 3, and whether there'd be any
5 impact on plants within that area.

6 We'd made a commitment to avoid a
7 hundred percent of plants with the gas line
8 alignment. And as a point of clarification, what
9 I said is that this new diagonal alignment, should
10 it be determined that that's the appropriate way
11 to go, there will be no impact on the area. So
12 we're, no construction impacts are still at a
13 hundred percent avoidance.

14 But, again, in this proceeding, where it
15 currently stands is where we have it, where we
16 have it located on the figures.

17 MR. BASOFIN: Okay, and when will you
18 make a determination whether you would use the new
19 siting of the gas pipeline?

20 MR. DE YOUNG: As it stands right now
21 we're going on the existing alignment.

22 MR. BASOFIN: Thank you. I think that's
23 all I have.

24 HEARING OFFICER KRAMER: Ms. Belenky.

25 MS. BELENKY: Thank you. I have a few,

1 actually quite a few questions.

2 CROSS-EXAMINATION

3 BY MS. BELENKY:

4 Q So I will start just simply back to the
5 map, 3-2. And the Commissioner, I think,
6 questioned -- or I can't remember, if it was Mr.
7 Kramer -- whether that shows all of the plants
8 that you located through your survey.

9 And what I wanted to make sure I
10 understood is many of the plant locations also
11 have like a box around them, but not all of them.
12 And I think that it makes visually it look
13 different.

14 And I'm just trying to understand why
15 there are boxes around some of the plants and not
16 others.

17 MR. DE YOUNG: There are two plant
18 species, Rusby's desert mallow and Mojave milkweed
19 that we have proposed to fence and avoid during
20 construction and operation.

21 MS. BELENKY: But not any longer in the
22 mitigated 3?

23 MR. DE YOUNG: No.

24 MS. BELENKY: So you didn't take the
25 boxes away?

1 MR. DE YOUNG: We're still proposing
2 that for Rusby's desert mallow and Mojave milkweed
3 to fence and avoid.

4 MS. BELENKY: In the area that you're
5 not going to use you're going to fence? Is that
6 in your testimony?

7 MR. DE YOUNG: We're not doing -- no,
8 I'm sorry, I thought you were talking about the
9 areas that are within the heliostat fields in
10 consideration of M-3. We're not doing anything in
11 the mitigated area.

12 MS. BELENKY: But it's on the map, they
13 still show up with the, I don't know, square
14 circles. They're highlighted, is that correct?

15 DR. SPAULDING: This is Geof Spaulding.
16 No, we chose to leave the symbols on the map
17 within the M-3 area for a point of reference to
18 demonstrate what we would be avoiding.

19 HEARING OFFICER KRAMER: Ms. Belenky,
20 you're estimating 20 or 30 minutes of cross-
21 examination?

22 MS. BELENKY: Probably just about 20.

23 HEARING OFFICER KRAMER: Okay. Then let
24 me put you on hold there so we can go to lunch.
25 If it was just going to be a couple minutes then

1 it might make sense to continue on.

2 But, Mr. Harris, do you have any
3 scheduling issues that would prevent us from
4 taking lunch right now?

5 MR. HARRIS: Well, other than taking --
6 lunch, --

7 (Laughter.)

8 MR. HARRIS: But I think this will be
9 it, though, right? I mean Ms. Belenky's questions
10 are it and then my panel could basically be
11 dismissed at that point?

12 I just want to make sure I understand
13 where we are.

14 HEARING OFFICER KRAMER: I think that's
15 correct. And if she was just talking a bout a
16 couple minutes, you know, I think we'd go forward.
17 But, --

18 MR. HARRIS: Whatever the Committee's
19 pleasure is.

20 MR. BELL: Staff has no scheduling
21 issues.

22 HEARING OFFICER KRAMER: Mr. Bell, what
23 did you say?

24 MR. BELL: Staff has no scheduling
25 issues, Mr. Kramer.

1 HEARING OFFICER KRAMER: Okay, thank
2 you. Okay, well, then let's take a lunch break.
3 So let's be back here at 1:15 on the clock in the
4 back, which is I think optimistic. Actually,
5 let's be back at 1:10, ten minutes after 1:00.
6 We'll start up again then.

7 Those of you on the telephone, we will
8 leave the line active. You could, I suppose, hang
9 up and then call back in.

10 And, again, send me an email if for some
11 reason when you try to come back in there's a
12 problem.

13 And we are off the record.

14 (Whereupon, the morning session of the
15 hearing was adjourned, to reconvene at
16 1:10 p.m., this same day.)

17 --o0o--

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION

1:17 p.m.

HEARING OFFICER KRAMER: Okay, we're continuing about 1:15. And Ms. Belenky will continue with her cross-examination of the applicant's panel.

MS. BELENKY: Thank you.

CROSS-EXAMINATION RESUMED

BY MS. BELENKY:

Q I just want to finish up my initial question, which follows up on something I believe one of the Commissioners or Mr. Kramer asked, which is whether the plants are shown the same way on this map in the, what you're calling the M-3 section, the northern section that would be carved off. And the rest of the project area.

And I believe the answer was some of them are and some of them are not, is that correct? That some of them have these little drawn halos around them and --

MR. DE YOUNG: There should be -- this is Steve De Young -- there should be no halos. It should not be interpreted that we're doing anything with the halos in the northern mitigation area.

1 MS. BELENKY: Do you have another map
2 that just shows all the plant sites with the same
3 plant project outline so that they can be compared
4 more fully?

5 MR. DE YOUNG: No.

6 MS. BELENKY: You do not, okay. Thank
7 you.

8 HEARING OFFICER KRAMER: And to be clear
9 we were speaking of figure 3-2 in exhibit 88.

10 MS. BELENKY: So I'm going to try and
11 ask this in order, however I want to start first
12 with the testimony you gave this morning and I
13 have several other questions.

14 In the new M-3 design does it show where
15 the road goes outside of the fence line?

16 MR. DE YOUNG: To help clarify here,
17 specifically what are you talking about?

18 MS. BELENKY: My understanding from the
19 original project design that we talked about at
20 the hearing previously --

21 MR. DE YOUNG: Right.

22 MS. BELENKY: -- is that there will be a
23 road going all the way around the fence line both
24 for your own maintenance use and in addition as a
25 alternate route for some of the ORV routes that

1 are on the public lands, is that correct?

2 MR. DE YOUNG: Correct.

3 MS. BELENKY: And does your map show the
4 route, does the outline here include the route, or
5 would the route be outside of the fence line that
6 you've drawn here? And how -- does it show the
7 width?

8 MR. CARRIER: The lines -- excuse me,
9 this is John Carrier. The lines that you see, the
10 black lines that you see on the maps are the
11 survey boundaries. No activity is going out
12 beyond the survey boundaries.

13 So all those perimeter roads and
14 everything are inside the boundary, the survey
15 boundary. So it may be -- the fence line, this is
16 not the fence line that you see, this is the
17 survey boundary.

18 So the fence line, if it's an exterior
19 road for maintenance, it's inside the survey
20 boundary on the outside of the security fence.

21 MS. BELENKY: Okay.

22 MR. CARRIER: Okay?

23 MS. BELENKY: That's your testimony --

24 MR. CARRIER: Yes, that's correct.

25 MS. BELENKY: Okay. I think we've

1 already covered the question of the 15 percent.
2 But I did want to understand. Mr. De Young, you
3 testified that the number of tortoises impacted
4 would be reduced by 15 percent. Are you a
5 tortoise scientist?

6 MR. DE YOUNG: No.

7 MS. BELENKY: Then what was the basis
8 for your testimony?

9 MR. DE YOUNG: Twenty tortoise were
10 found onsite. Three tortoises, 15 percent of 20.

11 MS. BELENKY: So you were testifying as
12 a mathematical expert?

13 (Laughter.)

14 HEARING OFFICER KRAMER: Isn't it kind
15 of sad that simple math now requires an expert to
16 accomplish?

17 (Laughter.)

18 MR. DE YOUNG: No, I'm not a
19 mathematical expert.

20 MS. BELENKY: Okay, so first of all, I
21 guess we need to go back and perhaps -- who
22 prepared this part of the testimony about the
23 desert tortoise?

24 MR. DE YOUNG: I did.

25 MS. BELENKY: You prepared this

1 testimony?

2 MR. DE YOUNG: I did. Are you referring
3 to my direct testimony?

4 MS. BELENKY: I'm referring to the
5 testimony about the desert tortoise. Either on
6 direct today or in the one that was submitted to
7 the CEC.

8 MR. HARRIS: Can you re-ask the
9 question, please?

10 MS. BELENKY: Who submitted the
11 testimony regarding the impacts on the desert
12 tortoise from your new whatever you're calling it,
13 alternative or new project proposal?

14 HEARING OFFICER KRAMER: It might be
15 more efficient for you to pose a question of the
16 panel, and then the appropriate person can provide
17 the answer.

18 MS. BELENKY: Well, if he says he
19 didn't, I think --

20 MR. DE YOUNG: We'll let Mr. Cochran
21 respond to that. I think he already said he was
22 the one that prepared the testimony on desert
23 tortoise.

24 MR. COCHRAN: Right, it's pretty simple.
25 I mean at the time of the surveys, as Mr. De Young

1 said, there were, you know, 20 tortoises. We had
2 a snapshot in time as to where those 20 tortoises
3 were.

4 And then the 433, you know, acres
5 reduction. Within that 433 acres at that time
6 there were three live tortoises. And then as Mr.
7 De Young testified, you know, three over 20, 15
8 percent.

9 And I think we've testified before that,
10 you know, the basis of those numbers.

11 MS. BELENKY: Thank you, Mr. Cochran. I
12 thought I understood your prior testimony was that
13 you can't tell how many tortoises would be there
14 now because they move, and therefore what is it
15 exactly that you are testifying to as to the 15
16 percent?

17 MR. COCHRAN: The 15 percent is the
18 tortoises that would be avoided, I suppose would
19 be a way to put it, if the projected -- if the
20 project were to be constructed in 2007 and 2008.

21 I think we're on the same page here, and
22 that is that at this point in time, you know,
23 2010, you know, we cannot say how many tortoises
24 would be avoided by the reduced footprint.

25 MS. BELENKY: Thank you. Mr. Carrier, I

1 believe that you testified this morning -- I'm
2 sorry, my notes are not completely clear -- but
3 you testified as to some of the biological
4 impacts, is that correct?

5 MR. HARRIS: You want to -- pose the
6 question. I don't know that I recall anybody's
7 individual testimony --

8 MR. CARRIER: I don't recall, either, if
9 I did or not. I may have made comments on that, I
10 don't recall.

11 MS. BELENKY: And do you have background
12 as a scientist?

13 MR. CARRIER: I don't have a background
14 -- I mean, if you're talking about a degree in
15 science, I don't have a degree in science.

16 MS. BELENKY: Are you testifying here as
17 a scientist or as an expert in science, in
18 biology?

19 MR. CARRIER: I'm testifying here as a
20 project manager that has reviewed these section.

21 MS. BELENKY: Thank you. I have some
22 questions about the project design. I believe Mr.
23 De Young testified this morning. In the past we
24 had asked that Yoel Gilon be available. Is he
25 going to be available today?

1 MR. HARRIS: Let me respond to that.
2 Mr. Gilon did not sponsor any of the testimony
3 that's before the Committee today, so, no, he's
4 not on this panel.

5 MS. BELENKY: Thank you. This is for
6 the applicant generally. Who re-designed the
7 project?

8 MR. DE YOUNG: BrightSource, the
9 company.

10 MS. BELENKY: Did the person who re-
11 designed the project, are they available for
12 testimony today?

13 MR. DE YOUNG: We're all part of a large
14 company, and, yes, the people who prepared these
15 documents are available. We are here today.

16 MS. BELENKY: Thank you. In earlier
17 testimony we discussed that under certain
18 conditions, for example clouds or so forth, where
19 there may be asymmetric amount of sunlight on a
20 tower, that the mirrors need to go into a safe
21 position.

22 And my understanding was that having a
23 symmetrical array of mirrors was very important,
24 is that correct?

25 MR. HARRIS: Actually I'm going to

1 object. That wasn't our testimony. The safe
2 position was during times of high wind.

3 MS. BELENKY: Well, I will find that in
4 the testimony, but I believe it was actually the
5 testimony.

6 MR. HARRIS: You can brief it in your --

7 MS. BELENKY: I will find it. I'm
8 asking what -- the purpose of my asking the first
9 question was that when looking at the new design,
10 especially Ivanpah 3, it's very asymmetric. Is
11 there any -- can you explain why that design is
12 still optimal?

13 MR. DE YOUNG: It's not optimal. The
14 project avoids a land feature, a mining claim to
15 the west. So, it -- can I explain?

16 MS. BELENKY: Um-hum.

17 MR. DE YOUNG: What was optimal would
18 have been our 200 megawatt plant.

19 MS. BELENKY: Okay. But it's your
20 testimony that the asymmetric design is still your
21 preferred design?

22 MR. DE YOUNG: We proposed a mitigation
23 proposal for biology that you have before you.
24 And we certainly optimized what's left of the
25 site, yes.

1 MS. BELENKY: In your testimony, and I'm
2 not sure which of you wrote this, this is in your
3 written testimony, you just said rough grading.
4 Is that a technical term?

5 MR. DE YOUNG: Ask Mr. Stewart to answer
6 that.

7 MR. STEWART: Yes.

8 MS. BELENKY: And can you provide us
9 with a definition of rough grading?

10 MR. STEWART: The definition of rough
11 grading, as we're using it, has connotations of a
12 certain amount of variance in the amount of
13 grading. The specific number of inches up and
14 down I don't recall.

15 MS. BELENKY: Is it in the testimony,
16 the difference, the amount of inches between rough
17 grading and other grading?

18 MR. STEWART: I don't believe so.

19 MS. BELENKY: In table 5.11-3 R2 there's
20 a table that has the amount of grading on each
21 site.

22 MR. HARRIS: Is that in the M-3 proposal
23 or is that --

24 MS. BELENKY: I believe it's the one you
25 are calling the M-3 proposal.

1 MR. HARRIS: -- it's attachment B.
2 Attachment B. I'm sorry, I just want to make sure
3 my witnesses know which document. I didn't
4 recognize it by the reference.

5 HEARING OFFICER KRAMER: What was the
6 table, again?

7 MS. BELENKY: I used the table number
8 rather than the page number, --

9 MR. HARRIS: It's that attachment B to
10 exhibit 88. Soil loss table, is that what you're
11 referring to?

12 MS. BELENKY: 3 R2. Yeah, um-hum. So,
13 this table actually describes the amount of
14 grading on each site, is that correct?

15 MR. STEWART: Could you repeat --

16 MS. BELENKY: This table describes the
17 amount of grading on each of the sites?

18 MR. STEWART: Could you repeat which
19 table you're looking at?

20 MS. BELENKY: Oh. It's on page 61 of
21 the pdf, and it is table B, 5.11-3 R2.

22 MR. STEWART: Thank you.

23 MS. BELENKY: This table describes
24 grading, is that correct?

25 MR. STEWART: Yes.

1 MS. BELENKY: And when it refers to the
2 690 acres of grading on the Ivanpah 1 site, what
3 kind of grading is that?

4 MR. STEWART: It's not clear in the
5 table what kind of grading that is.

6 MR. HARRIS: Let me interject. This
7 isn't a table of estimate of soil loss. This
8 refers to grading?

9 MS. BELENKY: This table describes the
10 grading and the acreage of grading.

11 MR. CARRIER: That's correct. This is
12 John Carrier. This table is an estimate of soil
13 loss using the Russell Equation. And it uses some
14 relatively conservative estimates to estimate the
15 amount of soil that would be lost from the
16 project.

17 And so they are some estimates, and the
18 assumptions for those are in the footnotes below
19 the table about what the assumptions were in
20 calculating these figures.

21 MS. BELENKY: But the amount of grading
22 listed for each of the project sites, is that the
23 correct amount of grading?

24 MR. CARRIER: These are assumptions and
25 estimates. There's no final design to determine

1 the exact amount of grading.

2 MS. BELENKY: I'm just trying to find --
3 sorry, I don't have everything printed out so it
4 may take me a bit longer.

5 So on page 3-12 of your exhibit 88, this
6 M-3 proposal, you discuss the reduction of grading
7 impact. What kind of grading impact would be
8 reduced? Can you be specific?

9 MR. STEWART: Are you referring to
10 grading and earthwork impacts paragraph?

11 MS. BELENKY: Well, that is the title of
12 the paragraph. But I'm still trying to get at and
13 understand what you mean by rough grading and
14 other grading. Clearly from your own chart there
15 will be hundreds of acres of grading in the
16 remaining area. So what is the difference in the
17 grading? And what is your testimony as to the
18 difference?

19 MR. STEWART: What is referred to on
20 page 3-12 where the document says: this mitigation
21 proposal would eliminate roughly 150 of the 170
22 acres or about 88 percent that would otherwise
23 need to be graded" that is full conventional
24 grading --

25 MS. BELENKY: But your other chart --

1 MR. STEWART: -- that will be
2 eliminated.

3 MS. BELENKY: What is the 170 acres?
4 Your own chart that we just looked at shows that
5 there will be 917 acres of grading. So where does
6 the 170 acres of grading come from?

7 MR. STEWART: The 170 acres is in what
8 was mostly the northwestern area of the original
9 Ivanpah 3.

10 MS. BELENKY: So you're just saying that
11 in the area you would avoid, you also would not
12 grade, is that correct?

13 MR. STEWART: Yes.

14 MS. BELENKY: Okay. It won't reduce
15 grading in any other area of the project?

16 MR. STEWART: It does not reduce grading
17 within the remaining footprint of the Ivanpah 3 or
18 the mitigated 3 project.

19 MS. BELENKY: And the 20 acres that are
20 remaining, you're saying roughly 150 of the 170
21 acres of grading would not happen. What are the
22 20 acres that are still going to be graded?

23 MR. STEWART: There is still a small
24 portion of gas line gulch, which is a large wash,
25 that is still part of the M-3 project boundary.

1 That is where the remaining 20 acres is.

2 MS. BELENKY: Is that on one of the
3 maps? Can you show us that?

4 MR. STEWART: It's in staff supplemental
5 testimony.

6 MS. BELENKY: The map is?

7 MR. STEWART: Yes.

8 HEARING OFFICER KRAMER: Do you have a
9 page cite we can look at?

10 MR. STEWART: Figure 17.

11 MS. BELENKY: In this area what kind of
12 grading would be done?

13 MR. STEWART: Rough grading.

14 MS. BELENKY: I think there's still some
15 confusion. When you say the 170 acres of grading,
16 did you mean in the original proposal or in this
17 area in the original proposal?

18 MR. STEWART: The 170 acres was in the
19 original proposal. And it was, by and large, in
20 the original Ivanpah 3 configuration. There are
21 20 acres remaining that require grading.

22 MS. BELENKY: Well, no, I think we've
23 established that there are over 900 acres that are
24 going to be graded in Ivanpah 3. That's what your
25 other table shows. That's why I don't understand

1 where these numbers are coming from.

2 MR. HARRIS: Is there a question?

3 MS. BELENKY: Yes. The question is how
4 many acres are going to be graded in the Ivanpah 3
5 under your mitigated proposal.

6 MR. CARRIER: This is John Carrier. I
7 think your confusion is because you're taking a
8 table that was conservatively estimated and
9 thinking that that's a design feature.

10 If you look at the notes in the table of
11 5.11-3 R2 that you started with, it talks about --
12 and actually on page B-2 -- what some of the
13 assumptions are.

14 And it's assuming, for example, that,
15 you know, that the laydown area would take one
16 month to grade, basically that the whole
17 construction logistics area it's assuming would be
18 -- other than the part that's being removed for
19 rare plants and succulent storage, those areas
20 that are being avoided -- that that whole area
21 would be graded.

22 Now whether that's going to happen or
23 not I don't think so. But we don't have design
24 drawings. So to be conservative, he assumed that
25 grading would take place over larger areas than

1 what will likely happen.

2 But we do not have design drawings so we
3 don't know exactly where grading will occur.

4 MS. BELENKY: So you have no estimate
5 for the amount of grading that will be on the
6 site, is that your testimony?

7 MR. CARRIER: We have maximum
8 assumptions that are in this table. We have no
9 minimum assumptions of what it will be.

10 MS. BELENKY: Sorry, I'm just looking
11 for the earlier maps that did show the graded, it
12 showed the large grading area, which I don't --

13 MR. CARRIER: That was back --

14 MS. BELENKY: Yeah, but they didn't
15 show, if I understand correctly, they did not show
16 the grading that's going to be done in other
17 areas. It only shows the big areas where they
18 pull out large amounts of --

19 MR. CARRIER: And those areas are the
20 ones that Todd was referring to in the text.

21 MS. BELENKY: I think it's more than 170
22 acres. That's why I'm confused by your testimony.
23 And I will find it.

24 (Pause.)

25 MS. BELENKY: Okay, on page -- it's

1 figure 12 of the staff assessment.

2 HEARING OFFICER KRAMER: The addendum or
3 the original staff assessment?

4 MS. BELENKY: The original staff
5 assessment. Discusses an overall grading plan.

6 MR. HARRIS: So this is called not a
7 supplement to the staff's testimony --

8 MS. BELENKY: Staff assessment, it's on
9 the pdf, page 94.

10 MR. HARRIS: In which section of the
11 assessment?

12 MS. BELENKY: It's right before
13 alternatives, the page before alternatives.

14 MR. HARRIS: Sorry, can you give the
15 page number again?

16 MS. BELENKY: The pdf page 94. And it's
17 called figure 12, project description.

18 (Pause.)

19 MR. HARRIS: I guess I want to ask the
20 question, this is not in the applicant's
21 testimony, from the applicant's testimony about M-
22 3, so I'm not following.

23 MS. BELENKY: I'm trying to understand
24 the basis for the statement that there would only
25 be 20 acres left of grading after this

1 alternative. I do not see any evidence of that.
2 In fact, all of the evidence points to the
3 opposite direction. I don't see where these
4 numbers are coming from.

5 You have testified that there will only
6 be 20 acres of grading left. There were 170 acres
7 of grading, now you've taken out 150, there will
8 only be 20 acres of grading left. I do not
9 understand the basis for that statement.

10 DR. SPAULDING: This is Geof Spaulding.
11 To be clear we're talking about grading only
12 within the original defined Ivanpah 3 area. And
13 we're still talking only about the Ivanpah 3 area
14 that remains.

15 The 170 acres, Mr. Stewart will concur,
16 is that part that was rough grading for the
17 bouldered terrain associated with that wash area,
18 is that correct?

19 MR. STEWART: That is correct.

20 DR. SPAULDING: And therefore, since
21 we're not affecting that bouldered terrain, most
22 of that terrain is no longer part of the project.
23 Therefore only about 20 acres are left, within
24 Ivanpah 3, alone, for rough grading for boulders.

25 We apologize if that wasn't a clear as

1 it could be.

2 MS. BELENKY: Well, it's still not clear
3 at all.

4 DR. SPAULDING: Well, I'm real sorry. I
5 don't think I can make it any clearer.

6 MS. BELENKY: I think the evidence in
7 the record seems to show quite a bit more grading.
8 And I still don't see the basis for your saying
9 this. But I'll move on.

10 I'm not sure which of the applicants
11 this is for. I notice that the applicant has
12 asked the air district to provide your air permit,
13 is that correct?

14 MR. HILL: This is Steve Hill. Yes,
15 that is correct.

16 MS. BELENKY: And does that mean you are
17 no longer proposing, you're no longer applying for
18 your original proposal? You are only applying for
19 the new proposal?

20 MR. HILL: I'm not sure I understand
21 your question.

22 MS. BELENKY: You had an air district
23 permit from your original proposal?

24 MR. HILL: What we have is an FDOC.

25 MS. BELENKY: That's the FDOC, thank

1 you. And you have asked the air district to
2 change that, is that correct?

3 MR. HILL: That is correct.

4 MS. BELENKY: When you applied to the
5 air district to amend your permit did you ask them
6 to include the 5 percent limit on the use of the
7 gas boilers that is proposed by the staff at the
8 CEC?

9 MR. HILL: No, we did not.

10 MS. BELENKY: Mr. De Young, this morning
11 you testified that the area that is now excluded
12 from your M-3 proposal would be set aside. What
13 did you mean by that?

14 MR. DE YOUNG: Perhaps that wasn't the
15 best term to use. It's being removed from the
16 project, so it will no longer be impacted by
17 project construction.

18 MS. BELENKY: Thank you. You also
19 testified this morning that you will be preparing
20 an amended translocation plan?

21 MR. DE YOUNG: No, I did not. What I --

22 MS. BELENKY: To the best of your
23 knowledge is the applicant or the applicant's
24 contractors working on an amended translocation
25 plan?

1 MR. DE YOUNG: What I indicated this
2 morning was that the decision on where to, and
3 actually let's use the correct term, it's
4 relocation not translocation. The applicant has
5 not proposed, other than the comment that was made
6 that the northern mitigation area would be
7 available for relocation of tortoise.

8 The decision on where to locate the
9 tortoise is not an applicant decision. It's an
10 agency decision, and will come out of the
11 biological opinions being prepared by the Service.

12 Should the Service come back and ask us
13 to evaluate the area, I'm not sure there's much
14 more would need to be done. It's already been
15 thoroughly evaluated over the last three and a
16 half years of this project.

17 MS. BELENKY: Thank you. And you've
18 just testified that the correct word would be
19 relocation. What is your basis for that
20 statement?

21 MR. DE YOUNG: Relocation being within
22 1000 meters of wherever the tortoise is located.
23 I believe that that area, or that that distance
24 might, in fact, be increased.

25 Translocation I associate with movement

1 into a completely different area.

2 MS. BELENKY: Thank you. And I think I
3 just have one last question for the applicant.

4 When you use the term, and I believe it
5 was Mr. De Young this morning, the term low impact
6 design, which you stated you were using that term
7 to discuss the fact that water would flow freely
8 across the site, is that correct?

9 MR. DE YOUNG: Low impact design is a
10 term that's used in stormwater management.

11 MS. BELENKY: Thank you.

12 HEARING OFFICER KRAMER: Anything else?

13 MS. BELENKY: I think I'm all done.

14 Thank you.

15 HEARING OFFICER KRAMER: Okay, I think
16 we've gone through all the parties at this point.
17 Any redirect, Mr. Harris?

18 MR. HARRIS: No, thank you.

19 HEARING OFFICER KRAMER: Okay. That'll
20 will conclude -- well, actually we had some
21 questions.

22 EXAMINATION

23 HEARING OFFICER KRAMER: The laydown
24 servicing area between units 1 and 2, I think at
25 various times you've used the term, called parts

1 of it an avoided area, but also in the same breath
2 suggested that it might be used -- those avoided
3 areas might be used for nurseries or transplanting
4 or, you know, some other activities in connection
5 with mitigating some of the impacts to the
6 species, plant species you find onsite.

7 And to me that sounds inconsistent that
8 you would be using an avoided area for some
9 project purpose. Could you set me straight on my
10 misperception, perhaps?

11 MR. CARRIER: This is John Carrier.
12 Yes, you're correct. It should probably be more
13 precisely stated as it's going to be avoided from
14 construction impact. That there will be, we plan
15 to use those areas for succulent storage, for rare
16 plant transplant. If we have a rare plant that's
17 in the path of construction we'll transplant it to
18 an area.

19 So it's not going to be part of the
20 construction areas. That's what we mean by
21 removed from construction.

22 HEARING OFFICER KRAMER: Okay, so those
23 uses will occur in such a way that you wouldn't
24 affect the plants that are already in those areas?

25 MR. CARRIER: We'd try to minimize any

1 impact. There's not going to be big equipment
2 coming in grading, you know, not laying out gravel
3 for a parking area or those kinds of things.

4 HEARING OFFICER KRAMER: Okay. And at
5 various time, I think, both in your filing and in
6 the staff's analysis, 433 acres is used. And in
7 other places, 476 acres. Could you reconcile
8 those? Do those numbers ring in your memory?

9 MR. DE YOUNG: I'm not familiar with
10 476; 433 acres is what we've described. Geof.
11 I'm sorry --

12 DR. SPAULDING: Those figures are from
13 table 3.2-1 in the mitigated Ivanpah 3 proposal.
14 There are actually two rather small areas within
15 what's commonly termed construction logistics area
16 that account for 38 acres and five acres,
17 respectively.

18 When those are added to the 433 acres
19 for the northern rare plant avoidance area that
20 we've been discussing, they come up to 476.

21 HEARING OFFICER KRAMER: Okay, I --

22 MR. BELL: Mr. Kramer, if I could, I
23 know we're doing party panels, subject matter
24 panels, however Misa Milliron is here. Am I
25 saying your name right? I'm sorry.

1 MS. MILLIRON: Milliron.

2 MR. BELL: Milliron, sorry. New last
3 name for me. And I think she might be able to
4 provide some clarification based on the same
5 question.

6 HEARING OFFICER KRAMER: Okay, well, I
7 think he's already provided it, but thank you for
8 the offer.

9 MS. MILLIRON: I would say the same
10 thing.

11 HEARING OFFICER KRAMER: But we will get
12 to the staff in a moment.

13 MR. CARRIER: Let me -- excuse me, but
14 that clarifies my response to you earlier, that if
15 you look at that table, 3.2-1. So of that area
16 that's being removed from construction, 66 acres
17 will be used for transplanting, but that 38 plus 5
18 will be completely avoided, other than there will
19 be a underground transmission line that goes
20 through that 38-acre parcel. Those will remain
21 untouched other than that underground transmission
22 line.

23 But the 66 acres will be not used for
24 construction, but will be used for supplement
25 succulent nursery and rare plants.

1 HEARING OFFICER KRAMER: Okay, so it's
2 in a different category.

3 MR. CARRIER: Yes.

4 HEARING OFFICER KRAMER: Okay. My final
5 question was staff, in their analysis, suggested
6 that there was some, I hate to use the word
7 significance, but that the applicant had failed to
8 recognize the halo concept in its filing.

9 And I believe they wanted to make it
10 clear that they expected that halos would still be
11 applied to those plants that were found, of the
12 two species -- I'm blanking on the name right now,
13 but they were found within the actual construction
14 area.

15 MR. DE YOUNG: The Rusby's desert mallow
16 and the Mojave milkweed.

17 HEARING OFFICER KRAMER: And, Mr. De
18 Young, earlier this morning I think you said
19 something that suggested that there was no attempt
20 to eliminate the halos. But I just wanted to
21 confirm that.

22 MR. DE YOUNG: That is correct. There
23 is no attempt for those two species to remove the
24 halos. Those areas will be located in the field,
25 the shape and size defined. Fences installed

1 prior to the start of construction. And they'll
2 be avoided during construction and operation.

3 HEARING OFFICER KRAMER: Okay, thank
4 you. Did you have any questions?

5 PRESIDING MEMBER BYRON: No.

6 HEARING OFFICER KRAMER: Okay. That
7 will do it then for the applicant's panel. Thank
8 you, gentlemen.

9 And we will then go to the staff.

10 (Pause.)

11 HEARING OFFICER KRAMER: So, let me ask
12 you, any of the parties wish to cross-examine any
13 of the staff witnesses? You've already talked to
14 Ms. Sanders. Ms. Milliron is here. Do you have
15 questions for her?

16 MR. SUBA: I have a question for Ms.
17 Milliron.

18 HEARING OFFICER KRAMER: Okay. Ms.
19 Milliron, you testified previously and were sworn?

20 MS. MILLIRON: I did.

21 HEARING OFFICER KRAMER: Okay, so you're
22 still sworn.

23 HEARING OFFICER KRAMER: Go ahead, Mr.
24 Suba.

25 MR. HARRIS: I'm sorry, Mr. Kramer, a

1 question. Can we figure out who else from the
2 staff -- and ask questions of the air expert and I
3 can let my air experts go.

4 I wanted to know how many staff
5 witnesses there are and how many people have
6 questions for us, so I can release people.

7 HEARING OFFICER KRAMER: Let's see. On
8 that list would be -- actually at least on the
9 Sierra Club's list Ms. Milliron is not there. So
10 that's a good point.

11 Let's try to assemble a panel of the
12 staff witnesses. Defenders did ask, let's see,
13 for Mr. Kessler, Susan Lee, Susan Sanders, Ms.
14 Milliron and Brenner Munger.

15 MR. BELL: Yes. Staff does have an
16 objection as to Susan Lee. Ms. Lee worked on none
17 of the materials that have been submitted. I
18 understand that Ms. Lee only worked on a section
19 that has already been the subject of hearings.

20 The intervenors had been given the
21 opportunity to cross-examine Ms. Lee as to the sum
22 of her testimony. And since she has nothing
23 further to offer with the current proceedings,
24 staff would be objecting to her being made
25 available for cross-examination.

1 MR. BASOFIN: Mr. Kramer, I have a
2 response to that. As you stated earlier, it's
3 appropriate to compare various alternatives to
4 this proposal. And Ms. Lee, as the staff's
5 preeminent alternatives expert, it's entirely, I
6 think, appropriate to have her testify.

7 HEARING OFFICER KRAMER: On what
8 particular topic do you wish to make a comparison
9 with her?

10 MR. BASOFIN: I have a few questions for
11 her regarding this proposal, and --

12 HEARING OFFICER KRAMER: I mean relative
13 to what? Biology, traffic?

14 MR. BASOFIN: Relative to biology.

15 HEARING OFFICER KRAMER: Okay. Mr.
16 Kessler, Ms. Lee was, in offering the alternatives
17 section, did she serve in the role as an expert on
18 biology? Or did she rely upon others in that?

19 MR. KESSLER: She relied upon others.

20 HEARING OFFICER KRAMER: Okay. That
21 would be the biological witnesses who are
22 available today?

23 MR. KESSLER: Yes.

24 HEARING OFFICER KRAMER: So in that
25 circumstances, Mr. Basofin, I don't think it's

1 necessary to have her here to tell you what she
2 heard from the very people to whom you could pose
3 those questions.

4 MR. BELL: Mr. Kramer, just a
5 clarification. There were two additional bio
6 witnesses, Dick Anderson and Carolyn Chainey-
7 Davis, that supported the alternatives in the bio
8 assessment. And neither of them have been asked
9 to appear today.

10 So I believe that Ms. Milliron could try
11 to address anything, if you saw that appropriate.

12 MR. BASOFIN: Mr. Kramer, I guess an
13 additional point I would have is that we now
14 effectively have two proposals for a reduced
15 acreage of the site. One of them was analyzed in
16 the alternatives analysis by Ms. Lee. I think
17 that was previously referred to as a reduced
18 acreage alternative.

19 We now have an additional proposal that
20 also reduces the acreage. So I think it's
21 entirely appropriate to compare those two
22 proposals together. And I think that Ms. Lee
23 would be witness to do that, having assessed the
24 reduced acreage alternative.

25 HEARING OFFICER KRAMER: Mr. Bell, were

1 you about to say something?

2 MR. BELL: I think if Ms. Lee had
3 anything to do with offering any section of the
4 staff addendum, if Ms. Lee had done any work with
5 respect to the applicant's proposal, then her
6 testimony may be relevant to this proceeding.

7 But she's done nothing to any issue
8 that's germane to this proceeding. She's looked
9 at none of the information that's provided by the
10 applicant. She's done no work at all on the
11 subject of this proceeding. Her testimony simply
12 isn't relevant to this proceeding.

13 MR. BASOFIN: Mr. Kramer, I'll preserve
14 my objection for the record. I think, based on
15 your statement earlier that it is appropriate to
16 compare alternatives to each other in this
17 proceeding, that Mr. Bell's argument that it's not
18 germane to this proceeding, you know, I think
19 that's -- argument.

20 But I will, as a matter of compromise
21 and to move things along, I will address my
22 questions that were for Ms. Lee to Mr. Kessler.

23 HEARING OFFICER KRAMER: And Ms.
24 Milliron?

25 MR. BASOFIN: Yes.

1 HEARING OFFICER KRAMER: Especially if
2 they're biological ones. She -- believe she is
3 the biological expert, not Mr. Kessler.

4 MR. HARRIS: Mr. Kramer, I just want to
5 support staff's position on this. I think it's a
6 dangerous precedent for the Commission to have
7 witnesses who were not involved in the preparation
8 of testimony to be cross-examined. I think that's
9 outside the scope of the proceedings here.

10 Mr. Bell and staff has testified that
11 Ms. Lee had nothing to do with the preparation.
12 And so they can cross her on all her testimony,
13 which is zero, in this case.

14 And so I think this is really a non-
15 issue and something that I'd urge the Commission
16 to be aware of going forward as an attack to
17 create the impression that somehow people are
18 being deprived the opportunity to ask questions
19 about the testimony presented. That is simply not
20 the case here.

21 HEARING OFFICER KRAMER: Okay. Let me
22 ask, the applicant basically convened a panel of
23 all of its experts on all topic areas; and
24 although the discussion was certainly focused on
25 biology.

1 Let me ask, does anybody have -- is
2 anybody planning on having any questions of Mr.
3 Munger with regard to air quality questions?

4 MR. BELL: Staff will have just a couple
5 of clarifying questions for Mr. Munger.

6 HEARING OFFICER KRAMER: Okay. Is he
7 here right now?

8 MR. BELL: He is.

9 HEARING OFFICER KRAMER: Okay. Why
10 don't you come forward, sir, and what we'll do is
11 create a panel similar to the applicant's, where
12 all the subject experts are available. And they
13 can be questioned at once.

14 Right, these are all the staff's
15 experts.

16 MR. BELL: Yes. We previously heard
17 from Ms. Sanders. Present are Mr. Kessler, Ms.
18 Milliron and Mr. Munger. Testimony has previously
19 been admitted. I just have a couple of follow-up
20 questions for Mr. Munger based on his testimony
21 that was previously admitted.

22 HEARING OFFICER KRAMER: Okay, go ahead.

23 MR. BELL: Mr. Munger has not previously
24 been sworn, however.

25 HEARING OFFICER KRAMER: Okay, if you

1 would stand and raise your right hand.

2 Whereupon,

3 BRENNER MUNGER

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

7 (Telephone interference.)

8 PRESIDING MEMBER BYRON: Stand by.

9 HEARING OFFICER KRAMER: I just stood up
10 away from my microphone to swear in a witness.
11 You didn't miss much.

12 Please state your name, your full name,
13 and spell your last name for the benefit of the
14 court reporter.

15 MR. MUNGER: My name is Brenner Munger;
16 it's spelled B-r-e-n-n-e-r M-u-n-g-e-r.

17 MR. SPEAKER: Is your mic on?

18 HEARING OFFICER KRAMER: For some reason
19 that side of the room is always a little quieter.
20 So if you could -- if all of you could project it
21 would be very helpful.

22 Whereupon,

23 MISA MILLIRON and JOHN KESSLER

24 were recalled as witnesses herein, and having been
25 previously duly sworn, were examined and testified

1 further as follows:

2 HEARING OFFICER KRAMER: Go ahead,
3 Mr. Bell.

4 MR. BELL: Thank you.

5 DIRECT EXAMINATION

6 BY MR. BELL:

7 Q Mr. Munger, did you prepare testimony to
8 be included in the final staff assessment addendum
9 in the matter being heard here today?

10 MR. MUNGER: Yes, I did.

11 MR. BELL: In what subject matter area?

12 MR. MUNGER: Air quality, an addendum to
13 the air quality testimony and an addendum to the
14 greenhouse gas testimony.

15 MR. BELL: Are there any changes to your
16 testimony?

17 MR. MUNGER: Yes.

18 MR. BELL: And could you describe what
19 those changes are?

20 MR. MUNGER: Yes. As a result of the
21 re-scoping of the project given forth in the
22 mitigated Ivanpah 3 proposal, the applicant has
23 requested the Mojave Desert Air Quality Management
24 District to revise the final determination of
25 compliance including the permit conditions.

1 Once those revisions are made we will be
2 revising the conditions of certification to match
3 the changes that the district makes in their
4 permit conditions.

5 MR. BELL: What are the things that
6 you're still waiting to receive before you can
7 make those suggested changes?

8 MR. MUNGER: Completion of the FDOC
9 revision process. We also have pending with the
10 applicant requests for additional information
11 which would update the basis for the 5 percent
12 fossil fuel limit. And that's AQSC-10.

13 MR. BELL: Do you have a timeline before
14 you'll receive that information from both the air
15 district and the applicant?

16 MR. MUNGER: Yeah, --

17 MR. BELL: Two-part question, sorry.
18 From the air district?

19 MR. MUNGER: From the air district my
20 understanding it's a matter of weeks.

21 MR. BELL: And from the applicant?

22 MR. MUNGER: That I do not know.

23 MR. BELL: Okay. Nothing further.

24 HEARING OFFICER KRAMER: Now, maybe I
25 missed something, but would the applicant's

1 information have to come before the air district
2 could finally act?

3 MR. MUNGER: No. The certificate,
4 conditions of certification that's requiring the
5 information is AQSC-10, which has to do with the 5
6 percent of fossil fuel.

7 HEARING OFFICER KRAMER: Okay. So when
8 you say weeks, you're thinking two to three weeks
9 or --

10 MR. MUNGER: That's the district's
11 process, as I understand it. And I don't have any
12 firm schedule from the district at this time. I
13 know that a draft revision to the FDOC has been
14 issued.

15 MR. BELL: I can represent to the
16 Commissioners and Mr. Kramer that as soon as the
17 information is in, staff is intending to file an
18 errata with those changes. But we can't do that
19 until we hear back from the air district.

20 HEARING OFFICER KRAMER: To what extent
21 will the -- the emission limits will increase, is
22 that right?

23 MR. MUNGER: No. The changes to the
24 FDOC permit conditions are administrative in
25 nature and they're prompted by the re-scoping of

1 the project.

2 These include reduction in size of the
3 Ivanpah 3 auxiliary boiler; the elimination of one
4 of the emergency generators for the Ivanpah 3
5 power block.

6 And so the permit conditions would be
7 changed to reflect that the Ivanpah 3 boiler would
8 be the same as the Ivanpah 1 and 2 boiler, and
9 there only would be three emergency generators
10 total.

11 HEARING OFFICER KRAMER: So would the
12 permitted level of emissions change at all in the
13 conditions?

14 MR. MUNGER: Not in the district's
15 current conditions.

16 HEARING OFFICER KRAMER: What about the
17 conditions that staff is proposing?

18 MR. MUNGER: There may be a change in
19 greenhouse gas emissions depending upon what the
20 response is for our request for an update on the
21 annual fuel usage associated with the revised re-
22 scoped project.

23 However, at this point we don't expect
24 that to change the conclusions of the ongoing
25 analysis, that the impacts will not be

1 significant.

2 HEARING OFFICER KRAMER: Okay, so then
3 the emissions limits, to be clear, in the
4 conditions would be the same as they are proposed
5 currently?

6 MR. MUNGER: If I may clarify. The
7 short-term emission limits will not be changed.
8 In other words, the pounds-per-hour emission rates
9 for the boilers or generators will still be
10 subject to the tier two requirements.

11 What may change is the annual fuel
12 usage, which would impact in the annual impacts,
13 annual air quality impacts and greenhouse gas
14 issues.

15 HEARING OFFICER KRAMER: And so it would
16 impact them upward or downward direction?

17 MR. MUNGER: It depends on what the
18 information is that they provide. But on the
19 annual basis, the impacts are very very very low.
20 In fact, in my testimony I related that the change
21 in impacts would result from the Ivanpah 3 new
22 configuration is lost in surrounding air. They
23 are that small.

24 HEARING OFFICER KRAMER: Okay, thank
25 you.

1 And then you had no direct for any of
2 the other staff?

3 MR. BELL: No.

4 HEARING OFFICER KRAMER: Well, the one
5 other staff that's with you.

6 MR. BELL: I'm sorry, Mr. Kessler
7 counts.

8 HEARING OFFICER KRAMER: He's always
9 here.

10 (Laughter.)

11 HEARING OFFICER KRAMER: Okay. Ms.
12 Belenky, any questions for the staff?

13 MS. BELENKY: I do, thank you.

14 CROSS-EXAMINATION

15 BY MS. BELENKY:

16 Q For Mr. Munger, is that correct?

17 MR. MUNGER: Yes.

18 MS. BELENKY: Thank you. I did have a
19 question. I was -- this goes specifically to the
20 greenhouse gas addendum. On page 4-24, it's the
21 last paragraph there. You state that the
22 emissions would be approximately 20,900 metric
23 tons, is that correct?

24 MR. MUNGER: That's correct, that's what
25 the testimony shows.

1 MS. BELENKY: On the chart on the next
2 page, it shows that the emissions, the boilers
3 would emit 23,549 metric tons. And then the
4 emissions from the total from the facility would
5 be 25,359.

6 Can you explain to me how those numbers
7 relate?

8 MR. MUNGER: That is a typographical
9 error. The numbers in the table are the correct
10 numbers.

11 HEARING OFFICER KRAMER: So to be clear,
12 then, the text on 4-24 should be changed?

13 MR. MUNGER: Correct.

14 HEARING OFFICER KRAMER: And the new
15 number should be --

16 MR. MUNGER: 25,359, sir.

17 HEARING OFFICER KRAMER: Give it to me,
18 again?

19 MR. MUNGER: 25,359 metric tons --

20 HEARING OFFICER KRAMER: Okay.

21 MR. MUNGER: -- CO2 per year.

22 MS. BELENKY: Thank you. On page 4-24,
23 and while I'm here I'll just check -- 4-26, you
24 state that there would not be stationary -- this
25 is the third paragraph, 9, down under the

1 compliance with LORS.

2 You state that the project would not
3 have stationary source emissions greater than
4 25,000, as shown in the first row of the
5 greenhouse gas table. Designated solely to the
6 boilers, is that correct?

7 MR. MUNGER: Yes.

8 MS. BELENKY: But the facility, as a
9 whole, would have greater than 25,000 million
10 pounds or something -- no, -- metric tons, is that
11 correct?

12 MR. MUNGER: Yes.

13 MS. BELENKY: The facility, itself,
14 would have more than 25,000, is that correct?

15 MR. MUNGER: Yes.

16 MS. BELENKY: Okay. So you were
17 speaking there solely of the boilers?

18 MR. MUNGER: Yes.

19 MS. BELENKY: Okay. Going back to the
20 table on page 4-25, what is the basis of these
21 calculations? By that I mean how did you -- the
22 basis for your emissions that you then used to
23 make this calculation?

24 MR. MUNGER: The first -- third column,
25 excuse me, represents the numbers that were

1 provided in the final staff assessment for the
2 project. And we used those as starting point.

3 The fourth column represents the numbers
4 associated with the revised project scope. And
5 these were done, again, in the context of an
6 envelope approach, looking at simplified metric to
7 prorate the original estimates of greenhouse gas
8 emissions for the original project, to reflect the
9 mitigated Ivanpah 3 scope.

10 So then that's the number that was used
11 for the different sources of emissions, different
12 metrics were used for the boilers. We're looking
13 at the capacity. That's been revised from 400
14 megawatts to 370. For the emergency generator
15 emissions the number is -- 3 and so forth. And
16 then that got to prorate a factor.

17 So we started with what was in the
18 original FSA and then prorated those.

19 MS. BELENKY: So, the original number of
20 480,000, I believe that number came from the
21 applicant, we learned in earlier testimony. You
22 didn't go out and do any independent analysis to
23 get this 480,000, is that correct?

24 MR. MUNGER: Correct.

25 MS. BELENKY: Okay, thank you. And I

1 just wanted to check. You said that this was a
2 typographic error, but earlier today you added to
3 your testimony. You didn't know this typographic
4 error, is that correct?

5 MR. MUNGER: I did not -- no, ma'am.

6 MS. BELENKY: I just was curious because
7 you had already amended your -- and what
8 information are you waiting for from the
9 applicant? Can you tell us what you asked for?

10 MR. MUNGER: We've asked for an update
11 of what would be here, the 480,000 mmBtu per year,
12 which was the estimate of the annual fuel usage
13 for the original scope of the Ivanpah project.
14 And with the reduction in number of heliostats,
15 with reduction in the size of the steam turbine
16 generators. We're looking to get a number from
17 them as to what would be their estimate of 5
18 percent, total solar-thermal input.

19 MS. BELENKY: Thank you. I think that's
20 all my -- oh, I did have one more question. Did
21 you make any calculations based on the -- let me
22 start back one step.

23 The air district permit, as it currently
24 exists, allows for four hours of use of boilers
25 per day. Whereas the staff condition would allow

1 for only the 5 percent.

2 Did you make a parallel calculation on
3 the greenhouse gas emissions that would ensue
4 under a four-hour day scenario?

5 MR. MUNGER: No, I did not.

6 MS. BELENKY: Thank you. I have a few
7 other questions on other topics. I didn't know if
8 you wanted to finish air quality?

9 HEARING OFFICER KRAMER: No, go ahead
10 and ask them of each of the panelists.

11 MS. BELENKY: All right. And I'm not
12 sure which of the panel. Going back just briefly
13 to the question of grading. On page 1.6 in the
14 staff's filing, again states that there would be
15 the 20 acres of remaining heavy grading in the
16 Ivanpah 3 site.

17 And I'm trying to understand what the
18 basis of that statement is.

19 MR. KESSLER: Could you be a little bit
20 more clear as to what is your question?

21 MS. BELENKY: In the staff addendum at
22 page 1.6 -- 1-6, it says that the area in Ivanpah
23 3 that would require heavy grading due to the
24 volume of boulders in the area would be reduced
25 from 170 acres to 20 acres.

1 What is the basis for the statement?

2 MR. KESSLER: We captured what we
3 understood the applicant to be telling us in their
4 filing. And our interpretation of that is is that
5 we'd understood that within the mitigation area
6 that that would be avoided.

7 That that was a predominant part of the
8 Ivanpah 3 site that required grading, largely
9 because of rocks and the presence of rocks that
10 would have to be removed.

11 So our understanding is that for the
12 remaining portions of the updated proposed Ivanpah
13 3 site, that there's 20 acres remaining within
14 that that would still require grading.

15 Again, we relied on information from the
16 applicant.

17 MS. BELENKY: So it's your testimony
18 that your understanding is that the entire Ivanpah
19 3 site there will only be 20 acres of grading?

20 MR. KESSLER: That's our understanding.

21 MS. BELENKY: And that's what was
22 analyzed in the FSA and the FSA addendum, is that
23 amount of grading?

24 MR. BELL: I have to object as that
25 mischaracterizes the testimony. I think there's a

1 differentiation between grading and heavy grading.
2 Areas that require grading because of boulders
3 versus areas that require grading for other
4 construction purposes.

5 HEARING OFFICER KRAMER: Sustained.
6 Please clarify your question.

7 MS. BELENKY: I simply asked was it his
8 testimony that there would be 20 acres of grading
9 in the Ivanpah 3 site?

10 MR. KESSLER: Where we evaluated any
11 changes to soil and water was in, within that
12 section at all. And as we concluded, I can say
13 this on behalf of Mr. Christopher Dennis, is that
14 we saw that there was a reduction in grading, a
15 reduction in impacts. We considered all the
16 potential impacts of the larger scale project
17 without our FSA Draft EIS and concluded that the
18 impacts would be mitigated to less than
19 significant. And therefore our conclusion is the
20 same for this FSA Addendum.

21 MS. BELENKY: I do understand what
22 you're saying. What I am concerned about is that
23 there is this term being used, heavy grading, as
24 opposed to grading, and that there is no clarity
25 or analysis of the amount of grading.

1 MR. KESSLER: I understand your concern.
2 I can't offer any clarity on that.

3 MS. BELENKY: Thank you.

4 MR. KESSLER: Sure.

5 MS. BELENKY: The staff issued a Notice
6 of Availability of the addendum, I believe on
7 March 17. Can you tell me what the comment period
8 for public comments for that addendum is?

9 MR. KESSLER: We did not offer any
10 public comment period. We saw this proceeding as
11 being the opportunity for the parties as well as
12 the public to offer their comments. This
13 proceeding being the hearing today, and anything
14 else offered by the Committee.

15 MS. BELENKY: So is it your -- I'm just
16 trying to understand. Staff's position is that
17 any public comment must be submitted by today?

18 MR. BELL: I'd have to object because
19 that is outside the scope of this proceeding.
20 There's nothing before us with the Final Staff
21 Addendum and nothing that this witness has
22 prepared that has anything to do with the public
23 comment period.

24 HEARING OFFICER KRAMER: Well he is the
25 project manager. They normally, at least they are

1 certainly well informed of what staff's intentions
2 are with regard to public comment. So if he knows
3 the answer he can provide it.

4 MR. HARRIS: I guess I want to object on
5 the basis of there isn't a comment period on a
6 staff document in the Energy Commission's
7 certified regulatory program. There simply isn't
8 a comment period that Ms. Belenky is suggesting
9 should have been noticed as part of your regular
10 process and thus nothing lacking.

11 HEARING OFFICER KRAMER: That's an
12 answer, probably not an objection.

13 MR. HARRIS: That's the basis for the
14 objection.

15 MR. KESSLER: And I would just ditto
16 that. I mean, that's our understanding as staff
17 is that we don't normally provide a public comment
18 period on an FSA and we felt we didn't need to do
19 that on the FSA Addendum.

20 The reason there is a public comment
21 period on the FSA Draft EIS was because that was a
22 joint document which, as you know, got out of sync
23 early in the process and we needed to provide that
24 for the federal NEPA purposes as a Draft EIS. But
25 otherwise it's the staff's understanding that it

1 is not necessary for us to provide that
2 opportunity with an FSA Addendum.

3 HEARING OFFICER KRAMER: And apparently
4 you do not intend to.

5 MR. KESSLER: That's correct.

6 HEARING OFFICER KRAMER: Okay, there's
7 your answer.

8 MS. BELENKY: I think that's all my
9 questions, thank you.

10 HEARING OFFICER KRAMER: Mr. Basofin,
11 any questions? Ms. Belenky then you dealt with
12 all this biology and Mr. Kessler in all of the
13 topic areas then? I just want to make it clear
14 that we're hoping that you will ask all of your
15 questions in all areas at this time.

16 MS. BELENKY: I certainly tried to.

17 HEARING OFFICER KRAMER: Okay.

18 MS. BELENKY: I may find another one
19 hidden in here later. But I think I tried to deal
20 with all of them.

21 HEARING OFFICER KRAMER: Okay. Mr.
22 Basofin.

23 MR. BASOFIN: Thank you Mr. Kramer. I
24 just have a couple of questions for Mr. Kessler.

25 Mr. Kessler you received the mitigated

1 unit 3 proposal of this document on February 12th.

2 Is that correct?

3 MR. KESSLER: That's my recollection.

4 MR. BASOFIN: Okay. When you received
5 that proposal did you consider it to be a new
6 project proposal?

7 MR. KESSLER: We considered it to be in
8 response to the mitigation that we proposed in
9 Bio-18, Condition of Certification Bio-18.

10 MR. BASOFIN: Okay. Did you consider
11 the circumstances of the project as being changed?

12 MR. KESSLER: Well certainly we
13 recognized that there was some change and that we
14 felt that they needed to be addressed in the FSA
15 Addendum. That was the purpose of our document.

16 MR. BASOFIN: And isn't it enough change
17 that you felt it merited a new project description
18 in the addendum? Is that correct?

19 MR. KESSLER: We wanted to disclose to
20 the parties and the public and the Committee how
21 the project had changed.

22 So we felt that those relevant parts of
23 our FSA draft EIS that had changed we wanted to
24 make it clear as to the substance of the
25 mitigation proposal by BrightSource.

1 MR. BASOFIN: Okay. And again, you felt
2 it necessary to draft a new project description.
3 Is that right?

4 MR. KESSLER: We felt --

5 MR. BELL: That's been asked and
6 answered.

7 MR. BASOFIN: I don't think it's been
8 answered.

9 MR. BELL: Not the way counsel wanted.
10 But it's been answered.

11 MR. BASOFIN: But it's a yes or no
12 answer.

13 HEARING OFFICER KRAMER: Overruled.

14 MR. KESSLER: We revised, yes we felt it
15 was necessary to update the project description
16 just as Air Quality, Bio, Soil and Water and
17 Visual because we felt that the updated mitigation
18 proposal were reflected some updates in staff's
19 assessment and we felt the project description
20 provided the basis for our updated assessment in
21 those other technical areas.

22 MR. BASOFIN: And as part of your
23 updated staff assessment did you consider
24 performing an additional alternatives analysis?

25 MR. KESSLER: We considered it but we

1 didn't feel like it was necessary.

2 MR. BASOFIN: Did you consider comparing
3 the Mitigated Unit 3 Proposal with the reduced
4 acreage proposal that had previously been
5 identified?

6 MR. KESSLER: We felt that it was within
7 the confines of that previous analysis for the
8 reduced acreage alternative and that it would not
9 change our conclusions within that alternative.

10 And again, we looked at this as really
11 mitigation and the applicant responding to that
12 request and a recommendation by staff in Bio-18.

13 I guess just to be really candid, we
14 didn't see a need to update our alternatives
15 analysis based on this response to our mitigation
16 proposal.

17 And we understand that the parties may
18 look at that differently. But in terms of
19 staffs's testimony as included in our FSA draft
20 EIS we would have not of changed anything any
21 conclusions within that alternative section.

22 Therefore we didn't feel it necessary to
23 update the analysis.

24 MR. BASOFIN: Okay. Thank you. Mr.
25 Kessler did you prepare the Notice of Availability

1 for the Mitigation Unit 3 Proposal?

2 MR. KESSLER: Yes I did.

3 MR. BASOFIN: Okay. And would you
4 consider the staff, I'm sorry strike that. In
5 your analysis in the addendum in your analysis did
6 you consider the possibility that the avoided area
7 in Unit 3 might be used as a translocation area?

8 I'm sorry a relocation area for the
9 Desert Tortoises?

10 MR. KESSLER: We understood that that
11 was included in the applicant's proposal.

12 I did not evaluate bio impacts myself.
13 I was responsible for the Project Description
14 Section and the Executive Summary.

15 MR. BASOFIN: Okay. Thank you. I think
16 that's all I have.

17 HEARING OFFICER KRAMER: Mr. Suba.

18 MR. SUBA: I have questions for Ms.
19 Milliron regarding the rare plants on site.

20 Good afternoon Ms. Milliron. So I'm
21 going to refer to a few things, Mitigated Ivanpah
22 3, Biological Mitigation Proposal, my comment M-3.

23 And the applicant's Exhibit 81, Special
24 Status Plant Avoidance and Protection Plan. That
25 was previously submitted, if I say Exhibit 81

1 that's the number I'm referring to.

2 So do you understand all that.

3 MS. MILLIRON: Yes.

4 MR. SUBA: Thanks. So to summarize the
5 FSA Bio Resource Section 6.2 for rare plants, we
6 don't have to go through all this. It's already
7 been put in.

8 But the direct and indirect impacts to
9 rare plants on the site include altered hydrology,
10 altered soil and nutrient chemistry, altered light
11 regime and introduction of invasive species.
12 Would you agree with those?

13 MS. MILLIRON: I'd agree with that.

14 MR. SUBA: In addition to those listed
15 impacts the project will also have impacts
16 relating to the fragmentation of the plant
17 population habitat and the interruption of
18 evolutionary processes inherent in the
19 fragmentation. Would you agree with those things?

20 MS. MILLIRON: I didn't specifically
21 refer to the evolutionary processes but we did, I
22 did include the concern of habitat fragmentation
23 in the testimony.

24 That's before us and also in previously
25 filed filings.

1 MR. SUBA: Would you agree that
2 fragmenting plant habitat could impact the
3 pollinator species for those plants, the ability
4 for those plants to pollinate and disperse their
5 seeds or to invade or immigrate into new areas in
6 the project site.

7 MS. MILLIRON: That was a concern that I
8 brought up previously, yes. I agree with that.

9 MR. SUBA: Okay. I consider those
10 evolutionary processes.

11 MS. MILLIRON: Okay.

12 MR. SUBA: We're just talking different
13 languages. So regarding this list of impacts do
14 you agree this will amount to uncertainty
15 contained in the mitigation proposed for the
16 project's impacts both uncertainties with what's
17 being proposed in M-3 and in Exhibit 81 and in the
18 new Bio-18?

19 MS. MILLIRON: Yes I acknowledge those
20 uncertainties.

21 MR. SUBA: So in response to the M-3
22 Proposal, Mitigated 3 Proposal, staff has amended
23 Bio-18 to recommend that if the applicant
24 implements the footprint reductions of the M-3
25 footprint reductions and if the applicant

1 implements the Halo Plans, do you understand what
2 I mean by Halo Plans?

3 MS. MILLIRON: I do.

4 MR. SUBA: For Milkweed and Rusby's and
5 Desert Pincushion as explained in Exhibit 81, as
6 outlined in Exhibit 81, so a footprint reduction,
7 Halos for the Milkweed, Rusby's and Pincushion,
8 the need for offsite surveys for Milkweed and
9 Rusby's and to provide compensatory mitigation
10 lands for Milkweed, that if they do those things
11 impacts to rare plants will be considered less
12 than significant under CEQA, is that correct?

13 MS. MILLIRON: Yes, that's what I wrote
14 in the testimony that's before us.

15 MR. SUBA: So on page 46 of the
16 addendum, Bio Resources, staff writes, the staff
17 is willing, quote, the staff is willing to accept
18 a limited amount of uncertainty in this case
19 regarding the onsite mitigation proposed for those
20 individuals located in the project area but
21 outside protected areas designated in Mitigated
22 Ivanpah 3.

23 So just to be clear, that means that the
24 staff is willing to accept a limited amount of
25 uncertainty about the Halos.

1 MS. MILLIRON: Correct. I think, are
2 you referring to, I'm sorry, I didn't see which
3 part. Is it the last sentence, the added sentence
4 at the end? It's 4-6 about --

5 MR. SUBA: The staff is willing to
6 accept a limited amount of uncertainty --

7 MS. MILLIRON: Oh, it's the last
8 sentence. In this case regarding, okay, I see.

9 MR. SUBA: Yeah.

10 MS. MILLIRON: Yeah, I was referring to
11 Rusby's Desert Mallow.

12 MR. SUBA: Okay and in terms of the
13 Rusby's. The individuals located in the project
14 area but outside protected areas designated in M-
15 3. Does that mean the plants in the Halos?

16 MS. MILLIRON: Right. What I was
17 referring to there is that the uncertainty with
18 what the fate of the plants that we protected by
19 the Halos or the fencing within the solar field.

20 MR. SUBA: Okay. That's what I thought
21 you meant. I just making sure that that's what
22 all that meant. So, okay, so just a few more
23 questions.

24 In order for the impacts to plants to be
25 mitigated to less than significant there seems to

1 be several pieces that need to fall into place
2 here. Based on the M-3 proposal in Exhibit 81 and
3 in the FSA Addendum the following things need to
4 happen.

5 The Halos would have to succeed in
6 mitigating the list of impacts we discussed
7 earlier, the change in water, the soil conditions,
8 light, fragmentation. All those impacts the Halos
9 would need to succeed in mitigating.

10 If needed the salvage and
11 transplantation of rare plants will need to
12 succeed.

13 All site surveys will need to identify
14 additional occurrences of plants.

15 And if they are found additional offsite
16 occurrences will need to be protected somehow.
17 Somehow that they are not protected here at
18 Ivanpah.

19 And identified milkweed compensation
20 lands will actually have to have milkweed growing
21 on them. So do you agree that those things would
22 need to fall in place in order for mitigation to
23 be mitigation?

24 MS. MILLIRON: Are you seeking to
25 clarify what I put into Bio-18 or? Because what I

1 put in there is a little bit different in terms of
2 whether the compensation land is occupied or not.
3 There was some discussion earlier in the addendum
4 that talked about protecting land that's adjacent
5 to, in the same watershed as a known occurrence.
6 But I didn't actually, I don't believe in Bio-18
7 it requires the compensation land be occupied.

8 MR. SUBA: I agree with your statement.
9 But thinking ahead into the future. If the reason
10 for identifying and acquiring those compensation
11 lands is to mitigate the milkweed, presumably we
12 are going to want milkweed on those lands.

13 MS. MILLIRON: Yes.

14 MR. SUBA: Okay, that's what I was
15 trying to get at.

16 MS. MILLIRON: That would be ideal. But
17 I realize that we don't have a way of determining
18 whether they are occupied right now so that's why
19 it was written the way it was.

20 And it would allow, if it wasn't
21 occupied, the thought is that it would still have
22 conservation value because it would be in a
23 suitable or at least historically suitable
24 habitat. So perhaps it could be, it would have a
25 better chance of being restored or reintroduced

1 into an area if it's no longer there.

2 MR. SUBA: My point of listing these, if
3 these happen then mitigation happens, is to
4 underscore all the maybes and mights and ifs that
5 are involved in this mitigation proposal, both the
6 M-3 in Exhibit 81 and the FSA Addendum, are taking
7 great leaps of faith in establishing mitigation
8 for our plants.

9 So my follow-up question to that
10 statement is that if those measures don't succeed,
11 if the Halos don't succeed in mitigating the list
12 of impacts we described, over time. If the
13 salvage and transplanting are not successful, the
14 surveys don't turn up any new occurrences of
15 milkweed, and if compensation lands don't turn up
16 any occurrences of milkweed or represent milkweed
17 habitat, then will the project impacts, in your
18 opinion, lead to the extirpation of milkweed in
19 California?

20 MS. MILLIRON: Well, I don't know that I
21 could say that it would directly lead to the
22 extirpation. It would certainly I think have a
23 substantial impact on its continued existence in
24 the state if all of those things failed.

25 But part of Bio-18 is a remedial action

1 plan that there would be some seed collection and
2 storage in the event that everything failed for
3 preservation of the germoplasm. Now I realize
4 that doesn't put the plant back in the habitat but
5 that was my intent in including that remedial
6 action plan.

7 MR. SUBA: Thank you. Would you say the
8 same for -- that you just said for milkweed, would
9 you say the same for the pincushion, the desert
10 pincushion?

11 MS. MILLIRON: What was the question?

12 MR. SUBA: If those lists of ifs didn't
13 succeed then would pincushion suffer potentially
14 the same fate as the milkweed?

15 MS. MILLIRON: I think it would be a
16 substantial effect but not as much as for the
17 milkweed. Just because owing to the number, the
18 pincushion has a larger number of occurrences that
19 are not associated with the project.

20 So, you know, the proportion of the
21 state's occurrences that would be impacted from
22 this project is lower compared to the Mojave
23 Milkweed. And there's just, I believe there's
24 just more total occurrences in the state that are
25 recent. Whereas with the milkweed there's not as

1 many recent confirmed occurrences.

2 MR. SUBA: And one more along this line,
3 the Rusby's Desert Mallow. If these measures
4 don't succeed, its fate in California?

5 MS. MILLIRON: I think for the Rusby's
6 Desert Mallow. It seems to me based on its, just
7 its overall life form and pollination strategy,
8 which tends to be a little bit more generalized
9 compared to the milkweed. Again, there would be
10 an impact if all of those mitigation measures
11 would fail. But it wouldn't be as devastating, I
12 guess I would say, compared to the milkweed.

13 MR. SUBA: Thank you.

14 MS. MILLIRON: There's just a lower
15 number of occurrences that are impacted. And more
16 of the occurrences are actually within the area
17 that's going to be protected.

18 MR. SUBA: Thanks. A couple more.

19 So in the FSA Addendum, in the Bio-18
20 addendum there is a recommendation to identify and
21 acquire off-site compensation lands for milkweed
22 on private land. In the original FSA, 6.2-40, the
23 FSA reads, quote:

24 "Essentially all occupied
25 habitat, i.e. habitat containing

1 special status plants, occurs on
2 federal land, primarily BLM and NPS
3 land. And no suitable private
4 parcels were found that could be
5 placed under a conservation
6 easement or other restriction to
7 prevent future development."

8 End quote.

9 So my question is, what changed in your
10 analysis?

11 MS. MILLIRON: Well in this case we went
12 back and asked our GIS staff to redo that
13 ownership analysis with specific emphasis on the
14 milkweed. We basically did a process of
15 elimination. They put on all the public ownership
16 layers.

17 At the end of that it appeared that
18 there were parcels that didn't fall into any of
19 those public ownership layers. And there were
20 some that were, essentially from process of
21 elimination, they looked to be private because
22 they were next to National Park Service land or
23 BLM land. And they appeared to be in holdings.
24 There was one that overlapped with a milkweed
25 known occurrence, another one was right adjacent

1 to one, it abutted the known occurrence.

2 Before when we were looking at the FSA
3 we were looking at whether those -- a substantial
4 amount of acreage for all of the species that we
5 were analyzing were -- unless we did a more
6 targeted analysis based on the milkweed.

7 MR. SUBA: Okay. My final question or
8 questions have to do with the plans that are
9 referenced in Bio-18 and outlined in Exhibit 81.
10 Yeah, it's Exhibit 81, the special status plan,
11 avoidance and protection plan.

12 Can you explain what the timeline is for
13 these plans to be developed and implemented, first
14 of all. There's a draft plan out now. So what
15 happens to that draft plan in Exhibit 81?

16 MS. MILLIRON: Well the condition, the
17 verification of Bio-18 calls for no less than 30
18 days following the publication of the Energy
19 Commission's decision for those drafts of those
20 plans to be submitted.

21 So I believe the next step would be for
22 us to see a revised version of Exhibit 81 that
23 takes into account the removed acreage from the
24 footprint and how that affects the rest of it. It
25 would include a revision of the map that we saw

1 today that the applicant provided and description
2 of -- we'd essentially have to revise it to
3 describe which plants would continue to receive
4 the Halo treatment or on-site minimization and
5 which ones would be completely avoided.

6 MR. SUBA: So two last questions. How
7 are the measures outlined in the draft plan to be
8 -- how are those measures -- how is the public
9 involved, if at all, to ensure that these measures
10 in the plan are implemented? Is the draft plan
11 developed outside the public question? That's my
12 question.

13 MS. MILLIRON: I don't know that I have
14 an answer for that because -- I don't know if John
15 might have an answer from compliance. We
16 typically, the staff in their review of applicant
17 mitigation plans, we seek input from other sister
18 agencies and other knowledgeable individuals on,
19 you know, what changes might be needed.

20 But I don't know that there is a forum
21 like, there isn't a forum like this that I know
22 for review of that kind of a plan. So it's -- I
23 mean, it's not -- other people can participate but
24 I don't think that it's sent out, it's not sent
25 out for a comment period or anything like that.

1 MR. SUBA: Well then the last thing I'll
2 say is if nothing else is done well.

3 The plan calls for baseline numbers.
4 It's looking for the numbers of plants on the site
5 that have been protected somehow and tracing those
6 over time, following them over time. And then
7 they reach a certain number and something happens.
8 The baseline numbers. It's unclear to me in the
9 plan whether those baseline numbers are to be
10 taken before construction begins or after
11 construction has already happened. What's your
12 starting point?

13 MS. MILLIRON: We want to look at the
14 baseline as being before any disturbance, any
15 ground disturbance. So you could compare --

16 MR. SUBA: Okay, that should be really
17 clear.

18 MS. MILLIRON: Yeah, so you could
19 compare pre and post.

20 MR. SUBA: Thank you.

21 HEARING OFFICER KRAMER: Thank you.
22 Basin and Range Watch, any questions?

23 MS. CUNNINGHAM: (Indiscernible).

24 HEARING OFFICER KRAMER: I'm sorry, we
25 couldn't quite make that out.

1 HEARING OFFICER KRAMER: Basin and Ranch
2 Watch, Ms. Cunningham or Mr. Emmerich.

3 MS. CUNNINGHAM: Can you hear me?

4 HEARING OFFICER KRAMER: Yes, just
5 barely.

6 MS. CUNNINGHAM: No questions.

7 HEARING OFFICER KRAMER: Okay, thank
8 you.

9 Sierra Club. Ms. Smith.

10 MS. SMITH: No questions, thank you.

11 HEARING OFFICER KRAMER: Dr. Connor for
12 Western Watersheds.

13 DR. CONNOR: No questions, thank you.

14 HEARING OFFICER KRAMER: County of San
15 Bernardino.

16 MR. BRIZZEE: No questions, thank you.

17 HEARING OFFICER KRAMER: Thank you. I
18 think I covered everyone except the applicant. Do
19 you have any questions?

20 MR. HARRIS: A comment actually. I
21 wanted to complement the staff on their work. I
22 thought it was a really tremendous piece of work
23 on a short time period; thank you for your work.
24 We have no questions for the staff.

25 HEARING OFFICER KRAMER: Okay. Did I

1 miss anyone by chance?

2 MR. BELL: No redirect.

3 HEARING OFFICER KRAMER: Okay, thank
4 you. Okay.

5 I could be wrong but it appears to me
6 that everybody who was on the list for cross
7 examination was either a staff or an applicant
8 witness. Do any of the intervenors have any other
9 witnesses that they wish to call to our attention
10 that they wanted to cross examine? I believe we
11 already covered the direct testimony from the
12 intervenors. Ms. Belenky.

13 MS. BELENKY: I just wanted to clarify
14 that question that came up during Mr. De Young's
15 testimony regarding whether the intervenors had
16 said that -- well, his characterization of -- in
17 terms of the testimony.

18 HEARING OFFICER KRAMER: Okay, go ahead
19 briefly. Are you meaning to ask Mr. De Young
20 another question?

21 MS. BELENKY: I actually need to ask
22 Mr. Connor, Dr. Connor a question.

23 HEARING OFFICER KRAMER: Okay, go ahead.
24 Dr. Connor, are you there?

25 DR. CONNOR: Yes, I'm here.

1 HEARING OFFICER KRAMER: Okay. You were
2 previously sworn, correct?

3 DR. CONNOR: Correct.

4 HEARING OFFICER KRAMER: Did you say,
5 yes?

6 DR. CONNOR: Yes.

7 HEARING OFFICER KRAMER: Okay. You're
8 still sworn. Go ahead.

9 Whereupon,

10 DR. MICHAEL CONNOR
11 was recalled as a witness herein, and having been
12 previously duly sworn, was examined and testified
13 further as follows:

14 DIRECT EXAMINATION

15 BY MS. BELENKY:

16 Q Dr. Connor, were you on the phone this
17 morning when Mr. De Young was testifying?

18 DR. CONNOR: Yes, I have been on the
19 phone all day.

20 MS. BELENKY: There was a question as to
21 the value of the habitat for desert tortoise in
22 various areas. Perhaps it would be easier to have
23 you discuss briefly your understanding, your
24 background on Ivanpah 3 area if you've been there.
25 Have you ever been there?

1 DR. CONNOR: Yes, I've been there.

2 MS. BELENKY: Okay.

3 DR. CONNOR: And Ivanpah 3 I have been
4 three times.

5 MS. BELENKY: Thank you. And of the
6 Ivanpah 3 site do you have any opinion as to
7 whether the area that would be excluded under the
8 so-called M-3 alternative is good habitat or not?

9 DR. CONNOR: I think perhaps before I
10 answer that I just make it clear that as far as I
11 am aware at no time have I ever identified Ivanpah
12 3 as a key issue for desert tortoise. It is my
13 expert opinion that the entire project is the
14 issue, not the specific component of the project.

15 I just want to make that clear because
16 the suggestion keeps being raised that somehow
17 Ivanpah 3 is the greatest concern with the
18 intervenors. And from my position the habitat in
19 Ivanpah 3 overall is as important as the habitat
20 in Ivanpah 2 and 1. The entire project itself is
21 going to fragment tortoise habitat in the northern
22 Ivanpah Valley. And I think that is one of the
23 principal impacts.

24 As far as the habitat itself is
25 concerned on Ivanpah 3. The area of the project

1 of Ivanpah 3 that would be avoided under the new
2 proposal, in my opinion that's not the best
3 tortoise habitat. There are a couple of issues
4 with it. First of all, as we have heard several
5 times today, this area has, this area is slated
6 for some of the most intense grading of the site.
7 It has these bolded areas. It's also got this
8 large wash going through the northeastern portion
9 of it.

10 And because of those features I'd be
11 concerned that it's actually of less importance to
12 desert tortoise in this area. Because the desert
13 tortoises there typically prefer the Tejada
14 itself. Does that answer your question?

15 MS. BELENKY: Yes, thank you.

16 DR. CONNOR: Perhaps I would also add
17 that the tortoise distribution list that came out
18 in the previous hearing is not even, it's going to
19 be patchy. And I think that the applicant's data
20 showing the distribution of tortoises and tortoise
21 burrows and so on on Ivanpah 3 shows that the
22 distribution of tortoise activity in the area is
23 going to be patchy.

24 HEARING OFFICER KRAMER: Okay, thank
25 you.

1 Earlier today we covered the admission
2 of all the exhibits that were presented in
3 preparation for this hearing. Do any parties have
4 any additional exhibits they wish to offer into
5 evidence at this point in time?

6 MS. BELENKY: Not at this time.

7 HEARING OFFICER KRAMER: Okay. We also
8 noticed this hearing as the opportunity to argue,
9 to take argument if there was to be any, on
10 Applicant's Exhibit 87, which was it's mapping of
11 Dr. Cashen's transects. It was prepared as an
12 outgrowth of the hearings in January. And as I
13 recall it was accepted into evidence subject to
14 the ability of the parties to later argue once
15 they had seen it about its accuracy.

16 I heard some rumblings that somebody
17 might want to argue to that effect, for instance
18 the Sierra Club. So we wanted to offer this as an
19 opportunity to do that. So let me begin with you,
20 Ms. Smith. Did you have any continuing objections
21 to Exhibit 87 that you wanted to discuss with us?

22 MS. SMITH: The Sierra Club has never
23 understood the purpose of the applicant's
24 depiction. Mr. Cashen submitted a map of his
25 transects. He was offered up for cross

1 examination, discussed how he conducted his work.
2 So the Sierra Club continues to question the value
3 of another party going and replicating what
4 Mr. Cashen has already submitted to the
5 Commission. In good faith.

6 If that's how the applicant wants to
7 spend its time and resources the Sierra Club
8 certainly can't object. But I always wondered
9 what the purpose of the exhibit was.

10 HEARING OFFICER KRAMER: Well, he has
11 spent his money. What you're saying, I gather, is
12 you did not find any inaccuracies in the
13 depiction.

14 MS. SMITH: I checked with Mr. Cashen
15 and he stands by his submission.

16 HEARING OFFICER KRAMER: Apparently does
17 not want to dispute --

18 MS. SMITH: The truth, the Sierra Club
19 does have limited resources and we can't respond
20 to every single thing that the applicant comes up
21 with. Frankly I asked him if he wanted to go back
22 to the drawing table and change his testimony in
23 any way in response to this and he said no. Then
24 I had him move on to supplemental testimony.

25 HEARING OFFICER KRAMER: Okay, well, I

1 am hearing there are no objection to the continued
2 admission of Exhibit 87 so that will remain a part
3 of the evidence.

4 MS. SMITH: I do have a question of
5 clarification. Throughout these proceedings there
6 has been discussion about the weight that certain
7 exhibits would be given. There seems to be some
8 sort of a continuum. I'm wondering about the
9 weight of this exhibit in light of the fact that
10 an expert prepared it, you know, under oath,
11 asserted to the truth of the matter therein. And
12 now, you know. Is what the applicant prepared
13 going to be given the same weight as what -- as
14 Mr. Cashen's own map?

15 HEARING OFFICER KRAMER: Well, weight is
16 a subjective, ultimately it's subjective. You
17 know, the Committee will view all the evidence.
18 Even expert opinion is subject to some diminution
19 if the assumptions upon which it's based are
20 questioned. So it's not strictly and absolutely
21 binding on the Committee.

22 Beyond that I can't say much more. To
23 my way of thinking that exhibit shows us more
24 precisely than -- if I recall Mr. Cashen had
25 marked on a piece of paper. And so we had a, we

1 had art, which probably wasn't as precise.

2 And now the applicant has reduced that
3 to a map that's similar to all the other drawings
4 of the area that we have been looking at. But
5 ultimately all that tells us is where he said he
6 walked. And then we look at that and we review
7 the transcript to see what he said about what he
8 saw when he walked, and his testimony to the
9 extent that it talks about the same thing.

10 We factor that in with all the other
11 statements we received from other experts and
12 somehow we have to sort it out. It's not the
13 easiest part of the job but it is our job and we
14 will do that.

15 That probably didn't completely answer
16 your question but I'm not sure that I can.

17 MS. SMITH: I understand.

18 HEARING OFFICER KRAMER: We have a few
19 more housekeeping items. Let me first say that,
20 let me ask if there is any reason why we should
21 not close the evidentiary record on the topic of
22 mitigation, Mitigated Ivanpah 3?

23 MS. BELENKY: I had two follow-up
24 things. I don't know if Tom Hurshman is still on
25 the phone from the BLM but if he is --

1 MR. HURSHMAN: I am.

2 MS. BELENKY: Could you perhaps give us
3 an update on the record as to the timing of the
4 Supplemental EIS work at BLM.

5 MR. HURSHMAN: Sure. At this point we
6 are anticipating getting the Supplemental Draft
7 EIS published in a Notice of Availability on April
8 16. That's, in my view, the best case that we
9 would be able to pull this thing together and get
10 our notices out. So it may actually lag an extra
11 week or so beyond that.

12 HEARING OFFICER KRAMER: And then the
13 comment period was going to be how long for that,
14 Tom?

15 MR. HURSHMAN: That is yet to be
16 determined, actually. Our proposal is that we
17 would put this up for a 30 day comment period in
18 light of the fact we have already had a 90 day
19 comment period. And we are doing nothing to
20 change the planning portion that required a 90 day
21 comment period to begin with. So we are hoping
22 that we will get approval for a 30 day comment
23 period but that's tentative at this point.

24 HEARING OFFICER KRAMER: Is there any
25 chance that a shorter period would be approved?

1 MR. HURSHMAN: I don't believe so.

2 HEARING OFFICER KRAMER: Okay. So if it
3 changed it's more likely to be longer than 30
4 days.

5 MR. HURSHMAN: Probably so.

6 HEARING OFFICER KRAMER: Okay. And then
7 after that period closes, am I correct that that's
8 when you would begin the preparation of your Final
9 EIS?

10 MR. HURSHMAN: That is correct. And
11 actually we have already begun portions of that
12 final EIS preparation in terms of comment analysis
13 for all of the comments that we have received on
14 the Draft EIS.

15 Of course we'll get, if we get
16 additional comments on our supplemental Draft EIS
17 we'll have to incorporate those as well.

18 HEARING OFFICER KRAMER: So do you have
19 any prediction as to the earliest that the EIS
20 could be published?

21 MR. HURSHMAN: Well again based on our
22 earliest analysis it's going to be July for a
23 Final EIS.

24 HEARING OFFICER KRAMER: And then how
25 soon after that to a Record of Decision?

1 MR. HURSHMAN: Well the time frame
2 between a Final EIS and a Record of Decision is
3 somewhat dependant upon if we receive any protests
4 to the land use plan amendment. Without any
5 protests there would be at least a 30 day period
6 between the Final EIS and the Record of Decision.

7 If there are protests to the Land Use
8 Plan Decision those have to be resolved and
9 answered prior to publication of the ROD. And I
10 really don't have an exact date except that the
11 resolution of a protest typically takes a couple
12 of months.

13 HEARING OFFICER KRAMER: Okay, thank
14 you. One of our duties here as a committee for
15 the Commission is to keep track of and try to make
16 sure that any decisions that we make are
17 synchronized, as far as requirements go, with the
18 decision that the BLM might make.

19 MR. HURSHMAN: And my duties too,
20 Mr. Kramer. Make sure we're in sync with the
21 Commission.

22 (Laughter.)

23 HEARING OFFICER KRAMER: Right. So when
24 we -- Is it fair to say that we are likely to know
25 what BLM is planning on doing with near finality

1 at the point in time when the FEIS comes out or
2 would it be at some later time?

3 MR. HURSHMAN: It's likely to be at the
4 time the Final EIS comes out. We are at this
5 point trying to maintain consistency between the
6 conditions of certification, mitigation measures
7 that are being developed that would carry forward
8 in the BLM document.

9 HEARING OFFICER KRAMER: Did I cover
10 everything you were looking for, Ms. Belenky?

11 MS. BELENKY: Yes, thank you.

12 I did have one other point before we
13 close the record.

14 HEARING OFFICER KRAMER: Go ahead.

15 MS. BELENKY: Mr. Powers' testimony was
16 not accepted as an exhibit at the hearing and we
17 have heard that there was no public comment period
18 provided for the Addendum except as to this
19 hearing today. So I would like to ask that his
20 testimony be accepted as public testimony.

21 HEARING OFFICER KRAMER: As public
22 comment?

23 MS. BELENKY: Public comment, thank you.

24 MR. HARRIS: Mr. Kramer, we have no
25 objection to receipt of that as public comment.

1 MR. BELL: Staff has no objection for it
2 to be received as comment.

3 HEARING OFFICER KRAMER: Okay. Then we
4 will accept it as public comment. That's Exhibit
5 947. And you'll see it marked that way in the
6 exhibit list.

7 Today we already discussed -- So any
8 other issues to raise before we close the record?

9 Seeing none we'll close the record.

10 There are a few more housekeeping items.
11 Today we already mentioned the pending changes to
12 the air quality conditions of certification. What
13 I heard, those would not be in the nature of
14 changes to the emission limits.

15 MR. HARRIS: And let me clarify further,
16 Mr. Kramer. What we're talking about there is
17 implementation of the compliance demonstration for
18 the five percent fuel. That's verification
19 language, that's not condition language. It's the
20 kind of thing that can be done post-certification.
21 So, you know, that type of detail is regularly put
22 into clarification and will be in the verification
23 of that condition, as I understand it, as well.

24 HEARING OFFICER KRAMER: Okay. Then as
25 a matter of formality, though. When this new FDOC

1 comes out we do need to somehow absorb it into the
2 record for this case.

3 MR. BELL: Staff does believe that we
4 will be filing an errata based on the new
5 information when it comes in, if necessary.

6 HEARING OFFICER KRAMER: Okay.

7 MR. BELL: But it's staff's anticipation
8 that the new information will result in some minor
9 changes to at least one table that will correct by
10 way of errata.

11 HEARING OFFICER KRAMER: Okay. So we
12 will receive that. What I am looking to find out
13 is if we need to plant for an additional hearing
14 on that. It would be a very limited hearing. Or
15 if that can come in by stipulation of the parties
16 subject to further comment if some comment is in
17 order.

18 But something as simple as, you know.
19 These conditions tend to have in their text that,
20 you know. Sometimes the serial number of some of
21 the various equipment like the emergency
22 generators. That's not the kind of thing that I
23 would hope that anybody thinks we need to have a
24 hearing about. But again, it is a formality that
25 we need to deal with.

1 Do any of the intervenors see any need
2 to have a further hearing on the air quality
3 changes, at least as they have been described
4 today?

5 MS. BELENKY: Not as they have been
6 described. But I guess we wouldn't stipulate
7 without seeing what it is.

8 HEARING OFFICER KRAMER: Okay, well
9 that's fair. Well we can do that when it comes
10 out. And staff, you could help by putting it in
11 your notice. Let's give everyone ten days to
12 indicate whether they wish to file any testimony,
13 additional testimony with regard to the changes in
14 the FDOC.

15 Mr. Kessler isn't here but, Mr. Bell, he
16 also suggested to me the other day that there is
17 the possibility that there will be some additional
18 information that will be provided with regard to
19 golden eagles. Are you aware of that?

20 MR. BELL: I'm peripherally aware of
21 that. As you know I'm just standing in for
22 Mr. Ratliff here but I am aware of some of the
23 issues. I know there were some questions raised
24 as to the federal requirements as to the golden
25 eagle.

1 I do know that based on what those
2 requirements are when we are made aware of them
3 from the appropriate federal authorities that
4 staff may be offering conditions of certification
5 or a condition of certification based on those
6 federal requirements to ensure that they are
7 carried out. But we don't anticipate that there
8 would be need for further testimony. we already
9 think that the record has already been made from
10 the various parties on the issue.

11 HEARING OFFICER KRAMER: For the other
12 parties is that something that -- and
13 Mr. Hurshman, are you still on the line?

14 MR. HURSHMAN: Yes I am.

15 HEARING OFFICER KRAMER: Do you know, is
16 BLM planning on adding in its Supplemental DIS an
17 additional discussion of golden eagle impacts?

18 MR. HURSHMAN: You know, I don't know
19 exactly what that will say but yes we are.

20 HEARING OFFICER KRAMER: Okay. So then
21 BLM is definitely doing something already within
22 their 30 day more or less comment period that
23 they're talking about.

24 MR. HARRIS: I guess I would like to
25 comment. The issue is compliance with the new

1 federal requirement. But that's certainly not a
2 state law issue that requires reopening the record
3 of this proceeding.

4 MR. BELL: Correct. I thought I made
5 that clear that we didn't anticipate reopening the
6 record or taking additional testimony on this.

7 HEARING OFFICER KRAMER: But you're
8 talking about adding a condition.

9 MR. BELL: Possibly. Depending on what
10 we receive by way of federal guidelines. I agree
11 with Mr. Harris, it's a federal requirement. But
12 it's something that staff might have to take into
13 consideration. We won't know until we see it.

14 MS. BELENKY: Mr. Kramer, may I speak to
15 the point?

16 HEARING OFFICER KRAMER: Go ahead.

17 MS. BELENKY: My understanding is that
18 under the requirement that you show that the
19 project is consistent with all of the other laws
20 and ordinances you would need to show consistency
21 with this law as well. I do think it is relevant
22 and the intervenors have specifically raised
23 issues regarding impacts to golden eagles. And if
24 there is going to be new information coming from
25 staff and submitted then we would like a chance to

1 review it and possibly submit additional testimony
2 as well.

3 HEARING OFFICER KRAMER: Okay. Well
4 when it comes out then. I guess we'll have to
5 play it by ear and consider arguments. There will
6 be a short turnaround for your arguments in favor
7 of additional hearing.

8 I don't think that needs to hold up the
9 preparation of the PMPD, though. Because w could
10 always reopen the record and modify it if we need
11 to.

12 MR. BELL: And again, I would agree with
13 that statement, Mr. Kramer, if we need to. Staff
14 doesn't see the potential for reopening the record
15 on this since we are just talking about
16 clarification for a federal requirement. There i
17 no additional testimony to develop out of that.

18 PRESIDING MEMBER BYRON: Maybe it's
19 premature, Mr. Bell, but do you know? Is this a
20 new federal requirement?

21 MR. BELL: This is a -- it's not new,
22 no. But we're looking at -- I know there's an
23 agency, and maybe Mr. Harris can help me with this
24 because he has been with this longer than I have.
25 Is it Fish and Wildlife that's developing the

1 guidelines?

2 MR. HARRIS: There are some guidelines
3 that are in development but those may be two or
4 three years away. And I guess I want to caution
5 the Commission against the idea of constantly
6 reopening the LORS door here, if you will.

7 So until we see what come out of the
8 federal government, if anything comes out in the
9 time frame, I don't think we can make a
10 determination there.

11 But I do think we need to be cognizant
12 of the idea that the application to consider is
13 the project from the point of time from the filing
14 of the application Notice of Preparation. And you
15 could end up in a circumstance where if you are
16 constantly reopening the record then local
17 governments, for example, could pass new
18 ordinances in the middle of the proceeding and
19 say, look, now it's a scenic highway. Which has
20 happened in one of my case, by the way.

21 So those are legal issues we can brief
22 going forward. But at some point the snapshot in
23 time has to taken so.

24 MR. BELL: Correct. And that's why I
25 keep saying maybe.

1 HEARING OFFICER KRAMER: You know, well
2 and I'm --

3 MR. HARRIS: I appreciate that, Kevin.

4 MR. BASOFIN: Mr. Kramer I'm a little
5 confused if there is proposed mitigation measure
6 that would be memorialized by a Condition of
7 Certification. I think that that's the thing that
8 we should be able to speak to.

9 And I hear that Mr. Bell and Mr. Harris
10 are sort of trying to divorce federal law and
11 state law issues but it sounds like there's a need
12 to comply both at the state and the federal level,
13 at the state level through a Condition of
14 Certification and at the federal level through
15 their process.

16 So if there is a Condition of
17 Certification that includes a mitigation measure I
18 think the parties all ought to be able to speak to
19 it.

20 MR. HARRIS: Well that's the big if. I
21 mean you don't get a Condition of Certification
22 that says, apply with the Federal Clean Air Act.
23 I mean you have to do it either way. And so it
24 very much will depend on what this says.

25 But I'm more worried about the example,

1 I can see it Josh, where somebody comes along and
2 says we need a state law condition that says
3 comply with federal law. And that's clearly
4 redundant.

5 MR. BELL: Correct. And I'm being
6 overly cautious again. I'm somewhat hobbled here
7 in that I'm standing in for Mr. Ratliff and I
8 simply don't have the history with this case that
9 others do.

10 But I was responding to a question about
11 possible additional information being developed.
12 And I'd rather proceed in an abundance of caution
13 with what we might have to, you know, what may be
14 coming rather than represent that we're not
15 expecting anything else to happen.

16 HEARING OFFICER KRAMER: Right. And my
17 bringing it up was meant to be a heads up to the
18 parties that we're aware of it.

19 And on that score we have, if we need
20 to, the Committee has reserved time on its
21 schedule for some other reason that we might want
22 to get together May 3rd. So mark that date.

23 And we're not offering this as an
24 incentive to find reasons to use it or anything of
25 the sort. But because scheduling is such, well it

1 was a recent cause for some consternation in this
2 case even, we are giving you advance warning of a
3 date that you should probably try to set aside on
4 your calendars in case we might need it.

5 Okay, we've discussed BLM's current
6 plans. A question for staff I guess. This is a
7 drafting issue.

8 Mr. Harris I know you've been talking
9 about, and I gather you're probably still going to
10 address in your brief, the question of compliance
11 submittals needing to go to both the BLM and the
12 CEC staff.

13 I don't know if you've come to any
14 conclusion about that. Perhaps you have even had
15 more talks with staff about that.

16 What my office has noticed is that in,
17 for instance, in the Ivanpah Case it requires that
18 the BLM's authorized officer and the CPM receive
19 various things. That's just a general phrase that
20 used in the Modes of Verification of the
21 Conditions.

22 And in a more recent case, the Imperial
23 Valley Case which is also on BLM land, somehow the
24 BLM's authorized officer has dropped out of that
25 equation. And I don't know, we don't know what to

1 make of that. Again, it's unfortunate Mr. Kessler
2 had to go to another conference on another case.

3 But I wanted to see if maybe, Mr. Bell,
4 you have some information about that. Is that a
5 change or just a style difference or --

6 MR. BELL: I do have some information
7 Mr. Kramer. It just so happens that I am the
8 attorney that handles all the compliance issues
9 for the Commission for our compliance staff.

10 And I'm currently reviewing a joint
11 agency MOU between the Commission and BLM that
12 while it's not finalized yet I think it's going to
13 provide for a more consistent approach for all of
14 these cases where there's some overlap in
15 jurisdiction between our agency and BLM.

16 As to specific cases I can't tell you
17 exactly why there's a difference right now. But I
18 can tell you that we're working on something
19 that's going to solve that inconsistency.

20 HEARING OFFICER KRAMER: Do you know
21 when you might be able to give us a definitive
22 recommendation to go one way or another in the
23 cases?

24 MR. BELL: I can tell you right now that
25 the two documents that we're proposing are with

1 BLM with their legal office for review.

2 And we're told that we should hear back
3 from them by Thursday of this week.

4 HEARING OFFICER KRAMER: Okay. If you
5 could file, if you do receive word, file some kind
6 of statement as to your recommendation after that
7 and serve that on all the parties. That would be
8 very helpful.

9 And I'm sure Mr. Harris is going to weigh in
10 one way or another and I suppose I should give him
11 a chance to talk at this point (laughter).

12 MR. HARRIS: I keep leaning into my mic.
13 I just wanted to redirect the proposal we put on
14 the table for Kevin's consideration before, which
15 would be to have a generic term in Conditions
16 like, approving authority.

17 So the document goes to the approving
18 authority and then the BLM and the CEC between
19 themselves could decide whether one or both of
20 them will be part of the approving authority for a
21 particular condition. And so on your compliance
22 matrix you just add another column that says, you
23 know, approving authority, you know, BLM, CEC, you
24 know, both.

25 Because there may be documents that the

1 BLM doesn't want to receive. And then there are
2 other things that even BLM's, you know, like
3 federal land management requirements are going to
4 have to receive. I'll let the two agencies kind
5 of work that out and maybe that's part of the MOU
6 process. But it seems like it almost needs to be
7 done on a condition-by-condition basis.

8 And that's the beauty of defining
9 approving authority that allow the flexibility of
10 the staffs to figure out which ones they want to
11 share.

12 It doesn't completely address the
13 applicant's concern about duplicative review
14 processes but we might be able to narrow things.

15 HEARING OFFICER KRAMER: Okay. Well
16 Mr. Bell if you can get back to us as soon as you,
17 I think for all the cases it would be helpful as
18 we're starting to draft these.

19 MR. BELL: I will.

20 HEARING OFFICER KRAMER: Briefings. Now
21 first of all, I'm informed that we will be getting
22 an expedited transcript. And so it may be
23 available as soon as this Thursday which is an
24 improvement on the former standard which was two
25 full weeks.

1 So keep that in mind in our discussion
2 we will now enter into about a briefing schedule.

3 The current schedule requires the
4 opening briefs this Wednesday, March 24th and
5 reply briefs on April 12th.

6 A motion from the environmental parties,
7 I forget the exact name used, requested April 26th
8 for an opening brief and May 10th for the reply
9 briefs.

10 I think we're willing to extend the
11 briefing schedule somewhat but not to that extent.

12 There would be some value in allowing
13 the parties a little more time to soak in as much
14 as they can today's discussion. Although I
15 emphasize, in the view of the Committee what
16 today's discussion was about was learning the
17 extent to which previously drawn conclusions about
18 the impacts and LORS compliance about the project
19 change because of this reduction in the footprint.
20 Not to reopen old issues that are unrelated to
21 that. Not to put new alternatives on the table.

22 Basically a relatively simple question.
23 What, if anything, changed? And staff reported
24 that in their opinion a couple of changes to their
25 previous conclusions did occur. And the

1 intervenors who have had a chance to test staff's
2 position and offer their own conclusions, which
3 I'm presuming have not changed.

4 So given that, and given that the meat
5 of the proposal, if you will, has been on the
6 table since mid-February and that even these
7 briefings, the current briefing schedule allowed
8 three weeks from when it was communicated to the
9 parties, and that was a standard adopted way back
10 in January.

11 So the Committee is, I think we've been
12 fair. To the extent the parties are expecting
13 that they don't have to start work on their briefs
14 until the Committee says, go, or that they have
15 some kind of right to fully brief all of the
16 issues in both an opening and reply round, we
17 don't accept those premises.

18 What we can do and are willing to do in
19 response to the motion is extend the opening
20 briefs until a week from today. That would be
21 Monday the, is that the 29th. And hold on a
22 minute, let me find the other date. And then the
23 reply briefs until April 16th.

24 That will postpone the issuance of a
25 PMPD a little bit. But I'll point out that, you

1 know that, because of the delay in the federal
2 process that we do not see any particular harm
3 from that.

4 Because as we mentioned we're not going
5 to be able to act in any sort of final way until
6 we know from the federal government what their
7 intentions are.

8 In some of these cases frankly there has
9 been a debate about whether we should put out a
10 PMPD prior to the FEIS. But because this case
11 involves a proposed change to the project and is
12 the sort of the case of first impression in this
13 joint system, we think it's appropriate to put out
14 something to send a signal of, at least, our
15 initial intentions to the other parties including
16 the BLM and to receive responses.

17 And of course once a PMPD goes out then
18 there's a comment period. And the Committee will
19 meet to consider those comments and then issue if
20 necessary a revised decision.

21 So that's our proposed order. Do the
22 parties have any comments on that?

23 MR. HARRIS: Isn't Monday a state
24 holiday, next Monday?

25 HEARING OFFICER KRAMER: No, it's the

1 Wednesday is Cesar Chavez Day.

2 MR. HARRIS: So it's the day of, you
3 don't get the Monday holiday. They put it in the
4 middle of the week for you.

5 HEARING OFFICER KRAMER: That's a
6 holiday I think they, some people tried to take
7 back. They have certainly not made it a Monday
8 holiday.

9 MR. HARRIS: Checking on this.

10 MS. BELENKY: I had one question. When
11 you stated that the parties shouldn't feel that
12 they have a right to fully brief issues both on
13 opening and reply. And then earlier in the back
14 and forth email about the briefing schedule you
15 said that we were, that intervenors who were
16 asking for additional time were free to put
17 anything, any issues they thought they didn't have
18 time to brief into our reply.

19 That's why me -- however what I don't
20 want is an objection to issues that we raise in
21 our reply brief that we feel that we haven't had
22 time to adequately pursue in the openings.

23 And I say that in the context that you
24 opened this today with, which is that it was
25 completely unclear whether this was going to be a

1 reopened hearing about, that would also include
2 the alternatives question, how alternatives would
3 be dealt with and how this new, what they're
4 calling now the M-3 Proposal would relate to the
5 other alternatives that have been discussed in the
6 previous hearings.

7 And I think that that was probably the
8 heart of the intervenors, it was at least one part
9 of heart of intervenors' questions and why we had
10 sought originally to have a prehearing conference.

11 MR. HARRIS: Yeah, I guess I need to
12 respond. The order here that's currently before
13 us and you haven't issued a new order yet. The
14 order that these parties are currently under is
15 very clear about opening briefs and reply briefs
16 and it says the opening briefs are due when
17 they're due.

18 And in regard to reply briefs they're
19 due -- and those briefs are to cover in addition
20 to responding to opening briefs, the reply briefs
21 may address any new issues raised by the evidence
22 presented in the March 22, 2010 Evidentiary
23 Hearing.

24 So the reply briefs are only about M-3.
25 And the idea that you could save for your reply

1 brief things that are not related to M-3 is
2 clearly contrary to your order.

3 And I think it's very important for
4 those of us who have moved heaven and earth to
5 have a brief ready for Wednesday to have the
6 fairness of keeping that same scope. That the
7 reply briefs should be focussed solely on M-3-
8 related issues.

9 HEARING OFFICER KRAMER: Well, okay, but
10 what about the traditional function of briefs?

11 MR. HARRIS: And responding to opening
12 briefs.

13 HEARING OFFICER KRAMER: Right, okay.

14 MR. HARRIS: Yeah, responding. I won't
15 say, what was the word Gloria used today?
16 Rebuttal, we'll call it rebuttal in this case.

17 MS. BELENKY: Well --

18 HEARING OFFICER KRAMER: Retaliation?

19 MR. HARRIS: Retaliatory. No
20 retaliatory briefing, yeah, just rebuttal.

21 HEARING OFFICER KRAMER: Ms. Belenky
22 were you offering an explanation about the concern
23 or were you making some particular request?

24 MS. BELENKY: Well I think our concern
25 is that we understood that there would be more,

1 that there would be allowed discussions of
2 alternatives and now you didn't allow discussion
3 of alternatives in this hearing.

4 And what it means to be about the M-3 is
5 entirely unclear on this record.

6 MR. HARRIS: It's absolutely clear.
7 There was pre-filed testimony on M-3. That is the
8 scope of the new issues. That's it.

9 MS. SMITH: Mr. Kramer this is Gloria.

10 HEARING OFFICER KRAMER: Okay.

11 MS. SMITH: We've discussed, I think
12 we've learned from today's hearing that we have a
13 new alternative on the table with potentially the
14 proposed project.

15 I think we have a better idea that
16 that's the correct assumption. I mean that's how
17 I'm going to operate.

18 Maybe a better way to handle this is to
19 go ahead and give us some time to digest what was
20 done today. Take what we've heard today, take a
21 look at the transcripts and then rather than just
22 giving us two or, you know, a couple of business
23 days and a weekend to craft a opening brief,
24 especially in light of what we heard from the BLM,
25 it just seems like a little more open, the little

1 more chance for a coherent opening brief is going
2 to save us a lot, perhaps some confusion in
3 duplicative and, you know, contentious work on
4 reply.

5 You know, as I mentioned before I have a
6 trial on Friday the 26th and this is just really
7 difficult. And again, given the BLM's schedule I
8 just don't understand why we only picked up a
9 couple of days.

10 I mean I would ask that we get more, a
11 couple of more days at least past March 29th. I
12 just don't see how that would change the PMPD
13 measurably especially in light of the BLM process.
14 This was supposed to sort of go in tandem.

15 HEARING OFFICER KRAMER: Okay. Let me
16 point out, we're going to deliberate in a minute.
17 But let me point out that I guess I don't agree
18 with the characterization that alternatives were
19 not allowed to be discussed today, at least
20 entirely, because questions about comparing this
21 new project to one of the previously analyzed
22 alternatives were allowed.

23 What was rejected was the introduction
24 of a whole new alternative or additional evidence
25 on alternatives that were already, that were not

1 in the project change and had already been
2 discussed at our previous hearings.

3 So with that, did any party, did any
4 other party wish to address this question before
5 we, before the Committee takes a moment to
6 deliberate? And then we, before we do that we'll
7 also hear from our Public Advisor. But any other
8 party first?

9 MR. HARRIS: Yeah, I have one more idea
10 for the Committee's consideration. Again, I think
11 your order is very clear on the scope of opening
12 briefs.

13 But if you want to give them another two
14 days and make it Wednesday of next week and so a
15 full week beyond the current schedule with the
16 understanding that it is everything but M-3. That
17 makes sense to me.

18 But then I'd ask that you hold the 16th
19 date for the reply because it is on that narrow
20 issue. So rather than getting a shorter time
21 frame to get a whole time period there we should
22 make the brief due on 3/31. Okay we'll avoid
23 April Fools Day.

24 HEARING OFFICER KRAMER: Well actually I
25 think April Fools Day is probably the better

1 choice because 3/31 is a holiday.

2 MR. HARRIS: Then appropriately April
3 1st. And then the reply on the 16th. The
4 traditional time frame for reply briefs with the
5 Commission is 10 days. That's 16 days from 4/1 to
6 4/16, and that to me is more than generous.

7 The Committee has been extremely
8 generous with their time here. That would give
9 them an extra week to get this done and then it
10 would get Ms. Smith through her trial.

11 And so would suggest that then 4/1 and
12 4/16 is a compromise.

13 HEARING OFFICER KRAMER: Okay. And
14 Ms. Jennings and please identify yourself for the
15 court reporter and spell your last name for us.

16 MS. JENNINGS: Yes, Jennifer Jennings,
17 Public Advisor for the Energy Commission. And one
18 of my roles is to advise the Commission on how to
19 ensure public participation in its process.

20 And I would like to endorse the request
21 of Ms. Smith in this regard. I think that one of
22 the backgrounds of this is that the applicant
23 submitted another alternative that became the
24 project after the close of the evidentiary record.

25 Nothing was done for another three weeks

1 or so. And now we're here at an Evidentiary
2 Hearing. I don't think it's fair for the public,
3 in this case environmental intervenors to be
4 jammed like this with regard to the briefs.

5 And I do agree with their position that
6 the briefing on this issue of whether it was from
7 the January hearings or whether today's hearing,
8 will be a very awkward process and you'll just
9 raise more arguments and objections than you would
10 solve.

11 So I would, it would be my
12 recommendation that the Commission allow at least
13 until April 5th for the opening briefs.

14 The opening briefs would be on all the
15 subjects. This is assuming that the transcript
16 for today's hearing would be available by this
17 Thursday which would be the 24th.

18 And then give a reasonable time
19 thereafter for reply brief and a reply brief on
20 all the projects in the entire range of the
21 project alternatives.

22 ASSOCIATE MEMBER BOYD: Ms. Jennings
23 what did you think of the applicant's proposed
24 time frame?

25 MS. JENNINGS: Like I said I believe

1 that April 5th would be a more reasonable time
2 frame. That would give them, you know, from
3 Thursday of one week to Monday the following week
4 after that, ten days after the transcripts would
5 be available.

6 ASSOCIATE MEMBER BOYD: Another
7 question. Were you deliberate in your use of the
8 word, alternative project?

9 MS. JENNINGS: You know, it was, I sat
10 through this hearing. I've looked at all the
11 paperwork that's come in since this. I was not
12 here at the Commission during the time of the
13 first hearings and I don't know, you know. It was
14 confusing to me from the addendum that the staff
15 put out exactly what was the context of this
16 hearing and what was, what the project is now.
17 And I finally figured out the project is the
18 Ivanpah Mitigated Number 3 but I don't think that
19 that was particularly clear previously.

20 And frankly, Commissioner Boyd hearing
21 some of the things I've heard about the staff
22 addendum not being out for public comment, I mean
23 that puts even more of a burden on the intervenors
24 that are present here. And I think it's an
25 important, this is an important project and it

1 shouldn't get hung up at this stage over a couple
2 of days whether or not they're going to have an
3 opportunity to brief fully.

4 MR. HARRIS: Yeah, I've got to take
5 issue with the word jamming though because there
6 has not been a jamming on this schedule.

7 The hearing order currently calls for
8 briefs this Wednesday on issues that were closed
9 on January 14th. It'll be nearly, what, two
10 months I guess, three months. The better part of
11 two months. This is the longest briefing schedule
12 I have ever seen.

13 MS. JENNINGS: With all due --

14 MR. HARRIS: Ever. Let me finish --

15 MS. JENNINGS: -- will all due --

16 MR. HARRIS: -- this is the longest.

17 The scope of brief are the issues closed on
18 January 14th and the brief is being requested now
19 from the 22nd of March more the two months later.
20 That's unprecedented in the terms now.

21 If you want to change the scope of the
22 brief as you have suggested now that's a complete
23 shift. This is day 875 in this proceeding. And
24 the word, jam, hardly applies.

25 MS. JENNINGS: May I respond? With all

1 due respect, Mr. Harris, your letter with regard
2 to this mitigated alternative indicated you were
3 going to file a motion to reopen the record. The
4 Evidentiary Record was closed at the time you
5 filed this alternative. And then nothing
6 happened.

7 I mean I looked on the docket. I
8 couldn't find anything happened in that entire
9 three weeks. So at least that period of time, you
10 know, is something, it was on the applicant's
11 shoulders to reopen the record to have everybody
12 discuss what's going to happen next. And nothing
13 happened.

14 MR. HARRIS: Well the Staff Assessment
15 certainly happened during that time period. They
16 didn't write that in the last week.

17 Now the record can be reopened by the
18 Committee upon their own motion.

19 MS. JENNINGS: And that didn't happen
20 either.

21 MR. HARRIS: All right. So the record
22 was reopened by order. It was absolutely reopened
23 by order, by this Committee.

24 So the facts are that the brief that's
25 due this Wednesday by the current schedule are on

1 the limited subjects that were closed on January
2 14th.

3 I'm unaware of ever having nearly two
4 months for briefing anything in the Commission's
5 history. It's absolutely unprecedented in that
6 respect and it's not a jamming of these folks.

7 MR. BASOFIN: Mr. Kramer just a follow
8 up to Ms. Jennings comment. For those of us who
9 are waiting for motions to re-pen the Evidentiary
10 Record and walked into this room and were asked to
11 stipulate it to the applicant's primary piece of
12 evidence coming into the record, I think we felt a
13 little awkward. Because we hadn't ever seen a
14 motion but we didn't feel like we could be
15 stipulating since we're already in this room and
16 the Commissioners' time is being used. And this
17 is a very strange situation to be in. So I
18 certainly concur with Ms. Jennings.

19 MS. BELENKY: Well and I just --

20 MS. SMITH: This is Gloria --

21 MS. BELENKY: Oh, go ahead Gloria.

22 MS. SMITH: Actually everyone knows the
23 Sierra Club has been focussed on alternatives.

24 My brief will not waste the Committee's
25 time rehashing alternatives that for all intents

1 and purposes have been rejected.

2 My opening brief will streamline as much
3 as possible the alternatives that are on the table
4 and what we, what the Sierra Club thinks this
5 Commission should do. Rather than briefing
6 alternatives that were proposed before this one.
7 That serves nobody.

8 So I have been waiting to hear what was
9 said today so that I could put the best possible
10 brief in front of the Committee and not waste
11 anybody's time on alternatives.

12 Now I learned today we have an
13 alternative back and forth on that and that's what
14 I'm going to focus on.

15 It's ridiculous to say that I've had all
16 this time to brief alternatives that were raised
17 back in January. Why would I waste the
18 Committee's time with that when we know what the
19 alternative is now.

20 I just wanted the full opportunity to do
21 the best job on my opening and closing briefs on
22 this new proposal.

23 I mean that's just the thing that makes
24 the most sense for everyone's time and resources.

25 MR. BELL: Mr. Kramer.

1 HEARING OFFICER KRAMER: Yes.

2 Ms. Belenky and then Mr. Bell.

3 MR. BELL: Thank you.

4 MS. BELENKY: Well I just wanted to add
5 that in, that I think that was extremely confusing
6 as well is that the addendum from the staff
7 basically creates a new proposed project.

8 And in order to brief anything about
9 this project we need to brief it, especially on
10 alternatives and impacts, you need to brief
11 against the proposed project. What are the
12 impacts of the proposed project? What are
13 alternatives to those impacts?

14 And without having a stable project it
15 is very difficult to provide briefing.

16 HEARING OFFICER KRAMER: Mr. Bell.

17 MR. BELL: Thank you Mr. Kramer.

18 Believe it or not I'm not going to add to this
19 discussion much. I think it's starting to gather
20 steam and it's probably time to turn the fire down
21 a little bit.

22 I think that the Committee has proposed
23 a very generous schedule for briefing.

24 My understanding of this and I don't
25 have the history that many others do in this case

1 so I don't bear the burden of those frustrations
2 as some parties may feel on this.

3 However an opening brief due April 1st
4 for issues that, covering only issues that have
5 been closed since, well for a couple of months
6 now, seems reasonable.

7 Reply briefs that would address other
8 parties' issues that are raised in those opening
9 briefs along with any issues that were discussed
10 today of April 16th also to me and to staff
11 appears to be reasonable.

12 And I think that at this time this might
13 be a good time to move on and just make a decision
14 as to what the briefing schedule is going to be.

15 Staff's position is that the modified
16 briefing schedule giving all the parties
17 additional time to prepare that opening brief due
18 April 1st and reply brief due April 16th is very
19 reasonable.

20 HEARING OFFICER KRAMER: Okay, give us a
21 minute. Okay. Opening briefs will be due on
22 April 1st. To the extent you can please feel free
23 to address the, what Mr. Rubenstein in his letter
24 to the Air District called the Revised Project I
25 think.

1 It would suggest to me that the
2 applicant has, although in their letter to us they
3 did say that they still think the full project
4 would be acceptable.

5 But Mr. Harris, is it fair to say that
6 the applicant is now requesting approval of the
7 modified project?

8 MR. HARRIS: Yeah. We proposed
9 mitigation that's called Mitigated 3 because we
10 removed certain areas that we thought satisfied
11 the staff's concerns about rare plants. So, yeah.

12 HEARING OFFICER KRAMER: Okay. So now
13 let's consider Mitigated 3 the project now. And
14 we don't have to, we don't have to think about the
15 originally proposed project as at least the main
16 focus of the analysis.

17 So, opening briefs due April 1st. To
18 the extent you can talk about Mitigated 3 at that
19 time please do so.

20 And then reply briefs due on April 16th
21 with whatever you were not able to marshal by way
22 of thoughts about Mitigated 3 and anything you're
23 saying by way of reply to the other points that
24 the parties make.

25 A lot of the issues really haven't

1 changed, traffic, waste management, and so you
2 should be able to fully cover those.

3 And as far as the nature of this change
4 and the idea that it's made it hard for people to
5 start marshalling their thoughts let me just point
6 out that this project is a reduced version of the
7 project that was discussed at length in January.

8 So there's no, nobody has had to go
9 outside the bounds of that to conduct new
10 analysis. In effect what you merely need to do is
11 refine the analysis that you hopefully have, at
12 least, been sketching out in your minds, maybe
13 during your nightmares, maybe in the shower,
14 wherever great ideas come to you.

15 But my point is that it's new only in
16 that it's different. But it's not, none of the
17 underlying information is really new to us at this
18 point. We've discussed it at length.

19 So that is the order. I will try to
20 circulate the revised exhibit list tomorrow or the
21 next day and you can use that for your exhibit
22 numbers. Please let me know if you see a
23 discrepancy on there.

24 What we're still wrestling with is the
25 accuracy of the descriptions of the documents. So

1 if you see something that just, you know, looks
2 like we've missed it by a mile, I'm open to
3 helpful edits to the exhibit list.

4 I believe that covers the issues that
5 were on the table for rulings.

6 We have one last order of business. It
7 should go quickly. That would be public comment.

8 Do we have anybody --

9 MR. BASOFIN: Mr. Kramer I'm sorry
10 before you go to the public. Now that we've
11 gotten through the scheduling issues. I'm
12 wondering, are you going to issue a new schedule?

13 And I'm particularly thinking about I
14 don't have a lot of familiarity with the Energy
15 Commission's process so my understanding is that
16 there is a brief hearing on the PMPD?

17 And I'm wondering if we need to be
18 reserving dates for that. It would be really
19 helpful if we had a revised schedule so we knew
20 going out a few months what's happening.

21 HEARING OFFICER KRAMER: Yeah, that's an
22 exercise that we've been going through on the
23 various committees that I work with and that my
24 colleagues do. And I'll see what we can do about
25 predicting dates. Probably what I'll do is just

1 send out an email saying, hold on to these dates
2 on your calendars.

3 You know, they'll be premised on the
4 assumption that the PMPD comes out at a particular
5 time. And then ultimately we're going to have to
6 wait before we go to the full Commission.
7 Certainly until we know more precisely what our
8 federal partners are intending to do.

9 So it's a guess. But I agree. And in
10 our other cases we have been trying to tell
11 people, you know, what we're, what our current
12 schedule is just so they have a heads-up.
13 Because, you know, our Commissioners are very busy
14 on these siting cases and on other policy-making
15 matters and when we can get time on their
16 calendars we like to make the best use of it, that
17 we can.

18 So public comment. Is there anybody on
19 the telephone? There are no members of the public
20 in this room with us who wishes to make a public
21 comment?

22 Is there anybody still left on the
23 phone? Gloria, are you there?

24 MS. SMITH: Yes.

25 HEARING OFFICER KRAMER: Okay, good.

1 Just making sure the phone is working.

2 Okay, is there any other business we
3 need to conduct today before we adjourn?

4 PRESIDING MEMBER BYRON: Mr. Kramer. I
5 just want to characterize a couple of things you
6 may or may not be aware of.

7 While we were working here this
8 afternoon the Governor as well as Secretary
9 Salazar were out in the desert, I believe near
10 Harper Lake this afternoon, signing new
11 legislation that expedites the siting.

12 Ms. Chew tells me the law is effective
13 immediately. It helps to conserve land for
14 endangered species and developers.

15 I also understands it changes some
16 aspects of the ex parte rule which we will
17 endeavor to understand here closely.

18 I believe that it allows Commissioners
19 to spend more time in consultation with other
20 agencies such as the Bureau of Land Management.

21 And I guess the reason I bring that up
22 is that there are a lot of moving parts here.

23 There are many projects that are under
24 consideration by this Commission.

25 I'd like to thank Commissioner Boyd for

1 his time today because I know he has many of those
2 projects. In fact, I don't believe any
3 Commissioners were present at the signing of this
4 legislation because they were tied up in cases.

5 I'd also like to extend my appreciation
6 to the applicant for providing us with a
7 responsive reduced footprint based upon the
8 Evidentiary Hearing that we conducted --

9 HEARING OFFICER KRAMER: Two months ago.

10 PRESIDING MEMBER BYRON: -- two months
11 ago. And I'd like to make it clear to the parties
12 that the reason we continue to push on schedule
13 and to limit the scope of what we're looking for
14 in your briefs is so that we can move towards a
15 proposed, Presiding Members Proposed Decision in a
16 timely way.

17 Mr. Kramer is very calm and relaxed. He
18 has a lot of responsibility on his shoulders.

19 Commissioner Boyd you want anything else
20 to say?

21 ASSOCIATE MEMBER BOYD: Well a word or
22 two. Thanks everybody for all that you've done to
23 try to move this along.

24 As Commissioner Byron indicated, these
25 are tough times. Particularly tough on the staff

1 of this agency which many of you know. We don't
2 like the fact that some of these things take so
3 long. We don't have a lot of choice in this new
4 area with more partners and, you know, with the
5 record caseload we have.

6 And, you know, actually, I probably
7 shouldn't use the phrase, plowing new ground, when
8 talking about biological things but in any event
9 there are some new and additional territories
10 we're into.

11 And it's tough on the Commissioners as
12 well because there's a lot of question about the
13 relevance of the Energy Commission and this siting
14 process.

15 There are debates on reorganization
16 proposals. Those of you who think the siting
17 process is worthy of the citizens of California
18 should pay attention to some of that.

19 But nonetheless we learn by doing. And
20 yes, a few barriers have been knocked down where
21 we can actually talk to our friends at BLM and
22 even in the state agencies now instead of that
23 being deemed an ex parte communication which
24 hopefully will be helpful.

25 Strangely enough our own staff is still

1 off-limits to us but, which has been real strange
2 to me in the years I've been here as compared to a
3 long list of other places I've worked that were
4 regulatory in nature but so be it.

5 Anyway, I can tell all of us are
6 strained and everybody take a deep breath and
7 we'll keep pushing on this. Thanks.

8 PRESIDING MEMBER BYRON: Okay. Thank
9 you Commissioner Boyd. All the parties thank you
10 very much for being here today. I know it was
11 difficult on short notice.

12 And I believe --

13 HEARING OFFICER KRAMER: We're
14 adjourned.

15 PRESIDING MEMBER BYRON: -- we're
16 adjourned. Thank you.

17 (Whereupon, at 4:16 p.m., the
18 Evidentiary Hearing was adjourned.)

19 --o0o--

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March, 2010.

JOHN COTA

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345