

COMMITTEE MEMBERS PRESENT

Robert Pernel, Commissioner, Presiding Member

Al Garcia, Commissioner Advisor

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Caryn Holmes, Staff Counsel

Kristy Chew, Project Manager

Melinda Dorin

APPLICANT

Steven Cohn
Assistant General Counsel
SMUD

Colin Taylor
Director, Cosumnes Power Project
SMUD

Jane E. Luckhardt
Downey, Brand, Seymour & Rohwer

INTERVENOR

Kathryn Peasha

I N D E X

	Page
Proceedings	1
Opening Comments and Introductions	1
Status Reports	
Steven M. Cohn, SMUD	4
Staff	28
Kathryn Peasha, Intervenor	46
Public Comment	
Karen French	50
Matt Kelly, Sacramento-Sierra Building Trades Council	53
Sandra Benson, VanBourg Law Firm	56
Closing Comments	60
Adjournment	62
Certificate of Reporter	63

P R O C E E D I N G S

1
2 PRESIDING MEMBER PERNELL: All right,
3 we're on the record.

4 Good afternoon. This is the second
5 Status Conference on the proposed Cosumnes Power
6 Plant Project. The Committee scheduled today's
7 event by notice dated December 13th, '02. My name
8 is Commissioner Robert Pernel, I'm the Presiding
9 Member. Commissioner Rosenfeld is our Associate
10 member, who was unable to be here.

11 To my right is our Hearing Officer.
12 He's standing in for our Hearing Officer, Mr.
13 Valkosky, and to my left is my advisor, Al Garcia.

14 At this time I will ask the participants
15 to introduce themselves and their team, starting
16 with the Applicant.

17 MR. COHN: Good afternoon, Commissioner,
18 Mr. Valkosky, Mr. Garcia. Steve Cohn, appearing
19 on behalf of the Applicant, Sacramento Municipal
20 Utility District, or SMUD. And with me today is
21 Colin Taylor, our Project Director; Kevin Hudson,
22 our licensing Project Manager; Jane Luckhardt,
23 who's our outside counsel. We also have John
24 Carrier from CH2MHill, and with us today also is
25 Jim Shetler, our Assistant General Manager, and

1 our General Counsel, Arlen Orchard.

2 PRESIDING MEMBER PERNELL: Welcome.

3 MR. COHN: Thank you.

4 PRESIDING MEMBER PERNELL: Staff,
5 please.

6 MS. CHEW: Good afternoon. I'm Kristy
7 Chew, the Energy Commission's Project Manager for
8 this project. To my left is Caryn Holmes, Staff
9 attorney, and to the left of her is Melinda Dorin,
10 Staff biologist.

11 PRESIDING MEMBER PERNELL: Thank you.

12 Intervenors. Are there any Intervenors
13 -- would you come forward and introduce yourself,
14 please, for the record?

15 MS. PEASHA: Hi. My name is Kathryn --

16 PRESIDING MEMBER PERNELL: You have to
17 come up to the mic, ma'am.

18 MS. PEASHA: Oh, I'm sorry. My name is
19 Kathryn Peasha, I'm an Intervenor regarding the
20 CPP.

21 PRESIDING MEMBER PERNELL: Okay. Thank
22 you. Welcome.

23 Are there anyone on the line that wants
24 to identify themselves?

25 We have a Joe Pennington on the line,

1 listening only.

2 Public Advisor's Office. Anyone from
3 the Public Advisor's Office? Not here yet.

4 The purpose of today's conference is to
5 hear from the parties regarding the status of
6 various pieces of information identified in the
7 November report, and to assess the scheduling of
8 future events in these proceedings. Applicant and
9 Staff filed updated status reports on January
10 10th. These reports will be served as the basis
11 for today's discussion.

12 At this time I would like to turn the
13 hearing over to our Hearing Officer, Mr. Valkosky.

14 HEARING OFFICER VALKOSKY: Thank you,
15 Commissioner Pernell.

16 The way we'll proceed today is we'll
17 first provide Applicant, followed by Staff, and
18 then the Intervenors, an opportunity to summarize
19 their view of the case, make any presentations
20 regarding case status, and tell the Committee
21 their recommendations for future scheduling. In
22 this regard, the parties should indicate the
23 desirability of, and timeframe for, Staff
24 releasing a partial Final Staff Assessment, as has
25 been suggested by Applicant.

1 In concert with that, the Committee
2 would like to hear a suggested timeframe for the
3 Pre-Hearing Conference, and the Committee is also
4 -- and hearing from the parties regarding the
5 extent of progress thus far in obtaining the
6 Federal Biological Opinion and associated 404
7 permit. Following these presentations, we'll
8 provide an opportunity for general public comment.

9 Is there any question on our procedure?

10 Okay. With that, Mr. Cohn.

11 MR. COHN: Actually, I'm going to turn
12 it over to Colin Taylor for our presentation.

13 MR. TAYLOR: Good afternoon. Can I dim
14 the lights, or --

15 PRESIDING MEMBER PERNELL: That is done
16 -- there you go.

17 MR. TAYLOR: I apologize for the
18 quality. It's not terrific, but this is legible,
19 and you do have copies of this presentation in
20 front of you.

21 This is a major project for SMUD. It's
22 actually bigger in output than Rancho Seco, and
23 it's the biggest project since Rancho Seco. It's
24 actually a little bit bigger than Upper American
25 River project, which is our hydroelectric project.

1 This project is being built to serve the
2 local area. It's not a merchant plant. It
3 doesn't have a guaranteed output like a merchant
4 plant does. We have a guaranteed output, a
5 guaranteed market, that's our own customers. And
6 we plan to be online in the spring of '05.

7 I'm going to go through the project
8 status, the importance of the schedule, the
9 documents, and our responses to the agency
10 requests. In fact, we believe we're not perfect,
11 but we've made a good effort at being, we're
12 trying to be responsive to the agencies. We will
13 go into the steps taken that we'd like to take to
14 speed the permits, and a proposal for the
15 remainder of the proceeding.

16 But for Biology, all the subject areas
17 are ready for Staff to complete the FSA. Except
18 for dotting a few "i's" and crossing a few "t's",
19 we think we're complete. We don't have any
20 outstanding data requests, except for Biology.
21 And the Final Determination of Compliance from the
22 air district has been issued on October the 21st.
23 SMUD's generation planning includes CPP, and
24 SMUD's generation planning looks for a commercial
25 operation date in the summer of 2005. And we need

1 this for local voltage support and energy supply.

2 We have some power purchase agreements
3 which actually we're, we're actually entering into
4 to replace power from the closed Rancho Seco
5 plant, and some of these expire in the summer of
6 2005, and this plant will replace them. So what
7 we're saying is we really want to get this plant
8 online to meet the summer load of 2005.

9 We've made significant commitments to
10 this project. We've spent at least \$150 million
11 on this project to date. We have all the major
12 equipment, the gas turbine, the steam turbine, the
13 boilers, and most of the balance of the plant
14 equipment. And that equipment is scheduled to be
15 delivered. We have hard delivery dates, which
16 I'll get into later. Some of the major equipment,
17 in fact, arrives in June 2003, so you can readily
18 see the importance of this project to us, and
19 getting a license.

20 We have proceeded with engineering
21 design. We have to do this to meet the online
22 date of summer of 2005. So backing up from that,
23 we had to do the engineering, and the engineering
24 is pretty much complete. We have initiated the
25 bidding process on the project construction, and

1 we'd like to start work. Right now, we're
2 actually having to delay this. We originally
3 anticipated starting site work in the
4 February/March timeframe of this year, and we are
5 now actually already delaying those bids.

6 Given the withdrawal of some of these
7 other projects, our engineers are telling us that
8 we actually need this plant for regional voltage
9 support, so this plant is not just important to
10 SMUD; it's important to this whole area. To meet
11 summer of 2005, we need some actions from SMUD and
12 the permitting agencies. We would like to give
13 notice to proceed to our contractors by May of
14 2003. We'd like a CEC decision and federal
15 approval by early June of 2003.

16 I'll get into the issue about Biology in
17 just a second, with a schedule. But the biology
18 resource avoidance requires two summer
19 construction windows for the pipeline, both 2003
20 and 2004. And we need to start testing the
21 turbines in the fall of 2004 to have the plant up
22 and operating for the summer peak of 2005.

23 Again, I apologize for the quality of
24 this overhead, but you do have a, I believe, a
25 copy of this in front of you. What we're looking

1 at is an FSA here. We'd like the FSA around the
2 3rd of February, if not earlier. And given the
3 process time, a minimum process time of 126 days
4 to go through the hearings, we'd expect the final
5 decision in June of '03, the beginning of June.
6 Here you can see the major equipment that we have
7 on order and will be delivered. The boiler is
8 being delivered in the July timeframe of this
9 year.

10 The next slide here is two seasons for
11 the gas pipeline, and the season is constrained at
12 both ends by biological reasons, so we would like
13 to start immediately, June, and finish the first
14 season's work by the end of September '03, and
15 then come back and start the second season and be
16 through in October of '04, to enable us to start
17 testing our plant.

18 This is the construction schedule below
19 here. We need to do the foundations first, of
20 course, to enable us to install the equipment, so
21 we'd like to start on construction as soon as we
22 can and be ready to receive the boiler equipment,
23 which will be delivered in the July/August
24 timeframe. And then this shows the rest of the
25 aboveground package.

1 If we get gas in October of '04, we will
2 want to start testing and actually first turbine
3 roll the turbine in December '04, with the project
4 online in May of '05.

5 I'd like to show you what happens if we
6 get delayed further. If the process time extends
7 out, say beyond a month or so, to 155 days, this
8 constrains our first season on the pipeline to
9 just two or three months. And then we'd be hard
10 pushed to finish that in season two, to enable us
11 to first roll the turbine in January, and we'd
12 slip about a month. So the issue really is this
13 is a day-to-day slip between here and the plant
14 online. It actually gets a lot worse than that,
15 or it could, potentially. If we don't start work
16 this year on the pipeline, we will not have enough
17 time to complete the gas pipeline in the second
18 season, that is, between May and October of '04,
19 and that could potentially slip this whole project
20 one complete year.

21 So this of huge importance to us. We
22 really want to get into the field and start the
23 pipeline as soon as we can, to get these two
24 seasons underway.

25 And incidentally, too, this will show

1 you, actually, if the boiler is being delivered
2 here and the foundations are not started, we'd
3 have nowhere to put the boiler except lay it down.
4 Which means we would double handle that equipment.

5 So what's holding us up? We need some
6 approvals from the various agencies, from the Army
7 Corps of Engineers, we need acceptance of the
8 wetland delineation from the Army Corps of
9 Engineers. Initiation of Section 7, that's the
10 consultation with the U.S. Fish and Wildlife
11 Service.

12 I'd like to tell you where we've been
13 and what we've done. We started this a long time
14 ago. We had pre-consult consultation meetings
15 with U.S. Fish and wildlife in March of 2001.
16 We've been working with the federal agencies for
17 almost two years. We sent a letter to the Army
18 Corps of Engineers in June, and I won't go through
19 this except to say that we've had, we have
20 actually offered up an enormous amount of
21 equipment in various forms to the various
22 agencies.

23 This list actually goes on. You can see
24 the delivery of some of the information to Army
25 Corps of Engineers, Fish and Wildlife, in May, in

1 June, in August, in October, in November,
2 December. We've had site visits, we have received
3 some letters from the Army Corps commenting on
4 submittals, and actually the SMUD management have
5 placed some calls to the Army Corps to see if we
6 can get a higher priority.

7 We supplied additional information to
8 the Corps on January the 8th, and as of today we
9 have not heard whether that is complete or
10 acceptable. We actually asked the Corps if they
11 would go the field with us immediately and check
12 the information, and to see if it would be
13 acceptable. We have not heard from them.

14 I would like to get into a couple of
15 details, just quickly, on how responsive we've
16 been to Staff and to the federal agencies.

17 PRESIDING MEMBER PERNELL: Mr. Taylor, a
18 quick question. You said you haven't heard from
19 the Army Corps of Engineers since --

20 MR. TAYLOR: We delivered the material
21 on the 8th of January, and I actually put in a
22 call to Mike Finan, and he said he'd get back to
23 me before today and let me know if, in fact, the
24 material we gave them was acceptable.

25 I think what we've done is we've, we've

1 tried to be totally responsive. We, we've met
2 with the Army Corps and Fish and Wildlife, as I've
3 spoken before. And they've indicated directions
4 in which to proceed, and initially we did think
5 there was some major progress on the pipeline and
6 we focused on the site itself. And then in
7 subsequent meetings, it seemed like the focus
8 shifted to the pipeline, and we've had to do an
9 enormous amount of additional survey work and work
10 actually onsite to get the information that the
11 Corps and Fish and Wildlife wanted.

12 This is a typical aerial, well this is
13 an aerial of the pipeline design. It's not
14 terribly clear because it's not focused. What I
15 wanted to explain was just that this is the
16 railroad track, and the pipeline was coming all
17 down through here. And there are some vernal
18 pools around here, and some elderberry bushes.
19 And both Staff and Fish and Wildlife were
20 concerned about the fairy shrimp and the
21 elderberry beetle, so we agreed to reroute the
22 line across to this area here. This,
23 incidentally, is pretty well developed down here,
24 is being developed. So we, this is somewhat of a
25 difficult route down through here. There are some

1 new subdivisions being built in here, and it's
2 quite a complicated route. And --

3 HEARING OFFICER VALKOSKY: Mr. Taylor,
4 your references are to the Franklin Boulevard
5 route?

6 MR. TAYLOR: Yes.

7 HEARING OFFICER VALKOSKY: Okay, for the
8 record. Thank you.

9 MR. TAYLOR: Yeah. The line was going
10 down the Pacific railroad track and then across,
11 traveling eastwards, across Franklin Boulevard,
12 where it crosses the railroad track. What we've
13 done is we paved east out to Elk Grove Boulevard,
14 across Franklin Boulevard, and then down south at
15 an angle, alongside Franklin Boulevard. I'd like
16 to say this is going to be pretty highly developed
17 down here, so we have quite a few questions with
18 the Elk Grove city about this, which we are, which
19 we're resolving.

20 But this is an example of what we've
21 done. We've made some pretty major changes, and,
22 for whatever reason, this has cost us a fair
23 amount of time.

24 This is actually the site. You get a
25 picture of this. This is Clay East Road along

1 here. Rancho Seco is to the top of this picture.
2 The site is to the top of the picture here. This
3 is the proposed laydown area. We originally were
4 going to put the laydown area straight across
5 here, but because of some environmental concerns
6 down here with these swales, we've actually
7 modified the laydown area to be in these two
8 shapes here, to avoid any spaces in these two
9 swales. So I believe that we, we've worked very
10 hard and very long with the Staff to come up with
11 these alternatives, which we hope are acceptable.

12 These are the areas of study that we
13 have completed, all with the exception of the one
14 which is the second on the left, Biological
15 Resources. So we believe that Staff can write the
16 other sections of the FSA, that's what we're
17 asking for in this hearing, and what we'd like to
18 do is bring in Biology as soon as we can get those
19 areas resolved.

20 So to answer the questions raised by the
21 Hearing Officer at the beginning of this, what
22 we'd like to do is bifurcate the FSA and set a
23 date for part one. And my final slide shows those
24 dates. We'd like to do this as soon as possible,
25 as soon in February as we can get to it, or

1 earlier, if we can. So we'd like, as I mentioned
2 several times, to proceed with all the areas
3 except Biology. The FDOC was issued by SMAQMD in
4 October. And one of the reasons we want the FSA
5 to be issued is we're already submitting
6 compliance information to the compliance division
7 of the CEC. For example, we've submitted
8 information on the cooling tower, but it's really
9 being held up because we don't have all the final
10 information, the FSA. So most of the engineering
11 that we've done now is based on the PSA. So we'd
12 like to firm up the FSA so that we're absolutely
13 sure we're not ordering equipment which we can't
14 use.

15 We'd like to catch up with Biology as
16 soon as we can. We're actually working with the
17 Army Corps and we'd like your help. We'd like to
18 see if we can get some help from the Energy
19 Commission and anybody else that can help us to
20 expedite that process.

21 This is what we'd like to do. We'd like
22 to set the Pre-Hearing Conference date, the date
23 is on my last page, which is next. We'd like to
24 set the Evidentiary Hearing dates on all those
25 subjects that I showed you on the list a moment

1 ago, to allow time for preparation of the
2 Presiding Member's Proposed Decision. And we'd
3 like to request assistance from the Commission to
4 call the Army Corps, and potentially U.S. Fish and
5 Wildlife Service, to request priority.

6 And these are our proposals. One thing
7 I would like to stress is that we have a site
8 visit before the Pre-Hearing Conference. We would
9 like the Commissioners to look at several areas, a
10 couple of them that I showed you, that would be
11 most interesting and informative, I believe, for
12 the Commission to look at. It's very hard to
13 describe Franklin Boulevard. It's very hard to
14 describe what we avoided. It's very easy to look
15 at it and get a really good impression of what the
16 issue really is. And also, in the laydown area,
17 which is to the south of the plant.

18 So we'd like the FSA without the Biology
19 section, but with everything else, especially
20 Water, the week of the 3rd of February. Pre-
21 Hearing Conference we'd like the week of February
22 the 10th or 17th. And go ahead with the
23 Evidentiary Hearings, except Biology, the week of
24 the 3rd of March. The Biology hearing, if we have
25 the information, by March of 2003. And the

1 Presiding Member's Proposed Decision then would be
2 April the 7th, public comments May 1, the revised
3 Presiding Member's Decision, then, May 19th, and
4 the Business Meeting is available on June the 4th
5 for a decision. And that would allow us to go and
6 follow the schedule that I showed you first in my
7 presentation.

8 That, sir, concludes my presentation.

9 PRESIDING MEMBER PERNELL: Thank you,
10 Mr. Taylor. I'm sure we have some questions for
11 you.

12 HEARING OFFICER VALKOSKY: Yeah, I've
13 got a couple of observations.

14 One, and again, it's, because I'm only
15 pinch-hitting here, I would expect the Committee
16 would not make any decision on dates today, but
17 rather that would be incorporated in an order when
18 Mr. Shean returns. I do, I do have some
19 questions, and Mr. Taylor or Mr. Cohn, I'm not
20 sure who can address them best.

21 But as I read Staff's Status Report,
22 they seem to be talking about a Part 2 of the FSA,
23 which would, in addition to Biology, contain
24 Alternatives and Soil and Water. What is your
25 position on that?

1 MR. COHN: Our, position is that Part 2
2 should be just Biology. We feel we've submitted
3 all the information required for the Soils and
4 Water section at least several weeks ago, and the
5 understanding was that the FSA should be available
6 within 30 days after the last submitted
7 information. The one exception in that would be
8 the Biology information.

9 HEARING OFFICER VALKOSKY: Okay. So
10 basically --

11 MR. COHN: That's our feeling is that
12 the reasons for delaying the Water and the Soils
13 section are not lack of data from the Applicant.
14 There may be some internal discussions going on in
15 Staff, but we've submitted all the data that they
16 need for everything except Biology.

17 HEARING OFFICER VALKOSKY: Okay, Mr.
18 Cohn. So basically, you're in disagreement with
19 Staff on that point. Right?

20 MR. COHN: Correct.

21 HEARING OFFICER VALKOSKY: All right.
22 You've also indicated that you would like to see
23 Part 1 of the FSA during the week of February 3rd.
24 You know, this creates a certain amount of
25 undesirable ambiguity because typically, an event

1 such as the Pre-Hearing Conference would be
2 scheduled, for example, a week or ten days after
3 issuance --

4 MR. COHN: Correct.

5 HEARING OFFICER VALKOSKY: -- of the
6 FSA. And were the Committee to do this at the
7 same time, we can't exactly say it's going to
8 happen this week, and the next event will happen
9 sometime this week. We need dates certain, so --

10 MR. COHN: Well, our preference,
11 obviously, would be February 3rd. And, you know,
12 we put the week up to show some flexibility. We
13 weren't sure whether --

14 HEARING OFFICER VALKOSKY: Right. So --

15 MR. COHN: -- could do it on the third
16 or not.

17 HEARING OFFICER VALKOSKY: So
18 fundamentally, if I could extend that out, that
19 could also read February 7th, which I guess is the
20 end of that week. Is that, is that correct?

21 MR. COHN: That, that would be the
22 Friday of that week, yes.

23 HEARING OFFICER VALKOSKY: So that would
24 be the no later than date.

25 MR. COHN: Well, our preference would be

1 no later than the third, but if the seventh
2 certainly --

3 HEARING OFFICER VALKOSKY: Right. No,
4 I'm talking about feasibility, not preference at
5 this point. Okay. I understand your preference.

6 Okay. And since I raised that question,
7 what do you think -- I take it from your chart you
8 would view roughly a week as an acceptable
9 timeframe between the issuance of the partial FSA
10 and the Pre-Hearing Conference?

11 MR. COHN: That would be the minimum, I
12 think.

13 HEARING OFFICER VALKOSKY: Okay, a week
14 minimum. Okay. And then --

15 MR. COHN: And we weren't sure what
16 dates were available for the Committee, so that's
17 why we wanted to --

18 HEARING OFFICER VALKOSKY: Right. No,
19 I --

20 MR. COHN: -- leave some flexibility.

21 HEARING OFFICER VALKOSKY: -- understand
22 that. And I believe there are two holidays in
23 February, too --

24 MR. COHN: Right.

25 HEARING OFFICER VALKOSKY: -- which

1 would shorten things up. Okay. So between the
2 FSA and the Pre-Hearing Conference, you would
3 recommend a week minimum. Between the Pre-Hearing
4 Conference and the Evidentiary Hearing, it looks
5 like two weeks. Is that --

6 MR. COHN: Two weeks.

7 HEARING OFFICER VALKOSKY: Two weeks
8 minimum?

9 MR. COHN: Well, I think ten days is the
10 minimum, I believe, in the regulations.

11 HEARING OFFICER VALKOSKY: So you would
12 suggest roughly a 10 to 14 day period. Is that --

13 MR. COHN: Correct.

14 HEARING OFFICER VALKOSKY: That's
15 correct. Okay.

16 All right. One of the points that, and
17 again, being new to this case it may be resolved,
18 it may not be, but it occurred to me, what the
19 nature of the information that you would view as
20 acceptable for Staff to proceed with the FSA.
21 Now, the possibilities, and I'm talking about the
22 information submitted to the federal authorities.
23 The possibilities, to my mind, would be the
24 information is deemed accepted by the federal
25 authorities so they can start their Biological

1 consult, or something else, such as a draft or
2 final permit from the federal authorities.

3 Am I correct in understanding that in
4 your view, Staff could do their FSA section on
5 Biology based on the information that was accepted
6 by the federal authorities to commence their
7 consult?

8 MR. COHN: Or that will be, or will be.
9 It has not yet been, but that's correct. And I
10 think we have agreement --

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. COHN: -- from Staff in that regard.

13 HEARING OFFICER VALKOSKY: Now, how
14 about the nature of the information in that vein,
15 with those three possibilities, that you would
16 view as suitable for going to hearings? Is it
17 that same information, or is it a draft federal
18 permit, or is it a final federal permit?

19 MR. COHN: Let me ask Jane Luckhardt to
20 come up. She wanted to speak on the Biology
21 issues, and since we're into that I'd like Jane to
22 speak to that.

23 MS. LUCKHARDT: I think as long as the
24 Staff has been, the Fish and Wildlife Service has
25 indicated to Staff that they have accepted the

1 mitigation. And what that means is that the
2 Biological Assessment is complete. And that's the
3 document that goes from Army Corps to U.S. Fish
4 and Wildlife Service, and that delineates all of
5 the mitigations so that Staff can include that in
6 the FSA, and it's also what we believe we need to
7 go to hearing on, because you can easily add a
8 condition that says you have to have your Section
9 7 prior to starting construction, and we do,
10 anyway, in accordance with federal law, and in
11 accordance with the Endangered Species Act.

12 As far as Army Corps and the 404 permit
13 goes, once we have the wetland delineation, we
14 should be able to, it's the same type of
15 situation. Staff should be able to go forward
16 with their FSA, which is what they're also waiting
17 for at this point, and we should be able to go to
18 hearings based on that information, because that
19 would be a completed document with all the
20 information that Army Corps would need to go
21 forward.

22 HEARING OFFICER VALKOSKY: But that is
23 different from, I certainly have seen a lot of
24 creatures called the draft federal permit, which
25 for all intents and purposes is final except for

1 the passing of a review period, or something of
2 that nature. So you're saying you don't need a
3 draft permit, but you --

4 MS. LUCKHARDT: We don't believe we need
5 the draft permits --

6 HEARING OFFICER VALKOSKY: Okay.

7 MS. LUCKHARDT: -- to go forward. We
8 believe that we can go forward with the
9 information, as long as it's been accepted and
10 that that has been communicated from the federal
11 agency to Staff.

12 HEARING OFFICER VALKOSKY: Okay. Thank
13 you. Since you're there, I mean, I --

14 PRESIDING MEMBER PERNELL: You might
15 want Staff to -- that chair --

16 (Laughter.)

17 HEARING OFFICER VALKOSKY: I am correct,
18 am I not, that you could not begin construction
19 until you've gotten, you finish the Biological
20 consultation and you've gotten the 404 permit; is
21 that correct?

22 MS. LUCKHARDT: That's correct. We
23 cannot start construction without the 404 or the
24 Biological opinion --

25 HEARING OFFICER VALKOSKY: Okay.

1 MS. LUCKHARDT: -- from Fish and
2 Wildlife.

3 HEARING OFFICER VALKOSKY: In terms of
4 time, how far you from getting the Biological
5 opinion?

6 MS. LUCKHARDT: We are meeting with
7 management of Fish and Wildlife tomorrow to
8 expedite. Because Army Corps has not initiated a
9 consultation so that we need an expedited
10 processing, we've been working with Fish and
11 Wildlife. They have actually been very
12 cooperative in reviewing draft, we call that the
13 Biological Resource Assessment because it can't be
14 a Biological Assessment until Army Corps
15 officially communicates it. We have received
16 actually quite a bit of feedback from the service,
17 and what we need is to have an individual
18 assigned, a service biologist assigned to the
19 project early, and that's the purpose of our
20 meeting tomorrow, is to get that individual
21 assigned.

22 We will be asking them whether we can
23 pay overtime for that individual, whether they can
24 contract out with someone else. We're looking for
25 a solution from the Fish and Wildlife Service.

1 HEARING OFFICER VALKOSKY: Okay.
2 Assuming you could get that individual assigned,
3 do you have a fix on how long it would take for
4 that individual to complete his or her duties?

5 MS. LUCKHARDT: I've seen draft
6 Biological permits come out in three weeks to a
7 month when they're appropriately motivated.

8 HEARING OFFICER VALKOSKY: Okay.

9 MS. LUCKHARDT: It, it is possible, but
10 it takes getting that person signed, and it's
11 going to take our, you know, an awful lot of
12 effort.

13 HEARING OFFICER VALKOSKY: All right.
14 And you say it is possible, but there, at least so
15 far, have been no representations that that will,
16 in fact, be possible in this case? I mean, is
17 that a fair summary?

18 MS. LUCKHARDT: Well, we, you know, we
19 hope to get that kind of a commitment from them,
20 and that's why we are going to have the meeting
21 with management and asking for that type of
22 priority at this point.

23 HEARING OFFICER VALKOSKY: Okay. Once
24 federal authorities finish the Biological opinion,
25 how long does it typically take for the second

1 permit, in this case a 404 permit, to be issued?

2 MS. LUCKHARDT: Well, a 404 permit,
3 after they receive the Biological opinion, should
4 be fairly short, because they are already, they
5 will have already evaluated and approved the
6 wetland delineation. And so they will have the
7 information they need to go forward, and they are
8 simply asking Fish and Wildlife for a consultation
9 on the Endangered Species Act.

10 HEARING OFFICER VALKOSKY: Okay. And to
11 quantify, fairly short? I mean, are we talking
12 two weeks, four weeks, what are we talking?

13 MS. LUCKHARDT: It can be done in two
14 weeks. I've seen other offices of Army Corps
15 issue it in a two-week period.

16 HEARING OFFICER VALKOSKY: Okay. Thank
17 you.

18 PRESIDING MEMBER PERNELL: I think
19 you've answered, or asked most of my questions. I
20 will have some at the end, presumably. So why
21 don't we, do you want to go to Staff?

22 MR. COHN: Mr. Valkosky and Mr. Pernell,
23 basically, I just want to summarize what is, what
24 we're asking for.

25 PRESIDING MEMBER PERNELL: I notice

1 she's trying to leave.

2 (Laughter.)

3 MR. COHN: What we're asking for would
4 allow us to do this process we're talking about
5 with the federal agencies, even while the rest of
6 the CEC process is moving forward. So it may be
7 obvious, but I just want to go ahead and state the
8 obvious, that we would expect to have that process
9 completed well before, or at least by June 4th, as
10 well.

11 PRESIDING MEMBER PERNELL: Right. But
12 you have a ambitious timeline that Mr. Taylor just
13 took us through, and so, you know, I think the
14 questions on how close you are with the Biology
15 and U.S. Fish and Wildlife is certainly
16 appropriate.

17 MR. COHN: Right.

18 HEARING OFFICER VALKOSKY: Do you have
19 anything further to add, Mr. Cohn?

20 MR. COHN: No. Thank you.

21 HEARING OFFICER VALKOSKY: Okay. Staff?

22 MS. CHEW: Thank you. Based on Mr.
23 Taylor's presentation there's a couple of items
24 that we would like to make.

25 Staff has, SMUD has provided Staff and

1 the other federal and state and local agencies
2 with many filings. However, some of the filings
3 may have not been complete in answering data
4 requirements from, by those permits, and what
5 Staff has also asked for. So although there have
6 been numerous filings, all the filings might not
7 have been complete or have completely answered
8 questions that Staff had and/or the agencies had
9 regarding the project.

10 One other item John pointed out.

11 MS. HOLMES: Actually, if this could be
12 informal enough, I would like to ask SMUD one
13 question about what their proposals are. One of
14 the issues that wasn't addressed in this hearing
15 was whether or not SMUD proposes to file new
16 testimony prior to the hearings or simply intends
17 to identify previously filed documents in a filing
18 that would serve as their testimony.

19 HEARING OFFICER VALKOSKY: Oh,
20 certainly. I mean, we're here to air the
21 information out on this. You --

22 MS. HOLMES: It just seemed to me that
23 that's an important piece of information when
24 we're trying to come up with a final schedule, so.

25 MR. COHN: Well, our, our proposal would

1 be to do whatever would most expedite the
2 proceeding, so I think in those areas where Staff
3 and Applicant are in agreement, which we hope to
4 be virtually all areas, or at least most, I would
5 think both Staff and Applicant could, through
6 declarations, incorporate all the materials that
7 have been submitted to support those areas, rather
8 than have to necessarily bring live witnesses for
9 each area.

10 MS. HOLMES: I was referring to the
11 question of whether or not SMUD plans to file, for
12 example, let's suppose there were areas of
13 controversy, is SMUD planning to provide
14 additional testimony beyond the data responses and
15 their reports and things that have been submitted
16 already. In some cases, the testimony comes in
17 simply as incorporations by reference to other
18 documents. In yet other cases, Applicants file
19 new testimony that incorporates some of the
20 information, but also has new information. And I
21 think that that's an important issue to resolve
22 before we come up with a final schedule.

23 MR. COHN: I think the only exception I
24 can think where, offhand, that we might require
25 additional testimony, and even there I don't know

1 that we would, would be if Staff were to recommend
2 something other than the cooling method that's
3 been proposed by the Applicant. I think in that
4 case I'm, you know, we would probably want to
5 think about submitting whatever we need to
6 convince the Committee that our proposal is
7 correct. And that's one of the reasons we want to
8 push for the FSA Part 1 to include Water and to
9 occur as soon as possible, because if that is at
10 issue, and, see, we don't think it is, but if it
11 is, we'd like to resolve that very soon, because
12 that could actually be several days of hearings on
13 that issue.

14 I think all the other ones, though,
15 would probably, well, I'm hoping we don't have any
16 disagreement, but if we do it'd probably be minor
17 enough that I don't anticipate new testimony,
18 other than information we've already submitted.

19 If --

20 MS. LUCKHARDT: Right. Staff --

21 MR. COHN: -- oh, I'm sorry.

22 MS. LUCKHARDT: No, I see that the same
23 on Biology, as well. I think that Biology is a
24 matter of agreeing on the mitigation with the
25 federal agencies and Department of Fish and Game,

1 and once that's agreed to, I don't know that we'll
2 have outstanding controversial issues with Staff.

3 PRESIDING MEMBER PERNELL: But certainly
4 that agreement should be part of the record, so --

5 MR. COHN: Absolutely.

6 MS. LUCKHARDT: Right.

7 PRESIDING MEMBER PERNELL: -- you know,
8 you can't just reference -- well, you can
9 reference that agreement, but that has to be part
10 of the record.

11 Let me just ask Staff. Do you have any
12 specific examples or -- it sounds like what the
13 Applicant is saying is, you know, we want to do
14 whatever we need to do, but I don't think we need
15 to do anything. So if you think they need to do
16 something, you probably should communicate that to
17 them, either here or --

18 MS. HOLMES: Staff's concern was
19 establishing a schedule that had a very short
20 period of time between the FSA and the hearings,
21 and then there being a need or a desire on SMUD's
22 behalf to file some sort of testimony that's new,
23 that's not information that's already in the
24 record. It sounds to me as though what SMUD
25 prefers to do at this point is, is hope that that

1 won't happen, and deal with it if it arises. If
2 that's the case, then we can go forward and talk
3 about the appropriate amount of time between an
4 FSA and the Pre-Hearing Conference without having
5 to resolve that.

6 I would ask, of course, that at some
7 point the, in this process, I don't know whether
8 it would be on the day that the FSA is filed or
9 not, SMUD also be requested to submit its
10 identification of its testimony, whether it's all
11 incorporation by reference. That date needs to be
12 established in the, in the order, as well.

13 MR. COHN: And we're amenable to that.

14 MS. HOLMES: And the last point that I
15 wanted to make is that I believe that there is a
16 statement in the, there was a statement made by
17 Mr. Cohn about the period of time between the FSA
18 and the hearings, and I believe that under Section
19 1747 it's 14 days that's required between the FSA
20 and the hearings.

21 The schedule, in -- I understand that we
22 have reached some sort of a general approach to
23 SMUD's filings for the Evidentiary Hearings, but
24 we would also request that the Committee take into
25 account the fact that Intervenors may wish to file

1 testimony, as well. Typically, Staff is in favor
2 of an approach in which it puts out its FSA first,
3 so that Intervenors have the opportunity to look
4 at the FSA and determine whether or not their
5 issues are satisfactorily addressed or not. Then
6 if they are, they don't have to go to the expense
7 and the difficulty of trying to hire a witness.

8 So I think that there needs to be some
9 window of opportunity in there for Intervenors to
10 review the FSA and SMUD's filings and determine
11 whether their issues have been addressed or
12 whether they would like to file testimony
13 themselves. And that, of course, would have to
14 come subsequent to the FSA and to SMUD's
15 testimony.

16 MR. COHN: May I speak to that point. I
17 agree with Staff on that, and Caryn's correct,
18 also, that it is 14 days under Section 1747, which
19 was what we've shown in our schedule. But the
20 preference would be if we could do the Pre-Hearing
21 Conference earlier, but even, well, 14 days would
22 be the minimum, I think, basically. But if the
23 FSA were to come out, for example, even February
24 7th, that would be actually almost a month before
25 the Evidentiary Hearings that we're referring to.

1 MS. HOLMES: Would, does SMUD propose
2 having Intervenor testimony filed before or after
3 the Pre-Hearing Conference?

4 MR. COHN: Probably after. But we, but
5 I think it'd be important that the Intervenors
6 specify which area they're going to contest.

7 HEARING OFFICER VALKOSKY: Yeah. I
8 think, I think a lot of those kinds of issues are
9 more appropriately handled at the Pre-Hearing
10 Conference itself, rather than here. You know,
11 we're just trying to get an overview on a fairly
12 limited number of topics, or number of potential
13 issues.

14 Do you have anything more?

15 MS. HOLMES: I think I've said enough.

16 HEARING OFFICER VALKOSKY: Does that
17 conclude Staff's presentation, then?

18 MS. HOLMES: Yes, it does.

19 HEARING OFFICER VALKOSKY: Okay. All
20 right. My questions.

21 How certain is Staff that it would have
22 to include Soil and Water and Alternatives in Part
23 2 of its FSA, were a bifurcated FSA to be issued?

24 MS. CHEW: Well, we think that filing
25 Water and Soils, the Water and Soils section could

1 happen fairly quickly, although it may need one
2 more week of review and discussion internally
3 before it's published with the first part of the
4 FSA. So what I envision right now is Staff could
5 file the first part of the FSA without Soil and
6 Water the first week of February. So between the
7 third and the seventh we could do that.

8 However, if we wanted to include Soil
9 and Water, it may, we'd probably need another week
10 of finessing and getting that the second week of
11 February. So it's close --

12 HEARING OFFICER VALKOSKY: So we would,
13 in essence, have a three part FSA. We'd have
14 everything but Biology, Soil and Water, and
15 Alternatives as the first one. We will then have
16 Soil and Water as, as an addendum, or as a second
17 part of the FSA, whatever you want to call it.
18 And then you would have Biology and Alternatives?

19 MS. CHEW: Yes.

20 HEARING OFFICER VALKOSKY: As a third
21 part of the FSA. Okay.

22 MS. HOLMES: Mr. Valkosky, just a point
23 of clarification. The reason that we propose to
24 include Alternatives in the second section is not
25 that there is any difficulty with it being

1 completed. In fact, SMUD has provided the
2 information that was necessary for Staff to
3 complete that portion of the assessment.

4 But in prior hearings, proceeding with
5 the Alternatives section when you don't have
6 sections with potential major issues raised in
7 them is very difficult, because, as you know, CEQA
8 requires Alternatives to be focused on those
9 alternative technologies or sites that can address
10 problems.

11 HEARING OFFICER VALKOSKY: No, I, I
12 understand the linkage, yeah, and I'm sure Mr.
13 Shean does, too. And, again, part of it is I
14 think the way we, as an agency, tend to delineate
15 these topics. But, yeah, I didn't mean to suggest
16 there were separate issues in there. It's just
17 that as a topic, that would require extra hearing
18 time that day.

19 Okay. Then we're going to the dates.
20 And again, one of the things --

21 PRESIDING MEMBER PERNELL: I'm sorry.
22 Before we go any further, does that, let me ask
23 Staff, does that add any, by having a three prong
24 in this case, is what I'm hearing, Staff
25 Assessment, does that add to the time?

1 MS. CHEW: No, it would be just, it
2 would still be two sets of hearings. Although
3 Staff would like to state right now that we would
4 prefer to file Water, Soil and Water with the
5 first part of the FSA. So if we had the other
6 week, additional week to wait and publish all of
7 it together, and only have two parts of the FSA,
8 we would much prefer that, as opposed to filing
9 three separate items.

10 HEARING OFFICER VALKOSKY: Which brings
11 up the dates that we're talking about. I mean,
12 that's, you know, that's where we are. So --

13 MR. COHN: Yeah. Mr. Valkosky -- yeah,
14 go ahead.

15 HEARING OFFICER VALKOSKY: Mr. Cohn has
16 suggested ideally February 3rd, but perhaps as
17 late as February 7th, for Part 1 of the FSA.
18 Now,, I guess the question in my mind is if it
19 went to February -- well, first of all, two
20 questions. Could Staff produce anything by
21 February 3rd, or would the no later than date be
22 February 7th?

23 MS. CHEW: Yes, we could publish with a
24 no later date than February 7th. We think we
25 could probably do it before February 7th, but --

1 HEARING OFFICER VALKOSKY: And, and that
2 date would be, or just no later than February 7th.

3 MS. CHEW: No later than February 7th.

4 HEARING OFFICER VALKOSKY: Okay. Okay.
5 So that would not include Soil and Water. And if
6 we were to go to Valentine's Day, which is
7 February 14th, that would include Soil and Water.
8 Is that correct?

9 MS. CHEW: Yes. Uh-huh.

10 HEARING OFFICER VALKOSKY: Okay. Okay,
11 Mr. Cohn.

12 MR. COHN: Yes. One clarification and
13 one suggestion. The Alternatives, at least as far
14 as cooling alternatives, I presume would be part
15 of the Soil and Water section; correct?

16 MS. CHEW: That's correct.

17 MR. COHN: Okay. What I'm hoping, then,
18 would be that perhaps if we set a date, for
19 example the 10th or 11th, for the Soil and Water,
20 then, you know, that would be the following week,
21 but maybe if that would help to do the whole thing
22 by then that would -- the only concern I have is
23 trying to get that in a suitable time so we could
24 still do a Pre-Hearing Conference prior to the
25 first week in March.

1 HEARING OFFICER VALKOSKY: Okay. Well,
2 the, the no later than date, and please, Ms. Chew,
3 correct me if I'm wrong, to have everything,
4 including Soil and Water, except for Biology and
5 Alternatives, is February 14th.

6 MS. CHEW: Yes.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. COHN: If we could just move that a
9 couple of days it might make a difference in
10 whether we could do the Pre-Hearing Conference --

11 HEARING OFFICER VALKOSKY: I'll tell you
12 what. This is, this is something I think the
13 parties, and I, by that I mean all the parties,
14 could discuss off the record and let the Committee
15 know tomorrow.

16 MR. COHN: Okay.

17 HEARING OFFICER VALKOSKY: Because, and
18 I say tomorrow because the Committee would like to
19 be able to issue an order on this as quickly as
20 possible. So, in fact, let me know, because I'm
21 not sure whether Mr. Shean will be done with his
22 personal responsibilities by then or not. And if
23 he is back, I will give him the information.

24 Yeah. So that, and again, if I could
25 just direct the parties to do that, we'll look

1 forward to your communication tomorrow.

2 All right. So if we went,
3 hypothetically, with the 14th, that would make the
4 Pre-Hearing Conference essentially at the end of
5 March.

6 MR. COHN: February.

7 MS. HOLMES: February?

8 HEARING OFFICER VALKOSKY: End of -- I'm
9 sorry. I am sorry. I was talking about the way
10 it'll really work out.

11 (Laughter.)

12 HEARING OFFICER VALKOSKY: That was a
13 joke, Steve. Don't --

14 PRESIDING MEMBER PERNELL: Everybody's
15 so cooperative today.

16 HEARING OFFICER VALKOSKY: Okay. End of
17 February, so that would give the 14 days required.

18 MS. LUCKHARDT: Stan, we, I'm sorry, but
19 you need 14 days between the FSA and the start of
20 hearings.

21 HEARING OFFICER VALKOSKY: Okay.

22 MS. LUCKHARDT: Not between the FSA and
23 the Pre-Hearing Conference.

24 HEARING OFFICER VALKOSKY: Thank you,
25 Jane. I --

1 MS. LUCKHARDT: So that gives you a
2 little more flexibility there.

3 HEARING OFFICER VALKOSKY: I will
4 certainly look at the regs before then, but, all
5 right. So you're saying seven days there, and
6 then it would be -- and again, we're just dealing
7 with recommendations. That would be about 14 days
8 between a filing of testimony and the start of
9 hearings, for the FSA.

10 Okay.

11 MR. COHN: Mr. Valkosky, if we did go
12 with the 14th, for example, we could still do
13 Evidentiary Hearings on the week of March 3rd,
14 assuming that we can squeeze the Pre-Hearing
15 Conference sometime in between those two.

16 HEARING OFFICER VALKOSKY: That's
17 correct. That's correct. And again, this is --
18 and again, because of the holidays and my lack of
19 a calendar, I think that's as far as we're going
20 to go on that right now.

21 Yeah, and for Staff. I asked Applicant
22 about the nature of material they believe they
23 need for the federal approvals, and the interplay
24 between that material and Staff's FSA and Staff's
25 presentation and hearings. As I understood Ms.

1 Luckhardt to say, essentially that would be the
2 information that the federal authorities would
3 view as acceptable to begin their review, and
4 would not be a formal draft permit. What is
5 Staff's position on that?

6 MS. CHEW: Staff agrees with what Ms.
7 Luckhardt said. We do prefer to have the
8 acceptance of the applications for the federal
9 permits by the time we write and publish our Final
10 Staff Assessment, and that's what we was requested
11 in our status report, is the application.

12 HEARING OFFICER VALKOSKY: Okay.
13 That's, that's for the FSA. I understand that.

14 How about for Evidentiary Hearings?

15 MS. CHEW: For the Evidentiary Hearings,
16 for instance, for Biological Resources, if a Staff
17 person from the Fish and Wildlife Service could
18 come and testify that the mitigation was
19 acceptable to them and that they did not see any
20 outstanding issues, then that would be acceptable
21 to us.

22 HEARING OFFICER VALKOSKY: Okay. So it
23 would be acceptable even though they may or may
24 not have issued a formal draft?

25 MS. CHEW: Correct. We wouldn't wait

1 for the written piece of paper.

2 HEARING OFFICER VALKOSKY: Permit.

3 Okay. Do you have any information from the
4 federal agencies concerning the timing on
5 producing the Biological opinion and following
6 that, the 404 permit?

7 MS. CHEW: I have received two e-mails
8 from the agencies last week, one from the Fish and
9 Wildlife Service and one from the Army Corps of
10 Engineers. I had asked if they would attend the
11 Status Conference in case we could ask -- so we
12 could ask them questions about the timing of their
13 reviews and the permits. And they both replied
14 that they could not attend today due to time
15 constraints and staff constraints, but they did
16 say that, the Corps of Engineers did say that they
17 did receive additional wetland information from
18 SMUD on the eighth, and that it would take them a
19 few weeks to review the verification of the
20 wetland delineation. So that was one timing
21 issue.

22 And then the Fish and Wildlife Service
23 stated that it would take them the four to six
24 months to --

25 PRESIDING MEMBER PERNELL: Four to six

1 months?

2 MS. CHEW: Yeah. They -- to finish the
3 Biological opinion, they legally, once they accept
4 the Biological Assessment as complete, they have
5 135 days to publish the Biological opinion. And
6 so that's -- and then after that, before that,
7 they have a 30-day acceptance period to review it
8 and to deem the application as data adequate. So
9 that would be about 165 days, so that's about five
10 and a half months.

11 HEARING OFFICER VALKOSKY: That would be
12 165 days under almost ideal circumstances, isn't
13 that correct? I mean, again, from my, from my
14 experience, I've seldom seen a Biological opinion
15 in 135 days.

16 MS. CHEW: Correct. However, I've never
17 worked with an Applicant who has offered to --

18 HEARING OFFICER VALKOSKY: No, I --

19 MS. CHEW: -- pay additional Staff
20 resources.

21 HEARING OFFICER VALKOSKY: Understood.
22 Understood. And, you know, SMUD may prevail, but
23 again, we're just, we're just going for general
24 facts as we can discern them.

25 MS. LUCKHARDT: Thanks for the vote of

1 confidence.

2 (Laughter.)

3 HEARING OFFICER VALKOSKY: Hey, we're,
4 we're non-partisan. We're just trying to do our
5 jobs here.

6 Okay. Does Staff have anything to add?

7 MS. CHEW: No, not at this time.

8 HEARING OFFICER VALKOSKY: Okay. Ms.
9 Peasha is an Intervenor. Please approach and, and
10 if you could just, you know, address the areas
11 that we've been dealing with here, that would be
12 most helpful.

13 MS. PEASHA: Sure. I was, I am
14 objecting to the fact that you bifurcate the FSA,
15 because --

16 PRESIDING MEMBER PERNELL: Well, we
17 haven't done that yet.

18 MS. PEASHA: Well, I'm, this is just my,
19 my opinion on it.

20 PRESIDING MEMBER PERNELL: And you don't
21 want us to do it.

22 MS. PEASHA: I don't want you to do it.

23 PRESIDING MEMBER PERNELL: Okay.

24 MS. PEASHA: Because I believe that the
25 information that you're going to get back from

1 Fish and Wildlife and maybe the Corps of Engineers
2 is going to affect a lot more than just what you
3 feel you have concluded, or completed, in the rest
4 of the topics of the FSA.

5 For instance, they had a public notice,
6 the Fish and Wildlife, and you had to respond by
7 December 23rd, regarding the opinions of the
8 public and others about the critical habitat that
9 were substantially on many maps, it was like a 212
10 page report that was put out by them. And I wrote
11 a letter regarding it, have received no more
12 information regarding what kind of results have,
13 have come by the opinions that were made by the
14 public. So I believe that that's going to create
15 a big difference if, in fact, this, because of the
16 laydown area, is, is included in that, that there
17 may be major effects on a lot of the other so-
18 called completed FSA topics.

19 HEARING OFFICER VALKOSKY: By that same
20 token, I mean, it would seem to me that some --
21 and, you know, again, you could be right that
22 there would be additional areas involved. But by
23 the same token, wouldn't there be some areas that,
24 you know, certainly can't be involved regardless
25 of the Biological opinion? I mean, take something

1 like the worker --

2 MS. PEASHA: Sure. I'm sure there could
3 be.

4 HEARING OFFICER VALKOSKY: Yeah.

5 MS. PEASHA: But, but for myself, as an
6 Intervenor, to prepare and to, to get witnesses
7 and so forth, and prepare for those, I don't
8 believe I will, I'll have, I won't have all the
9 information that I need.

10 HEARING OFFICER VALKOSKY: Okay. That's
11 -- continue, please.

12 MS. PEASHA: Excuse me. I believe some
13 of the other topics of the, other than Biological,
14 have not been respectfully or adequately answered
15 for them to give you that information in
16 completeness. I've asked many different questions
17 that I've gotten responses to, that I, I do not
18 believe show adequately the information that we're
19 dealing with. I mean, in many, many different
20 areas.

21 HEARING OFFICER VALKOSKY: Okay. Okay,
22 ma'am. I'd just like to make sure that you know
23 the way the process will work. To the extent that
24 you disagree with what Staff or Applicant, or any
25 other party has put forward as their analysis,

1 you'll have a couple of chances. First, you'll
2 have a chance at the Pre-Hearing Conference --

3 MS. PEASHA: Correct.

4 HEARING OFFICER VALKOSKY: -- to
5 indicate what that disagreement is, and you'll
6 have a chance at the Evidentiary Hearing, as a
7 party, to either present your own witness with a
8 differing opinion, or to question, slash, cross
9 examine the witnesses from Staff and Applicant.
10 So, I mean, that, that is coming, and that's, you
11 know. So keep that in mind. What we're, what
12 we're trying to do today is just, again, figure
13 out a fairly limited next step on a fairly limited
14 range of issues.

15 MS. PEASHA: Certainly. I, I do, but I
16 do believe some of the critical habitat
17 information that's going to be maybe in the second
18 phase of your FSA will affect how we would proceed
19 with hearings prior to that.

20 HEARING OFFICER VALKOSKY: Okay. Your
21 point is made. Thank you. Anything else?

22 MS. PEASHA: No, I think I'm finished.
23 Thank you.

24 HEARING OFFICER VALKOSKY: Okay.

25 PRESIDING MEMBER PERNELL: Thank you.

1 HEARING OFFICER VALKOSKY: Is there, is
2 there public comment from anyone here present?
3 Ma'am.

4 MS. FRENCH: My name is Karen French.
5 I'm a homeowner in the Herald area, and I wrote a
6 letter on October 10th to the Commission as part
7 of the record. I'm not an Intervenor, I'm
8 commenting at this point.

9 I'd like to raise two issues with
10 respect to bifurcating the hearing and SMUD's
11 request today. And I would urge caution on your
12 part in deciding to, to bifurcate the hearing for
13 these, primarily for these two reasons.

14 SMUD has, and I also apologize, I just
15 received the Commission documents as well as
16 SMUD's documents this morning by e-mail, so I
17 haven't had a chance to really read them over
18 carefully. But SMUD raises the issue that
19 biological resource avoidance is the reason they
20 need the bifurcated hearing, so that they can go
21 forward with construction beginning, I believe,
22 July 3rd. It was a little hard to read the, the
23 diagram.

24 And I find it of concern that Biological
25 Resources is exactly the area where we don't have

1 enough information to go forward. If the train
2 starts rolling out of the station and the
3 Commission moves through with these proceedings,
4 I, I'm not sure I really understand what has been
5 bought in the way of time should there be any
6 problems with Biological Resources, should there
7 be additional mitigation that needs to take place.

8 And specifically, the pipe construction
9 and the site preparation laydown area, I am
10 familiar with burrowing owls and Swainson's Hawks
11 in this area. My land comes right up to Twin
12 Cities Road, and I'm less than two miles away from
13 the Rancho Seco site and, and the new
14 construction. And I know that these species are
15 there. I have personal experience with them. And
16 that, that very construction period of June, July,
17 August, is the time when the Swainson's Hawks are,
18 they're fledging their young, they're, they're
19 foraging in the area. It's also the time when the
20 burrowing owls are there. They're not there this
21 time of year. You can go out and you're not going
22 to find them. But they're, they come in in the
23 springtime and they raise their young.

24 The second point I would like to raise
25 is that bifurcating the hearing, or even turning

1 it into three parts, should that be what you do,
2 inhibits and complicates public participation in
3 these hearings. I know personally one of the
4 reasons why there are very few people in the
5 Herald area who have come forward is that most of
6 us work in Sacramento to support being able to
7 live out in the country, and it's, it's difficult
8 to come to hearings. I mean, I, I had to make a
9 choice this afternoon, and even though the senate
10 went into session at the same time this hearing
11 came forward, I came here. But not everybody can
12 do that.

13 And so there's limited public
14 participation anyway. If you bifurcate it you're
15 doubling the difficulty of being involved. You're
16 also raising issues of expense for intervenors.

17 Thank you.

18 PRESIDING MEMBER PERNELL: Ma'am, let me
19 just say that it has been certainly my policy to
20 have these hearings in the community, in the
21 afternoon, so that you can have community and
22 public participation. We're having this here
23 today because this is a status conference. But
24 normally, I, I would agree with you that I want
25 the hearings in the community, and I want to hear

1 from the folks.

2 MS. FRENCH: No, I didn't mean to
3 criticize the hearing being here.

4 PRESIDING MEMBER PERNELL: No, I didn't
5 take it as a criticism.

6 MS. FRENCH: What I meant is that in the
7 community, most of us are work, work in town, so
8 we're on the road over an hour a day. And being
9 able to attend an afternoon, like the site visit
10 in, in Herald, I couldn't do that because I was
11 working in Sacramento. And, I mean, that's,
12 there's nothing you can do about that, and I'm not
13 criticizing at all your doing that. I'm just
14 saying that it's difficult for the public to
15 participate at all, just given the logistics of
16 it. And I, I would urge you not to make it even
17 more complicated.

18 PRESIDING MEMBER PERNELL: Thank you.

19 MS. FRENCH: Thank you.

20 HEARING OFFICER VALKOSKY: Is there
21 any --

22 MR. KELLY: Good afternoon. My name is
23 Matt Kelly, with the Sacramento-Sierra Building
24 and Construction Trades Council. We represent
25 over 25,000 union construction workers at our

1 council with our affiliates.

2 I'm here to stand in support of this
3 project. I believe there's not a person in this
4 room that couldn't agree that this project is
5 needed to provide power for the SMUD community,
6 and 2005 will not be a minute too soon, I don't
7 believe.

8 The pipeline completion on this drives
9 the, the completion date. And without the ability
10 to start this pipeline, I think SMUD's facing an
11 awful lot of potential delays. And I think that
12 the bifurcation of this report is a method that
13 can be used to facilitate one part of the project
14 that is not necessarily dependent on the study in
15 another area. I think that the labor agreement
16 that is on this project is going to mean
17 substantial construction jobs when this project
18 gets going.

19 There will be an influx of dollars into
20 the community, and I think that SMUD's diligence
21 and forthright assistance with the agencies
22 involved thus far would indicate their intent to
23 deal with all reasonable demands by these agencies
24 for mitigation and what have you, as the project
25 goes. I would think that the bifurcation would

1 also create more opportunities for people to speak
2 on these subjects. Instead of having one hearing
3 for everything at one time, I would think that
4 this would create two more, or an additional
5 hearing where it would give individuals an
6 opportunity to get out and voice their opinions on
7 the project.

8 Once again, I would urge you to
9 facilitate this licensing process and accelerate
10 it in any fashion that you can, and comply with
11 SMUD's request today. The labor community and the
12 building trades specifically would appreciate that
13 very much. Thank you.

14 HEARING OFFICER VALKOSKY: Thank you,
15 sir.

16 PRESIDING MEMBER PERNELL: Mr. Kelly,
17 given the timeline that Mr. Taylor has shown us,
18 and representing the building trades so I've go
19 task you this. Do you anticipate any, any work
20 stoppages or slowdowns?

21 MR. KELLY: Well, from what I can
22 understand is if the project's not started on time
23 it gives them very, a very short frame to complete
24 the first part of the pipeline, Phase 1 of the
25 pipeline, if you want to call it that. Then

1 they've got to stop construction on that pipeline
2 for the rain season, and then they'll pick it up
3 again. If they're not able to substantially
4 complete the portion of the pipeline that they
5 wish to in this Phase 1, if you will, then Phase 2
6 is going to create problems that will ultimately
7 affect the end of the project. And that would
8 delay construction, and that would delay the jobs
9 that are involved with that construction.

10 PRESIDING MEMBER PERNELL: Right. But
11 in terms of the people you represent, they are
12 qualified and ready to go.

13 MR. KELLY: They are ready. The halls,
14 there is no problem at all manning the, the job.
15 When the contractors are signed and they make job
16 requests, I don't anticipate any problem at all in
17 making sure that there's plenty of qualified
18 personnel available to work on this project.

19 PRESIDING MEMBER PERNELL: Thank you,
20 Mr. Kelly.

21 MS. BENSON: Good afternoon. My name is
22 Sandra Benson, and I'm the attorney for the
23 Sacramento Building Trades Councils and the
24 affiliated local unions. I just want to speak
25 briefly.

1 Obviously, we all agree that we need the
2 energy that's going to be produced by this
3 project. But I'm here to support SMUD's request
4 on another basis, in that you heard Mr. Kelly say
5 that the unions are committed to this process, and
6 they are because they've entered into a project
7 labor agreement with SMUD which guarantees the
8 highest quality construction, on time budget, and
9 on, on budget, on time construction of this
10 project without any possibility of any labor
11 disputes or work stoppages.

12 More important than even that, though,
13 is I think this project is going to bring a
14 tremendous amount of local hire opportunities to
15 this community. We need the energy, but we need
16 the jobs. And the unions, along with SMUD, have
17 made a commitment not only to local hire, but
18 through community outreach groups to bring youth,
19 women, minorities, and other disadvantaged members
20 of this community into the local union
21 apprenticeship programs for training for full-
22 time, lifetime skilled positions in the
23 construction trades.

24 That's extremely necessary, and the
25 union apprenticeship programs in this state,

1 together with their signatory contractors, have
2 devoted more than \$100 million to their
3 apprenticeship programs. This job is going to
4 offer a significant opportunity for the youth, the
5 labor, the women, the minorities, and the workers
6 in this area. If you delay it, or it's delayed
7 for any reason so that an entire summer
8 construction season is gone, that's going to hurt
9 a tremendous segment of this community.

10 We fully support that you expedite this
11 process as much as possible. We fully support the
12 site visit that SMUD is asking for. We think that
13 you will see that the laydown area is not
14 sensitive, as far as biological problems may go.
15 And I, I just want to stress the unions see a
16 major economic benefit here, but they are also
17 sensitive and work very, very closely on all
18 environmental issues. So this is not an issue
19 where we are insensitive to those possibilities.
20 We think that SMUD has approached it in a very
21 good fashion of saying please permit it now, and
22 then we will be able to deal with the biological
23 issues if there are any that the federal
24 government brings to your attention.

25 But to wait upon that would simply

1 jeopardize far too many jobs that could go in this
2 community over the next summer, and we ask you to
3 keep that in mind, as well.

4 Thank you.

5 PRESIDING MEMBER PERNELL; Thank you,
6 Ms. Benson.

7 HEARING OFFICER VALKOSKY: Is there
8 anyone else here who would like to address the
9 Committee?

10 Susanne, is there anyone on the
11 conference line? There's no one on the conference
12 line.

13 Can we go off the record a minute,
14 please.

15 (Off the record.)

16 HEARING OFFICER VALKOSKY: Okay. At
17 this time, as far as the Committee is concerned,
18 the parties will let me know tomorrow as far as
19 the potential date for Part 1 of the FSA, just so
20 the Committee will have that information. And I
21 realize it's a Staff and Applicant agreement, but
22 we do have Intervenors, so make sure that they are
23 also apprised of your recommendation. And to the
24 extent possible, include it in the discussions,
25 which I assume will occur today.

1 The, after getting that information, and
2 again, I'm hedging a little bit pending Mr.
3 Shean's return, but it is likely that the
4 Committee would issue an order, or, if
5 appropriate, a notice and order, hopefully by the
6 end of the week. But as I say, some of that
7 depends on Mr. Shean's circumstances.

8 PRESIDING MEMBER PERNELL: Thank you,
9 Mr. Valkosky.

10 Let me just say on behalf of the
11 Committee, we appreciate everybody coming down and
12 preparing for this. I think it's important that
13 we all know where we are in terms of information
14 and timing. There was a couple of statement that
15 we, as a Commission, shouldn't hold up the
16 process. And I just want to be clear that the
17 Commission isn't holding up the process, it's some
18 information that I guess Fish and Wildlife needs.
19 We will certainly communicate with them and, and
20 try and help in that, but it's not up to us.

21 I would also mention that I understand
22 from reading the paper either yesterday or this
23 morning, that Congressman Pombo, who SMUD is very
24 familiar with, is the resource chairman, so
25 certainly he is a representative of, of this

1 region, and that might be a way in which we can,
2 or you can help expedite the process with a call
3 to Mr. Pombo. Or Mr. Matsui. We are talking
4 about federal agency.

5 I wouldn't, it's not my personal
6 recommendation. I think working with U.S. Fish
7 and Wildlife we can get this done. But you are on
8 a tight time schedule, and so, and we've heard
9 from people that say it wants this process to
10 start, you get the necessary documentation in,
11 that they have the workers to complete the job.

12 So the other thing that Mr. Valkosky
13 said that is dear to my heart, and that is that
14 the Intervenors be engaged in the process and
15 allowed every opportunity to respond. And as
16 Presiding Member of this Committee, I want to make
17 sure that that happens, so that we're not just
18 working in a vacuum, but we're working with
19 everyone to help understand the process.

20 Now, no one might, might not like the
21 results of what the Committee is going to
22 recommend, but that'll be the order of the
23 Committee. So I would just encourage everybody to
24 work with us. We will get through this, perhaps
25 not on any one person's timeline, but we will

1 certainly get it done as, as soon as possible from
2 our end. And I don't mind going to the community
3 and staying up to two in the morning, or whatever
4 it takes.

5 So I think that as we go forward, we
6 will be able to complete the project not just for
7 the electricity for SMUD customers, but hopefully
8 some on the grid, and certainly for the workers in
9 this community.

10 Is there anything else to come before
11 this Committee? Anyone have any other comments?

12 Hearing none, seeing none, this
13 Committee is adjourned.

14 (Thereupon, the Status Conference
15 was concluded at 2:58 p.m.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission 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 Status Conference, or in any way interested in the outcome of said Status Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of January, 2003.

PETER PETTY

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345