

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification for the ) Docket No.  
Imperial Valley Solar Project ) 08-AFC-5  
(formerly known as SES Solar Two Project) )  
Imperial Valley Solar, LLC )  
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CALIFORNIA ENERGY COMMISSION  
SECOND FLOOR CONFERENCE ROOM  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, JULY 26, 2010

10:11 A.M.

Reported by:  
Peter Petty

Transcribed by:  
Diana Sasseen

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1 MS. JENNINGS: Yes, we're on the line. We didn't  
2 successfully come in via computer, but we're telephonic  
3 right now.

4 COMMISSIONER BYRON: Ms. Jennings has gone  
5 through some extraordinary efforts to try and make sure  
6 that we provide for public comment and interest in  
7 southern California, namely the El Centro area. And I'd  
8 like to just clarify why we are here in Sacramento and not  
9 down there.

10 And first of all, we apologize, because our  
11 intent was to be there, but we had to make a decision  
12 prior to July 1st with regard to the scheduling location  
13 for this continuation. And we had to make the decision to  
14 have it here in anticipation of not having a state budget  
15 closed by July 1st, which is indeed the case as we speak  
16 today. No budget means there's really no travel expenses  
17 for the staff. It's extremely important that we get  
18 evidentiary hearing on the record in a timely way. I was  
19 quite concerned about the technology, the challenges of  
20 phone lines and such and giving evidentiary hearings.

21 So that's why we are here; however, we do have  
22 public comment scheduled. I appreciate that Ms. Jennings  
23 is down there to help make sure that we can facilitate  
24 getting input from public and others that were unable to  
25 travel today.

1           We have a number of significant issues to still  
2 address. Let me just layout for you briefly the plan for  
3 the day. And this is subject to change, of course.

4           We started a little bit late at 10:00 because  
5 Monday mornings are very difficult for individuals,  
6 particularly if they try and travel to get here this  
7 morning. We hope that works for everyone. We have public  
8 comment scheduled for about 5:30. We will plan to take a  
9 lunch break in the noon to 12:30 range, and we will be  
10 reconvening tomorrow at 9:00 a.m.

11           We may go late this evening. We prefer to  
12 reserve tomorrow as the late evening, let's -- using those  
13 World Cup soccer terms, for overage time as necessary, but  
14 we'll sort of play that by ear today in terms of how much  
15 comment there might be and how late we might need to go  
16 this evening.

17           We have a number of significant issues that we  
18 need to address, it's not limited to, but we're  
19 principally concerned about addressing biological  
20 resources, land use, soil and water, and visual. Cultural  
21 resources, I don't think we're going to be able to address  
22 today, and we've got a tentative date scheduled that we're  
23 looking at for evidentiary hearing on that issue.

24           So before I turn it over to my hearing officer,  
25 let me ask Commissioner Eggert if he had anything he

1 wished to add.

2           COMMISSIONER EGGERT: Thank you,  
3 Commissioner Byron, and good morning, everyone.

4           I don't have much to add. I think you've laid  
5 out the plans for the day quite well. I would say having  
6 read through the materials that have come in over the last  
7 several weeks, I just want to say I want to thank all of  
8 the parties for their significant efforts. These are  
9 incredibly complicated cases, and it's clear that a  
10 significant amount of attention has been paid to providing  
11 the best available information, again, from all parties,  
12 with respect to the impacts of this project and the  
13 mitigation options.

14           So I look forward to hearing the testimony  
15 throughout the hearing today. And I think we have a lot  
16 of work to do, so let's go ahead and get started.

17           COMMISSIONER BYRON: Thank you, Commissioner.

18           And I think, I'm just going to say this as well up  
19 front; Ms. Jennings, if you have any concerns or issues,  
20 I'd prefer that you speak up sooner rather than later, and  
21 we may check in with you periodically during the day to  
22 make sure that we still have our phone connection down  
23 there in El Centro.

24           So I'm going to turn it over at this time to our  
25 hearing officer, Mr. Renaud.

1 HEARING OFFICER RENAUD: Thank you,  
2 Commissioner Byron.

3 I think maybe the first order of business will be  
4 introductions of the parties. Let's start with the  
5 applicant, please.

6 MR. THOMPSON: Thank you very much, and good  
7 morning.

8 My name is Allan Thompson. And seated next to me  
9 is Ella Foley Gannon, co-counsel from the Bingham  
10 McCutchen law firm. Behind me are an array of witnesses  
11 whom hopefully we will get to today, or possibly tomorrow,  
12 but the first panel are both from Tessera,  
13 Marc Van Patten, and Sean Gallagher.

14 Thank you for scheduling this, thank you for the  
15 offer of going forward. And, Raoul, I have a complete new  
16 appreciation for those of you who put together schedules.

17 HEARING OFFICER RENAUD: Well, and we have a  
18 great appreciation of the work that you and all the  
19 parties did in coordinating one another's witnesses. That  
20 really was a valiant effort, and well, it looks like it's  
21 going to pay off.

22 Let's hear from staff introductions next, please.

23 MS. HOLMES: Thank you. Caryn Holmes, staff  
24 counsel. With me is Christine Hammond, staff counsel; and  
25 Christopher Meyer, project manager; as well as several of

1 staff's witnesses.

2 HEARING OFFICER RENAUD: Good morning. And thank  
3 you.

4 Intervenor CURE.

5 MS. MILES: Good morning. I'm Loulena Miles,  
6 representing CURE. And we will have witnesses attending  
7 this afternoon.

8 HEARING OFFICER RENAUD: All right. Thank you.  
9 And Intervenor Budlong.

10 MR. SILVER: Larry Silver for intervenor  
11 Tom Budlong. Mr. Budlong is on the phone.

12 HEARING OFFICER RENAUD: Good. Thank you. And  
13 Intervenor California Native Plant Society.

14 MR. BELTRAN: Tom Beltran, California Native  
15 Plant Society.

16 HEARING OFFICER RENAUD: All right. Very good.  
17 Thank you.

18 Couple of just housekeeping matters, some of  
19 which you heard back in May but are probably worth  
20 repeating.

21 Today's proceeding is a formal evidentiary  
22 hearing conducted by the California Energy Commission to  
23 take in evidence into the record upon which a decision on  
24 the Imperial Valley Solar project will be based. The  
25 proceeding is being recorded stenographically and will be

1 transcribed into a written, typed booklet that will be  
2 posted on our website and available for review.

3           Because of that, since it's going to be reduced  
4 to writing, everything that you do or everything -- every  
5 expression in here needs to be done verbally. Nods of the  
6 head, shakes of the head, gestures, that sort of thing  
7 will not show up on the record. So "yes", "no," "I don't  
8 know" and so on will be best. If you're referring to a  
9 document, please identify what it is.

10           And those of you on the phone, if you are  
11 speaking or testifying, please make sure to identify  
12 yourselves when you speak.

13           Now, back in May at the first session of these  
14 hearings we did cover some material regarding the topics  
15 that you have planned for today. We'll be listening with  
16 great interest to what you have for us today, but we are  
17 not interested in hearing anything repeated; we don't  
18 really have time for that. So please try and keep your  
19 presentations today to new material rather than re- -- and  
20 avoid rehashing what we've already done.

21           Now, speaking of the phones, I won't normally  
22 require everybody on the phone to identify themselves, but  
23 I would like to ask if anybody is on the phone who would  
24 like to identify themselves, and if you do, just go ahead  
25 and speak.

1 MS. HARMON: Edie Harmon.

2 HEARING OFFICER RENAUD: Welcome, Ms. Harmon.  
3 Thank you.

4 MS. TISDALE: Donna Tisdale.

5 HEARING OFFICER RENAUD: Thank you. Welcome.

6 MS. CONKLIN: Diane Conklin with Mussey Grade  
7 Road Alliance --

8 HEARING OFFICER RENAUD: Thank you. Next.  
9 All right. The last person, would you please  
10 repeat? That didn't really come through clearly.

11 MS. CONKLIN: Yes. It's Diane Conklin with the  
12 Mussey Grade Road Alliance in Ramona, California.

13 HEARING OFFICER RENAUD: All right. Thank you  
14 for participating.

15 MS. CONKLIN: Thank you.

16 HEARING OFFICER RENAUD: All right.

17 MR. TAYLOR: This is Steve Taylor with San Diego  
18 Gas & Electric.

19 HEARING OFFICER RENAUD: Thank you, and welcome.

20 Anyone else? I know Mr. Budlong is there. And I  
21 see others who appear to be witnesses. Those of you  
22 participating by WebEx, if you're on the phone, great,  
23 just be on the phone, you don't have to do anything other  
24 than talk on the phone; although, if you don't want us to  
25 hear, if you want to make noise at your end, please mute

1 your phone, not place it on hold, but mute it. And if you  
2 are making noise and we can't stop you, we're going to  
3 mute you. So just bear in mind that to the extent your  
4 phone is not muted, we can hear what is going on at that  
5 end.

6 All right. Now, I've been following the parties'  
7 efforts at refining the schedule, and I believe  
8 Mr. Thompson submitted the latest version of that this  
9 morning, not that long ago, maybe an hour and a half ago,  
10 and it sounds like since then it may have changed. But it  
11 appears to me from what I can determine that you're  
12 planning to do air quality and land use this morning.

13 MR. THOMPSON: I would prefer that. If you want  
14 my reasons, I'll go forward, if this is acceptable to  
15 you --

16 HEARING OFFICER RENAUD: Is there anybody that  
17 has a problem with that?

18 MR. MEYER: No, staff agrees.

19 HEARING OFFICER RENAUD: Okay. All right, then  
20 that's what we'll do. And applicant has the burden, so  
21 we'll start with the applicant's presentation.

22 MR. THOMPSON: Julie Mitchell from URS, are you  
23 on the phone?

24 MS. MITCHELL: This is Julie Mitchell from URS,  
25 the applicant's air quality consultant.

1 MR. THOMPSON: Mr. Renaud, Julie Mitchell has  
2 been previously sworn at our May proceeding. Do you want  
3 her sworn again?

4 HEARING OFFICER RENAUD: I think it would be  
5 best, just for -- just to be sure. I'm not certain myself  
6 whether or not her oath would survive two months. We  
7 might as well repeat it.

8 MR. THOMPSON: Ms. Mitchell, will you please  
9 stand up and raise your right hand and the reporter will  
10 swear you in in 30 seconds.

11 (Julie Mitchell sworn.)

12 THE REPORTER: Could you please state and spell  
13 your name for the record, and then consider yourself  
14 sworn.

15 MS. MITCHELL: My name is Julie Mitchell,  
16 J-u-l-i-e, last name, Mitchell, M-i-t-c-h-e-l-l.

17 MR. THOMPSON: Thank you. I would also like to  
18 offer Marc Van Patten. And his testimony covers a number  
19 of categories today. Right now I only want to address the  
20 diesel generator issue.

21 HEARING OFFICER RENAUD: All right. Let's swear  
22 in Mr. Van Patten, and that will be valid for today and  
23 tomorrow.

24 (Marc Van Patten sworn.)

25 THE REPORTER: Please state and spell your name

1 for the record.

2 MR. VAN PATTEN: Marc Van Patten, M-a-r-c V-a-n  
3 P-a-t-t-e-n.

4 THE REPORTER: Thank you. Please be seated.

5 HEARING OFFICER RENAUD: Excuse me. Ms. Holmes,  
6 would it make sense to have Mr. Walters available and do  
7 this in a panel type of thing? If you'd like, we could.

8 MS. HOLMES: Well, staff has its -- is prepared  
9 to respond to the applicant's testimony associated with  
10 the new diesel engines, so I think it would be more  
11 appropriate if it followed the applicant's testimony.

12 HEARING OFFICER RENAUD: Fine. That's fine.  
13 Thank you.

14 Anybody who does want to do a panel though at any  
15 time, please let us know, and we'll set that up for you.

16 MR. THOMPSON: Thank you. In our rebuttal  
17 testimony that was filed in July of this year, we have  
18 testimony, and then we have marked exhibits, but the  
19 testimony is not labeled with exhibit numbers. Would you  
20 prefer to take that testimony and attach new exhibit  
21 numbers to each of the pieces of the testimony?

22 HEARING OFFICER RENAUD: I think that would be  
23 best, yes.

24 MR. THOMPSON: There's two pieces in there. One  
25 is the prepared rebuttal testimony of Marc Van Patten. If

1 I could ask that that be marked as the next exhibit in  
2 order. And I think that would be 130, if I'm not  
3 mistaken.

4 HEARING OFFICER RENAUD: Okay. Thank you.  
5 Marked for identification.

6 (Applicant's Exhibit 130 was marked for  
7 identification.)

8 MR. THOMPSON: And a couple -- and if you skip on  
9 it, you get to the prepared testimony of Julie Mitchell on  
10 air quality. If I could have that marked as Exhibit 131.

11 HEARING OFFICER RENAUD: All right. Thank you.  
12 That's been marked.

13 (Applicant's Exhibit 131 was marked for  
14 identification.)

15 DIRECT EXAMINATION

16 MR. THOMPSON: Mr. Van Patten, let me turn to  
17 you, please. Would you please turn to what has been  
18 marked as Exhibit 130. In question 17 through 20 you  
19 describe the circumstances of the change in the project to  
20 the implementation of diesel electric generators on site.  
21 Would you give us about a two-minute explanation overview  
22 of why this was necessary?

23 MR. VAN PATTEN: We had initially contemplated  
24 going to IID for a back feed -- not close enough?

25 We had initially anticipated going to for back

1 feed power for station service construction and so forth,  
2 and in the investigation of that solution with IID, we  
3 found that although they could provide us with a solution,  
4 we didn't think it was timely enough for us to have back  
5 feed power get through the upgrades that would be  
6 necessary to ensure reliability in the area. And we  
7 looked at various other options, including timing of  
8 getting back feed through the IV substation, and found  
9 that it was most advantageous to have temporary generators  
10 used, Tier 4 generators, low emission for such an  
11 application.

12 We investigated that Tier 4 will be available  
13 September, October time frame in the California area, and  
14 we're going to pursue having those for the temporary  
15 generation needs for construction.

16 MR. THOMPSON: And in the remote possibility that  
17 those Tier 4 engines may not be available, what would you  
18 propose?

19 MR. VAN PATTEN: We would propose using what is  
20 available, the most environmentally --

21 MR. THOMPSON: Stringent.

22 MR. VAN PATTEN: -- stringent or appropriate  
23 generators, which I believe would be the Tier 3  
24 generators, and operate those such that the emissions  
25 would be constrained to the low levels that would be

1 significant on the project.

2 MR. THOMPSON: And, Mr. Van Patten, am I correct  
3 that you then took this plan for the diesel generators and  
4 asked URS to evaluate the air quality impacts?

5 MR. VAN PATTEN: We did.

6 MR. THOMPSON: That completes the direct of  
7 Mr. Van Patten on the issue of diesel electric generators.

8 Ms. Mitchell, are you still on the phone?

9 MS. MITCHELL: Yes, I am.

10 MR. THOMPSON: Your testimony has now been marked  
11 as Exhibit 131. Do you have this front of you?

12 MS. MITCHELL: Yes.

13 MR. THOMPSON: Would you please give the  
14 committee a brief overview of your activities with regard  
15 to the evaluation of these generators?

16 MS. MITCHELL: To examine the potential emissions  
17 from these generators, I assumed that these generators had  
18 the possibility of operating at the maximum capacity at  
19 the maximum load for the -- for the entire daily duration  
20 and monthly duration of the construction period for up to  
21 one year and then estimated emissions based on that.

22 As we all know, these generators may not operate  
23 that much, but that's the most conservative way to  
24 estimate potential emissions from these engines.

25 MR. THOMPSON: And your conclusions?

1 MS. MITCHELL: My conclusion was that adding  
2 these generators for temporary power for the initial  
3 portion of the construction phase will not cause the  
4 federal conformity thresholds to be exceeded in that there  
5 will not be a significant impact, and that these engines  
6 themselves will be registered under the state PERP plan,  
7 and so they are permitted engines, and we'll be in  
8 compliance that way also.

9 MR. THOMPSON: I'm sorry, the state -- what term  
10 did you use?

11 MS. MITCHELL: Oh, Portable Equipment Registry  
12 Program.

13 MR. THOMPSON: I think we have a -- we have a  
14 problem in these hearings sometimes with acronyms, so  
15 that's great.

16 Finally, Ms. Mitchell, did you have any  
17 discussions with the local air quality management district  
18 regarding these engines?

19 MS. MITCHELL: Yes, I did. I spoke with them to  
20 ensure that -- that the assumptions that we just spoke  
21 about would be correct for bringing those engines on this  
22 facility, and they agreed they would -- the local air  
23 district, Imperial County Air Pollution Control District  
24 would like notification that the engines come on site.  
25 And aside from that, they're fine with the engines being

1 on site.

2 MR. THOMPSON: Thank you, Ms. Mitchell.

3 If I can bounce one more question back to  
4 Mr. Van Patten.

5 Ms. Mitchell testified that these diesel engines  
6 would be good for up to one year. How long does the  
7 project anticipate using these engines?

8 MR. VAN PATTEN: We anticipate needing engines  
9 until we can back feed power from the IV substation  
10 through our interconnection that we planned for the  
11 project to the IV substation, which we anticipate to be up  
12 to six months.

13 However, as Julie Mitchell explained, we looked  
14 at them for a year just in case there's any delay in the  
15 interconnection with the IV substation, we would have some  
16 latitude to use the generators a little bit longer.

17 HEARING OFFICER RENAUD: Anything else?

18 MR. THOMPSON: Our two-person panel on the air  
19 quality of the diesel engines is tendered for cross.

20 HEARING OFFICER RENAUD: Thank you.

21 Cross-examination by staff?

22 MS. HOLMES: Just one question.

23 CROSS-EXAMINATION

24 MS. HOLMES: Ms. Mitchell, can you hear me?

25 MS. MITCHELL: Yes, I can.

1 MS. HOLMES: Two questions.

2 The real question is what emission -- did you use  
3 the emission factors associated with Tier 4 engines or  
4 Tier 3 engines in your analysis?

5 MS. MITCHELL: I used the emission factors for  
6 the Tier 4 engines.

7 MS. HOLMES: Thank you.

8 HEARING OFFICER RENAUD: Cross by CURE?

9 MS. MILES: No questions. Thank you.

10 HEARING OFFICER RENAUD: Budlong? Mr. Silver?

11 MR. SILVER: No questions.

12 HEARING OFFICER RENAUD: All right. CNPS?

13 MR. BELTRAN: No questions.

14 HEARING OFFICER RENAUD: Thank you very much.

15 Questions by the committee?

16 Nothing?

17 COMMISSIONER EGGERT: No questions here.

18 COMMISSIONER BYRON: No questions. We were able  
19 to find the answer to the one question I had.

20 HEARING OFFICER RENAUD: All right. Good. Thank  
21 you very much.

22 So we'll proceed then with staff's air quality  
23 testimony.

24 MS. HOLMES: Thank you. I'd like to have the  
25 supplemental staff exhibit marked as Exhibit 302. I know

1 it's not the next in order, but we were planning to do  
2 this by date, and we filed another exhibit in between the  
3 staff assessment and the supplemental staff assessment  
4 that we'll get to later. So for purposes of moving  
5 forward, I'd like to have the supplemental staff  
6 assessment marked as Exhibit 202.

7 HEARING OFFICER RENAUD: And would that be the  
8 document that's dated July 7th?

9 MS. HOLMES: It would be.

10 HEARING OFFICER RENAUD: Good. Just to make sure  
11 we're marking the right one. All right. That's marked.

12 (Staff's Exhibit 302 was marked for  
13 identification.)

14 MS. HOLMES: And we would call William Walters,  
15 who is on the phone and needs to be sworn.

16 MR. THOMPSON: And was that 302 or 202?

17 HEARING OFFICER RENAUD: 3.

18 MS. HOLMES: 302.

19 HEARING OFFICER RENAUD: And before you call  
20 Mr. Walters, you reminded me of one housekeeping matter.

21 Mr. Thompson, do you wish to move 130 and 131  
22 into evidence?

23 MR. THOMPSON: I do. Thank you.

24 HEARING OFFICER RENAUD: Is there any objection  
25 from the parties?

1 MS. HOLMES: No.

2 HEARING OFFICER RENAUD: All right. Those will  
3 be admitted then.

4 (Applicant's Exhibits 130 and 131 were received  
5 into evidence.)

6 HEARING OFFICER RENAUD: Then proceed, I'm sorry,  
7 with Mr. Walters.

8 MS. HOLMES: Staff would call Mr. Walters and ask  
9 that the court reporter swear the witness.

10 (William Walters sworn.)

11 THE REPORTER: Please state and spell your name  
12 for the record and consider yourself sworn.

13 MR. WALTERS: William Walters, W-i-l-l-i-a-m  
14 W-a-l-t-e-r-s.

15 DIRECT EXAMINATION

16 MS. HOLMES: Thank you.

17 Mr. Walters, did you prepare the air quality  
18 section of Exhibit 302, the supplemental staff assessment?

19 MR. WALTERS: Yes, I did.

20 MS. HOLMES: And was a statement of your  
21 qualifications included in Exhibit 302?

22 MR. WALTERS: Yes, they were.

23 MS. HOLMES: And do you have any changes or  
24 corrections to make to your testimony?

25 MR. WALTERS: Not specifically to that, no.

1 MS. HOLMES: Thank you.

2 Are the facts in your testimony true and correct  
3 to the best of your knowledge?

4 MR. WALTERS: Yes, they are.

5 MS. HOLMES: And do the opinions this your  
6 testimony represent your best professional judgment?

7 MR. WALTERS: Yes, they do.

8 MS. HOLMES: I think rather than have Mr. Walters  
9 give a summary of his testimony, we'll move to the issue  
10 that seems to be before us.

11 Mr. Walters, did you hear the testimony of  
12 Julie Mitchell and Marc Van Patten that was given a few  
13 moments ago with respect to the use diesel engines on  
14 site?

15 MR. WALTERS: Yes, I did.

16 MS. HOLMES: Can you tell me how you found out  
17 and when you found out that the applicant was proposing to  
18 use these engines?

19 MR. WALTERS: I found out when the docketed  
20 supplemental testimony from the applicant came to me late  
21 last week.

22 MS. HOLMES: Thank you.

23 And you've had a chance to review that testimony.  
24 Can you please summarize your conclusions with regards to  
25 the applicant's testimony on the impacts associated with

1 the operation of those generators?

2 MR. WALTERS: Yeah. I did review testimony. I  
3 also did a few of my own sample calculations. For Tier 4,  
4 I found that the assumptions being used and the numbers  
5 presented seem reasonable.

6 MS. HOLMES: Do you have a sense of whether or  
7 not your conclusions would change if they were to use  
8 Tier 3 engines?

9 MR. WALTERS: There is a possibility that there  
10 could be issues with Tier 3, considering the density of  
11 emissions would be quite a bit higher. I'm a little  
12 worried that we'd have problems with one hour NOx, so I  
13 would prefer and since the testimony from Ms. Mitchell has  
14 Tier 4, I would prefer that we have some sort of amended  
15 condition or new condition regarding these engines that  
16 specified either Tier 4 or required additional analysis  
17 for allowing Tier 3.

18 MS. HOLMES: Thank you.

19 And you also heard Ms. Mitchell testify that her  
20 analysis assumed that the engines would operate for one  
21 year. Would your conclusions change if the Tier 4 engines  
22 were to operate in excess of one year?

23 MR. WALTERS: No. No, they wouldn't.

24 MS. HOLMES: And I don't know whether you've had  
25 any conversations with the air quality management district

1 with respect to this question, but I'll ask you anyway.

2 Do you have a sense of whether or not the final  
3 determination of compliance needs to be amended?

4 MR. WALTERS: I did not talk with district, but  
5 if the engines are as they indicated to be in the PERP  
6 program, then no, the FDOC should not need any changes.

7 MS. HOLMES: Thank you.

8 That concludes the staff's direct examination.

9 HEARING OFFICER RENAUD: Cross-examination by  
10 applicant?

11 MR. THOMPSON: No.

12 HEARING OFFICER RENAUD: All right. CURE?

13 MS. MILES: No.

14 HEARING OFFICER RENAUD: Budlong?

15 MR. SILVER: No.

16 HEARING OFFICER RENAUD: CNPS?

17 MR. BELTRAN: I've got some questions.

18 HEARING OFFICER RENAUD: All right. Go ahead,  
19 please.

20 CROSS-EXAMINATION

21 MR. BELTRAN: My name is Tom Beltran, California  
22 Native Plant Society.

23 Mr. Walters, I read your write-up in the  
24 supplemental staff assessment, and I noticed you were  
25 concentrating on the PM-10 and the PM-2.5. What were --

1 you had mentioned one of the likely sources for the  
2 Colexico reading for the PM-2.5 was from idling trucks at  
3 the border.

4           What about at the other sites? What were the  
5 sources for the PM-2.5 at the other sites?

6           MR. WALTERS: Well, the district has indicated  
7 and some of the studies show that as you get away from the  
8 border and influence Mexicali, most of the particulate  
9 becomes more just native wind-borne-type particulate soil  
10 for the most part with obviously some secondary pollutant  
11 including organics and inorganics, sulfate, nitrate.

12           MR. BELTRAN: Well, I follow that, but your -- in  
13 air quality Table 5 in the PM-2.5 for 24 and -- for the  
14 24-hour period and for the annual period, you're showing  
15 77 percent and 73 percent of standard respectively.  
16 That's a basin-wide reading; is that correct, or average?

17           MR. WALTERS: No. It would be -- it would be  
18 based on the data on Table 4, and the data in Table 4 is  
19 noted that -- that I believe that the PM numbers are from  
20 the El Centro station.

21           MR. BELTRAN: On page C.1-12 under particulate  
22 matter and fine particulate matter section, you refer to  
23 the source of PM-2.5, quote, "is derived mainly from  
24 either the combustion of materials or from precursor  
25 gases."

1           Combustion of materials, would that include  
2 burning of agricultural materials?

3           MR. WALTERS: It would.

4           MR. BELTRAN: Would it also include the  
5 combustion of the agricultural equipment, such as tractors  
6 and trucks and those types of activities?

7           MR. WALTERS: It would.

8           MR. BELTRAN: Did you do an analysis to estimate  
9 what portion of these readings came from those sources?

10          MR. WALTERS: We looked at available information  
11 from ARB. And let me go back and take a look.

12          There wasn't any testimony -- pre-testimony on  
13 this, so I wasn't prepared for this particular set of  
14 questions, so give me a moment.

15          MR. BELTRAN: Okay.

16          MS. HOLMES: Take your time.

17          MR. WALTERS: Okay. My testimony on page C.1-32  
18 notes that --

19          MR. BELTRAN: Please repeat that page number  
20 again.

21          MS. HOLMES: Can you speak up and speak more  
22 slowly, please, Will?

23          MR. WALTERS: Okay. My testimony on page C.1-32  
24 notes that from ARB resource available in 2005 that the  
25 primary, at least in Colexico, which as I have noted

1 elsewhere in my section, is highly influenced from  
2 Mexicali, had primary, secondary -- well, primary fine  
3 particulate from fugitive dust and combustion particulate.  
4 And the ammonium nitrate, ammonium sulfates were less than  
5 a quarter of the total.

6 MR. BELTRAN: At what station was that? Was that  
7 the Colexico?

8 MR. WALTERS: Right. This was readings --  
9 readings taken for that particular study that ARB  
10 completed in 2005 at Colexico.

11 MR. BELTRAN: I'm concerned -- my question is,  
12 okay, so what you're saying is the Colexico station, part  
13 of the 2.5, the source is from Mexicali. It's also likely  
14 as you put in your section that it's from the idling  
15 trucks. And this comes from air resources board.

16 What about the upper part of the basin towards  
17 where this project is sited? There's a station at Ninth  
18 and Imperial, I believe.

19 MR. WALTERS: Yeah. And I wouldn't exactly call  
20 this in the upper part of the basin, it's still pretty  
21 close to the border, but it is quite a bit further west  
22 than Colexico and generally not in the predominant wind  
23 direction from Mexicali, it will have considerably less  
24 influence both due to distance and direction.

25 HEARING OFFICER RENAUD: Mr. Walters, you're

1 fading out. Please keep close to your phone.

2 MR. WALTERS: Okay. Let me do that again.

3 The site, I would not characterize as being in  
4 the north part of the basin, it's still fairly close to  
5 the border with Mexico, a little further north than  
6 Colexico, which is on the border, but is also considerably  
7 more west. And so due to both distance and direction, the  
8 direction not being a predominant wind direction from  
9 Mexicali, it would experience considerably less influence  
10 from Mexico.

11 In terms of available data, I don't have  
12 available data from the project site area, and the study  
13 that ARB did not have data for El Centro. I expect,  
14 however, certainly at the site location, which I expect to  
15 have considerably lower particulate values than in the  
16 more developed area of the basin, would be more influenced  
17 by fugitive dust than the other forms, but there still  
18 would be a fairly sizeable fraction of both particulate,  
19 organic fraction as well as some secondary from sulfate  
20 and nitrate formation.

21 MR. BELTRAN: So basically you're speculating.  
22 You don't have the data to show the sources, or you don't  
23 have it available; is that correct?

24 MR. WALTERS: Correct. The data that was  
25 available was Colexico.

1 MR. BELTRAN: Okay. If this project were  
2 sited -- right now it's sited on an undeveloped desert  
3 creosote scrub with some washes. If it were sited on  
4 productive agricultural land and that were taken out of  
5 production and the burning were to cease, would you expect  
6 this to have a positive impact on the air quality in the  
7 basin?

8 MS. HOLMES: I'm just going to object to the  
9 question and ask about the assumption that there's ag  
10 burning.

11 If you could break that down into two questions  
12 so that your assumption is made clear, I think it would be  
13 easier for the witness to answer.

14 MR. BELTRAN: If agricultural land is taken out  
15 of production, assuming that this agricultural land  
16 contributes 2.5 particles, would it be reduced if -- would  
17 the PM-2.5 be taken out of -- would the PM-2.5 emissions  
18 be reduced if ag land is taken out of production?

19 MR. WALTERS: I think there are two ways to  
20 answer that question.

21 Number one, if you're going to be replacing an  
22 existing baseline emission source regardless of what that  
23 is, agricultural, industrial, and then reuse the land in  
24 another fashion, then you always can get some benefit of  
25 reducing that baseline, assuming -- and this is the second

1 part of the answer -- assuming that baseline doesn't move  
2 to another location.

3           And, you know, there's really no way to be able  
4 to say that if you were able to take agriculture out of  
5 one location, it wouldn't come back into another and  
6 essentially have the same emission profile.

7           MR. BELTRAN: Well, that's the second part. The  
8 first part, more directly, is if agricultural land is  
9 fallowed, will it reduce particle 2.5 emissions? I'm not  
10 saying if it's moved or if it's put into production  
11 someplace else. If it's fallowed, if we reduce  
12 agriculture production, will it reduce particle 2.5  
13 emissions?

14           HEARING OFFICER RENAUD: Emanating from that land  
15 that was fallowed; isn't that what you really mean?

16           MR. BELTRAN: If the total acres of agricultural  
17 are reduced because we fallow land, will it reduce PM-2.5  
18 emissions?

19           HEARING OFFICER RENAUD: Can you answer --

20           MR. WALTERS: You know, I haven't really done a  
21 study on that because there are pluses and minuses in both  
22 directions. I think over the long term, you know, annual  
23 basis, it probably would. But if you fallow land and  
24 aren't careful to keep it well vegetated, you know, you  
25 could increase temporary emissions during wind events

1 pretty significantly.

2 MR. BELTRAN: But wind events don't create 2.5  
3 particles; is that correct?

4 MR. WALTERS: Oh, they create some.

5 MR. BELTRAN: Okay. Very good. Thank you.

6 HEARING OFFICER RENAUD: All right. Thank you.  
7 Is there any redirect for Mr. Walters?

8 MS. HOLMES: One question.

9 HEARING OFFICER RENAUD: Thank you. Go ahead.

10 REDIRECT EXAMINATION

11 MS. HOLMES: Will, could you please explain why  
12 it is that you would expect that there is still, I believe  
13 you said, a significant fraction of the total particulate  
14 levels to be from combustion in the project area?

15 MR. WALTERS: It primarily would be transported  
16 from the west, from the San Diego air basin. But also, in  
17 the project area, you know, there is the I-8, which is a  
18 fairly significant emission source in terms of trucking,  
19 that would add to that total as well.

20 MS. HOLMES: Thank you.

21 HEARING OFFICER RENAUD: Okay. Mr. Walters, I  
22 have a question for you. This is Raoul Renaud, the  
23 hearing officer.

24 Ms. Mitchell's testimony basically is that it  
25 assumes a possibility, not likely, but a possibility that

1 Tier 4 engines were not available, and that if they had to  
2 use Tier 3 generators, the project would need to use  
3 either fewer than six or run them less to remain under the  
4 federal conformity threshold.

5 Do you agree with that testimony?

6 MR. WALTERS: Actually, I'm not sure where I'm  
7 seeing those assumptions in Mrs. Mitchell's testimony. I  
8 believe I heard something to that effect in the verbal  
9 testimony from Mr. Van Patten; I've actually not seen it  
10 in written in terms of her testimony.

11 HEARING OFFICER RENAUD: In her declaration that  
12 was submitted with the applicant's -- let's see, what's  
13 the title of this document? Supplemental or rebuttal  
14 testimony -- on July 21st, rebuttal testimony, second  
15 page -- I don't know if you have that in front of you, but  
16 I basically was reading it to you. If you'd like, I can  
17 read you the paragraph, if that would help you, and then  
18 ask you if you agree with it. Would that be helpful to  
19 you, or do you have it available?

20 MR. WALTERS: Oh, I see it now. Yes, okay --

21 HEARING OFFICER RENAUD: Question 8 and answer 8.

22 MR. WALTERS: Yeah. She was specifically talking  
23 about general conformity threshold and not necessarily  
24 about other possible impacts, including short-term NOx.

25 HEARING OFFICER RENAUD: All right. Do you agree

1 with her testimony; question 8, answer 8?

2 MR. WALTERS: Yes, in terms of the federal  
3 conformity threshold, I do.

4 HEARING OFFICER RENAUD: All right. Thank you.  
5 Any questions from the committee?

6 COMMISSIONER BYRON: None.

7 HEARING OFFICER RENAUD: Further questions before  
8 we let Mr. Walters go? Anybody? All right. Good.

9 MS. HOLMES: One question.

10 HEARING OFFICER RENAUD: Ms. Holmes, please.

11 REDIRECT EXAMINATION

12 MS. HOLMES: Mr. Walters, could you explain what  
13 the concern would be if there were to be an exceedance of  
14 short-term NOx standard?

15 MR. WALTERS: Well, our findings in terms of  
16 significance are based on the fact that there are no  
17 exceedances of the NOx standard. So if we were to remodel  
18 with these new engines and find that there were  
19 exceedances, then we would have what staff would consider  
20 significant impacts under CEQA that we'd either try to  
21 mitigate in some manner or there would have to be some  
22 sort of override.

23 MS. HOLMES: Thank you.

24 HEARING OFFICER RENAUD: All right. Is that it?

25 MR. THOMPSON: That's it from applicant.

1 HEARING OFFICER RENAUD: All right. Good. I  
2 think we're done with air quality then. Thank you.

3 Would you like to move on to land use?

4 MR. THOMPSON: We would. And we have  
5 Mr. Van Patten who's been previously sworn, but his  
6 testimony in the land use area is one part of one question  
7 and answer, one response in his Exhibit 130, and that is  
8 response 3A. I can put him on for that and then turn it  
9 over to staff for their land use expert, if that works for  
10 you.

11 HEARING OFFICER RENAUD: That works for us.  
12 Does that work for staff?

13 MS. HOLMES: I'd like to go back for a moment.

14 HEARING OFFICER RENAUD: To air?

15 MS. HOLMES: Yeah. I'd like to move my exhibit  
16 into evidence.

17 HEARING OFFICER RENAUD: Good idea. Thank you.

18 MS. HOLMES: The air quality portion of  
19 Exhibit 302. And --

20 HEARING OFFICER RENAUD: Could I possibly suggest  
21 modifying your motion to move the entire SSA into  
22 evidence, and then we won't have any problems with not  
23 doing part of it.

24 MS. HOLMES: Well, staff certainly will not  
25 object to that.

1 HEARING OFFICER RENAUD: All right.

2 Would anybody object to --

3 MR. THOMPSON: No objection.

4 HEARING OFFICER RENAUD: Any parties?

5 MR. SILVER: No.

6 HEARING OFFICER RENAUD: All right. No  
7 objections. The entire SSA is admitted, the one dated  
8 July 7th.

9 (Staff's Exhibit 302 was received into evidence.)

10 MS. HOLMES: Thank you.

11 And I'm sorry, Mr. Thompson, I didn't quite  
12 understand what you were saying about Mr. Van Patten's  
13 testimony. I was still finishing up with air. So if you  
14 could -- but a little bit more slowly for those of us who  
15 are slower than you are, I would appreciate it.

16 MR. THOMPSON: Done.

17 DIRECT EXAMINATION

18 MR. THOMPSON: Thank you. Mr. Van Patten, you've  
19 been previously sworn.

20 In the area of land use, would you describe which  
21 portions of your Exhibit 130 and attachments thereto you  
22 wish to put into the record in land use?

23 MR. VAN PATTEN: Yeah. We're submitting a couple  
24 of -- we're submitting a couple of options. One for  
25 80 acres owned by the Burke family denoted as Double Eagle

1 in the option agreement with attached lease.

2 Another one for the Oatman and Miller families  
3 for 180 acres, plus another -- let's see, it's another --  
4 I can't remember the acreage, but it's another private  
5 parcel within the project boundary which has an option  
6 agreement plus a lease, an attached agreed-upon lease.

7 And then the third one is for the Martinez family  
8 for a one-acre parcel, which is a purchase agreement.

9 MR. THOMPSON: And what was the purpose of  
10 including these options in your testimony?

11 MR. VAN PATTEN: To show that we have control  
12 over that land, site control.

13 MR. THOMPSON: Anything else?

14 MR. VAN PATTEN: It's not coming to me, Allan.  
15 So if there's something else, it's not coming to me.

16 MR. THOMPSON: Why is that important to the  
17 applicant?

18 MR. VAN PATTEN: Such that we can ultimately,  
19 once granted the right-of-way grant from the BLM, we can  
20 aggregate the private lands within the project site and  
21 develop the entire site contiguously.

22 MR. THOMPSON: Thank you. That completes our  
23 further direct on the subject of lands for this witness.

24 HEARING OFFICER RENAUD: All right.

25 Is there any cross?

1 MS. HOLMES: Just a couple of questions.

2 CROSS-EXAMINATION

3 MS. HOLMES: I wanted to confirm, so,  
4 Mr. Van Patten, is it your testimony that you have site  
5 control for 40 years as a result of these option  
6 contracts?

7 MR. VAN PATTEN: These option agreements allow us  
8 to sign a lease in two cases and to purchase the land in  
9 the other case where the initial lease term is 20 years  
10 with 10-year extensions.

11 MS. HOLMES: And under what circumstances -- let  
12 me ask that question a different way.

13 Does the property owner have the ability to  
14 refuse to enter into the extensions?

15 MR. VAN PATTEN: No.

16 MS. HOLMES: And can you point to a particular  
17 section of the lease -- I'm sorry, the reason I'm asking  
18 these questions is I was confused about the 20 years and  
19 then the two 10-year terms. And so it would be helpful if  
20 we could look at those sections so that we can ensure that  
21 there's site control.

22 MR. VAN PATTEN: Do I need to do this this  
23 second, or are we going to spend too much time --

24 MS. HOLMES: No. I don't have any problem coming  
25 back to that.

1 MR. VAN PATTEN: Let me identify those in all  
2 contracts so we have exactly what the provisions are.

3 MS. HOLMES: That's fine. I don't even have an  
4 objection to that being submitted later today or tomorrow,  
5 but we would like to understand; it wasn't immediately  
6 clear to us.

7 MR. THOMPSON: Understand Mr. Van Patten is here  
8 for the duration. So we will put that --

9 MS. HOLMES: As are most of us.

10 HEARING OFFICER RENAUD: All right. Is there any  
11 cross-examination by CURE?

12 MS. MILES: No.

13 HEARING OFFICER RENAUD: All right. Budlong?

14 MR. SILVER: No.

15 HEARING OFFICER RENAUD: CNPS?

16 MR. BELTRAN: No.

17 HEARING OFFICER RENAUD: All right.

18 Mr. Thompson, just so I'm clear that we're all on  
19 the same page, Exhibit 130, the prepared rebuttal  
20 testimony of Marc Van Patten, was that submitted with the  
21 applicant's package of July 21st?

22 MR. THOMPSON: Yes, the submittal of rebuttal  
23 testimony, yes.

24 HEARING OFFICER RENAUD: All right. And does one  
25 of you have the pdf copy of that open on a computer? I

1 just want to know what page we're looking at. It's a  
2 great big document, and it's got subparts.

3 Just page 19, all right. Thank you.

4 MS. FOLEY GANNON: And there are -- the leases  
5 that were referenced are actually exhibits to that  
6 exhibit. So when we were submitting Exhibit 130, we were  
7 including all the exhibits attached to that testimony.

8 HEARING OFFICER RENAUD: That's what I wanted to  
9 make clear. All right. Good. Thank you very much.

10 All right. Further witnesses by the applicant on  
11 land use?

12 MR. THOMPSON: No.

13 HEARING OFFICER RENAUD: All right. Staff?

14 MS. HOLMES: Thank you. Staff would call Negar  
15 Vahidi. She needs to be sworn.

16 HEARING OFFICER RENAUD: Ms. Vahidi, you're on  
17 the phone, I believe.

18 MS. VAHIDI: Yes.

19 I think Caryn's mic is off.

20 Hi. I think we need to be sworn in; is that  
21 correct?

22 MS. HOLMES: Yes.

23 HEARING OFFICER RENAUD: Yes. And let me remind  
24 you to speak right up to your phone so we can all hear you  
25 very well.

1 MS. VAHIDI: Is that better?

2 (Negar Vahidi and Susanne Huerta were sworn.)

3 THE REPORTER: Could you please state and spell  
4 your names for the record and consider yourself sworn.

5 MS. VAHIDI: Yes. First name Negar, N-e-g-a-r,  
6 last name Vahidi, V-a-h-i-d-i.

7 MS. HUERTA: Susanne Huerta. First name  
8 S-u-s-a-n-n-e, last name H-u-e-r-t-a.

9 DIRECT EXAMINATION

10 MS. HOLMES: Thank you, Ms. Vahidi. Did you  
11 prepare the land use section of Exhibit 302?

12 MS. VAHIDI: Yes, I did.

13 MS. HOLMES: And was the statement of your  
14 qualifications included in that exhibit?

15 MS. VAHIDI: Yes, they are.

16 MS. HOLMES: And do you have any changes or  
17 corrections to your testimony?

18 MS. VAHIDI: No, I do not.

19 MS. HOLMES: And are the facts contained in your  
20 testimony true and correct?

21 MS. VAHIDI: Yes.

22 MS. HOLMES: Do the opinions in your testimony  
23 represent your best professional judgment?

24 MS. VAHIDI: Yes.

25 MS. HOLMES: Again, in the interest of time, I

1 think we'll skip the summary of the staff testimony.

2 Ms. Vahidi, are you familiar with the applicant's  
3 testimony on land use?

4 MS. VAHIDI: Yes, I am.

5 MS. HOLMES: And does it address two issues,  
6 zoning consistency, and setback requirements?

7 MS. VAHIDI: Yes.

8 MS. HOLMES: And did staff also consider a third  
9 issue in its analysis, that of site control?

10 MS. VAHIDI: Yes.

11 MS. HOLMES: Can you please very briefly explain  
12 what the staff -- in light of the testimony that you just  
13 heard from Mr. Van Patten, can you please explain what the  
14 staff position is on those three issues?

15 MS. VAHIDI: Yes. I will start with the issue of  
16 site control, because setbacks are somewhat related, and  
17 since Mr. Van Patten --

18 HEARING OFFICER RENAUD: Please speak right into  
19 your phone. You're pretty faint here.

20 MS. VAHIDI: Sorry. Okay. I'm going to start  
21 with the issue of site control.

22 Staff, as part of data adequacy requirements, we  
23 usually ask for information regarding any private parcels  
24 and the applicant's intent for acquiring and/or leasing  
25 those parcels. So this issue sort of -- we've been in

1 discussions with the applicant since the very outset of  
2 the project.

3           Regarding site control, we require that  
4 applicant's in compliance with the state Subdivision Map  
5 Act, show site control by either acquiring parcels in one  
6 of two ways -- or showing site control in one of two ways;  
7 either merging parcels or doing a lot line adjustment.

8           Now, the power of implementing the Subdivision  
9 Map Act is vested in the local agency. In this particular  
10 case the local agency is Imperial County, but we should  
11 note that Imperial County doesn't really have any specific  
12 requirements regarding lot mergers or lot line  
13 adjustments.

14           We had put in our typical condition of  
15 certification requiring the applicant to comply with the  
16 Subdivision Map Act by either doing a lot line adjustment  
17 or a parcel merger through the county; however, the  
18 applicant's not had a lot of luck getting a lot of  
19 confirmation out of the county, so they are requesting  
20 that the committee or we don't implement condition of  
21 certification land one, and they are requesting an  
22 override for compliance with the Subdivision Map Act.

23           Now, the reason the setback requirement is  
24 important is one of the reasons we require merging of  
25 parcels or a lot line adjustment is to allow the applicant

1 to be able to fully build out those private parcels by not  
2 having to comply with the county setback requirements for  
3 each parcel. But that would be yet another item that the  
4 applicant is asking the committee for an override on, is  
5 to basically override the local agency, i.e., Imperial  
6 County LORS regarding the setback requirements.

7           And the third issue regarding the project -- the  
8 portions of the project site on private lands that are  
9 within Imperial County and are located within the F-2 zone  
10 and the fact that siting the project as proposed within  
11 that Imperial County zoning designation would not be  
12 consistent based on the recommendations that even the  
13 county has made regarding use of a process, whereby they  
14 call it a similarity in use process because the project  
15 that the county of Imperial selected as the project that  
16 they would use as a similar use is nowhere near similar in  
17 its scale to Imperial Valley Solar Project.

18           And those are the main issues regarding land use  
19 at the moment.

20           MS. HOLMES: Thank you. Those are all my  
21 questions.

22           HEARING OFFICER RENAUD: Thank you.

23           Cross-examination by applicant?

24           MR. THOMPSON: No, thank you.

25           HEARING OFFICER RENAUD: By CURE?

1 MS. MILES: No.

2 HEARING OFFICER RENAUD: All right. By Budlong?

3 MR. SILVER: No.

4 HEARING OFFICER RENAUD: CNPS?

5 MR. BELTRAN: No.

6 HEARING OFFICER RENAUD: All right. I do have a  
7 couple questions, if I may.

8 I guess we'll start with the last first on the  
9 similarity of use.

10 Ms. Vahidi, first of all, have you heard or are  
11 you aware of the county's position with respect to this  
12 similarity of use issue?

13 MS. VAHIDI: Yes. They've sort of, for lack of a  
14 better word, vacillated on their position a couple of  
15 times. In their comment letter on the staff assessment,  
16 they did -- the applicant and staff had a lot of  
17 discussions, or have attempted to have a lot of  
18 discussions with the county planning staff. They  
19 originally came out telling the applicant and staff that  
20 for the project to comply, that they -- that the applicant  
21 could go through this similarity of use finding and then  
22 the project would be consistent.

23 And since then, after much discussion, the  
24 applicant -- the county has come back actually and told us  
25 that they now agree with us, meaning staff, that the

1 project that they had brought up as the project that they  
2 would have used as the similar use is nowhere near as far  
3 as being similar to this project because that project is a  
4 450 acre solar PV project.

5 So in the interest of looking at the Imperial  
6 Valley Solar Project as a whole and not just the, you  
7 know, 380 acres of private parcels, you'd have to look at  
8 the entire project in its entirety with regard to scale.

9 So they did -- the county did agree with us that  
10 they do not think that this would be a similar use any  
11 more than that maybe the applicant should pursue trying to  
12 get an override for that -- for that zoning inconsistency.

13 HEARING OFFICER RENAUD: All right. Thank you.

14 As far as your analysis that it's not a similar  
15 use, help me understand this. The amount of land that's  
16 under Imperial County jurisdiction at the site is 340  
17 acres, correct?

18 MS. VAHIDI: Yes, thereabouts, yes.

19 HEARING OFFICER RENAUD: And the similar use  
20 project you looked at is 540 acres, correct?

21 MS. VAHIDI: Yes, about.

22 HEARING OFFICER RENAUD: So wouldn't you compare  
23 the 540 to the 340, rather than the 540 to the 6500?

24 MS. VAHIDI: Because I -- because when the  
25 project that's implemented, it's not just the 340 acres

1 getting implemented, even though the majority of the  
2 acreage is on BLM land. I'd have to look at the project  
3 as a whole as far as the scale of it goes. If we're  
4 trying to make a similarity in use finding based on the  
5 criteria that the county uses, you'd have to look at the  
6 project as a whole with regards to the impact and the  
7 findings that they would have to make.

8 HEARING OFFICER RENAUD: Okay. Thank you for  
9 that clarification.

10 Let's see. I'm looking at my next question, so  
11 just bear with me here.

12 MS. VAHIDI: Sure.

13 HEARING OFFICER RENAUD: All right. In your  
14 testimony, Ms. Vahidi, you talked about the current use of  
15 the site. And I'm looking at page C.7-8 particularly, of  
16 Exhibit 302. You estimated that 1038 acres of the site  
17 have been disturbed by off-highway vehicle use, and you  
18 base that on GIS data. What is -- could you describe more  
19 particularly for us that data is, GIS, what kind of data  
20 is it, where do you find it and so on?

21 MS. VAHIDI: Well, the GIS data -- and the  
22 applicant can jump in. GIS data, which is geographic  
23 information system data, was provided regarding on-site  
24 uses and existing conditions by the applicant in their AFC  
25 and subsequent filing.

1           The issue of OHV use was -- there was information  
2 provided by the applicant in a study called the "Baselines  
3 Conditions Report," and there was a map in there in  
4 addition to some descriptive data that showed the  
5 disturbance on site by OHV use.

6           HEARING OFFICER RENAUD: All right. And farther  
7 down in that page your testimony reads that -- or  
8 describes the site as highly disturbed from years of heavy  
9 and ongoing OHV use.

10           Is that consistent with the 1038 acres, or are  
11 you indicating to us that there is in fact more  
12 disturbance area than the 1038?

13           MS. VAHIDI: Well, yes, that's a very good  
14 question. As I'm sure BLM staff would testify to if they  
15 could, you will have on BLM land some designated open  
16 roads for OHV use, but the way OHV use usually occurs, a  
17 lot of times roads may not be necessarily discernible or  
18 someone, you know, one or two OHV users may veer off a  
19 designated road, and then it creates yet another road. So  
20 there are instances with some unauthorized use of other  
21 portions of land that are not designated for OHV use to  
22 occur.

23           So in other words, there is -- the site could be  
24 more disturbed than just the amount that is indicated.

25           HEARING OFFICER RENAUD: Okay. And then just to

1 confirm, I think what I'm reading, but I want to hear it  
2 direct from you, with respect to the trail, the Anza  
3 Recreation Trail, apparently cannot be discerned due to  
4 the use of the site, current use of the site.

5 Are you aware of any efforts that have been made  
6 by BLM or anybody over the years to protect that trail so  
7 that it -- or the location of the trail so that it could  
8 be discerned?

9 MS. VAHIDI: I do note that there was some --  
10 that BLM had been working with the park service to try and  
11 put up signage, but at this point, as the applicant can  
12 also confirm, we really cannot tell where -- where the  
13 trail is on site. And the efforts that are ongoing right  
14 now to maybe help reestablish the recreational aspects of  
15 the trail is to try and connect the two segments north and  
16 south of the site, sort of due east of the site.

17 So national park service, as you know, based on  
18 their comment letter, is attempting to do that along with  
19 BLM. I don't have any, unfortunately since the  
20 bifurcation of the staff assessment from the GIS, I don't  
21 have a lot of information regarding the specifics of BLM  
22 and national park service's ongoing coordination or  
23 discussion regarding this particular issue.

24 HEARING OFFICER RENAUD: All right. Thank you  
25 very much.

1           That's all the questions I had.

2           Committee? Anybody? All right.

3           MS. FOLEY GANNON: We have one follow-up  
4 question, if it's okay.

5           HEARING OFFICER RENAUD: Redirect from applicant,  
6 yes.

7                                 REDIRECT EXAMINATION

8           MS. FOLEY GANNON: In your testimony you were  
9 commenting on the fact that the project would not be  
10 consistent with the technical provisions of the  
11 Subdivision Map Act. What is the intent of those  
12 provisions as you understand them? I mean, what are they  
13 intended to accomplish?

14           MS. VAHIDI: Yes, again, the Subdivision Map Act  
15 and the intent of why the energy commission actually tries  
16 really hard to have applicants comply with that is to  
17 ensure that when there are private parcels, that the  
18 parcels -- you know, so that the applicant can show that  
19 they are going to be able to build the project on the site  
20 that they have proposed.

21                         In other words, you don't want to have the  
22 commission license a power plant project and then not be  
23 able to site it where it -- where the applicant has  
24 proposed it because a property owner may say I no longer  
25 want to sell to you, or, I no longer want to lease the

1 land to you.

2 MS. FOLEY GANNON: So would having control of the  
3 site for the predicted life of the project address that  
4 concern?

5 MS. VAHIDI: Yes, it would.

6 MS. FOLEY GANNON: And with regard to the  
7 setbacks, what is the intent of the setbacks that the  
8 county requires, as you understand them?

9 MS. VAHIDI: Well, the kind of setbacks within  
10 that particular zone is to ensure that it's safe. If  
11 there's one -- say there are a number of private property  
12 owners adjacent to each other; so when you build out your  
13 parcel as a private property owner that you have -- and  
14 this occurs in all local agencies, are setback  
15 requirements. So that the local agency tries to ensure  
16 that there's enough of a buffer between the two adjacent  
17 uses or the adjacent uses on all these private parcels so  
18 they're not building right up to the edge of the boundary  
19 of the parcel.

20 MS. FOLEY GANNON: And in a situation like we  
21 have here where the private parcels are actually  
22 surrounded by the use that's going to be the same as will  
23 be done on the private parcels, do you think that there is  
24 a need to protect that interest, or do you think those  
25 setbacks are needed to accomplish the goals of the

1 setbacks?

2 MS. VAHIDI: No, not in this particular case,  
3 because, in fact, it would probably render some of the  
4 parcels not very useful if you can't build them out fully.

5 MS. FOLEY GANNON: Thank you.

6 HEARING OFFICER RENAUD: All right. Thank you.

7 Is there any further questions of this witness by  
8 any party?

9 MS. HOLMES: No.

10 MS. MILES: No.

11 MR. SILVER: No.

12 MR. BELTRAN: No.

13 HEARING OFFICER RENAUD: All right. Thank you.

14 Staff, do you have another witness to call? Or  
15 no?

16 MS. HOLMES: I don't believe so.

17 HEARING OFFICER RENAUD: Okay.

18 MS. FOLEY GANNON: For the rest of the day?

19 You're done?

20 This is going to be a shorter time than we  
21 thought.

22 MS. HOLMES: Those are staff's witnesses on land  
23 use.

24 HEARING OFFICER RENAUD: That's it. All right.

25 Thank you very much.

1 MS. HOLMES: I would note that we did skip over  
2 project description and policy. I don't know if that was  
3 an intentional and I missed part of the discussion, or  
4 whether it was inadvertent.

5 HEARING OFFICER RENAUD: It was intentional  
6 because I heard from, I believe it was Mr. Thompson, that  
7 we thought we'd try to do air quality and land use first  
8 thing.

9 MS. HOLMES: That's fine.

10 MS. FOLEY GANNON: I think, yeah, we thought that  
11 they were discrete issues, and the rest of the issues were  
12 more connected and would make more sense to have them be  
13 heard sequentially and to have these discrete issues  
14 handled this morning.

15 HEARING OFFICER RENAUD: Well, okay. That's  
16 good. I think that concludes the land use then.

17 MS. FOLEY GANNON: That does conclude the land  
18 use.

19 HEARING OFFICER RENAUD: Thank you very much.

20 What's now --

21 MS. FOLEY GANNON: We will now turn to that not  
22 inadvertently skipped section, the policy and overview,  
23 and we will call -- we'll have Marc Van Patten stay as a  
24 witness, and call Sean Gallagher.

25 THE REPORTER: Mr. Gallagher, could you stand up

1 and raise your right hand, please.

2 (Sean Gallagher was sworn.)

3 THE REPORTER: Please state and spell your name  
4 for the record.

5 MR. GALLAGHER: Sean Gallagher, S-e-a-n,  
6 Gallagher, G-a-l-l-a-g-h-e-r.

7 THE REPORTER: Thank you. Be seated.

8 MS. FOLEY GANNON: Sorry. I noticed the chair I  
9 was sitting in was broken, so I wanted to have  
10 Mr. Thompson take over that chair for the rest of the day.

11 HEARING OFFICER RENAUD: Well, we hope you're  
12 happy with the furniture arrangements now; if not, we'll  
13 try to accommodate you.

14 MS. FOLEY GANNON: I appreciate that.

15 DIRECT EXAMINATION

16 MS. FOLEY GANNON: Mr. Gallagher, are you the  
17 same Sean Gallagher who has given testimony in the  
18 previous oral proceedings as well as written testimony?

19 MR. GALLAGHER: Yes.

20 MS. FOLEY GANNON: And are you the author of the  
21 testimony, rebuttal testimony that was submitted on July  
22 in 2010?

23 MR. GALLAGHER: Yes.

24 MS. FOLEY GANNON: And we would like to have  
25 Mr. Gallagher's testimony marked as the next exhibit,

1 which will be Exhibit 132?

2 HEARING OFFICER RENAUD: That would be the next  
3 number, yes.

4 (Applicant's Exhibit 132 was marked for  
5 identification.)

6 MS. FOLEY GANNON: Mr. Gallagher, do you have any  
7 corrections, revisions to make to your previous testimony?

8 MR. GALLAGHER: Yes, I do.

9 The testimony that we filed last week includes an  
10 error on page 8 in the bullet related to condition, worker  
11 safety 7. My testimony cites some language from the SSA,  
12 but the language cited is from the wrong paragraph in the  
13 SSA. So that reference should be stricken from my  
14 testimony. It does not change the conclusion of my  
15 testimony however.

16 MS. FOLEY GANNON: I'm sorry, we're on page 8,  
17 and it was the language that was cited with regard to  
18 which provision?

19 MR. GALLAGHER: Worker safety 7.

20 MS. FOLEY GANNON: Okay.

21 HEARING OFFICER RENAUD: All right. Just so I'm  
22 clear, we're again referring to the supplemental testimony  
23 that was filed on July 21st.

24 MR. GALLAGHER: Correct.

25 HEARING OFFICER RENAUD: And we're at page 8 --

1 MR. GALLAGHER: Correct.

2 HEARING OFFICER RENAUD: -- of the Sean Gallagher  
3 declaration.

4 MR. GALLAGHER: That's correct.

5 HEARING OFFICER RENAUD: All right.

6 MR. GALLAGHER: And there's a second bulleted  
7 paragraph on page 8 that has to do with condition worker  
8 safety 7.

9 HEARING OFFICER RENAUD: Yes.

10 MR. GALLAGHER: The one, two, three, four, fifth  
11 line of that paragraph includes -- fifth and sixth lines  
12 include some quoted language from the SSA, and that quoted  
13 language should be stricken; however, it does not change  
14 the conclusion of my testimony at this point.

15 HEARING OFFICER RENAUD: The language beginning  
16 with the word "incidence."

17 MR. GALLAGHER: Correct.

18 HEARING OFFICER RENAUD: All right. Striking it,  
19 not replacing it.

20 MR. GALLAGHER: I think what I'll do is replace  
21 it orally --

22 HEARING OFFICER RENAUD: With something --

23 MR. GALLAGHER: Yes.

24 HEARING OFFICER RENAUD: -- that's coming.

25 All right. Thank you.

1 MS. FOLEY GANNON: Do you have any other  
2 corrections or revisions to this testimony submitted?

3 MR. GALLAGHER: No other corrections, but one  
4 addition.

5 Our testimony did mention condition VIS 6,  
6 however, my testimony didn't mention one additional  
7 concern with VIS 6 that we'd like to raise today and one  
8 additional change to VIS 6 that we'd like to request  
9 today.

10 And I can either discuss that change now or when  
11 we go through. I think we'll just --

12 MS. FOLEY GANNON: We can do it when we get to  
13 discussing the nature of the conditions that you wish to  
14 provide comments on.

15 Overall, Mr. Gallagher, what is the purpose of  
16 your testimony here today?

17 MR. GALLAGHER: Overall, I'd like to discuss the  
18 evolution of the project in response both to agency  
19 concerns and our own learnings. I'd like to discuss our  
20 response to some of the most serious conditions that we  
21 have changes to request, and I want to discuss the basis  
22 for the override where an override is going to be  
23 necessary.

24 MS. FOLEY GANNON: And I know we are not -- we're  
25 working very hard to avoid repeating anything that we have

1 put in previously, but to set up and understand, as you  
2 call it, the evolution of the project, the project was --  
3 the AFC was submitted in 2008; is that correct?

4 MR. GALLAGHER: Yes. The AFC was submitted in  
5 June 2008. And since then our experts, as they'll testify  
6 later today and tomorrow, have spent thousands of hours  
7 studying and assessing the site's resources and have also  
8 spent hundreds or thousands of hours discussing the  
9 proposed project with federal and state natural resource  
10 agencies and permitting agencies and trying to respond to  
11 concerns.

12 And the reason I bring it up is that I'm going to  
13 in a few minutes complain about some of the project --  
14 some of the conditions of certification in the SSA, and I  
15 want to make it clear to the committee that we've done a  
16 lot of work to improve this project over the past two  
17 years, and there's many, many conditions that we agree  
18 with.

19 And I don't want you to get the impression or the  
20 misimpression that we're simply -- we're simply  
21 complaining about some of the issues here. We want to  
22 make sure that you understand there are many, many things  
23 that we've done to try to improve this project that have  
24 the agreement of the agencies and there are many, many  
25 conditions that have been suggested in the SSA with which

1 we agree as well.

2 MS. FOLEY GANNON: And as I understand it, the  
3 site investigation began prior to the AFC, and there were  
4 probably even changes prior to the AFC?

5 MR. GALLAGHER: That's right. The project as it  
6 was originally proposed was a 900 megawatt project on 7600  
7 acres of land, and the initial studies, even before the  
8 AFC was filed in June 2008, found that there were  
9 potentially significant impacts to environmental  
10 resources, cultural resources in particular on the eastern  
11 end of the project site.

12 And as a result, even before the project was  
13 filed in June 2008, the project was -- the scope of the  
14 project was reduced from 900 megawatts to 750 megawatts,  
15 and the acreage was reduced from 7600 acres to about 6500  
16 acres.

17 Now, just as an aside, I'll say when I was still  
18 at the Public Utilities Commission when that change was  
19 made and when it came across my desk, I, frankly, was  
20 impressed that the applicant was taking a responsible  
21 approach to permitting the project.

22 MS. FOLEY GANNON: And have there been other what  
23 you would consider significant changes that have been made  
24 in response to agency concerns or the results of studies  
25 conducted by your consulting team?

1           MR. GALLAGHER: Yes. And the biggest one that  
2 I'd like to mention are the changes that have been made in  
3 response to the Army Corps of Engineers and working with  
4 the Army Corps of Engineers on the 404B-1 permit under the  
5 Clean Water Act that the army corps must permit.

6           We've been working with the corps for months, and  
7 the project has been redesigned or modified substantially  
8 in response to concerns articulated by the corps. As  
9 originally proposed, the project would have been 750  
10 megawatts and would have impacted 177 acres of the waters  
11 of the United States and would have had additional  
12 indirect and temporary impacts.

13           And as currently proposed and as modified, we've  
14 worked hard to figure out how to maximize reduction of  
15 those impacts to waters of the United States while still  
16 having a project that's buildable, that's practicable  
17 logistically and cost-wise to build.

18           And where we are now, and the corps has  
19 preliminarily onto this -- in their preliminarily least  
20 environmentally damaging practicable alternative analysis  
21 as modified, the project reduces the permanent direct  
22 impacts to 38.2 acres, that's about 75-percent reduction  
23 from the original proposal, and it reduces the temporary  
24 and indirect impacts as well.

25           We also, as going through this, we lost some

1 acres and we lost some megawatts. The project is down to  
2 709 megawatts now as a result of those changes, but it's  
3 buildable at that size. And there's been a number of  
4 changes that have been made to achieve those reductions to  
5 the project, including changing the way the roads are laid  
6 out, changing the width of the roads, and many, many other  
7 project changes that are described in my testimony.

8 MS. FOLEY GANNON: And does the -- does the LEDPA  
9 have any impact on the potential impacts to listed  
10 species?

11 MR. GALLAGHER: Well, the LEDPA has reduced  
12 impacts on species because the LEDPA has reduced impacts  
13 on the dry washes on the project site which are -- and I'm  
14 not a biologist, but the better habitat for the species  
15 such as big horn sheep in particular. The washes on the  
16 site is where the marginal big horn sheep foraging habitat  
17 is located. And as a result, the mitigation that's been  
18 proposed by the corps to mitigate for impacts to waters of  
19 the United States is also -- would also have significant  
20 benefits for the big horn sheep.

21 And so as I will discuss a little later, we've  
22 got a mitigation proposal on waters of the United States  
23 that also addresses impacts to big horn sheep.

24 MS. FOLEY GANNON: And has there been any other  
25 changes made to the project that you think significantly

1 reduce impacts?

2 MR. GALLAGHER: Well, the only other one I'd  
3 mention now is another -- is another change to avoid  
4 cultural resources on the site. We've agreed in  
5 consultation with the BLM and the other parties to the  
6 programmatic agreement to create environmentally-sensitive  
7 areas within the project site, within the remaining  
8 project site to avoid high environmentally-sensitive areas  
9 with a minimum buffer of 100 feet and to avoid other  
10 identified environmentally-sensitive areas with a buffer  
11 of 50 feet.

12 MS. FOLEY GANNON: And just to clarify -- I think  
13 you did say you were not a biologist. I think you maybe  
14 misspoke in saying that the LEDPA, according to your  
15 testimony, reduces impacts to Flat-tailed Horned Lizards  
16 and not to the big horn sheep?

17 MR. GALLAGHER: Sorry, yes. Well, yes,  
18 significantly reduced impacts on the Flat-tailed Horned  
19 Lizards as well.

20 And one of the main things is that the LEDPA, as  
21 it's currently proposed, takes the project equipment out  
22 of many of the dry washes, including the main and only, as  
23 I believe, only current movement corridor for Flat-tailed  
24 Horned Lizards across the site. There's a culvert under  
25 I-8 at one point that goes through a wash that then flows

1 through the site, and we've created an avoidance corridor  
2 all the way through that wash.

3 MS. FOLEY GANNON: Thank you.

4 Are there any other changes that you think  
5 should -- are significant enough to discuss with the  
6 commission briefly today?

7 MR. GALLAGHER: There are a couple of others  
8 changes that we made that we have summarized in a document  
9 that I think we wanted to introduce as an exhibit today,  
10 but I'm not sure they -- they warrant further discussion.

11 I suppose we could talk about the water changes.

12 MS. FOLEY GANNON: We have an exhibit here which  
13 we have prepared which we would like to offer into  
14 evidence and we will distribute now. We ask that that  
15 be -- everyone can look at it and see if they have any  
16 objections, but it would be Exhibit 133. And we will pass  
17 that out now.

18 Essentially it is providing a summary of the  
19 major project changes and the reasons for them.

20 (Applicant's Exhibit 133 was marked for  
21 identification.)

22 MR. GALLAGHER: There will be a lot of changes  
23 on -- a lot of testimony on water supply I think over the  
24 next two days; but the one point I think I'd make is that  
25 the project as currently proposed will use treated

1 wastewater as its primary water supply. That's a change  
2 from the original project design where we would have  
3 obtained water from the Imperial Irrigation District as  
4 summarized as part of the documents being distributed now  
5 as well.

6 MS. HOLMES: Ms. Foley Gannon, may I ask a  
7 clarifying question?

8 MS. FOLEY GANNON: Yes, please.

9 MS. HOLMES: When you talk a summary of project  
10 changes, are you talking about -- over what time period  
11 and reflected in what documents?

12 MS. FOLEY GANNON: It's the document that's being  
13 handed out right now.

14 MS. HOLMES: Right. And I'm asking the changes  
15 that are identified in here, are these -- where are  
16 these -- are these changes all identified in one single  
17 piece of testimony? I'm just puzzled as to what this is.

18 MS. FOLEY GANNON: This is a summary of the  
19 applicant's view as the significant project changes and  
20 explaining the reasons for them. So there would be a  
21 number of different reference documents that have been  
22 submitted. All of these changes are been documented in  
23 the record at some place. This was trying to give another  
24 view of these changes.

25 HEARING OFFICER RENAUD: All right. Well, we

1 have a question about the document.

2 Is this somebody's testimony?

3 MS. FOLEY GANNON: This is Mr. Gallagher's  
4 testimony.

5 HEARING OFFICER RENAUD: All right. So the  
6 document you just distributed, which is one, two, three --  
7 three typed pages entitled "Imperial Valley Solar Project  
8 Changes," is intended to be part of Mr. Gallagher's  
9 testimony today.

10 MS. FOLEY GANNON: Correct.

11 HEARING OFFICER RENAUD: All right. Well, I  
12 think you probably better have him adopt it on the record,  
13 and then we'll see if there are any objections.

14 Mr. Gallagher, did you author what we have just  
15 distributed and preliminarily entitled as Exhibit 133?

16 MR. GALLAGHER: Yes.

17 MS. FOLEY GANNON: And you testified to the  
18 veracity of this document?

19 MR. GALLAGHER: Yes, to the best of my knowledge.

20 MS. FOLEY GANNON: Thank you.

21 MS. JENNINGS: Excuse me, Hearing Officer Renaud.

22 HEARING OFFICER RENAUD: Yes, I'm listening.

23 MS. JENNINGS: This is Jennifer Jennings. We  
24 would like a copy of that document to be e-mailed down to  
25 us.

1 HEARING OFFICER RENAUD: Okay.

2 Do you have that capability, applicant?

3 MS. FOLEY GANNON: We do. And where would you  
4 like to have at that e-mailed?

5 MS. JENNINGS: To desertharmon@gmail.com.  
6 D-e-s-e-r-t-h-a-r-m-o-n at gmail.com. I have Internet  
7 access on, open right now.

8 MS. FOLEY GANNON: Okay.

9 Do you want us to take a moment here and mail it  
10 right now before we continue discussing it?

11 HEARING OFFICER RENAUD: If you can --

12 MS. JENNINGS: That would be great.

13 HEARING OFFICER RENAUD: -- that would be good.

14 MS. JENNINGS: Thank you.

15 MS. FOLEY GANNON: I'm sorry. It was  
16 d-e-s-e-r-t-h-a-r-m-o-n@gmail.com; is that correct?

17 MS. JENNINGS: Yes.

18 MS. FOLEY GANNON: Is there anyone else that is  
19 in El Centro that wants it e-mailed?

20 MS. JENNINGS: We'll share here.

21 MS. FOLEY GANNON: Okay.

22 MS. JENNINGS: Thank you.

23 MS. FOLEY GANNON: We'll send it right now.

24 MS. JENNINGS: Thank you.

25 COMMISSIONER BYRON: If I may, Mr. Gallagher,

1 while you're sending that, it looks as though this summary  
2 includes changes that the applicant has made prior to the  
3 AFC being filed, and I'm just wondering why that's  
4 relevant to this committee.

5 MR. GALLAGHER: Well, again, Commissioner, what  
6 we have tried to describe throughout the case is an  
7 approach to permitting that attempts to be responsive to  
8 both agency concerns and to the facts. And so one of the  
9 big changes to the project was made even before we filed  
10 the project because, you know, we had, for example, filed  
11 for an interconnection agreement with SDG&E for 900  
12 megawatts and had found land that we thought would support  
13 a 900-megawatt project. But in the initial investigations  
14 it was determined that part of that land was so sensitive  
15 that it would be very problematic to try to permit. And  
16 so rather than trying to fight that fight, we simply cut  
17 that part of the land out of the project. And so we  
18 wanted to ensure that as part of the context for -- for  
19 permitting the case, that that's understood.

20 HEARING OFFICER RENAUD: All right. Thank you.

21 MS. FOLEY GANNON: Hearing officer, there are --  
22 let's see, one, two, three, four, five, six -- six other  
23 exhibits which we are going to be offering as part of  
24 Mr. Gallagher's testimony. The five of them are proposed  
25 revised condition language. It was referenced in his

1 submittal rebuttal testimony, which is marked as  
2 Exhibit 132, that we would be submitting them today.

3           And some of these conditions are also conditions  
4 which were revised in the staff's rebuttal and errata  
5 which was issued last week. And so we are going to be  
6 submitting -- asking those to be taken into evidence as  
7 well.

8           We can just take that now and give numbers to all  
9 of them and distribute them, and then we can discuss them  
10 as we're going through it substantively, if that makes the  
11 most sense --

12           HEARING OFFICER RENAUD: Yes.

13           MS. FOLEY GANNON: -- so that we don't have to  
14 keep breaking up and jumping up and down, if that makes  
15 most sense.

16           HEARING OFFICER RENAUD: Yes. I'll tell you, you  
17 know, the committee, we really do set out these schedules  
18 for exchange of documents in advance so that everybody  
19 knows what's coming, and we're not particularly, what,  
20 friendly toward last-minute submissions. But when it  
21 comes to conditions of certification on a highly-contested  
22 project, we understand that there's a lot of back and  
23 forth going on, and, in fact, we very much appreciate  
24 bringing written copies or any copies of the latest  
25 versions so everybody can see it. But certainly it will

1 be good to get those in people's hands --

2 MS. FOLEY GANNON: Okay.

3 HEARING OFFICER RENAUD: -- as soon as we can.

4 MS. FOLEY GANNON: Why don't we distribute those  
5 now.

6 As I said, the five of them are our proposed  
7 language for revised conditions; the other one is a -- a  
8 matrix of the conditions which we are asking changes for  
9 as well as the conditions we are not asking changes for,  
10 so it's all in one place. And it doesn't have any other  
11 commentary other than that; it's just a list of this is  
12 what we're -- this is what we're talking about, and this  
13 is what we're not talking about, essentially.

14 So I can help you hand those out, and then we  
15 can --

16 MS. JENNINGS: And excuse me, Jennifer  
17 Jennings --

18 MS. FOLEY GANNON: And we e-mail all of those to  
19 you as well in El Centro.

20 MS. JENNINGS: Thank you.

21 MR. BUDLONG: This is Tom Budlong here.

22 I'm wondering if you could send them, e-mail them  
23 to me, also.

24 MS. FOLEY GANNON: Okay. Can you give us your  
25 e-mail address?

1 MR. BUDLONG: Yeah, Tom Budlong, just like it  
2 sounds, at roadrunner.com.

3 MS. FOLEY GANNON: At roadrunner.com?

4 MR. BUDLONG: Yes.

5 MS. FOLEY GANNON: I could suggest, shall we go  
6 off the record for like five minutes while we hand these  
7 out and get these e-mailed out and then continue the  
8 discussion?

9 HEARING OFFICER RENAUD: Sure. All right.

10 (Recess.)

11 HEARING OFFICER RENAUD: We've -- just for the  
12 record, we've just been handed a number of documents, the  
13 bulk of which are proposed revised conditions of  
14 certification. And as I indicated earlier, we understand  
15 that working out conditions of certification is an ongoing  
16 process, and, in fact, we've heard while we were off the  
17 record that these are in response to staff's rebuttal  
18 testimony, which it's got to be part of our process,  
19 there's no way around that.

20 Having said that, it's always better if we can  
21 get materials like this in advance so that people can look  
22 at them and be prepared. I'm not sure much more needs to  
23 be said about that, though if there is a need to study  
24 these and respond to them, I think probably we'll have to  
25 address that in the form of briefs. That's probably --

1 that's about the only way I can see to do it unless we can  
2 catch up with it over night and do it tomorrow.

3 MS. MILES: Hearing officer?

4 HEARING OFFICER RENAUD: Listening, yes.

5 MS. MILES: I have a question as to whether --  
6 I'm sorry, I can't look at you and talk to you at the same  
7 time. I have a question as to whether I can get an  
8 electronic copy and parties can get an electronic copy of  
9 this now so that I could submit it to my expert for  
10 review, my biological expert, for example, the one related  
11 to plants and --

12 MS. FOLEY GANNON: Absolutely. I believe that we  
13 are having someone from URS distribute it to the whole  
14 docket list as soon as we can.

15 MS. MILES: Okay. Thank you.

16 MS. FOLEY GANNON: Yeah, if you give your e-mail  
17 right now, Angela can send it to you right now.

18 HEARING OFFICER RENAUD: Everybody's on the  
19 service list.

20 MS. FOLEY GANNON: But the problem is since we're  
21 here, we don't have that that accessible to us at this  
22 moment. We can get someone back at URS to do it soon, but  
23 she was just saying if you want to send it to her this  
24 minute, we can do that.

25 HEARING OFFICER RENAUD: Ms. Miles, do you have

1 e-mail access here?

2 MS. MILES: Yes, I do.

3 HEARING OFFICER RENAUD: You get it, you can  
4 forward it. That will work.

5 All right. Well, let's proceed. Maybe the first  
6 order of business will be to mark these --

7 MS. FOLEY GANNON: Shall we give exhibit numbers?  
8 Yeah. Okay.

9 HEARING OFFICER RENAUD: And I'll leave it to you  
10 to tell us the order. The last one we have is the -- is  
11 133, the changes.

12 MS. FOLEY GANNON: Right, and we would do the  
13 Imperial Valley Solar Project conditions of -- SSA's  
14 conditions of certification of exhibit as Exhibit 134.  
15 We'll do the red line version of Bio 10 as Exhibit 135.  
16 The red line version of Bio 17 as Exhibit 136. Red line  
17 of Bio 19 as 137. Red line of Soil and Water 7 as 138.  
18 And Worker Safety 7 as 139.

19 HEARING OFFICER RENAUD: Okay. They've been  
20 marked for identification.

21 (Applicant's Exhibits 134 through 139 were marked  
22 for identification.)

23 MS. FOLEY GANNON: Okay. Turning back to you,  
24 Mr. Gallagher, it's just come up that you've referenced  
25 the fact that there are a number of conditions that we

1 will want to discuss with the commission and with staff,  
2 the basis for them, or to suggest changes; but overall,  
3 can you give us a view of your overall approach to the  
4 conditions and your assessment of them?

5 MR. GALLAGHER: Yes. And I'll say that I'm  
6 sponsoring Exhibit 122 that was filed last week. That  
7 proposes modifications to most of the conditions with  
8 which we have issues.

9 As I mentioned earlier and as you have now in one  
10 of the exhibits that was just marked, there's 133  
11 conditions with which we have no objections at all. There  
12 are several other conditions with which we have modest or  
13 what we think are uncontroversial proposed changes. Most  
14 of them were filed last week with our rebuttal testimony.  
15 And many of those are in the nature of changing a  
16 requirement, something be prepared 90 days prior to ground  
17 disturbance to 30 days prior to ground disturbance.

18 And then there are five sort of big-ticket items  
19 that we wanted to discuss with you today. And most of  
20 those were the documents that were handed out to you just  
21 a moment ago. All of the substance of the proposed  
22 changes to those conditions were described in our  
23 testimony that was filed last week on time; some of the  
24 details we weren't able to provide until we spent hours  
25 and hours and hours going through the very detailed

1 conditions. So that's why the actual -- the written  
2 proposed changes to some of these conditions you're just  
3 receiving now.

4           And I would add that for Bio 10, Bio 17, and  
5 Bio 19, which are three of the documents you've just been  
6 handed, staff made additional revisions to their proposed  
7 conditions in staff's supplemental testimony filed last  
8 week, and so had we filed language on those last week, we  
9 would have had to change them again, or we would have had  
10 to work on them again.

11           MS. FOLEY GANNON: So turning to what you've  
12 identified as the five sort of substantive big changes  
13 that we would like to -- that you would like to discuss  
14 with the commission, or the committee, the first one is --  
15 references Bio 9 -- Bio 10. Can you describe overall your  
16 concerns with the conditions?

17           MR. GALLAGHER: Yes. Bio 10 is a major change in  
18 the mitigation approach and the mitigation dollar amounts  
19 for mitigation for Flat-Tailed Horned Lizard. And our  
20 concerns relate to the approach and to the dollars  
21 associated with this condition.

22           In December of last year we received a letter  
23 from the BLM --

24           MS. HOLMES: Excuse me, excuse me. I'm going to  
25 interject an objection at this point.

1           Staff had prepared a panel of biological  
2 resources experts who will be available, who will be  
3 listening to biological resources tomorrow. They include  
4 representatives from the RIAT agencies. And I think it's  
5 important that testimony on biological resources be given  
6 when those parties have the opportunity to listen and  
7 respond when they in turn have the opportunity to testify.

8           So I'm not -- I'm not objecting to them  
9 discussing this change and why they believe it's  
10 appropriate, but I do believe that the other witnesses  
11 ought to have the ability to hear this testimony in order  
12 to be able to respond to it.

13           HEARING OFFICER RENAUD: All right. Let me, from  
14 our perspective, it appears to us that this topic  
15 currently is project description and policy. And you  
16 know, I can see biology or any of them being involved in  
17 some sort of a very high-level way, but not at this level  
18 of detail. And I'm wondering if you could respond to  
19 Ms. Holmes suggestion, which sounds like a good one.

20           MS. FOLEY GANNON: The intent was to give an  
21 overview, and the objections that are -- were going to be  
22 addressed by Mr. Gallagher were the bigger picture, not  
23 the details about, you know, what is the specific impact  
24 to a Flat-Tailed Horned Lizard or what mitigation is  
25 needed to specifically offset those impacts. It was to

1 discuss the overall approach.

2           If you can give me a moment, I think we may not  
3 object to -- to having Mr. Gallagher discuss these  
4 particular conditions in detail tomorrow, and we can go on  
5 with the other conditions, as Mr. Gallagher is going to be  
6 present. I mean, we -- we -- when we were setting up our  
7 witnesses we were trying to get our technical biological  
8 people in a panel. Those panels are getting pretty big  
9 and somewhat unruly, so we were just trying -- we were  
10 thinking about this, we were breaking this down as  
11 overview, bigger picture sort of how we were thinking  
12 about this as that the major concern and issues and then  
13 leaving the details to the detail people. If there's a  
14 desire to have all of that discussed in one day, we can do  
15 that.

16           HEARING OFFICER RENAUD: I really think we prefer  
17 not to separate things like that. If it's biology, let's  
18 do all of this tomorrow. Mr. Gallagher's going to be here  
19 tomorrow. Jumping back and forth is, I think, potentially  
20 confusing, and I think also it might be something said  
21 that a staff or a party witness would like to hear.

22           So to the extent you can just stick to project  
23 description and policy, we'd appreciate that. That's  
24 what's listed and that's what parties -- that's what we're  
25 prepared to hear and parties are prepared for cross.

1 MS. FOLEY GANNON: Then he can defer discussion  
2 of the other two conditions.

3 MR. GALLAGHER: I guess what I would like to be  
4 able to say on Bio 10, 17, 19 is that the SSA represents a  
5 major departure in the approach from the SA, and that's  
6 what my testimony was intended to address rather than the  
7 specifics of the impacts. And very large changes in the  
8 conditions which are very impactful to the project and to  
9 the economics of the project and with which we have  
10 significant concerns, and we've tried to productively  
11 propose revisions to those conditions in a way that would  
12 both be responsible and would allow the project to be  
13 built.

14 MS. HOLMES: Staff would be happy to provide a  
15 response with its biological resources witnesses tomorrow  
16 about why there were changes between the staff assessment  
17 and the supplemental staff assessment.

18 HEARING OFFICER RENAUD: Yeah, I think we really  
19 ought to discuss all of that tomorrow. It would just be  
20 better to have that all in a package, and it will give  
21 people time to review this new material between now and  
22 tomorrow. So let's proceed with something else.

23 MS. FOLEY GANNON: Okay. So we won't actually  
24 discuss the proposed changes, we will discuss them in the  
25 appropriate subject matter in more detail; but at the end

1 of his testimony, we will be asking to move them into  
2 evidence so we don't have to go through this again.

3           Turning now to the conclusions regarding  
4 significant impacts associated with the project, after  
5 reviewing the staff assessment, do you agree with the  
6 staff's conclusion that there may be significant and  
7 unmitigable impacts?

8           MR. GALLAGHER: We -- I think the short answer is  
9 yes and no. There are several areas that will be  
10 discussed by substance experts later in the testimony  
11 where we disagree with staff's conclusion that after  
12 mitigation there remain significant impacts. There are at  
13 least two areas where we agree. One is visual. We agree  
14 that there will be a significant impact. And we have in  
15 my prior testimony requested an override. And the second  
16 is on the setbacks issue that was discussed earlier this  
17 morning, we have again requesting an override on that  
18 point.

19           And I think the point of my testimony is we'll  
20 try to establish later in the hearings that on the other  
21 issues, that mitigation will reduce the impacts to less  
22 than significant; but to the extent that the committee  
23 doesn't accept that evidence, then we would request an  
24 override on each of those points where mitigation does not  
25 reduce the impact to less than significant.

1 MS. FOLEY GANNON: And does your earlier  
2 testimony reflect the reasons why you believe the override  
3 for either LORS noncompliance or substantive impacts would  
4 be appropriate in this case?

5 MR. GALLAGHER: Yes, it does. My testimony from  
6 the May hearing addresses those points.

7 MS. FOLEY GANNON: Is there anything you wish to  
8 add to that?

9 MR. GALLAGHER: I don't think so.

10 MS. FOLEY GANNON: I wasn't leading you actually.  
11 That was fine; I wanted to know.

12 Are you requesting that an override be taken by  
13 the commission if there are significant impacts?

14 MR. GALLAGHER: Yes, on visual on the setback  
15 issue and on any other areas in which the commission  
16 concludes that significant impacts remain after  
17 mitigation.

18 MS. FOLEY GANNON: And one other point of  
19 clarification. Earlier in the beginning of your testimony  
20 you stated that the applicant was now pursuing the 709  
21 megawatt alternative or what you described as the LEDPA,  
22 the least environmentally damaging practicable  
23 alternative. Are you requesting the commission approve  
24 that project at this time?

25 MR. GALLAGHER: Yes, we are. We're requesting

1 that the committee and the commission approve the project  
2 as modified consistent with what the corps has  
3 preliminarily determined to be the least environmentally  
4 damaging practicable alternative.

5 MS. FOLEY GANNON: Does this conclude your  
6 testimony?

7 MR. GALLAGHER: No. We should probably talk  
8 about VIS 6 and Worker Safety 7.

9 MS. FOLEY GANNON: They don't want to talk about  
10 conditions.

11 MR. GALLAGHER: You don't want to talk about  
12 those either? Okay.

13 MS. FOLEY GANNON: They want to talk about  
14 conditions in the substantive matter. And we can have you  
15 back up in each one of those to talk about the overall  
16 policy issues associated with them.

17 HEARING OFFICER RENAUD: It does appear we have  
18 time for visual and for worker safety scheduled, so none  
19 of these are going to be orphans with no place to go.

20 MS. FOLEY GANNON: That's correct.

21 HEARING OFFICER RENAUD: So let's do them when we  
22 get to those topics.

23 MR. GALLAGHER: Then yes, that concludes my  
24 testimony.

25 HEARING OFFICER RENAUD: Cross-examination.

1 MS. HOLMES: I don't have cross-examination, but  
2 I want to make a statement for the committee a global  
3 statement, and that is that the applicant has requested  
4 that the commission approve what's been referred to as the  
5 LEDPA, despite our dislike of acronyms. Staff has not  
6 analyzed the LEDPA. Staff saw the draft LEDPA on the 21st  
7 of July. Staff has analyzed the project as originally  
8 proposed and a series of alternatives.

9 There may be a number of times during these  
10 hearings when the question of impacts associated with the  
11 LEDPA or potential amelioration of effects associated with  
12 the LEDPA come up. Staff cannot testify to any of that.  
13 Staff has not examined the LEDPA.

14 If the committee wishes staff to examine the  
15 LEDPA and reach conclusions as to whether or not they're  
16 significant impacts, either new significant impacts or  
17 existing impacts that we've identified that are reduced,  
18 we can do so, but it will take additional time.

19 HEARING OFFICER RENAUD: All right.

20 Cross-examination by CURE?

21 MS. MILES: I do have cross-examination questions  
22 for Mr. Gallagher, but they are related to biology, so I  
23 will withhold those until tomorrow.

24 HEARING OFFICER RENAUD: Thank you.

25 MS. MILES: And I have a similar concern

1 regarding the LEDPA analysis. I just wanted to highlight  
2 the fact that it is a draft document, and it will be  
3 circulated in the FEIS by the BLM, and there will be  
4 public comment taken on that. I mean, we cannot assume  
5 that it will remain in its present form.

6 HEARING OFFICER RENAUD: I understand.

7 Cross by Budlong?

8 MR. SILVER: No cross by Mr. Budlong, based on  
9 the assumption that there will be opportunities for him to  
10 cross-examine witnesses in the particular subject matters  
11 that we earlier identified.

12 HEARING OFFICER RENAUD: Yes, indeed.

13 And CNPS?

14 MR. BELTRAN: No.

15 HEARING OFFICER RENAUD: No cross. All right.

16 On this issue of the LEDPA, just to make sure we  
17 have the record clear, the -- there is no official LEDPA  
18 yet, correct?

19 MR. GALLAGHER: That's correct.

20 HEARING OFFICER RENAUD: There has been one  
21 submitted by applicant, which the corps is evaluating.

22 MS. FOLEY GANNON: It's further along than that.  
23 If you look at the -- and we will have a witness  
24 testifying about the process tomorrow, Mike Fitzgerald.  
25 If you look in this -- that was an attachment to

1 Mr. Fitzgerald's testimony.

2           The corps has taken what we submitted, made their  
3 own preliminarily draft document, which says this is the  
4 corps's preliminary conclusion, it is no longer our  
5 document, it is now authored by the corps, it's been  
6 changed and modified by the corps to reflect their own  
7 independent analysis. That is the document that is going  
8 to be concluded in the Final Environmental Impact  
9 Statement, which is scheduled to be published by the BLM  
10 this Friday. There will be public comments on that, but  
11 it is not -- it's -- in terms of corps permitting  
12 processes, it's actually very far along the way.

13           HEARING OFFICER RENAUD: That's -- you  
14 anticipated my question, which is, you know, how far along  
15 are they and when can we anticipate that. And you gave  
16 us --

17           MS. FOLEY GANNON: You're very far along the way.

18           HEARING OFFICER RENAUD: Thank you very much.  
19 Okay. Good.

20           MS. FOLEY GANNON: And we'll -- again, we'll be  
21 providing expert testimony with the people who have been  
22 involved directly in that permitting process tomorrow so  
23 that can be discussed as of the basis for those  
24 assertions.

25           HEARING OFFICER RENAUD: Great. Great.

1           And so those of you who are interested in the  
2 LEDPA, based upon what we've just been told, you might  
3 want to start making an assumption that the preliminary  
4 result may be exactly or close to or similar to the final  
5 and preparing your testimony, your experts and so on on  
6 that. All right. Good.

7           Do we have anything further on this topic,  
8 project description policy from applicant?

9           MS. FOLEY GANNON: We have nothing further.

10          HEARING OFFICER RENAUD: All right.

11          MS. FOLEY GANNON: We would like to move the  
12 exhibits which have been identified for identification  
13 purposes as exhibits -- what are we through? 133, -- oh  
14 sorry, 132 through 139.

15          HEARING OFFICER RENAUD: All right. Does anybody  
16 object to that?

17          MS. HOLMES: No objection.

18          MS. MILES: No objection.

19          MR. SILVER: No.

20          MR. BELTRAN: No.

21          HEARING OFFICER RENAUD: Okay. Those will all be  
22 admitted. Thank you.

23          (Applicant's Exhibits 132 through 139 were  
24 received into evidence.)

25          MS. FOLEY GANNON: Thank you.

1 HEARING OFFICER RENAUD: All right. Now, under  
2 this topic staff indicated direct examination of Mr. Meyer  
3 for ten minutes.

4 MS. FOLEY GANNON: Actually, the applicant  
5 indicated direct examination of Mr. Meyer.

6 HEARING OFFICER RENAUD: Oh, well, okay.

7 MS. FOLEY GANNON: I don't know that anybody has  
8 any questions; and if they don't, I'm sure he'd be happy  
9 to not testify.

10 HEARING OFFICER RENAUD: I guess I should say  
11 that more clearly.

12 Applicant indicated that staff indicated, but if  
13 you -- do you have any direct examination of anybody on  
14 this topic?

15 MS. HOLMES: No.

16 HEARING OFFICER RENAUD: All right.

17 CURE, direct examination of anybody?

18 MS. MILES: I have one random question for  
19 Mr. Meyer.

20 MS. HOLMES: So perhaps we should have him sworn;  
21 then he can answer the random question.

22 MS. MILES: Sorry.

23 MS. FOLEY GANNON: And we have one random  
24 question for him, too.

25 HEARING OFFICER RENAUD: All right.

1 THE REPORTER: Stand and raise your right hand.

2 (Christopher Meyer was sworn.)

3 THE REPORTER: Would you state and spell your  
4 name for the record.

5 MR. MEYER: Christopher Meyer.  
6 C-h-r-i-s-t-o-p-h-e-r, last name M-e-y-e-r.

7 THE REPORTER: Thank you.

8 COMMISSIONER EGGERT: I have just a quick  
9 question on the items that were just brought. The track  
10 change legend, is it the case that green is applicant, red  
11 is staff, and does that carry through?

12 MR. GALLAGHER: Yes, this is correct. The red is  
13 the staff changes filed last week, and the green is our  
14 suggested changes.

15 COMMISSIONER EGGERT: That's for all documents?

16 MS. FOLEY GANNON: Yeah.

17 COMMISSIONER EGGERT: Okay.

18 DIRECT EXAMINATION

19 MS. HOLMES: Mr. Meyer, was the supplemental  
20 staff assessment prepared by you or under your direction,  
21 including the project description and introduction?

22 MR. MEYER: Yes, it was.

23 MS. HOLMES: Was a statement of your  
24 qualifications included in the supplemental staff  
25 assessment?

1 MR. MEYER: Yes, it is.

2 MS. HOLMES: Are the facts contained in the  
3 supplemental staff assessment true and correct to the best  
4 of your knowledge?

5 MR. MEYER: Yes, they are.

6 MS. HOLMES: And do the opinions in Exhibit 302  
7 represent your best professional judgment?

8 MR. MEYER: Yes, they do.

9 MS. HOLMES: Thank you.

10 Rather than summarize, let's just move directly  
11 to cross-examination questions.

12 HEARING OFFICER RENAUD: Very well.

13 Applicant?

14 CROSS-EXAMINATION

15 MS. FOLEY GANNON: Mr. Meyer, I guess we can't  
16 actually say it's a random question, it's a pretty  
17 critical question to us.

18 Are you recommending approval of this project?

19 MR. MEYER: Staff is making a recommendation of  
20 drainage avoidance alternative number one for the project.

21 MS. FOLEY GANNON: And you have identified some  
22 unavoidable and unmitigable impacts. Are you recommending  
23 overrides?

24 MR. MEYER: Staff has presented overrides to  
25 management, which we believe management will be filing an

1 override testimony on this. We were hoping to have that  
2 very soon, if not by tomorrow.

3 MS. FOLEY GANNON: And your recommendation of  
4 drainage avoidance alternative one, and we will obviously  
5 get into the details of this with the technical experts,  
6 but from the executive summary it appeared that that was  
7 really focused on reducing impacts to aquatic resources.  
8 Is that your understanding?

9 MR. MEYER: Not primarily. That is, the genesis  
10 of that alternative was based on avoidance to aquatic  
11 resources, but it goes far beyond that.

12 MS. FOLEY GANNON: What is most significant from  
13 the executive summary, big policy picture, the significant  
14 differences in impacts with drainage avoidance alternative  
15 one versus the proposed project?

16 MR. MEYER: Aquatic resources, biological  
17 resources in general; but it also gets into many others  
18 including cultural, visual, land use.

19 MS. FOLEY GANNON: Okay. No further questions.

20 HEARING OFFICER RENAUD: Okay. Thank you.

21 CURE questions?

22 CROSS-EXAMINATION

23 MS. MILES: I'm glad, actually, that you weren't  
24 just sworn in for this question.

25 But my question is how often does the -- do you

1 know how often that the trains go by the project site --

2 MR. MEYER: My understanding on this project --

3 MS. MILES: -- if it's an active --

4 MR. MEYER: -- it's a very rare occurrence. It's  
5 not a main line.

6 MS. MILES: Uh-huh.

7 MR. MEYER: So it -- when I've worked out there  
8 in the past, it was a rare occurrence to see a train on  
9 that track adjacent to the project site.

10 MS. MILES: Okay. Thank you.

11 MR. MEYER: But unfortunately I do not have any  
12 information on what the frequency is.

13 MS. MILES: Thank you.

14 No further questions.

15 HEARING OFFICER RENAUD: I'd like to ask a  
16 question. Maybe I'll let Ms. Foley Gannon see if that's  
17 my question.

18 MS. FOLEY GANNON: It probably isn't because it  
19 was something I was just thinking.

20 HEARING OFFICER RENAUD: Is it about trains?

21 MS. FOLEY GANNON: No, it's not about trains.

22 HEARING OFFICER RENAUD: Well, mine's about  
23 trains, so I'm going to ask it.

24 MS. FOLEY GANNON: Okay. You want to go -- you  
25 talk about trains since we were talking about trains.

1 HEARING OFFICER RENAUD: All right.

2 When you refer, Ms. Miles, to trains, the trains,  
3 I take it you're referring to the rail line that I think  
4 it runs right next to Plaster City or even through it?

5 MS. MILES: That's correct.

6 HEARING OFFICER RENAUD: All right. Just to make  
7 sure. I seem to recall there was one down by the freeway  
8 also, but maybe that's the same one.

9 CROSS-EXAMINATION

10 MS. FOLEY GANNON: My question was related to,  
11 and this goes to sort of the other witnesses that we have  
12 coming up over the next -- this afternoon and tomorrow.  
13 You had said sort of preliminarily that the difference in  
14 impacts from an overview standpoint with drainage  
15 alternative one in the proposed project was related to  
16 aquatic resources, bio, cultural resources, visual, and  
17 land use. I know we're going to be discussing water this  
18 afternoon, aquatic resources, and bio tomorrow, VIS  
19 tomorrow, cultural resources at a future date. Land use  
20 we've already done. And I'm just scratching my head  
21 trying to think of what's the difference in impacts with  
22 VIS -- for visual with drainage alternative one versus the  
23 proposed project.

24 MR. MEYER: It's not going to be a change between  
25 significance and insignificance. It's just a lot of -- as

1 you talk about the difference between a 6500 acre project  
2 and you start -- any time you're reducing impacts, it's  
3 going to have a change. When -- land use, in particular,  
4 one of the things they were talking about is loss of  
5 area -- I'm sorry, let me clarify. I was thinking of some  
6 of the other reduced acreage alternatives. I'm sorry.

7 MS. FOLEY GANNON: Okay.

8 MR. MEYER: The drainage avoidance alternative  
9 one kept the same footprint in some of the earlier talks  
10 about leaving some of the areas open, which would have  
11 decreased the amount that was taken out of public use was  
12 to reduce it; but you're right, drainage avoidance  
13 alternative one, the determination by the agencies was to  
14 leave the fence line intact so that there wouldn't  
15 actually be the incursion potential by OHV users and the  
16 sort into the area so that there actually would be a  
17 protection of biological resources, which then eliminated  
18 any potential benefits from a recreation standpoint.

19 MS. FOLEY GANNON: Okay. So there really isn't a  
20 land use difference between proposed project and --

21 MR. MEYER: No, not as currently proposed for the  
22 fence lines.

23 MS. FOLEY GANNON: Okay. All right. So then we  
24 can address the other ones. I just wanted to make sure  
25 that I understood what we needed to discuss.

1 Thank you very much.

2 HEARING OFFICER RENAUD: Cross by Budlong?

3 MR. SILVER: No.

4 HEARING OFFICER RENAUD: CNPS?

5 MR. BELTRAN: No.

6 HEARING OFFICER RENAUD: All right. Then no  
7 further questions for Mr. Meyer. All right.

8 Does CURE have any testimony to present in this  
9 topic area?

10 MS. MILES: No, we do not.

11 HEARING OFFICER RENAUD: Okay. Budlong?

12 MR. SILVER: Let me just ask --

13 HEARING OFFICER RENAUD: Other than the specific  
14 topics that we've -- getting into the specific topics  
15 which we talked about earlier.

16 MR. SILVER: If I may, I just wanted to ask  
17 Mr. Budlong whether he did have any examination of  
18 Mr. Meyer with regard to the revised staff assessment.

19 MR. BUDLONG: No, I don't.

20 HEARING OFFICER RENAUD: All right. Thank you.  
21 CNPS?

22 MR. BELTRAN: No.

23 HEARING OFFICER RENAUD: All right. Good.

24 So we're concluded with that topic.

25 And we've done air quality and land use.

1           What would be next?  Would it be water supply?

2           MS. FOLEY GANNON:  Yep.

3           HEARING OFFICER RENAUD:  All right.  Well, I  
4 think that might mean it's a good time for a lunch break,  
5 unless anybody has a witness sitting on the phone ready to  
6 go right now and you want to go.  But since that will  
7 probably be a big topic; probably a good time for our  
8 break.  All right?

9           MS. FOLEY GANNON:  Agreed.

10          HEARING OFFICER RENAUD:  All right.  Let's be  
11 back here at 1:15.

12          (Lunch recess.)

13          HEARING OFFICER RENAUD:  We'll go back on the  
14 record.

15          When we were ending the last session, I believe  
16 we determined that the next topic would be water supply.  
17 Am I correct about that?  Or water in some aspect.

18          MS. FOLEY GANNON:  I'm sorry.

19          HEARING OFFICER RENAUD:  Next topic?  What is the  
20 next topic going to be?  Water?

21          MS. FOLEY GANNON:  Yes.  So what we would propose  
22 to do is to break it up really into two different  
23 discussions; one would be water supply, and then one would  
24 be related to sedimentation and more water quality  
25 impacts.  Does that make sense?  I think otherwise our

1 panels might get vague and the discussion might get kind  
2 of difficult to go through in a reasonable fashion. Does  
3 that make sense to the other parties?

4 MS. HOLMES: It does to staff.

5 MS. MILES: We have no objection.

6 HEARING OFFICER RENAUD: All right. It looks  
7 like everybody's okay with that. Makes sense to us.

8 While we're setting up for that, let me just ask  
9 by phone, Public Advisor Jennings, are you there?

10 MS. JENNINGS: Yes, I am.

11 HEARING OFFICER RENAUD: All right. And that  
12 means our link is still going, which is good.

13 MS. JENNINGS: Yes. And I have a request that  
14 people identify themselves when they're speaking. It's  
15 getting a little hard to follow.

16 HEARING OFFICER RENAUD: All right. You mean  
17 people here in the room, not just the ones on the phone?

18 MS. JENNINGS: Yes.

19 HEARING OFFICER RENAUD: All right. We'll do the  
20 best we can.

21 MS. JENNINGS: Thank you.

22 MS. FOLEY GANNON: Ella Foley Gannon for the  
23 applicant.

24 In terms with water supplies, we have it  
25 witnesses that we would like to put forth for initial

1 direct testimony and then cross-examination by the other  
2 parties. Marc Van Patten, who has been previously sworn  
3 in as a witness and Mr. Robert Scott, who needs to be  
4 sworn in.

5 THE REPORTER: Stand and raise your right hand,  
6 please, Mr. Scott.

7 (Mr. Scott sworn.)

8 THE REPORTER: Could you please state and spell  
9 your name for the record. Be seated.

10 MR. SCOTT: Robert K. Scott. R-o-b-e-r-t K.  
11 S-c-o-t-t.

12 THE REPORTER: Thank you, sir.

13 DIRECT EXAMINATION

14 MS. FOLEY GANNON: Mr. Van Patten, I'd like to  
15 start talking with you about the water supply for the  
16 project, and I would note that in your -- in Exhibit 130,  
17 which we submitted earlier this morning, I believe you  
18 address some of the water supply issues; is that correct?

19 MR. VAN PATTEN: That's correct.

20 MS. FOLEY GANNON: Do you have any corrections or  
21 additions to make to your earlier testimony regarding  
22 water supply that's included in Exhibit 130?

23 MR. VAN PATTEN: I just have one point of  
24 clarification I'd like to make. In question -- or answer  
25 to question 8, we mention that there is --

1 MS. FOLEY GANNON: And which page is this on,  
2 just for clarity?

3 MR. VAN PATTEN: I'm on page 3 of my testimony.

4 MR. MEYER: Does someone have a --

5 MS. FOLEY GANNON: I'm sorry, we do not have  
6 consecutive page numbering in it. It is -- he is the --

7 MR. MEYER: Page 19.

8 MS. FOLEY GANNON: No, there is not consecutive  
9 page numbering in our rebuttal testimony. So you just  
10 need to go to Mr. Van Patten's testimony, it's his second  
11 testimony in our July submittal. So Sean Gallagher's goes  
12 up to page 12, and then the next page is Marc Van Patten's  
13 testimony.

14 Has everyone found it, or who would like to find  
15 it has found it? Yes? Okay.

16 So I'm sorry. What page is it, Mr. Van Patten?

17 MR. VAN PATTEN: Third page of my testimony.

18 HEARING OFFICER RENAUD: Of the pdf.

19 MR. VAN PATTEN: Top of the page, answer to  
20 question 8 says 51 acre feet per year is the demand  
21 projection. That assumes a worst-case scenario of seven  
22 days per week. However, I just wanted to clear that we  
23 intend to work six days a week. This is just a maximum  
24 number. If it were six days a week as we planned, it's  
25 really 42.4 acre feet per year.

1           And that also applies to the answer to question  
2 10 on the same page down below where we talk about our  
3 construction is expected to average 51 acre feet per year.  
4 That's the only clarification I wanted to make.

5           MS. FOLEY GANNON: Thank you, Mr. Van Patten.

6           Turning now to the question of the water supply  
7 for the project, what does the applicant anticipate to be  
8 the long-term water supply for this project?

9           MR. VAN PATTEN: We anticipate using the Seeley  
10 Wastewater Treatment Facility water for the long-term  
11 water supply for the project. That's for construction and  
12 operation.

13           MS. FOLEY GANNON: Have you read the supplemental  
14 staff assessment's discussion of water and soils impacts?

15           MR. VAN PATTEN: Yes.

16           MS. FOLEY GANNON: And do you have any comment on  
17 their conclusions regarding the availability of Seeley to  
18 the project?

19           MR. VAN PATTEN: We believe and we have no reason  
20 not to the believe that the Seeley Wastewater Treatment  
21 Facility water will not be available, meaning we have no  
22 reason to believe it won't be available for us to use.  
23 Hopefully that's a correct conjugation of English.

24           MS. FOLEY GANNON: That's called a double  
25 negative.

1           MR. VAN PATTEN: We have every reason to believe  
2 it will be available for us in a timely manner for  
3 construction, operation of the project.

4           MS. FOLEY GANNON: And on what basis is that  
5 conclusion made?

6           MR. VAN PATTEN: We have every reason to believe  
7 that their EIR, which is currently in process, will be  
8 adopted by the Seeley County Water District in November of  
9 this year, and the construction of their upgrades should  
10 be able to begin a month later in December and be done or  
11 concluded four to six months afterwards with the upgrades,  
12 and the water would then be available for us at that time.

13           They have to do this upgrade regardless of  
14 whether this project is going to move ahead or not.  
15 They're in violation of their NPDS right now; that's on  
16 the record.

17           And David Dale, who's the contract engineer for  
18 the Seeley County Water District, has stated that they  
19 would move ahead with upgrades to the project regardless  
20 of if our project were to be approved or not, and would  
21 search for funds to do that through other means, should  
22 they need to do that.

23           MS. FOLEY GANNON: So again, in terms of the  
24 applicant's planning purposes, when do you anticipate that  
25 you will be able to utilize the Seeley water?

1           MR. VAN PATTEN: I think, aggressively, it would  
2 probably be first quarter of 2011; worst-case scenario we  
3 believe would be second quarter 2011.

4           MS. FOLEY GANNON: First or second quarter of  
5 2011. So there will be an interim period where you will  
6 need a water supply.

7           What is the water supply you're intending to use  
8 in that period?

9           MR. VAN PATTEN: For any interim period up until  
10 we have access to the Seeley County Water District water,  
11 we plan to utilize the Dan Boyer well in Ocotillo.

12           MS. FOLEY GANNON: And you provided earlier  
13 testimony I believe in the earlier hearings regarding the  
14 Boyer well. And at that period, you gave some discussion  
15 about the current condition of the well and the county's  
16 permit. Is there any additional information that you have  
17 to date regarding the condition of the well and the  
18 permit --

19           MR. VAN PATTEN: Since the May hearing --

20           MS. FOLEY GANNON: -- or the license. I'm sorry.

21           MR. VAN PATTEN: The well registration?

22           MS. FOLEY GANNON: Registration.

23           MR. VAN PATTEN: County well registration?

24           Since the May hearing, the county has issued a  
25 letter to Dan Boyer Water Company indicating that his well

1 is in conformance with all conditions contained within the  
2 county well registration.

3 MS. FOLEY GANNON: Was that letter attached to  
4 your testimony?

5 MR. VAN PATTEN: It is. And it is Exhibit 125.

6 MS. FOLEY GANNON: So it's 125 to -- just for  
7 clarity, it's Exhibit 125 to Exhibit 130. I like to make  
8 things simple for people.

9 So it is your understanding that the well is  
10 currently in terms of the county's permitting processes,  
11 allowed to operate and to extract what amount?

12 MR. VAN PATTEN: Up to 40 acre feet per year.

13 MS. FOLEY GANNON: How much of the water from  
14 this well are you intending to use for the project?

15 MR. VAN PATTEN: We have -- we understand that  
16 Dan Boyer Water Company had supplied water to other users  
17 other than industrial or commercial users that may be  
18 personal users in the area. Estimate that Dan Boyer has  
19 made as to that usage has been roughly a third of an acre  
20 foot per year. We have -- we can agree to use not the  
21 entire amount of the 40, but less one half acre feet per  
22 year in order to still continue to allow Mr. Boyer to  
23 provide that third acre foot per year to other users in  
24 the area, and we are proposing that we be able to use 39.5  
25 acre feet per year for our uses.

1 MS. FOLEY GANNON: To be clear, the half acre  
2 that you're referring to, that is the calculation provided  
3 by Boyer that that's the amount, maximum amount of  
4 residential usage that's regularly been used or served by  
5 this well?

6 MR. VAN PATTEN: Yes. He has --

7 MS. FOLEY GANNON: And I believe that you had a  
8 declaration from Mr. Boyer that you have submitted?

9 MR. VAN PATTEN: We have a declaration that --

10 MS. FOLEY GANNON: Is attached to your --

11 MR. VAN PATTEN: -- we submitted --

12 MS. FOLEY GANNON: -- testimony?

13 MR. VAN PATTEN: -- that as Exhibit 126 to my  
14 Exhibit 130 where he has stated and declared that he has  
15 estimated that it would be less than half an acre foot per  
16 year of usage by other folks in the area.

17 MS. FOLEY GANNON: In the supplemental staff  
18 assessment the staff makes a conclusion that there are  
19 currently up to six acre feet a year which are utilized by  
20 residential users. Do you have any comment upon that  
21 analysis?

22 MR. VAN PATTEN: We don't agree with the  
23 analysis. There was some assumptions that were made by  
24 the staff as to where that number would be computed. One  
25 of those assumptions was that water in a particular time

1 of the year, let's say February, might have been  
2 attributable to personal users versus let's say a  
3 commercial user if dust control was not required at that  
4 time of the year. And then for conservatism, that number  
5 was doubled and coming up with six.

6 And there was another methodology for coming up  
7 with six acre feet per year for personal users, which we  
8 don't agree with the methodology and the presumptions  
9 around it or assumptions used.

10 And we believe highly in the testimony of  
11 Mr. Dan Boyer, who has actually had purchases with  
12 payment received by personal users in the area. And he  
13 estimates his volume to be, you know, a third of an acre  
14 foot, certainly less than half an acre foot per year.

15 MS. FOLEY GANNON: And the applicant does not  
16 object to reducing its use by the amount of established  
17 residential users; is that right?

18 MR. VAN PATTEN: We have no objection.

19 MS. FOLEY GANNON: So you would be willing to  
20 utilize 39 -- limit your use to 39.5 acre feet a year.

21 MR. VAN PATTEN: That's correct.

22 MS. FOLEY GANNON: And that raises an issue about  
23 the demand from the project, both in terms of construction  
24 and operation; and maybe we can start walking through some  
25 of that.

1           You clarified earlier this morning that the  
2 amount of water would be demanded during construction  
3 would be -- I'm sorry, could you repeat that number again?

4           MR. VAN PATTEN: Conservative value in my  
5 testimony is 51, but provided we do a six-day work week,  
6 it's really 42.4 acre feet per year under that scenario.

7           MS. FOLEY GANNON: And in the 42.4 acre feet per  
8 year, what are the water uses that are needing to do  
9 during construction?

10           MR. VAN PATTEN: When I looked at the detailed  
11 estimate on which we based our estimated needs for the  
12 project which were provided to us by RMT, the EPC  
13 contractor, the numbers come out right at about 60 percent  
14 is used for dust control. The rest of it is used for road  
15 work or miscellaneous. It's primarily the other big use  
16 is road work on the project site and some miscellaneous  
17 things like foundations, the fence line, things like that.  
18 But it is 60 percent dust control.

19           MS. FOLEY GANNON: And it's been pointed out that  
20 the numbers that you're providing, whether it be the 51 or  
21 the 42.4 that you've highlighted for us this afternoon,  
22 have changed since the original filing in the AFC. Can  
23 you speak to why that changed?

24           MR. VAN PATTEN: I can only say that in the  
25 initial AFC, there were engineering estimates that were

1 made which were given to us by the engineers that helped  
2 us to prepare the AFC, and they did a good job of trying  
3 to estimate what our water needs would have been. At that  
4 time we didn't have a working facility like we do right  
5 now with the Maricopa facility. They were trying to be  
6 conservative in our water needs and not to underestimate  
7 and try to reflect a reasonable number.

8           And since then, we have Maricopa's facility in  
9 Phoenix to judge our water needs from an operation point  
10 of view. We have construction use of water over there as  
11 well that helps us to understand that. And we have an EPC  
12 contractor that we've engaged for construction of the  
13 balance of plant on the project, and they have  
14 specifically given us what they think their water needs  
15 will be. That has helped us to identify a pretty  
16 substantial reduction in our water needs to what we had in  
17 the AFC.

18           MS. FOLEY GANNON: Based on your experience and  
19 your best professional judgment, what is your level of  
20 confidence in these numbers?

21           MR. VAN PATTEN: I'm very confident that the  
22 folks from RMT who do construction every day in this  
23 environment and in other environments would have a very  
24 good handle on what their water needs would be. And I  
25 feel very good that this is what they'd be able to work

1 with.

2 MS. FOLEY GANNON: And there have been issues  
3 raised, obviously, that if you were utilizing the Boyer  
4 well, which in your calculations you would be having -- I  
5 think you said 39.5 acre --

6 MR. VAN PATTEN: Correct.

7 MS. FOLEY GANNON: -- feet a year available to  
8 you, taking into the account for the potential residential  
9 uses. What happened to the difference? 42.4 is what you  
10 need and 39.5 is what you have.

11 MR. VAN PATTEN: Yeah. The difference is 2.9  
12 acre feet per year. What that would, in fact, do is  
13 either make RMT ration their water such that they could  
14 accomplish the same things with less water. I would  
15 assume they would at least try, but I don't know if they  
16 would be successful.

17 And secondly, what could happen is they'd have to  
18 delay their construction schedule by some amount  
19 proportionate to the 2.9 acre feet per year usage that  
20 they would have otherwise needed. So there may be a  
21 schedule impact.

22 MS. FOLEY GANNON: And you said the 42.4 was  
23 based upon the six-day work week?

24 MR. VAN PATTEN: Correct.

25 MS. FOLEY GANNON: What if you were at a five-day

1 work week?

2 MR. VAN PATTEN: If you were in a five-day work  
3 week, you'd need approximately 35.3 acre feet per year.

4 MS. FOLEY GANNON: So that would be within the  
5 Boyer -- so the Boyer well's supply should be sufficient  
6 to supply for a five-day --

7 MR. VAN PATTEN: Right, or a little bit more,  
8 yes.

9 MS. FOLEY GANNON: Maybe even five and a half.

10 HEARING OFFICER RENAUD: What was the figure  
11 again? 32?

12 MR. VAN PATTEN: I calculate 35.3 acre feet per  
13 year for a five-day work week.

14 HEARING OFFICER RENAUD: Thank you.

15 MS. FOLEY GANNON: Turning towards the operation  
16 numbers, how much water demand will be needed once the  
17 plant is in operation?

18 MR. VAN PATTEN: It's been calculated as roughly  
19 33 acre feet per year.

20 MS. FOLEY GANNON: Okay. And again, what are the  
21 primary demands that are inclusive in that figure?

22 MR. VAN PATTEN: Do we have Waymon Votaw on the  
23 phone? Because I can't --

24 MS. FOLEY GANNON: Oh, you will not be able --  
25 Waymon Votaw will be --

1           MR. VAN PATTEN: I did not prepare that  
2 testimony.

3           MS. FOLEY GANNON: I'm sorry. He is -- he will  
4 be testifying tomorrow to plant reliability and to the  
5 operational issues. So I will -- I can raise that issue  
6 with him. I know that the water people will be here  
7 today, but he can -- if there are questions about the  
8 specific uses within operations, he will be able to answer  
9 those, though I believe you can answer the general  
10 concepts regarding the water uses in operations,  
11 Mr. Van Patten?

12           MR. VAN PATTEN: High level. General. I'll try  
13 my best.

14           MS. FOLEY GANNON: Do you have any other  
15 testimony that you would like to give about the water  
16 demands for the project --

17           MR. VAN PATTEN: Nothing I can think of.

18           MS. FOLEY GANNON: -- the water needs of the  
19 project?

20           So we can -- we can either move on to cross on  
21 that subject matter and then talk about the groundwater  
22 supply issues, or we can do those together now, whichever  
23 the parties -- I mean, there's lots of ways to break this  
24 issue up; and so I'm -- whatever works best for other  
25 people, we can certainly do.

1 HEARING OFFICER RENAUD: Well, from what I know,  
2 the Boyer well sounds like its own little issue, maybe not  
3 so little, but so I would suggest we do cross on that  
4 right now.

5 Does anybody have a different idea?

6 MS. FOLEY GANNON: Well, this is not -- we will  
7 have testimony about the use of the Boyer well and the  
8 impacts on groundwater, but there have been -- I know that  
9 there has been testimony by some of CURE's experts about  
10 water use amounts --

11 HEARING OFFICER RENAUD: Just the sufficiency.

12 MS. FOLEY GANNON: The sufficiency.

13 HEARING OFFICER RENAUD: Yes.

14 MS. FOLEY GANNON: So that seemed like sort of a  
15 separate issue to me.

16 HEARING OFFICER RENAUD: All right.

17 MS. FOLEY GANNON: But again, we can wrap it in,  
18 whatever people want to do.

19 MS. HOLMES: I have a question.

20 Is Dan Boyer available for cross-examination? We  
21 have hearsay evidence, and I'm wondering whether or not we  
22 can have evidence that's not hearsay regarding historical  
23 water use.

24 HEARING OFFICER RENAUD: You have a declaration I  
25 believe, or is it a letter?

1 MS. FOLEY GANNON: It's a declaration.

2 HEARING OFFICER RENAUD: Has that been offered in  
3 evidence?

4 MS. FOLEY GANNON: It has been.

5 HEARING OFFICER RENAUD: It's part of the  
6 testimony?

7 MS. FOLEY GANNON: It is, yes.

8 HEARING OFFICER RENAUD: All right. Well, would  
9 you like to get him -- do you think he could be made  
10 available for cross-examination?

11 MS. FOLEY GANNON: Can we just have one moment  
12 for a second?

13 HEARING OFFICER RENAUD: Please.

14 MS. FOLEY GANNON: We believe that he's not  
15 traveling, that he is somewhere where we may be able to  
16 reach him, so we can see if we can get him on the phone.

17 HEARING OFFICER RENAUD: All right.

18 Ms. Holmes, there is a declaration from Mr. Boyer  
19 in the record. Did you wish to cross-examine him about  
20 that declaration or --

21 MS. HOLMES: I did. And let me offer a little  
22 bit of foundation for that.

23 At the hearings in El Centro in May, we heard the  
24 representative of the county say that at that time the  
25 well registration had not been approved and that Mr. Boyer

1 did not have a right to use water from the well; and so  
2 I'm curious about how much water was, in fact, being used  
3 legally or illegally. We've got testimony in the -- we've  
4 got a statement in the declaration about residential use.  
5 I'm curious about other types of uses since it obviously  
6 has an impact on baseline issues, issues of impacts to the  
7 groundwater basin. But I'm prepared to go forward as well  
8 if that would make things easier.

9 HEARING OFFICER RENAUD: All right. I think it's  
10 a fair request, and if he's available we ought to do it.

11 MS. FOLEY GANNON: If I could ask for some  
12 clarification.

13 We do have a letter from the county, which is the  
14 one who makes the determinations about the compliance with  
15 the registration terms, and they have stated that he is in  
16 compliance. So I'm not sure what else Boyer can add about  
17 that other than, yes, the county told me I'm in  
18 compliance.

19 MS. HOLMES: We're a little bit curious about the  
20 water use before he was in compliance. So this is the  
21 question. Are you talking about the historical use having  
22 been .5 acre feet or .3 acre feet a year in the last six  
23 weeks since the county gave its --

24 MS. FOLEY GANNON: I'm not sure what the  
25 relevance of Boyer's legal or maybe not permitted or how

1 it was permitted use when it was not to our project.

2 MS. HOLMES: I think it goes --

3 MS. FOLEY GANNON: -- and was not part of this  
4 project. I mean, I'm just -- I'm hesitant. He is not a  
5 party to this proceedings. He has given us a declaration  
6 which he has sworn to --

7 HEARING OFFICER RENAUD: We understand your  
8 concern.

9 MS. FOLEY GANNON: -- you know, so put him on,  
10 get him on the phone, ask him to get on the telephone to  
11 say have you been -- can you say under testimony, swear  
12 that you've been illegally using water. I'm not sure that  
13 I want to do that --

14 HEARING OFFICER RENAUD: Ms. Holmes --

15 MS. FOLEY GANNON: -- or if it's relevant.

16 HEARING OFFICER RENAUD: -- maybe you could  
17 explain the relevance.

18 MS. HOLMES: I believe it goes to his  
19 credibility. We have information from the county  
20 indicating that prior water use would have been illegal  
21 prior to the registration. There is a current  
22 registration, I don't think there's any dispute about  
23 that. I would have --

24 HEARING OFFICER RENAUD: I don't know about --

25 MS. HOLMES: My line of questions would be very

1 simple. One would be is the historical water use that's  
2 identified in his declaration based on the very short  
3 period of time since the registration has become valid or  
4 is it based on something prior to that, in which case, as  
5 I said, I think that there -- there is an issue of  
6 credibility associated with that.

7 HEARING OFFICER RENAUD: I don't know about the  
8 credibility issue, but the fact is that the state of the  
9 evidence at this point is that we're hearing today .5  
10 residential, staff's analysis I believe said six  
11 historically.

12 MS. FOLEY GANNON: Right.

13 HEARING OFFICER RENAUD: And the concern was that  
14 the -- whether or not there is a potential for an impact  
15 to current and/or future residential users of this well.  
16 And so we need to know whether or not it's .5 always or is  
17 it now or what?

18 MS. HOLMES: Well, I think we need to know if the  
19 .5 is a legitimate number. As I said, I think the  
20 question of potential violation of a county ordinance is  
21 something that goes to a witness's credibility. And I  
22 think that since, as you're aware, the commission has a  
23 regulation that states that hearsay evidence is admissible  
24 but that it's not available to support a finding of fact  
25 absent other corroborating evidence that's probably

1 introduced into the record.

2 HEARING OFFICER RENAUD: All right. Well, if we  
3 can make the witness available, we'll try to keep the  
4 questioning to this very limited narrow scope that you've  
5 described about the present and historical residential  
6 water use.

7 MR. SILVER: Mr. Renaud, Mr. Budlong joins in  
8 this request. And I believe there is evidence that is  
9 either in the record already or that will be introduced by  
10 Mrs. Harmon indicating that the Bookman Edmonston study  
11 done for the U.S. -- for the U.S. Gypsum project does  
12 indicate, I think, that there was service to Painted  
13 Gorge, and I think there's a number in there of something  
14 maybe less than six, but much more than what this witness  
15 has testified.

16 HEARING OFFICER RENAUD: I've indicated what we'd  
17 like to do, and let's proceed in that fashion, please.

18 MS. HOLMES: So would you like me to proceed with  
19 my questions for Mr. Van Patten at this time?

20 HEARING OFFICER RENAUD: Yes. And let's keep  
21 doing something while we try to find Mr. Boyer.

22 MS. FOLEY GANNON: And Mr. Van Patten will have  
23 to be the one who calls Mr. Boyer because he is the -- he  
24 would be the person who contacts him.

25 HEARING OFFICER RENAUD: All right. Okay.

1 MS. FOLEY GANNON: So we could do this, and then  
2 we could -- I mean, I think we have enough water issues  
3 and I think we're going to be talking about the Boyer well  
4 for a while --

5 HEARING OFFICER RENAUD: Of course.

6 MS. FOLEY GANNON: -- that we probably can --

7 HEARING OFFICER RENAUD: At some point we'll get  
8 Mr. Boyer.

9 Go ahead.

10 CROSS-EXAMINATION

11 MS. HOLMES: Good afternoon, Mr. Van Patten. Do  
12 you have any evidence of the historical water use  
13 associated with the Dan Boyer well other than the  
14 declaration of Mr. Boyer?

15 MR. VAN PATTEN: Yes. I've looked at many  
16 documents that he's provided to us on historical water  
17 use.

18 MS. HOLMES: Did not staff ask for objective  
19 evidence provided at the May hearing and -- I believe we  
20 did; is that correct?

21 MR. VAN PATTEN: I actually don't recall. It may  
22 be correct, but I don't recall.

23 MS. HOLMES: Hearing Officer Renaud, that's  
24 information that we requested at the May hearing. This is  
25 the first we've heard of its existence.

1 HEARING OFFICER RENAUD: You're heard it -- all  
2 he said is that he looked at historical water use.

3 MS. HOLMES: He said there was additional  
4 objective documentation.

5 HEARING OFFICER RENAUD: Well, we don't know what  
6 it is yet. May be -- why don't you bring that up.

7 MS. HOLMES: We had asked that it be provided at  
8 the May hearing.

9 HEARING OFFICER RENAUD: Well, you need to find  
10 out if it was available.

11 MS. HOLMES: Have you provided this information  
12 to staff?

13 MR. VAN PATTEN: I'm checking.

14 What are we calling this? The May supplement?

15 MS. FOLEY GANNON: Yeah, that was previously  
16 submitted into the evidence.

17 MR. VAN PATTEN: There was a May supplement  
18 previously submitted into the evidence that contained  
19 historical water use.

20 MS. HOLMES: So this is a document that's called  
21 "Supplement to the Imperial Valley Applicant  
22 Certification," Volume II of two, May 2010, and is  
23 referencing Appendix D, which has some groundwater  
24 evaluation reports as well as I believe the documentation  
25 about -- the document we had about sales; is that correct?

1 MR. VAN PATTEN: That's correct.

2 MS. HOLMES: This, I believe, is Mr. Scott's  
3 document actually,

4 MR. SCOTT: Yes, it is. It's in Appendix B of  
5 Appendix D to the supplemental.

6 MS. HOLMES: Then perhaps you could -- would it  
7 be appropriate -- you've been sworn. Would it be  
8 appropriate for you to describe what that evidence is?

9 MR. SCOTT: Well, the evidence is water sales  
10 history from the Westwind Water Company.

11 MS. HOLMES: Is this the same information that  
12 was included in the file that the county provided at the  
13 hearings in --

14 MS. FOLEY GANNON: I don't recall it was in the  
15 county's file at the hearings.

16 MS. HOLMES: This is the information that went  
17 from 19- -- 1970-something to 2004?

18 MR. VAN PATTEN: This is -- yeah, this is 1990 to  
19 2004.

20 MS. HOLMES: Okay, thank you very much.

21 So the information that you're referring to has  
22 nothing to do with Dan Boyer sales?

23 MR. VAN PATTEN: Yeah, the historical documents,  
24 not the recent one since he's been the owner of Westwind.

25 MS. HOLMES: Right. And I apologize for the

1 confusion. My question went to whether or not you have  
2 any independent evidence of the statement that's been made  
3 by Mr. Boyer about his water sales.

4 MR. VAN PATTEN: I have not seen anything.

5 MS. HOLMES: In his declaration he refers to  
6 providing no more than a half an acre foot for domestic  
7 uses. Do you know if there's been water provided for  
8 other uses?

9 MR. VAN PATTEN: According to Dan Boyer there has  
10 been.

11 MS. HOLMES: Do you know how much?

12 MR. VAN PATTEN: I don't know how much.

13 MS. HOLMES: Thank you.

14 Do you know how many years the Seeley Wastewater  
15 Treatment Plant has been in violation of its waste  
16 discharge requirements?

17 MR. VAN PATTEN: I don't know that, but maybe  
18 someone -- do you know?

19 MS. HOLMES: Do you know whether or not the  
20 violations are recent or whether they're longstanding?

21 MR. VAN PATTEN: Don't know that either.

22 MS. HOLMES: Thank you. That's fine.

23 MR. VAN PATTEN: But maybe someone knows that.

24 MS. FOLEY GANNON: We broke this out to  
25 sedimentation; we have a water quality expert who will

1 testify.

2 MS. HOLMES: That's fine.

3 Lastly, you talked about reducing your water use  
4 to less than 40 acre feet per year by moving to a five-day  
5 a week construction schedule. Did I hear you correctly?

6 MR. VAN PATTEN: Or five plus, I mean, it's not  
7 six. It's a 2.9 acre foot per year difference.

8 MS. HOLMES: And is it -- would it be fair to say  
9 that that would postpone the completion date of the  
10 various portions of the project proportionally?

11 MR. VAN PATTEN: Only during the time in which  
12 you're using the Dan Boyer well, but not the project  
13 overall, because you're able to accelerate the  
14 construction once you have access to the Seeley water, you  
15 get back on schedule.

16 MS. HOLMES: When do you need to be online for  
17 our power purchase agreement?

18 MR. VAN PATTEN: The end of 2012, December 31.

19 MS. HOLMES: And is it your testimony that moving  
20 to a five-day construction schedule does not jeopardize  
21 that online date?

22 MR. VAN PATTEN: Our schedule assumes that we  
23 would be using Dan Boyer water for six months; and if we  
24 were to use Dan Boyer water for six months with a 2.9 acre  
25 foot yearly in a reduction, it would not appreciably

1 impact our construction schedule.

2 MS. HOLMES: Did you do an analysis to determine  
3 what would happen to your schedule if the Dan Boyer well  
4 needed to be relied upon for a period of time greater than  
5 six months?

6 MR. VAN PATTEN: We did not do a very detailed  
7 analysis, but back of the envelope analysis that we did do  
8 would indicate that we could use the Dan Boyer well for up  
9 to a year and not miss our contract COD date with SDG&E.

10 MS. HOLMES: When you say you could use the  
11 Dan Boyer water, does that mean you're talking about  
12 something between a five- and a six-day construction  
13 schedule for that period --

14 MR. VAN PATTEN: Correct.

15 MS. HOLMES: -- for that year?

16 Okay. Thank you.

17 I think those are all my questions.

18 HEARING OFFICER RENAUD: All right. Thank you.

19 Questions by CURE?

20 CROSS-EXAMINATION

21 MS. MILES: My first question is are you willing  
22 to stipulate to a five-day work week for as long as you  
23 are relying on the Dan Boyer well?

24 MR. VAN PATTEN: No.

25 MS. MILES: Are you willing to stipulate to a

1 six-day work week as long as you're relying on the  
2 Dan Boyer well?

3 MR. VAN PATTEN: Yes.

4 MS. MILES: Regarding the Seeley Wastewater  
5 Treatment Facility --

6 MR. VAN PATTEN: Let me be clear on my answer  
7 too.

8 MS. MILES: Okay.

9 MR. VAN PATTEN: As long as we're using the  
10 Dan Boyer well for construction water needs.

11 MS. MILES: So you're saying that you wouldn't  
12 stipulate to that regarding operation water needs that  
13 might overlap with construction water needs.

14 MR. VAN PATTEN: What I'm saying is if there  
15 were -- what I don't want to get into a situation of is  
16 Seeley water becomes available, we're in transition, we  
17 have plenty of water, we're using a little bit of  
18 Dan Boyer water maybe, but we have plenty of water from  
19 Seeley, and all of a sudden I'm stuck with a six-day work  
20 week -- I'm sorry, yeah, six-day work week, but I need to  
21 catch up on my schedule, and maybe we're going to schedule  
22 a couple of full weekends. I don't want to be arbitrarily  
23 restricted on construction when there's obviously tons of  
24 water available for construction from our intended source.

25 MS. MILES: That's understandable.

1 MR. VAN PATTEN: That's just a technicality I'm  
2 trying to avoid.

3 MS. MILES: With regard to the six-day work week,  
4 would you have enough water then from the Dan Boyer well  
5 if you only had access to the Dan Boyer well?

6 MR. VAN PATTEN: Can you ask that again?

7 MS. MILES: Would you have a sufficient water  
8 supply if you are restricted to a six-day work week?

9 MR. VAN PATTEN: If we were restricted to a  
10 six-day work week, what could end up happening is we would  
11 obviously be a little bit short, because I stated that it  
12 would be 2.9 acre feet per year short if we were on  
13 average year. What it doesn't mean to say that we  
14 wouldn't work one week five days to store water for a  
15 six-day work week in which we had certain things planned.  
16 So I could work full six-day work weeks depending on what  
17 I'm doing and scheduling my work.

18 MS. MILES: So you're saying that you believe you  
19 could operate or you could construct under a six-day work  
20 week using only the Dan Boyer well based on changing your  
21 construction schedule.

22 MR. VAN PATTEN: No. There will be schedule  
23 impacts, as I've stated previously, if we are restricted  
24 to the 39.5.

25 MS. MILES: Are you actively seeking additional

1 water supply?

2 MR. VAN PATTEN: No.

3 MS. MILES: Why not?

4 MR. VAN PATTEN: Because we believe strongly that  
5 the Seeley Wastewater Treatment Facility will be upgraded  
6 and we'll have access to that water, which is our primary  
7 water supply source, and Dan Boyer's merely a temporary  
8 stopgap measure.

9 MS. MILES: Regarding the Seeley Wastewater  
10 Treatment Facility, do you know if they had any funding to  
11 do their upgrades prior to your offer of funds?

12 MR. VAN PATTEN: I don't know specifically if  
13 they've had any offers of funds, access to funds. I have  
14 attended their monthly board meetings in which I've  
15 overheard them speaking of what they would pursue for  
16 funds, you know, for various projects that they have. So  
17 I know that they have access through their own means,  
18 whether we were there or not, but whether they've actually  
19 gotten funds or would have -- or were in the process of  
20 getting funds, I don't know.

21 MS. MILES: So just so that I understand you, in  
22 these meetings have you heard they have secured some  
23 funding at this point?

24 MR. VAN PATTEN: I have not. I've just overheard  
25 speaking of things that they would try to look for funds

1 through other means.

2 MS. MILES: Do you have any reason to believe  
3 that they would be able to acquire funding if you did not  
4 provide funding?

5 MR. VAN PATTEN: I don't have any knowledge that  
6 would help me to understand whether they could or could  
7 not or what specifically they could get or from where.

8 MS. MILES: Are there any other permits that the  
9 Seeley County Water District would need to acquire other  
10 than completing the EIR process and approving the EIR  
11 before they could operate?

12 MR. VAN PATTEN: I'm not familiar with any.

13 MS. MILES: So you're not familiar with a change  
14 of use permit that would be required from the state water  
15 resources control board?

16 MR. VAN PATTEN: I don't recall that permit.

17 MS. MILES: My understanding is that it has not  
18 been applied for yet, so my follow-up question was, you  
19 know, why are you not pursuing that at this time.

20 MR. VAN PATTEN: I don't remember that one. It's  
21 not ringing any bells.

22 MS. FOLEY GANNON: If you don't remember, you  
23 don't remember.

24 MS. MILES: Okay. Are you aware that the  
25 county -- let me find my note here.

1           Are you aware that the county strongly  
2 recommended to the energy commission to take into  
3 consideration historical users of the Boyer well as well  
4 as on-site water needs at the Westwind parcel?

5           MR. VAN PATTEN: Yes, I'm familiar with that.

6           MS. MILES: I'm not sure if this is in evidence,  
7 I don't think it is, but I brought the letter. This is  
8 the Imperial County Planning comment letter on the staff  
9 assessment draft EIS, and so unless someone tells me that  
10 it's already in evidence from another party, then I'm  
11 going to submit this into evidence now. I believe it  
12 would be 499N at this point. Yes. So I'd like to move  
13 that into evidence.

14           HEARING OFFICER RENAUD: As far as I can tell,  
15 that has not been submitted by any other party.

16           MS. HOLMES: Is this the May 27th, 2010, letter?

17           MS. MILES: Yes, it is.

18           MS. HOLMES: Thank you.

19           HEARING OFFICER RENAUD: All right. And what was  
20 the number you had for it again?

21           MS. MILES: 499N.

22           HEARING OFFICER RENAUD: Okay.

23           (Intervenor CURE's Exhibit 499N was marked for  
24 identification.)

25           HEARING OFFICER RENAUD: Any objection to that

1 being admitted into evidence?

2 MS. FOLEY GANNON: No objection.

3 HEARING OFFICER RENAUD: Anybody?

4 MS. HOLMES: No objection.

5 MR. SILVER: No objection.

6 HEARING OFFICER RENAUD: All right. That will be  
7 admitted then.

8 (Intervenor CURE's Exhibit 499N was received into  
9 evidence.)

10 MS. MILES: So and I would also just like to say  
11 that I think this also lays the basis for relevance as to  
12 looking at the historical use of the well to the extent  
13 that Dan Boyer is aware of the historical use of the well,  
14 because this is something that -- the county strongly  
15 recommended that the energy commission take that into  
16 consideration as well as on-site water needs. And I  
17 haven't actually read anything -- I don't know, can you  
18 speak to whether you know of what the on-site water needs  
19 are for that parcel?

20 MR. VAN PATTEN: I can only speculate that he has  
21 a home there and he would need to flush toilets and take a  
22 shower.

23 MS. MILES: Not really interested in speculation,  
24 but thank you.

25 And are you certain that the letter from

1 Mr. Boyer represents -- the letter that you submitted that  
2 stated --

3 HEARING OFFICER RENAUD: Do you have copies for  
4 us up here?

5 Yes, thank you.

6 MS. MILES: -- his estimate of historical water  
7 use? Are you certain that that letter represents the  
8 historical residential water use prior to the past two  
9 years? I know it only is standing for the past two years,  
10 but would you -- could you speak to whether it represents  
11 anything before that?

12 MR. VAN PATTEN: He's only testified or declared  
13 to the well usage since he's had control over it. That's  
14 the only thing he's testifying to that I'm aware of.

15 MS. MILES: Okay. So can you speak to any  
16 historical water use besides what he's submitted in his  
17 declaration?

18 MR. VAN PATTEN: Only what's been already entered  
19 into testimony.

20 MS. MILES: Right. Okay. And how long has  
21 Mr. Boyer been owner of the well?

22 MR. VAN PATTEN: I don't think it's been over two  
23 years. I think it's right at around two years is my  
24 recollection, but I -- I'm not positive.

25 MS. MILES: Okay. I have a question.

1           Also I noted in your testimony you mention the  
2 that -- I don't think if it was the RMT study or the RMT  
3 firm that has been working with you --

4           MR. VAN PATTEN: RMT is the contractor whose been  
5 engaged for the balance of the plant installation, which  
6 would include construction of the facility.

7           MS. MILES: And you mentioned that there was an  
8 estimate that 60 percent of the water use would be for  
9 dust control measures?

10          MR. VAN PATTEN: When I looked at their detailed  
11 estimate, that's what it showed to me. It was probably  
12 59.-something, roughly 60.

13          MS. MILES: That's fine. I'm just wondering  
14 whether that information is in the record.

15          MR. VAN PATTEN: Not the detailed breakdown, just  
16 the total water supply needs of our RMT is what we offered  
17 in the past.

18          MS. MILES: And why did you not offer the  
19 breakdown into the record?

20          MR. VAN PATTEN: I didn't know that it was  
21 relevant in that the total water need is what the relevant  
22 number is, as I understand it.

23          MS. MILES: Well, it's definitely been difficult  
24 for us to evaluate whether you're going to have an  
25 adequate water supply when we can't get a breakdown of

1 what your water needs are on the project site, so that's  
2 why I'm asking that question.

3 Can you submit the RMT study into the record or  
4 the RMT information that you're referring to regarding the  
5 59.-something dust control?

6 MS. FOLEY GANNON: We have replied to all data  
7 requests that we received in a timely fashion. We don't  
8 believe that there's any need to submit this.

9 MS. MILES: Well, I believe that the time for  
10 data -- the data adequacy -- not the data adequacy -- the  
11 time for data request closed prior to the information  
12 being put into the record as to the Boyer well, and so  
13 this is relevant to new information.

14 HEARING OFFICER RENAUD: What would be  
15 applicant's objection to submitting the requested  
16 material?

17 MS. FOLEY GANNON: We don't see the relevance of  
18 having to submit this. And the problem is --

19 HEARING OFFICER RENAUD: Why? What's not  
20 relevant about it? That's what I'm -- I'm trying to get  
21 it as specific --

22 MS. FOLEY GANNON: The need -- the water need,  
23 the total number of the water need is what we think is the  
24 relevant consideration.

25 HEARING OFFICER RENAUD: Rather than the

1 breakdown of the various uses?

2 MS. FOLEY GANNON: The breakdown of specific --  
3 how much is used for dust control and how much is used for  
4 roads, how much is --

5 HEARING OFFICER RENAUD: All right.

6 Excuse me. Why does CURE need that?

7 MS. MILES: Well, we have been trying to actually  
8 evaluate whether the water needs are correctly calculated,  
9 and we have submitted testimony that the water has not  
10 been accurately calculated, the water needs.

11 HEARING OFFICER RENAUD: All right. So what is  
12 the objection to the breakdown? I think she's made a good  
13 case for her wanting to see that information, unless  
14 there's some reason you can't produce it, which you  
15 haven't told me yet? Is it an extensive document?

16 MS. FOLEY GANNON: It's an extensive document,  
17 but it has other information included in it.

18 HEARING OFFICER RENAUD: All right.

19 MS. FOLEY GANNON: We did not have anything  
20 prepared specifically for sharing with the public or  
21 submitting to the commission.

22 HEARING OFFICER RENAUD: Can you pull out the  
23 part that has the information they're requesting?

24 MS. FOLEY GANNON: I mean, what we would need to  
25 do is to go back and probably ask RMT to provide the

1 summary numbers, because again, there is some information  
2 that may be confidential information --

3 HEARING OFFICER RENAUD: I understand. So see if  
4 you can do that, please.

5 MS. FOLEY GANNON: We can provide something which  
6 gives a more general breakdown without having to get into  
7 our specific engineering and building plans in detail that  
8 is not relevant to this issue.

9 HEARING OFFICER RENAUD: Right.

10 MS. FOLEY GANNON: If that makes sense.

11 MS. MILES: Well, I'm not sure that it makes  
12 sense considering that you said this wasn't relevant at  
13 all, but if you're accepting that it is relevant, then we  
14 are interested in --

15 HEARING OFFICER RENAUD: Listen, we don't need  
16 that kind of commentary. We've said it's relevant.

17 MS. MILES: Okay, thank you.

18 MS. FOLEY GANNON: Yeah, doesn't matter.

19 HEARING OFFICER RENAUD: Please provide the  
20 summary that you indicated.

21 MS. FOLEY GANNON: Yes, we will.

22 HEARING OFFICER RENAUD: Carry on.

23 MS. MILES: I appreciate that. Thank you.

24 Moving on, I have a question related to the dust  
25 and testimony. Have your experts compared the conditions

1 at the Maricopa site and the expected conditions at the  
2 Imperial site relating to dust, particularly accounting  
3 for the difference in soil types and baseline dust  
4 conditions?

5 MR. VAN PATTEN: There's been discussions between  
6 Mortenson and RMT regarding all aspects of construction of  
7 the Maricopa site, in that it was a Mortenson project with  
8 SES installation of the SunCatchers. There's been a lot  
9 of sharing of data to try to get their head around not  
10 only the construction aspects of it but also the operation  
11 aspects of it.

12 MS. MILES: Because I understand, I believe,  
13 correct me if I'm wrong, the Maricopa site is like a  
14 previous agricultural land?

15 MR. VAN PATTEN: That's correct.

16 MS. MILES: And it's near a power plant --

17 MR. VAN PATTEN: That's correct.

18 MS. MILES: -- or another industrial facility?

19 MR. VAN PATTEN: That's correct.

20 MS. MILES: And it's a much smaller site. And so  
21 I'm -- reason that I'm asking this is because I'm  
22 wondering, the Imperial site seems very different to me in  
23 terms of the soil types and the amount of dust you're  
24 likely to have and desert pavement and things you wouldn't  
25 have as functions. So I'm wondering can you provide that

1 information if that is in the documentation that, you  
2 know, you are already going to be excerpting for us?

3 MR. VAN PATTEN: These not part of any  
4 documentation that I have. It's discussions that go on  
5 between the various parties.

6 MS. MILES: So you don't have anything -- you've  
7 not submitted anything into the record relating to the  
8 amount of dust compared to the Maricopa facility that  
9 you're going to have to deal with?

10 MR. VAN PATTEN: I'm not aware of anything like  
11 that --

12 MS. MILES: Okay.

13 MR. VAN PATTEN: -- anything written down or  
14 offered in testimony.

15 MS. MILES: That's all -- oh, actually I have one  
16 last question.

17 And I understand you have a power purchase  
18 agreement for this project.

19 MR. VAN PATTEN: We do.

20 MS. MILES: And how many megawatts has SDG&E  
21 committed to purchase in the power purchase agreement  
22 excluding options and rights of refusal?

23 MS. FOLEY GANNON: I thought this discussion was  
24 about water supply.

25 MS. MILES: Well --

1 MS. FOLEY GANNON: And just so we can have  
2 rebuttal that follows testimony. I mean, does this relate  
3 to water supply?

4 MS. MILES: Well, Mr. Van Patten will be  
5 testifying again at a time when I can ask a question --

6 MS. FOLEY GANNON: He will be.

7 MS. MILES: -- relating to --

8 MS. FOLEY GANNON: Yep.

9 MS. MILES: Will he be testifying when I can ask  
10 a question relating to the power purchase agreement?

11 MS. FOLEY GANNON: There will be. Plant  
12 reliability might be a place that would be more reasonable  
13 than water supply, I would think, to ask that question.  
14 Because we haven't offered any initial testimony on this  
15 subject, and so we can have rebuttal that's related to the  
16 initial testimony.

17 MS. HOLMES: As an item of clarification, staff  
18 also had questions to ask of Mr. Van Patten about the  
19 power purchase agreement. And we were planning to ask him  
20 when he testified about alternatives. So I don't know  
21 what the appropriate place is --

22 MS. FOLEY GANNON: That's fine. We can do it  
23 during alternatives.

24 HEARING OFFICER RENAUD: I think it's pretty  
25 clear it's not water. So good.

1 MS. MILES: Okay. Thank you. No more questions.

2 HEARING OFFICER RENAUD: All right. Questions by  
3 Budlong?

4 MR. BUDLONG: Yes.

5 This is Tom Budlong. I have questions with  
6 respect to some data that appear in the staff assessment.  
7 And maybe you can guide me as to when I should ask those  
8 and to whom.

9 HEARING OFFICER RENAUD: On what topic,  
10 Mr. Budlong?

11 MR. BUDLONG: Water usage and construction water.

12 HEARING OFFICER RENAUD: I'd say we're there.

13 MR. BUDLONG: Dust control water and construction  
14 water.

15 HEARING OFFICER RENAUD: That's I think where we  
16 are now.

17 Go ahead.

18 MR. BUDLONG: And this is in the SSA.

19 CROSS-EXAMINATION

20 MR. BUDLONG: In the water section on page C.7-17  
21 and I think on the next table it talks about using 5,000  
22 gallons per day for dust control. And if I work that down  
23 to human figures, using a little bit of arithmetic, I get  
24 that for every square yard, if you consider the 200 acres  
25 need dust control, that's all out of the 6,000, that

1 you're allocated something like a half liter, which is one  
2 of those little bottles that you buy in the 7-Eleven store  
3 for every square yard of ground that needs to be dust  
4 controlled per month. And that sounds to me like a very  
5 small amount of water required for dust control.

6 How did you arrive at that small amount of water  
7 required for dust control?

8 MS. HOLMES: Let's first of all confirm that  
9 these numbers that are in the staff assessment are based  
10 on information provided by Tessera.

11 MS. FOLEY GANNON: Yeah, that's what we were just  
12 trying check.

13 I'm sorry, Mr. Budlong, can you say which table  
14 you're looking at again, which you say it was on 6-7.7?

15 MR. BUDLONG: The table starts on C.7-16,  
16 Table 3. And the data are actually on C.7-17. It splits  
17 to the next page.

18 MS. HOLMES: And the source is listed as SES  
19 2008A, which I think is the application for certification.

20 HEARING OFFICER RENAUD: Ms. Holmes, I'm not sure  
21 your mic is on.

22 MS. HOLMES: It is. I'm not often accused of not  
23 speaking loudly enough. I apologize.

24 HEARING OFFICER RENAUD: No accusation meant,  
25 just a question.

1 MR. VAN PATTEN: The table that you're referring  
2 to is in operations, water demand table.

3 MR. BUDLONG: Yes, it is. Yes.

4 MR. VAN PATTEN: And I don't have -- I have not  
5 testified to operations water use or numbers, Waymon Votaw  
6 has provided numbers and could testify to that.

7 MS. FOLEY GANNON: Yeah, we apologize again.  
8 There's some overlap on different panels, but we can make  
9 a note that when Waymon Votaw's testifying tomorrow in  
10 plant reliability he can answer this question specifically  
11 again with relation to water operations. And we  
12 apologize, he was not able to be here due to some  
13 obligations, but will be on the phone tomorrow.

14 MR. BUDLONG: All right. So that's a Raymond  
15 Votaw question?

16 MS. FOLEY GANNON: Waymon, W-a-y-m-o-n.

17 MR. VAN PATTEN: Votaw, V-o-t-a-w.

18 MS. WHITE: Can you please make sure you're  
19 speaking close to the microphone? It's very difficult to  
20 hear you sometimes.

21 HEARING OFFICER RENAUD: Yeah, it's really quite  
22 faint. Put it right up to your mouth.

23 MR. VAN PATTEN: Like right here?

24 HEARING OFFICER RENAUD: Yes, please, that's the  
25 way to do it. Put it on top of your papers if you need

1 to. We need to hear you clearly.

2 MR. VAN PATTEN: All right. I'll do it.

3 HEARING OFFICER RENAUD: Thank you.

4 MR. BUDLONG: I have another question, and that  
5 is that in that same Table 3, essentially what is  
6 specified there is that the construction will use 166 acre  
7 feet to install 30,000 SunCatchers. And if I compare that  
8 to Calico, which is very similar, and I look in the Calico  
9 supplemental staff assessment, which is a July document, I  
10 find that Calico will use 600 acre feet to install a few  
11 more SunCatchers, 34,000 instead of 30,000. So we're  
12 using 166. If you divide it out, it comes out to be for  
13 Calico, 17 and a half acre feet per thousand SunCatchers;  
14 and for Imperial, five and a half acre feet per thousand  
15 SunCatchers. I'm wondering if you're able to describe why  
16 Imperial can be so much more efficient than Calico in  
17 installing these things.

18 HEARING OFFICER RENAUD: Mr. Budlong, this is  
19 Hearing Officer Renaud. You're referring still to  
20 Table 3, correct?

21 MR. BUDLONG: Yes.

22 HEARING OFFICER RENAUD: And that's about  
23 operations. And as I understand your question, your  
24 question is about construction.

25 MR. BUDLONG: Wait. Wait. Wait. Wait. Wait.

1 Excuse me while I get my notes in order here.

2 MS. FOLEY GANNON: I think Mr. Budlong might be  
3 on page C.7-16 under the narrative under construction  
4 water.

5 Is that what you were looking at?

6 MR. BUDLONG: Yes, I think that's what it is,  
7 yes, not in the table. Yeah. Down in the construction  
8 water towards the bottom, it says 166 acre feet, total  
9 construction water use approximately 54 million gallons,  
10 166 acre feet, which works out substantially less than  
11 what it talks about in Calico.

12 MR. VAN PATTEN: Well, in regards to differences  
13 between the two projects --

14 HEARING OFFICER RENAUD: Microphone, please.

15 MS. FOLEY GANNON: Lean in, lean in, lean in.

16 MR. VAN PATTEN: I'm sorry. Thank you.

17 HEARING OFFICER RENAUD: You might just move it  
18 up to you, and then you don't have to lean forward.

19 That's it. Thank you.

20 MR. VAN PATTEN: In regards to the differences  
21 between Calico and Imperial Valley Solar water, there are  
22 several reasons that are specific to the projects that  
23 include things as far as earth work that needs to be done  
24 on each project is different.

25 In the case of Calico, there's a large bridge

1 facility with embankments, and a lot of grading has to be  
2 done, a long entrance road, much more distance than at  
3 IVS. There's different soil types at both projects, and  
4 the different soil types require different amounts of  
5 water, either for dust control or what have you.

6 At IVS, is more of a -- as I understand it from  
7 the engineer, it's more of a silty sand, holds a lot more  
8 moisture than the soils out at the Calico project, and so  
9 they have to use a lot more water up there in their  
10 estimates. It's a coarser sand, with silt; but,  
11 nonetheless, it doesn't hold as much water and the water  
12 is able to evaporate.

13 MS. JENNINGS: Excuse me. Could we ask who was  
14 just testifying?

15 MR. VAN PATTEN: This is Marc, this is  
16 Marc Van Patten with Tessera Solar.

17 And in the case of Calico, there are detention  
18 basins required, and more water's required for that. And  
19 in the case of IVS, they've been removed. When we've  
20 asked the question as to the differences internally, those  
21 were the answers we got from the engineers.

22 MR. BUDLONG: Okay. All right. Thank you.

23 HEARING OFFICER RENAUD: Thank you.

24 MR. BUDLONG: Those are my questions.

25 HEARING OFFICER RENAUD: You're done?

1 MR. BUDLONG: Yes.

2 HEARING OFFICER RENAUD: Good. Thank you.

3 Cross-examination by CNPS?

4 MR. BELTRAN: No.

5 HEARING OFFICER RENAUD: Any redistrict?

6 MS. FOLEY GANNON: Just a couple of points for  
7 clarification.

8 REDIRECT EXAMINATION

9 MS. FOLEY GANNON: To understand, and I know we  
10 will have a technical expert speaking later in afternoon  
11 about how the BMPs for dust control have been developed  
12 and studied, but to the best of your knowledge, were the  
13 dust control BMPs and measures developed looking at  
14 Maricopa?

15 MR. VAN PATTEN: As far as for this project?

16 MS. FOLEY GANNON: Right.

17 MR. VAN PATTEN: No.

18 MS. FOLEY GANNON: Were the dust control measures  
19 based upon the actual site conditions here?

20 MR. VAN PATTEN: Absolutely.

21 MS. FOLEY GANNON: Thank you.

22 And with regard to Seeley, is Tessera Solar  
23 getting permits for Seeley?

24 MR. VAN PATTEN: No, we're not getting any  
25 permits for Seeley.

1 MS. FOLEY GANNON: So Seeley is responsible for  
2 getting any and all permits that are necessary for  
3 carrying out its upgrades or taking care of different uses  
4 and things like that; is that correct?

5 MR. VAN PATTEN: That's correct. That's what I  
6 understand.

7 MS. FOLEY GANNON: So the relationship between  
8 the IVS project and Seeley is what? With regards to the  
9 upgrades? What is IVS's role in the upgrades?

10 MR. VAN PATTEN: We have agreed to pay for any  
11 upgrades should they, in fact, move ahead with the  
12 upgrades.

13 MS. FOLEY GANNON: Very good.

14 And then you just provided us some information on  
15 Calico, and I think you answered this question that came  
16 up in my mind.

17 Have you worked on the Calico project?

18 MR. VAN PATTEN: I have not.

19 MS. FOLEY GANNON: So you don't have any personal  
20 knowledge about how calculations were done by engineers  
21 working for the Calico project or the specific soil  
22 conditions or things like that?

23 MR. VAN PATTEN: No.

24 MS. FOLEY GANNON: All right. That's very  
25 helpful. Thank you.

1 HEARING OFFICER RENAUD: Any questions from  
2 committee members?

3 Yes, Ms. Holmes?

4 MS. HOLMES: One recross question?

5 HEARING OFFICER RENAUD: Sure.

6 RECROSS-EXAMINATION

7 MS. HOLMES: Mr. Van Patten, does the project  
8 need to obtain any kind of a permit other than the CEC  
9 permit in order to use the water that it receives from the  
10 Seeley Wastewater Treatment Facility?

11 MR. VAN PATTEN: The only one that I'm familiar  
12 with is the extension of service implication to LAFCO.

13 MS. HOLMES: And is that in process?

14 MR. VAN PATTEN: Yes.

15 MS. HOLMES: Thank you.

16 HEARING OFFICER RENAUD: Any further questions?  
17 I have a couple, but anyone else? All right.

18 Mr. Van Patten, you said that you -- and I don't  
19 recall your exact words, but you're very confident that  
20 the Seeley wastewater treatment upgrades will be  
21 constructed and make that water available. What's the  
22 basis for thinking that as of today?

23 MR. VAN PATTEN: Because they have indicated --  
24 well, first of all they are in violation of their NPDS. I  
25 understand that the agencies that govern that permit

1 require them to upgrade or face fines and other  
2 enforcement actions, and which would indicate to me that  
3 they would be looking for every and all solutions to  
4 getting out of a situation where they're constantly in  
5 violation and having to pay fines and nothing's being  
6 upgraded.

7           There are, I understand, from -- like I said,  
8 I've overheard them speaking in the past at some of their  
9 board meetings where they talk about what access to  
10 funding they have at that level given that they're a very  
11 low-budget city water department. And they're  
12 exploring -- and they would be exploring any way possible  
13 to get that upgrade done, whether we were there or not.  
14 And with us having offered to pay for those upgrades,  
15 should we have access to that water, I have no reason to  
16 believe they wouldn't get that permit to construct and  
17 that they would ultimately implement it.

18           HEARING OFFICER RENAUD: Okay. But I guess I  
19 wasn't quite specific about what I had in mind, which is  
20 that they're going through an EIR process.

21           MR. VAN PATTEN: Correct.

22           HEARING OFFICER RENAUD: Do you have any  
23 information about the anticipated outcome of that, when  
24 and how?

25           MR. VAN PATTEN: We do have an anticipation of

1 how that would come out in that they did go through --  
2 testimony has already shown they've started out with an  
3 MND, Mitigated Negative Declaration, and in that Mitigated  
4 Negative Declaration, they've identified the issues  
5 surrounding the project. And there are probably others  
6 better suited to testify in more detail if you'd like, but  
7 that showed what might be impacted by the upgrades.

8           And these were -- as I recall, they were all  
9 things that were not -- at the end of the day, they could  
10 not be mitigated to less than significant. And with the  
11 EIR process, those things could be shown with significant  
12 levels of detail, such that it gave Tessera Solar no cause  
13 for concern as to their ability to come to the end of that  
14 with a very supportable EIR document that would then be  
15 able to be adopted without any significant challenge.

16           HEARING OFFICER RENAUD: All right. And is that  
17 what you just said your opinion, or is that based on  
18 information you -- or opinion you received from others?

19           MR. VAN PATTEN: The opinion I received from  
20 others, and now it's an opinion that I share.

21           HEARING OFFICER RENAUD: And do you have -- is  
22 your background, education, experience such that you  
23 can -- that could form the basis for an opinion like this,  
24 to support an opinion like this?

25           For example, do you have experience or education

1 in the area of EIRs for wastewater treatment facility  
2 upgrades?

3 MR. VAN PATTEN: I have never participated in an  
4 EIR for a waste treatment facility.

5 HEARING OFFICER RENAUD: All right.

6 MR. VAN PATTEN: However, I've spent the last 15,  
7 20 years developing power plants around water systems with  
8 many, many different types of water supply requirements  
9 and water-related permitting of all types, and have a good  
10 feeling as to how things are being conducted and what  
11 probable outcomes would be. But that's based purely on a  
12 power plant and water-resource needs perspective and not  
13 from a biological perspective or specific wastewater  
14 treatment permitting perspective.

15 HEARING OFFICER RENAUD: All right. Thank you.

16 And something else. Talking about the half an  
17 acre foot a year of residential use on the Boyer well. Do  
18 you have any knowledge -- I just don't know these figures,  
19 they're probably somewhere, but how many gallons is half  
20 an acre foot?

21 MR. VAN PATTEN: Half an acre foot?

22 HEARING OFFICER RENAUD: Or what's a whole acre  
23 foot, and then we can split it, but whatever.

24 MR. VAN PATTEN: Well, an acre foot is 325 --  
25 325,851 gallons.

1 HEARING OFFICER RENAUD: Okay. So and how many  
2 gallons does a residence -- I mean, there's a huge span  
3 here, but sort of typical, three-bedroom, two-bath  
4 family-of-four residence use in a year?

5 MR. VAN PATTEN: A couple thousand gallons a  
6 year.

7 MR. SCOTT: There have been some studies in  
8 southern California --

9 HEARING OFFICER RENAUD: Please state who you are  
10 for the record.

11 MR. SCOTT: This is Mr. Scott.

12 And there have been some studies throughout the  
13 state, and in southern California in the urbanized areas,  
14 a residential city lot uses about a half of an acre foot a  
15 year. In these areas, there's generally no irrigation of  
16 the properties, and so I would anticipate that the use,  
17 annual use would be somewhat less than a half an acre,  
18 maybe a quarter or a third.

19 HEARING OFFICER RENAUD: Does the Boyer well have  
20 any steady residential customers at this point? I don't  
21 see that in his declaration, and I just wondered if you  
22 might know.

23 MR. VAN PATTEN: Forgive me; I didn't hear that.

24 HEARING OFFICER RENAUD: Does the Boyer Water  
25 Company have any steady regular residential customers now?

1 MR. VAN PATTEN: He has mentioned to me in  
2 conversation that he does have some, like the ones  
3 referred to earlier in Painted Gorge. There are some  
4 seasonal and some permanent residents there that  
5 periodically stop by and purchase water.

6 HEARING OFFICER RENAUD: Okay.

7 Go ahead.

8 Ms. White has a question.

9 MS. WHITE: So is he permitted to be a public  
10 water supply? Is he permitted to be a supplier of water?

11 MR. VAN PATTEN: He's permitted to supply it to  
12 40 acre feet per year.

13 MS. WHITE: Okay. Question back to the  
14 wastewater treatment plant.

15 Are there any downstream users of the discharge  
16 from the wastewater treatment plant?

17 MR. VAN PATTEN: None that I'm aware of.

18 MS. WHITE: Okay. Thank you.

19 HEARING OFFICER RENAUD: Commissioner Eggert?

20 COMMISSIONER EGGERT: This is more of a question  
21 of curiosity.

22 So 40 acre feet a year is maybe about enough to  
23 support about 20 acres of alfalfa, I think, approximately,  
24 and right next -- fairly nearby we have the irrigation  
25 district, Imperial Irrigation District, which pumps over

1 two million I think, acre feet a year.

2 What was presented -- was there anything  
3 preventing you from going to secure a source within the  
4 IID?

5 MR. VAN PATTEN: Yes. We initially started this  
6 project prior to submitting the AFC I believe, or maybe --  
7 I don't remember, it might have been with the initial AFC,  
8 it might have included IID as a water solution. And we  
9 subsequently found out that IID's service territory  
10 includes a portion of the project. It was a part of the  
11 900 megawatt project to the east near Dunaway Road that  
12 the IID service territory touched.

13 And even if we hadn't removed that part for  
14 cultural resource or environmentally-sensitive area  
15 reasons, we still would not have been able to use that  
16 water for the rest of the project, and, therefore, it was  
17 not an appropriate solution for the entire project because  
18 we would have been restricted to using IID water on that  
19 portion of the project, unless we were able to get an  
20 extension of service from IID service territory through  
21 the federal government, which we found would probably take  
22 too long.

23 COMMISSIONER EGGERT: Okay. Thanks.

24 HEARING OFFICER RENAUD: All right. Before we  
25 move on this water part two, any other questions from

1 anybody?

2 All right. Go ahead. Yes.

3 MR. SILVER: Yes, I have a question.

4 RECROSS-EXAMINATION

5 MR. SILVER: Are you aware that U.S. Gypsum was  
6 able to obtain in connection with its expansion project  
7 water from IID by reason of an expansion of the service  
8 area?

9 MR. VAN PATTEN: No, I'm not aware of that.

10 HEARING OFFICER RENAUD: All right. Let's  
11 proceed.

12 MS. FOLEY GANNON: One other question.

13 REDIRECT EXAMINATION

14 MS. FOLEY GANNON: If you were using IID water,  
15 would the water that you would be using be potable water?

16 MR. VAN PATTEN: I believe so, but I'm not  
17 familiar enough with the IID water to know that answer.

18 HEARING OFFICER RENAUD: Okay. Let's move on to  
19 the next aspect of water, please.

20 MS. FOLEY GANNON: Okay. Would you -- are you  
21 interested in us trying to get Boyer on the well before --  
22 not the -- Boyer on the line, I'm sorry -- before we start  
23 talking further about the Boyer well, or should we try to  
24 see if we can get him, or just any time is fine because  
25 there's limited questions for him?

1 HEARING OFFICER RENAUD: We just -- mainly, yes.  
2 We wanted to keep moving though, we don't want to sit and  
3 wait for the phone call to go through. So if that could  
4 be done while we're doing something else, great;  
5 otherwise, let's just --

6 MR. VAN PATTEN: Does someone have the call-in  
7 information handy so I can write it down and give it to  
8 him quickly? Anyone?

9 MS. FOLEY GANNON: Allan can get it for you.

10 MR. VAN PATTEN: Okay.

11 MS. FOLEY GANNON: We can turn now and talk about  
12 the -- further about the Boyer well and the potential  
13 impacts associated with relying on the Boyer well. And  
14 for this we would like to turn to Mr. Scott.

15 DIRECT EXAMINATION

16 MS. FOLEY GANNON: Mr. Scott, have you had a  
17 chance to -- you've submitted previous testimony, I  
18 believe, in our earlier hearings as well as written  
19 testimony; is that correct?

20 MR. SCOTT: Yes, that's correct.

21 MS. FOLEY GANNON: Do you have any corrections or  
22 amendments to that earlier testimony that you submitted?

23 MR. SCOTT: No, I don't.

24 MS. FOLEY GANNON: Again, we won't walk through  
25 all of the analysis that you did on the Boyer well that

1 you have previously discussed or provided written  
2 testimony, I'm predominantly, first off, getting your  
3 reaction in response to the analysis that was included in  
4 the supplemental staff assessment.

5 Have you had a chance to review their discussion  
6 of the groundwater use?

7 MR. SCOTT: Yes, I have.

8 MS. FOLEY GANNON: And could you provide us with  
9 sort of your overall reaction or impression of that?

10 MR. SCOTT: Well, first of all, the impact  
11 identified in the supplemental staff assessment doesn't  
12 reflect any adverse physical consequences, but it does  
13 indicate some very small degree of water depletion in the  
14 abstract in the basin as a whole. And the supplemental  
15 staff assessment concludes, as do I, that pumping from the  
16 Boyer well, even for 40 years beyond using it as a  
17 temporary source, will not -- will not adversely affect  
18 water level declines, it will not impact neighbors  
19 significantly through the pumping, nor will it affect any  
20 springs. There are no nearby springs or phreatic plants  
21 because the water table is too deep, it's about 125 feet.  
22 And we -- I'd also agree that the upwelling of any poor  
23 quality water that lies below the alluvium would not  
24 significantly impact the neighbors.

25 And the conclusions basically confirm that

1 there's no significant impact resulting from the use of  
2 the Boyer well for the project.

3 MS. FOLEY GANNON: So when you are looking at or  
4 considering the issue of whether using groundwater from a  
5 particular basin is or is not an adverse effect or a  
6 significant adverse effect, the factors that you'd just  
7 run through, those are the things that you would look at?

8 MR. SCOTT: Right. Yes.

9 MS. FOLEY GANNON: So just sort of what you were  
10 saying is you looked at the impact on neighboring wells;  
11 is that correct? You've looked at the impact on potential  
12 springs in the area. You looked at the impact on  
13 vegetation.

14 MR. SCOTT: On plants.

15 MS. FOLEY GANNON: In the area, you looked at  
16 potential for the pumping to somehow bring in or affect  
17 the water quality of the overall basin.

18 MR. SCOTT: That's correct.

19 MS. FOLEY GANNON: And in simple terms, how did  
20 that occur, or what level of sort of pumping would you  
21 need, or does that change basin by basin? How do you look  
22 at that issue?

23 MR. SCOTT: Well, you'd have to look at the  
24 degree to which the water quality may have changed over a  
25 period of time as a result of pumping.

1           For instance, we understand from the information  
2 appearing in the supplemental staff assessment, we have an  
3 idea of what the water use from the Westwind Water Company  
4 was. We also have some anecdotal information of water use  
5 prior to that, you know, between the period of, say, the  
6 1970s and the current time. And what we found is if  
7 you -- there's water quality data from 1974, and as part  
8 of our investigation of the well that appears in the  
9 supplemental staff assessment, we found that there's been  
10 little or no change in water quality over that period of  
11 time.

12           And we must consider that, you know, the Boyer  
13 well was pumping, you know, at least at times, probably in  
14 excess of what currently appears in the well registration.  
15 And there were other wells pumping in the basin. And we  
16 see no difference in water quality.

17           MS. FOLEY GANNON: So when you analyze, you took  
18 water samples now?

19           MR. SCOTT: Yes, we did. When we did our aquifer  
20 testing in April of this year.

21           MS. FOLEY GANNON: And you had them run, and then  
22 you compared them to test results that were done in the  
23 70s? Is that --

24           MR. SCOTT: Yes, we did.

25           MS. FOLEY GANNON: And the results were again?

1           MR. SCOTT: Well, the TDS, for instance, just to  
2 give an indicator parameter, was 380 milligrams per liter  
3 back in 1974, and it was the same value today. And when  
4 comparing even a number of all the other parameters,  
5 different cations and anions and fluoride, the  
6 concentrations were basically the same. So that in a  
7 real-life situation and not related to any kind of  
8 modeling, it shows that there's been no adverse impacts,  
9 pumping, on water quality in that particular area.

10           MS. FOLEY GANNON: So then your conclusion after  
11 reviewing that information was, with regard to the  
12 potential pumping from this well, was what?

13           MR. SCOTT: Was that there would be no  
14 significant impact to water quality.

15           MS. FOLEY GANNON: For the other determinations  
16 that you made regarding the impacts that there's not going  
17 to be impacts of neighboring wells, that was done based  
18 on --

19           MR. SCOTT: Well, that was based on the results  
20 of the aquifer tests that we conducted. And we calculated  
21 the hydraulic parameters for the aquifer, and then we  
22 projected what the drawdown and zone of influence would be  
23 resulting from pumping at the 40 acre feet a year rate  
24 that's specified in Mr. Boyer's well registration.

25           MS. FOLEY GANNON: And when you're looking at the

1 other potential impacts, like vegetation and other things  
2 along those lines, how do you make an assessment of that?

3 MR. SCOTT: Well, the water table in the vicinity  
4 is greater than 125 feet, and so we basically, you know,  
5 you'd look at -- there are certain plants that are deep  
6 rooted in the desert environment that would rely on  
7 groundwater, and generally the roots of those plants don't  
8 tap water at that depth.

9 MS. FOLEY GANNON: So overall, if you're looking  
10 at sort of what you would -- what you've listed as what  
11 you think would be the physical effects of changing -- of  
12 taking water from an aquifer, and am I correct saying --  
13 summarizing that you're saying you're not seeing any of  
14 these negative effects?

15 MR. SCOTT: That's right.

16 MS. FOLEY GANNON: And staff essentially in the  
17 staff assessment came to the same conclusion after going  
18 through an analysis of these same factors?

19 MR. SCOTT: Yes, that's correct.

20 MS. FOLEY GANNON: Yet staff concluded that there  
21 was going to be significant and adverse and unmitigable  
22 impact.

23 Do you understand what the basis of that  
24 conclusion is?

25 MR. SCOTT: Well, I think I understand that if

1 any -- basically if any water's taken out of the basin,  
2 being that it's been -- you know, it's believed that the  
3 basin is an overdraft, it's an unmitigable impact.

4 MS. FOLEY GANNON: And you're looking at what the  
5 effects of taking water out of a basin that is an  
6 overdraft, if you were evaluating the significance of that  
7 impact, what would you be looking at?

8 MR. SCOTT: Well, I would be looking at all of  
9 those conditions that we'd already discussed.

10 MS. FOLEY GANNON: I understand there's something  
11 somewhat unique about this basin in comparison to some  
12 other basins; is that correct, that there's some evidence  
13 that this basin is being depleted naturally? Is that an  
14 accurate assessment?

15 MR. SCOTT: Yeah, this is true. I mean, the  
16 basin is divided by an international border, and  
17 groundwater generally appears to flow from the northwest  
18 to the southeast. And so it basically -- I wouldn't  
19 necessarily say leaves the basin, because the basin to the  
20 south of the border is part of the same basin.

21 MS. FOLEY GANNON: And is this the -- what is the  
22 size of this basin?

23 MR. SCOTT: There's an indication, DWR indicates  
24 that it's about 228 square miles. I think in the staff  
25 assessment there's an indication it's about a hundred

1 square miles.

2 MS. FOLEY GANNON: And if the -- the applicant,  
3 understand, was looking at this assuming that they would  
4 be relying on this well for about three years.

5 MR. SCOTT: Yeah, this is what I understand.

6 MS. FOLEY GANNON: So that would be a net --

7 MR. SCOTT: It would be a removal of 120 acre  
8 feet if we consider the 40 acre feet a year.

9 MS. FOLEY GANNON: And in your opinion, would  
10 this be a measurable difference in this size basin?

11 MR. SCOTT: Well, the storage of the basin has  
12 been reportedly anywhere from 1.2 million acre feet to 1.7  
13 million acre feet. So 120 acre feet a year is like one  
14 one-hundredth of a percent of the total volume of the  
15 aquifer, which would not be -- would not be significant.

16 MS. FOLEY GANNON: And I understand that in the  
17 testimony that was submitted by in writing by  
18 Mr. Van Patten that the applicant's proposing mitigation  
19 measures to further offset any potential impacts  
20 associated with using temporarily the Boyer well.

21 Are you familiar with those measures?

22 MR. SCOTT: Yes, I am. And from what I  
23 understand, that the applicant will offset its water use  
24 from the Boyer well by an equal amount by paying Mr. Boyer  
25 not to sell water after -- after the applicant uses the

1 well.

2 MS. FOLEY GANNON: And in your view, would that  
3 be effective?

4 MR. SCOTT: In the grand scheme of preserving  
5 water in the basin, I would say yes.

6 MS. FOLEY GANNON: Do you believe it's necessary?

7 MR. SCOTT: I don't think it's necessarily  
8 required, because as we've discussed about the well  
9 registration, whether Mr. Boyer in his declaration sells  
10 the water to IVS or not, he will be using the 40 acre --  
11 he will be selling the 40 acre feet a year that he's  
12 allocated for his well.

13 MS. FOLEY GANNON: So there is no -- have you  
14 reviewed his well registration?

15 MR. SCOTT: Yes, I have.

16 MS. FOLEY GANNON: And I noted that there was a  
17 number of conditions in there regarding maintenance of the  
18 area, making sure it was conforming with land use  
19 restrictions and other things.

20 Was there any restriction other than the amount  
21 of water that can be used on the operation that Dan Boyer  
22 can use?

23 MR. SCOTT: No. I think that if you look at --  
24 it may be condition T-2. He's allowed to do what he wants  
25 with the 40 acre feet of water.

1 MS. FOLEY GANNON: And if we could turn, that, I  
2 believe, was an attachment to Mr. Van Patten or was in  
3 earlier testimony.

4 MR. SCOTT: It's actually in our report that  
5 appears in the supplement staff assessment appendix,  
6 Appendix D.

7 MS. FOLEY GANNON: And this was, again, the May  
8 2010 supplemental staff assessment?

9 MR. SCOTT: Right. Yeah, if you look at -- if  
10 you look at Appendix C, it goes through the requirements  
11 that Mr. Boyer must comply with.

12 MS. FOLEY GANNON: And can you read the  
13 provisions of T-2 that relate to his ability to sell the  
14 water, or the relevant provisions of --

15 MR. SCOTT: Oh, yeah. Here it says -- it says  
16 40 acre feet of groundwater per year is the maximum amount  
17 of groundwater extraction and exportation registration for  
18 the well.

19 MS. FOLEY GANNON: Exportation?

20 HEARING OFFICER RENAUD: What page of Appendix C  
21 is this?

22 MR. SCOTT: It's the first page. It says  
23 specific terms for groundwater well registration.

24 MS. HOLMES: This was just recently  
25 misidentified. It's actually not the staff assessment;

1 it's the supplement that was filed on May 12th.

2 MR. SCOTT: Oh, I'm sorry. I'm sorry.

3 MS. FOLEY GANNON: Yeah, I'm sorry.

4 HEARING OFFICER RENAUD: Okay. That helps.

5 Thank you.

6 MS. HOLMES: And I'm not finding it either.

7 MS. JENNINGS: Excuse me.

8 MS. FOLEY GANNON: Is it in Volume II? Is it --

9 MR. SCOTT: Yes, it's in Volume II, Appendix D.

10 HEARING OFFICER RENAUD: Yes, Ms. Jennings, could  
11 we help you?

12 MS. JENNINGS: We could not hear Ms. Holmes.

13 HEARING OFFICER RENAUD: Okay.

14 We fixed that. That's fixed. Thank you.

15 MS. JENNINGS: Excuse me. We could not hear what  
16 Ms. Holmes just said.

17 MS. HOLMES: We were just clarifying where we are  
18 reading from.

19 We are reading from the May filing of the  
20 applicant entitled, "Supplement to Imperial Valley Solar,"  
21 we're in Volume II of it. We're in Appendix C of  
22 Appendix D.

23 MS. JENNINGS: Thank you.

24 MR. BOYER: Hello?

25 MS. FOLEY GANNON: We believe that Mr. Boyer has

1 just joined us.

2 HEARING OFFICER RENAUD: All right.

3 Mr. Boyer, is that you?

4 MR. BOYER: Yes, it is.

5 HEARING OFFICER RENAUD: All right. Please stand  
6 by, we'll be with you momentarily.

7 MS. FOLEY GANNON: So can you begin reading the  
8 applicable provisions that --

9 MR. SCOTT: Is everybody on that page?

10 MS. FOLEY GANNON: Did people find -- who are  
11 looking for that find the document that we're referring  
12 to?

13 MR. SCOTT: Under the specific terms of the  
14 groundwater well registration, if you look at condition  
15 T-2, it says 40 acre feet of groundwater per year is the  
16 maximum amount of groundwater extraction and exportation  
17 registration for the well. And then it goes on to  
18 indicate the number of gallons per day, gallons per week  
19 based on a six-day work week, 52 weeks a year. And  
20 exportation is limited to tanker trucks from the premises  
21 in Ocotillo.

22 MS. FOLEY GANNON: So pursuant to the terms of  
23 this permit that Mr. Boyer --

24 MR. SCOTT: The registration.

25 MS. FOLEY GANNON: The registration -- sorry, I

1 keep doing that.

2 HEARING OFFICER RENAUD: Mr. Boyer, we're just in  
3 the midst of asking questions of another witness. And so  
4 if you will just stand by, we'll let you know, we'll make  
5 sure you understand when it's your turn.

6 MR. BOYER: Okay.

7 HEARING OFFICER RENAUD: Just sit back and  
8 listen. Thanks.

9 MS. FOLEY GANNON: So again, the limitations that  
10 you believe are in the registration are the amount,  
11 ultimate amount, 40 acre feet per year?

12 MR. SCOTT: Correct.

13 MS. FOLEY GANNON: There is a gallons per day --

14 MR. SCOTT: That's right.

15 MS. FOLEY GANNON: -- number.

16 And then this --

17 MR. SCOTT: How it can be --

18 MS. FOLEY GANNON: Exported?

19 MR. SCOTT: -- transferred or transported.

20 MS. FOLEY GANNON: Right. And those are the only  
21 restrictions that are in there relating to use.

22 MR. SCOTT: Right.

23 MS. FOLEY GANNON: So that based on this  
24 information, assuming that Imperial Valley Solar was not  
25 purchasing the 40 acre feet a year from Mr. Boyer, there

1 doesn't seem to be other things that would restrict him  
2 from selling this water to anybody else.

3 MR. SCOTT: That's correct.

4 MS. FOLEY GANNON: Very good. That concludes my  
5 direct.

6 HEARING OFFICER RENAUD: All right. Any  
7 cross-examination by staff?

8 MS. HOLMES: I'm sorry, excuse me?

9 COMMISSIONER BYRON: Put the microphone right up  
10 next to you, Ms. Holmes.

11 HEARING OFFICER RENAUD: Cross-examination by  
12 staff?

13 MS. HOLMES: Yes, thank you.

14 CROSS-EXAMINATION

15 MS. HOLMES: Mr. Scott, you referenced in your  
16 testimony a county groundwater regulatory scheme. Do you  
17 believe that that regulatory scheme, as you referred to  
18 it, is based on the county's determination of safe yield  
19 for the basin?

20 MR. SCOTT: I'm not sure whether it's based on  
21 that or not.

22 MS. HOLMES: And do you know whether or not  
23 there's some sort of overall limitation on extraction from  
24 the basin based on safe yield?

25 MR. SCOTT: No, there's no -- there is no

1 requirement in that regard as I'm aware.

2 MS. HOLMES: Are you aware of any environmental  
3 evaluation that the county has performed of the effect of  
4 pumping water from this well at 40 acre feet per year?

5 MR. SCOTT: No, I'm not.

6 MS. HOLMES: I want to ask you a couple of  
7 questions about your significance threshold and your  
8 testimony about facts, because I'm just a little bit  
9 confused.

10 I think I heard you say initially there was no  
11 physical effect on the groundwater basin of pumping water.  
12 Did I hear you correctly? Or if I didn't --

13 MR. SCOTT: Well, there's some level -- there  
14 will be some level of small depletion as a result of the  
15 pumping.

16 MS. HOLMES: But it's your testimony that that  
17 depletion is not a significant impact.

18 MR. SCOTT: That's correct.

19 MS. HOLMES: And when you're determining whether  
20 or not a project has a significant impact, what's your  
21 criteria?

22 MR. SCOTT: Well, the criteria would be the  
23 ability to impact adjacent wells and to adversely affect  
24 the water quality.

25 MS. HOLMES: Would you look at impacts to the

1 amount of water in storage?

2 MR. SCOTT: Yes, I would.

3 MS. HOLMES: Would you look at -- if you're  
4 making a determination of whether or not an impact is  
5 significant, would you take into account whether or not  
6 the basin was an overdraft; would that be a factor that  
7 you would consider?

8 MR. SCOTT: Well, it might be; but in the case of  
9 this well, that -- it's already permitted for -- well,  
10 it's allowed to remove 40 acre feet a year, whether it's  
11 IVS or Mr. Boyer sells it to others.

12 MS. HOLMES: So is your determination that it's  
13 not a significant effect based on the fact that it's  
14 already permitted?

15 MR. SCOTT: Well --

16 MS. HOLMES: Or, excuse me, registered.

17 MR. SCOTT: Registered. Partly. But as a result  
18 of our aquifer testing, we found that the extent of the  
19 point of depression during the period of temporary use  
20 would not extend to the nearest well.

21 MS. HOLMES: Do you know how many pumpers are in  
22 the basin?

23 MR. SCOTT: They're on the order of anywhere from  
24 probably 30 to 50. And that's just off the cuff, you  
25 know, based on a number of wells that we've identified

1 through a -- through a variety of sources and documents  
2 that we've reviewed.

3 Now, the -- whether all of those wells are  
4 currently in an operating capacity is not known.

5 MS. HOLMES: Do you know whether or not any of  
6 those 30 to 50 wells themselves cause significant adverse  
7 impacts?

8 MR. SCOTT: I don't know.

9 MS. HOLMES: Would you agree that water levels in  
10 the basin can decline even if there are a series of small  
11 individual projects that are causing the decline?

12 MR. SCOTT: I think that -- certainly. I mean,  
13 water, you know, there's water that comes out of the basin  
14 and there's water that recharges the basin. And there's  
15 also water that can -- can move in an adjacent basin  
16 through underflow.

17 MS. HOLMES: Right. I'm not talking about  
18 recharge right now, I'm talking about basin balance.

19 You testified that this project -- you testified  
20 that some people believe that the project -- that the  
21 basin is in overdraft conditions.

22 MR. SCOTT: That's true.

23 MS. HOLMES: Do you believe that?

24 MR. SCOTT: You know, there are wells that  
25 indicate a steady decline and there are others that show

1 increases in water levels.

2 MS. HOLMES: What's the overall historic trend of  
3 groundwater levels in this basin?

4 MR. SCOTT: In a majority of the wells, it's been  
5 downward.

6 MS. HOLMES: And do any of these -- do any of  
7 these wells cause a significant adverse impact?

8 MR. SCOTT: Well, all of them added together.

9 MS. HOLMES: Thank you very much.

10 Is it your testimony that overdraft in a basin  
11 need not be addressed unless the basin is faced with  
12 dewatering? Is that a point at which regulatory agencies  
13 should take action, and not before?

14 MR. SCOTT: Well, I think the action is currently  
15 being taken in the case of this basin.

16 MS. HOLMES: Are you referring to the county  
17 regulatory groundwater scheme that you were talking about  
18 earlier?

19 MR. SCOTT: Well, in the restriction of the Boyer  
20 well to 40 acre feet a year, yes.

21 MS. HOLMES: Okay. My question was more directed  
22 at the basin as a whole.

23 Is it your testimony that regulatory agencies  
24 need not take action when a basin shows decline unless  
25 that decline threatens dewatering?

1 MR. SCOTT: I think that -- I think that -- yeah,  
2 I'd agree.

3 MS. HOLMES: But they don't need to do anything  
4 until dewatering is a threat?

5 MR. SCOTT: Oh, no. I mean, certainly you  
6 wouldn't want to get to the point of any kind of  
7 dewatering.

8 But the amount of water that this project is  
9 going to use is relatively small compared to the overall  
10 amount of water in storage in the basin.

11 MS. HOLMES: Thank you. Those are all my  
12 questions.

13 HEARING OFFICER RENAUD: All right. Questions by  
14 CURE?

15 CROSS-EXAMINATION

16 MS. MILES: You testified regarding the  
17 average -- I'm not sure if it was average actually, but  
18 acre feet per year a typical home and what you'd expect in  
19 the region.

20 MR. SCOTT: Right.

21 MS. MILES: And I just wondered if you had looked  
22 at -- actually, let me find the exhibit number.

23 There's an exhibit in the record now, 517, that  
24 states that there's a limit of 1.5 acre feet per dwelling  
25 in the Ocotillo/Nomirage community area. This is the

1 Ocotillo/Nomirage community area plan.

2 MR. SCOTT: I don't -- I don't remember seeing  
3 that.

4 MS. MILES: Okay. So is that consistent with  
5 your earlier testimony?

6 MR. SCOTT: Probably -- it depends to what degree  
7 these properties use water for irrigation. And I suspect,  
8 you know, being out in that vicinity, that very little  
9 water is used for irrigation. And I would suspect  
10 considerably less than a city urban lot where at least  
11 half of the water is used for irrigation. So I would  
12 think that that might be an overestimate.

13 MS. MILES: And also you testified to the number  
14 of -- was it the number of dwellings that you estimate are  
15 relying on this basin? 80 -- I'm sorry, I can't remember  
16 what --

17 MR. SCOTT: Oh, that are relying on this basin?  
18 I think that we talked about how many wells there are.

19 MS. MILES: Okay. I just wanted to -- also in  
20 this document, that there are 366 dwelling units in the  
21 Ocotillo/Nomirage community area. I was not sure if that  
22 was relevant to the number of wells or not, but I just  
23 thought that I wanted --

24 MR. SCOTT: Well, I suspect that people live  
25 there seasonally, and maybe there may be instances where

1 they bring their water with them.

2 MS. MILES: Are there any impacts associated with  
3 the mitigation of offsetting use that you can imagine?

4 MR. SCOTT: I think in the grand scheme of things  
5 it does preserve water that's present in the basin. I  
6 mean, generally, I mean, you wouldn't look at it  
7 necessarily from year to year. I think you would need to  
8 look at it in a grander picture for its overall basin  
9 health.

10 MS. MILES: So you wouldn't be able to find that  
11 there are some benefits and some impacts, you'd say that  
12 you could only look at the overall picture? I'm asking if  
13 you could envision any impacts associated with that  
14 mitigation proposal.

15 MR. SCOTT: I think that it would be a benefit,  
16 certainly, that the applicant would pay Mr. Boyer not to  
17 use his well for an equal volume of water.

18 MS. MILES: So you don't see that there could be  
19 an impact associated with residential water use or  
20 commercial water use or hampering development in the area  
21 as a result of not allowing that water to be used in the  
22 community?

23 MR. SCOTT: I wouldn't anticipate any.

24 MS. MILES: Okay. I have another question.

25 So -- where is it? Okay.

1           The July 14th letter from the Imperial County  
2 Planning Commission stating that the well is now  
3 registered. Is this the permit or what had been  
4 considered the permit for the Dan Boyer well? Or is there  
5 any other documents that are active permits for the well?

6           MR. SCOTT: I'm not aware of that July 14th  
7 document.

8           And what was your question again?

9           MS. MILES: I'm just wondering, so my  
10 understanding is this is the current permit or  
11 registration for the well --

12          MR. SCOTT: Yeah, the current registration, as I  
13 understand it.

14          MS. MILES: And are there any other permits for  
15 this well that are active?

16          MR. SCOTT: Not that I'm aware of.

17          MR. VAN PATTEN: The only thing that I'm aware of  
18 is that it's registered with the state.

19          MS. MILES: And have you provided that  
20 registration?

21          MR. SCOTT: The registration is the actual well  
22 I.D. number.

23          MS. MILES: And there's no other documentation?

24          MR. SCOTT: Not that I'm aware of.

25          MS. MILES: Okay. So there is no other permit

1 besides the registration with the state and the  
2 registration with the county.

3 MR. SCOTT: Correct.

4 MS. MILES: Okay. Thank you.

5 No further questions at this time.

6 HEARING OFFICER RENAUD: I have a question of  
7 clarification.

8 When you referred to Exhibit 517, were you  
9 referring to page 4 where it refers to one acre foot per  
10 family of five?

11 MS. MILES: It looks to me like it --

12 HEARING OFFICER RENAUD: Or if not --

13 MS. MILES: Let's see. Okay. Looks to me like  
14 it's page 10 of the actual plan, but it's page 3 of the  
15 submission.

16 HEARING OFFICER RENAUD: All right. And page 10  
17 is a lot of objectives, right?

18 MS. MILES: That's correct. So it's objective  
19 5.10.

20 HEARING OFFICER RENAUD: Okay. Impose a limit of  
21 1.5 acre feet of water per dwelling.

22 I just wanted to -- I wasn't sure where you were  
23 looking, and I looked on page 4 where it talks about  
24 current use, existing conditions, and trends, water,  
25 sewer, and there under D, water, sewer, second paragraph,

1 last sentence says an acre foot of water supplies a family  
2 of five per year.

3 Does that -- does that affect your questioning  
4 perhaps seeing that? Would you like to follow up with  
5 that, because the committee's going to be looking at all  
6 of these things?

7 MS. MILES: Well, I would -- I'm not sure what  
8 the actual current usage is because this was a document  
9 from 1994, but I just wanted to draw the attention of the  
10 committee and the expert witness that there is a limit of  
11 1.5 acre feet per year.

12 HEARING OFFICER RENAUD: All right. Thank you.  
13 Thanks for that clarification.

14 Okay. Let's see, where were we? Okay.

15 Cross-examination by Budlong?

16 MR. SILVER: I just have a couple questions.

17 CROSS-EXAMINATION

18 MR. SILVER: Sir, with regard to your conclusion  
19 that there not impacts on phreatophytes because of the  
20 depths of the wells, did you survey for phreatophytic  
21 vegetation at all in this area?

22 MR. SCOTT: I specifically have not, but there  
23 doesn't appear to be any. And regardless, the depth to  
24 groundwater is 125 feet, and from what I understand,  
25 mesquite, for instance, roots don't extend down to that

1 depth, and that would be a plant that would be very deep  
2 rooted.

3 MR. SILVER: And when you say from what you  
4 understand, are you referring -- did you yourself then  
5 look at a study on phreatophytes or consult with someone  
6 else as to the presence of phreatophytic vegetation?

7 MR. SCOTT: I consulted with the applicant's  
8 botanist.

9 MR. SILVER: And who is that?

10 MR. SCOTT: Michael Wood.

11 MR. SILVER: Thank you.

12 And did you perform any analysis with respect to  
13 the impacts that might occur if the various permitted wash  
14 uses, including that of U.S. Gypsum, occurred at the same  
15 time as pumping from the Boyer well?

16 MR. SCOTT: Through our evaluation and our  
17 aquifer testing, we found that our well would not affect  
18 any of the neighboring wells, and so that was -- that was  
19 where we completed our evaluation.

20 MR. SILVER: But did you perform any analysis  
21 with respect to the effects on the aquifer, if you will,  
22 of varying other permitted uses -- take, for example,  
23 something, I think, like 700 acre feet that have been  
24 allocated or granted to U.S. Gypsum for its operations --  
25 in terms of simultaneity of use?

1 MR. SCOTT: Well, as I understand it, U.S. Gypsum  
2 is currently extracting water, and the results of our  
3 aquifer test would have been superimposed on that. So  
4 that's -- that would have been the extent of our analysis.

5 MR. SILVER: Did you in terms of that analysis  
6 have knowledge concerning the extent of those extractions  
7 at the time you made that survey?

8 MR. SCOTT: Well, the information isn't publicly  
9 available since well data is proprietary in the state of  
10 California. So we did not have that information.

11 All I know is that between 19- -- sometime in the  
12 1990s, that on an annual basis U.S. Gypsum extracted  
13 amongst its three wells 350 acre feet a year, and that  
14 would have been about 72 gallons a minute if you assume it  
15 was pumped 365 days a year.

16 MR. SILVER: I have no questions.

17 HEARING OFFICER RENAUD: All right. CNPS?

18 MR. BELTRAN: No questions.

19 HEARING OFFICER RENAUD: Redirect? Follow up?

20 Thank you, Mr. Scott.

21 MR. SCOTT: You're welcome.

22 HEARING OFFICER RENAUD: All right. Let's talk  
23 to Mr. Boyer next.

24 Commissioner Byron, would like to --

25 COMMISSIONER BYRON: Mr. Boyer, this is

1 Commissioner Jeff Byron.

2 Are you still with us?

3 MR. BOYER: Yes, I am.

4 COMMISSIONER BYRON: Listen, I wanted to welcome  
5 you and thank you very much to our proceeding for joining  
6 our proceeding today and making yourself available on such  
7 short notice.

8 Let me just give you a brief introduction as to  
9 what we're doing here in hopes that that's helpful to you.

10 We understand, or we assume that you're doing  
11 business with the applicant. And Commissioner Eggert and  
12 I are two members of a five-panel commission that are  
13 looking into gathering all the evidence that we can get  
14 for this application for this project with regard to the  
15 environmental impact.

16 So we've taken a lot of evidence, a lot of  
17 testimony, not just today but over previous days. Some of  
18 that's been about water and many other issues. And you  
19 can just assume that this is one piece of a much bigger  
20 pie.

21 So we've got some parties here that are  
22 interested in asking some questions, and they were really  
23 interested in hearing from you. And we appreciate your  
24 being with us. I hope you understand all that and you'd  
25 be more than willing to answer some questions for us.

1 MR. BOYER: No problem.

2 COMMISSIONER BYRON: Okay. Thank you.

3 HEARING OFFICER RENAUD: All right. I think we  
4 need to have Mr. Boyer sworn first.

5 Mr. Boyer, the court reporter here is going to  
6 give you an oath, swear you in. And let me caution you or  
7 remind you just to speak right into your telephone so we  
8 can all hear you in this big room.

9 (Mr. Boyer sworn.)

10 THE REPORTER: Mr. Boyer, could you please state  
11 and spell your name for the record, and then just consider  
12 yourself sworn. Thank you.

13 MR. BOYER: My name is Dan Boyer, D-a-n  
14 B-o-y-e-r.

15 DIRECT EXAMINATION

16 MS. FOLEY GANNON: Good afternoon, Mr. Boyer. My  
17 name is Ella Foley Gannon, and I'm counsel to Tessera.

18 I want to thank you, first off, for joining us  
19 and making yourself available so quickly this afternoon.

20 We were discussing this morning some of the  
21 conditions that relate to water usage associated with your  
22 well, particularly focusing on residential uses.

23 Did you sign a declaration regarding the  
24 residential water uses -- and I'm sorry, I'm trying to  
25 find it -- which was submitted to Marc Van Patten? I'm

1 trying to find the date that you signed it.

2 Did you sign a declaration, Mr. Boyer,  
3 regarding --

4 MR. BOYER: Yes, I did.

5 MS. FOLEY GANNON: -- residential uses associated  
6 with your well?

7 MR. BOYER: Yes, I did.

8 MS. HOLMES: It's Exhibit 126.

9 MS. FOLEY GANNON: Exhibit 126. Thank you.

10 MS. HOLMES: Always want to be helpful.

11 MS. FOLEY GANNON: Just one minute, Mr. Boyer.

12 Excuse me.

13 Here it is. I found it.

14 So this was a declaration which was signed, it  
15 looks like, on July 15th, 2010. Do you recall that  
16 declaration, Mr. Boyer?

17 MR. BOYER: Yes, I do.

18 MS. FOLEY GANNON: And in that declaration you  
19 state your knowledge about the residential users of this  
20 well since you have owned it. Can you provide us with  
21 your conclusions regarding the normal residential uses  
22 served by your well since you have been the owner of that  
23 well?

24 MR. BOYER: Yes. It's very minimal. The average  
25 person that lives down in Painted Gorge are vacationers.

1 They have lots out there, some of them have no  
2 electricity, and they come in with very small containers,  
3 you know, anywhere from 50 gallons to 500 gallons. A  
4 couple of people have old trucks that they have that are a  
5 little bit bigger. The biggest one is a thousand-gallon  
6 truck.

7 But they very seldom come in for water. It's an  
8 occasional use. And I just provide it as a courtesy.  
9 It's something that, you know, I'm not really obligated to  
10 do, but I let people come in, and it's self-serve, so they  
11 come in and log in and put their name and how many  
12 gallons.

13 And we did the math, I sat down and calculated up  
14 an approximate use, you know; but again, it's seasonal.  
15 So like I say, the summer times are a lot less water use,  
16 and in the wintertime it's a few more people that camp,  
17 you know, on their property, come down and use it.

18 MS. FOLEY GANNON: I see. So I think one source  
19 of confusion for some of us when we're looking at this is  
20 we're thinking about residential use, you're thinking  
21 about usually like a home depending upon this well for its  
22 water supply.

23 MR. BOYER: There's a few homes that are in  
24 Painted Gorge that they use water. But some of them truck  
25 in their own water from other areas, you know, and they do

1 have other sources to get water. But, you know, the thing  
2 is it's very minimal. And I was real close to just, you  
3 know, not allowing them to come in to get water because  
4 it's more of a hassle than it's worth to me, but I'm still  
5 letting them come in to get water.

6 MS. FOLEY GANNON: So is there any residents or  
7 are their multiple residents in your area that rely upon  
8 your well for their normal domestic needs on a, you know,  
9 regular annual basis?

10 MR. BOYER: I'm sorry, could you repeat that  
11 again?

12 MS. FOLEY GANNON: Is there any resident or  
13 multiple residents who rely on your well for, really, for  
14 their basic water needs?

15 MR. BOYER: Yeah, there are a few people that do,  
16 but it's not a lot. You know, there's -- offhand, I know  
17 a few people that live out there year round, but most of  
18 them leave because of the heat.

19 MS. FOLEY GANNON: And to understand how you came  
20 up again with the half acre figure, you said you looked at  
21 the records of people -- I'm sorry, you said there's sort  
22 of like self logs that people write down when they take  
23 the water; is that correct?

24 MR. BOYER: Yeah. And the average income that  
25 I've had, based at two cents a gal, has been anywhere from

1 150 to \$300 a month income, and that's based on two cents  
2 a gallon. So that's how I came up with the figure. And  
3 it's an approximate figure, but I actually put it a little  
4 higher than I thought it was --

5 MS. FOLEY GANNON: Okay. That's very helpful.

6 MR. BOYER: -- just to be on the safe side.

7 MS. FOLEY GANNON: All right. Thank you very  
8 much, Mr. Boyer. That's all the questions I have.

9 HEARING OFFICER RENAUD: All right. Ms. Holmes?

10 CROSS-EXAMINATION

11 MS. HOLMES: Good afternoon, Mr. Boyer. My name  
12 is Caryn Holmes, and I'm with the California Energy  
13 Commission staff.

14 Do you know how many people that you sell water  
15 to for residential use?

16 MR. BOYER: Well, there's three that are pretty  
17 consistent; but on and off, I think there's a total of  
18 maybe, you know, 12. Like I say, some of them I haven't  
19 seen for five, six months.

20 But when I first bought the place, I put down a  
21 list, anybody that's purchasing water here, to put their  
22 name and phone number down so that I, you know, had a  
23 contact with them. And I think that list consists of  
24 about 12 people all together. But there's only been a few  
25 people that come in and buy it consistently.

1 MS. HOLMES: And so when you say there's three  
2 that buy it consistently, is it your thinking that those  
3 people are probably at Painted Gorge year round or more or  
4 less there year round?

5 MR. BOYER: Yeah. And I do know them personally.  
6 They're just people that are die hards, and they stay out  
7 there all summer.

8 MS. HOLMES: I guess they are.

9 Let me -- I'd like to turn for a moment to the  
10 registration that you have.

11 First of all, when did you purchase the well, or  
12 purchase the property on which the well is found, located?

13 MR. BOYER: In August it will be two years.

14 MS. HOLMES: Okay. So this is based on the two  
15 years since you assumed ownership of the parcel.

16 MR. BOYER: Yes.

17 MS. HOLMES: Did the registration that is  
18 associated with the well, did it give you the right to  
19 pump water before the county approved the registration?

20 MR. BOYER: Yes. Actually, you know, we've been  
21 continually pumping, you know, we agreed with the county  
22 just to be able to satisfy them, but we were grandfathered  
23 in before the county requirements were there. So, you  
24 know, we went ahead and put in a driveway and the few  
25 things that they asked to do to clean the place up, which,

1 you know, it needed to be cleaned up; but the county was  
2 really wanting that done, and we got it done.

3 MS. HOLMES: When you say "grandfathered," do you  
4 mean that the registration was grandfathered, that it went  
5 with the well?

6 MR. BOYER: Well, the state well license was  
7 there, and it's been operating, from what I know, over 70  
8 years.

9 MS. HOLMES: Right. I'm talking about the well  
10 registration that the county -- that the county issued.

11 Were you saying that it was -- did it go with the  
12 property in essence, you became subject to those terms and  
13 conditions because you purchased the property with the  
14 well on it?

15 MR. BOYER: Well, you know, the previous owner  
16 got a letter from the county, and they were asking them to  
17 do those things, to pave the driveway and put a meter on  
18 and comply with a limit of 40 acre feet. It had quite a  
19 bit bigger historic use than that, but they were actually  
20 limiting -- trying to, you know, limit the well to 40 acre  
21 feet, which, you know, what we came up with, that's the  
22 paperwork I had seen from the county.

23 So we went ahead and complied and put the meter  
24 in and did the things the county required. And that's,  
25 you know, that's why they gave us, you know, the

1 registration.

2 MS. HOLMES: Okay. Thank you.

3 Those are all my questions.

4 HEARING OFFICER RENAUD: All right. Ms. Miles?

5 CROSS-EXAMINATION

6 MS. MILES: Hello, Mr. Boyer. Thanks for making  
7 yourself available for the hearing today.

8 My name is Loulena Miles, and I'm representing  
9 California Unions for Reliable Energy, an intervenor in  
10 this proceeding. And I just have a couple questions for  
11 you.

12 You say that the usage goes up in the summer --  
13 down in the summer and up in the winter because people,  
14 unless they're a die hard, they probably don't stay there  
15 all year; is that correct?

16 MR. BOYER: Yes.

17 MS. MILES: And what would be the variation be  
18 between summer and winter usage?

19 MR. BOYER: Well, it's not a whole lot; but from  
20 what I gathered, I kind of sat down and did a brief  
21 summary on it, and there's probably about eight more  
22 people to come. But when they come, they might only come  
23 for two weeks, so it's not something that they stay all  
24 winter. They have their vacation homes out there, so they  
25 come out and ride their bikes and dune buggies. And they

1 have these individual little compounds, you know, I  
2 wouldn't even call them homes, it's more like campsites.  
3 The majority of them don't even have power. So they come  
4 out and use it as, you know, more of a camping thing.

5 MS. MILES: And can you estimate how much your  
6 income changes in the two seasons?

7 MR. BOYER: Well, you know, sometimes in the  
8 summer it might be as low as a hundred dollars a month,  
9 and in the winter months it might go up to, 3-, 4-, 500;  
10 it just depends on how many, you know, times they come in.  
11 It's really hard to average because it's -- like I say,  
12 it's seasonal. You know, most of them come in, you know,  
13 for a few weeks or two weeks. It's just -- you know, and  
14 some of them don't even come -- you know, so people I seen  
15 in the first year didn't even come back, you know, this  
16 last winter. So, you know, it's whether or not they can  
17 afford to go camping.

18 MS. MILES: Right. Have you signed a contract  
19 with Tessera for supplying water to the project?

20 MR. BOYER: Yes, I did.

21 MS. MILES: And is that different than your  
22 intent to serve letter?

23 MR. BOYER: I'm sorry, could you repeat that?

24 MS. MILES: In this proceeding, I have seen a  
25 document that was, I believe it was called an intent to

1 serve or will serve letter that was signed by you, and I  
2 wondered if there was an additional contract that was  
3 signed besides that.

4 MR. BOYER: You know, I don't remember one at  
5 this point.

6 MS. MILES: Okay. So --

7 MR. BOYER: There could have -- you know, I'm at  
8 a job site right now out here in about 115 degrees, so --

9 MS. MILES: I'm sorry.

10 MR. BOYER: -- for me to recall everything, it's  
11 kind of hard right now.

12 MS. MILES: I hope you're in the shade.

13 MR. BOYER: Yeah, we are.

14 MS. MILES: Good. And I have one question just  
15 because you're -- I assume, do you live out there year  
16 round?

17 MR. BOYER: Yes, I do.

18 MS. MILES: And so you're probably familiar with  
19 the geography around your project site and over the water  
20 basin?

21 MR. BOYER: Yes.

22 MS. MILES: So are there areas where the  
23 elevation changes relative -- I mean, you know, the  
24 elevation changes quite a bit I guess from where the well  
25 is located at your Westwind parcel in the general

1 vicinity, like say, within a mile radius?

2 MR. BOYER: Yeah. Yes. I mean, it basically  
3 starts out at about 400, 450 feet elevation at my place  
4 and drops down to 20 feet below sea level in El Centro.  
5 It's just a slow drop.

6 MS. MILES: Right. I understand that there's an  
7 area where you have sort of a valley, and I believe that's  
8 where Coyote Wash is, and that the elevation is much lower  
9 there, and it's fairly close to your parcel?

10 MR. BOYER: Well, I'm not familiar with it,  
11 but --

12 MS. MILES: Well, I'm just asking because I'm  
13 trying to get established whether the ground level is the  
14 same relative to the groundwater level in different areas  
15 around your parcel.

16 MR. BOYER: Yeah -- I don't really understand the  
17 question.

18 MS. MILES: Yeah, I'm sorry, I know you're not a  
19 groundwater expert, or perhaps you are, but you have not  
20 been brought in to answer questions like that. So I was  
21 just wondering about your knowledge of elevation.

22 Thank you for entertaining my question.

23 MR. BOYER: Okay.

24 HEARING OFFICER RENAUD: All right. Any  
25 questions --

1 COMMISSIONER BYRON: If I may, Mr. Renaud, enough  
2 entertainment, can we move forward? We need to get some  
3 work done here today.

4 HEARING OFFICER RENAUD: Sure.

5 Questioning by Budlong?

6 MR. SILVER: No questions.

7 HEARING OFFICER RENAUD: CNPS?

8 MR. BELTRAN: No questions.

9 HEARING OFFICER RENAUD: Redirect?

10 MS. FOLEY GANNON: No questions.

11 HEARING OFFICER RENAUD: Committee? Any?

12 COMMISSIONER BYRON: No questions.

13 HEARING OFFICER RENAUD: All right. Thank you.

14 COMMISSIONER BYRON: Mr. Boyer, I'd like to thank  
15 you very much, and we really, it's inappropriate to  
16 apologize for some of the questions and the areas that we  
17 went, they might seem kind of silly to you, but we're  
18 trying to gather information here, and we really  
19 appreciate your being available to us today. Thank you.

20 MR. BOYER: All right. Thank you. So that's it?

21 COMMISSIONER BYRON: Yes, sir.

22 MR. BOYER: Okay. Thank you very much.

23 HEARING OFFICER RENAUD: All right. Applicant,  
24 call your -- do you have another witness?

25 MS. FOLEY GANNON: I think that we are ready to

1 submit on the groundwater and the water use issues.  
2 There's two points of clarification I would like to make  
3 however, before I do that. One is that I believe I forgot  
4 to ask for an exhibit number for the rebuttal testimony  
5 that was submitted by Robert Scott on July 20th. That  
6 would be Exhibit 140. And I would like to ask that that's  
7 moved into the record.

8 HEARING OFFICER RENAUD: Any objection from  
9 parties?

10 That will be admitted then. Thank you.

11 (Applicant's Exhibit 140 was marked for  
12 identification and received into evidence.)

13 MS. FOLEY GANNON: And the one point of  
14 clarification, additional point of clarification, and it  
15 is -- we don't need to go into it in detail, but it is --  
16 I'd like to have -- I will limit to the two or three  
17 questions to Mr. Van Patten about one change of condition  
18 that we are asking for related to soils and water, and  
19 this is specifically related to soils and water -- let me  
20 find it. Sorry.

21 We have some discussion of soils and water 2, but  
22 I think that Mr. Van Patten's testimony can stand on its  
23 own as it's written. But in soils and water 9, which is a  
24 condition relating to a limitation on use of the -- any  
25 water from the Boyer well outside of the basin, I would

1 just like to ask Mr. Van Patten a few questions about  
2 this.

3 DIRECT EXAMINATION

4 MS. FOLEY GANNON: Mr. Van Patten, with regards  
5 to soil and water 9, can you please tell us what impact  
6 this would have on the project, limiting the use to the  
7 basin?

8 MS. HOLMES: Can I ask -- I apologize for  
9 interrupting. I think it's soil and water 11.

10 MS. FOLEY GANNON: Soil and water 11? Am I  
11 looking at the wrong one?

12 MR. VAN PATTEN: Yes, it's 11.

13 MS. FOLEY GANNON: You're so good with exhibit  
14 numbers and things.

15 MS. HOLMES: I appreciate when I can get it.

16 MS. FOLEY GANNON: Okay. Substance same, soil  
17 and water 11.

18 MR. VAN PATTEN: Yes, it would restrict us from  
19 using, unless permitted by the county, the four percent,  
20 three, four percent of water that we would need to use for  
21 the linears for the transmission line and the water line.  
22 And given the current well registration with the county  
23 that Boyer holds, which allows him extraction and  
24 exportation, we believe that the condition should be  
25 changed to allow for this, if permitted by the county,

1 which under his current registration, it does.

2 MS. FOLEY GANNON: So have you had a discussion  
3 with anyone from the county about this condition?

4 MR. VAN PATTEN: I have talked to the county  
5 about it, and I have asked them in respect of the  
6 condition, what I asked the county was, would you permit  
7 an exportation from the Boyer well. And the answer was  
8 he's already permitted under the well registration to  
9 export.

10 MS. FOLEY GANNON: So the change that I  
11 understand that we're asking, that you're requesting the  
12 staff to make is to say that the permit is obtained or  
13 evidence from the county that no permit is required to  
14 allow for either one of these eventualities; is that  
15 correct?

16 MR. VAN PATTEN: That's correct.

17 MS. FOLEY GANNON: Thank you.

18 I offer if there's any redirect on this issue, or  
19 rebuttal, sorry.

20 HEARING OFFICER RENAUD: Ms. Holmes, anything?

21 RE-CROSS-EXAMINATION

22 MS. HOLMES: Can you tell me who you talked to at  
23 the county?

24 MR. VAN PATTEN: Mr. Jim Minnick.

25 MS. HOLMES: Thank you.

1 HEARING OFFICER RENAUD: Questioning by CURE?

2 RECROSS-EXAMINATION

3 MS. MILES: So just to clarify, there's nothing  
4 in writing though from the county stating that no permit  
5 is required for exportation.

6 MR. VAN PATTEN: There is a well registration  
7 that Mr. Boyer holds that the county referred me to that  
8 mentions that he can export. Other than that, there's  
9 nothing in writing, for instance, specifically from the  
10 county to me saying that he can.

11 MS. MILES: All right. Has the county done any  
12 analysis regarding whether it's appropriate to provide an  
13 exportation permit for this project?

14 MR. VAN PATTEN: I'm not familiar with anything,  
15 in that my intent to call Mr. Jim Minnick at the county  
16 was to determine if I could comply with this condition;  
17 and he referred me to the Boyer well registration and  
18 indicating to me that he was already permitted to export  
19 up to 40 acre feet per year.

20 MS. MILES: So this is -- the registration,  
21 that's not a permit that we have.

22 Thank you. No further questions.

23 HEARING OFFICER RENAUD: Okay. Budlong,  
24 questions?

25 MR. SILVER: No.

1 HEARING OFFICER RENAUD: All right. CNPS?

2 MR. BELTRAN: No.

3 HEARING OFFICER RENAUD: All right. Thank you.  
4 Ready for your next witness?

5 MS. FOLEY GANNON: Do we want to move on now --  
6 we're done with water supply and groundwater. Do we want  
7 to take witnesses from the other parties on those issues,  
8 or do we want to move --

9 HEARING OFFICER RENAUD: Ms. White would like to  
10 ask some questions; I'm sorry.

11 MS. WHITE: Sorry. Just one clarification.

12 Could you define what is meant by "export" and  
13 what use is allowed under export as the well is  
14 registered?

15 MR. VAN PATTEN: Are you asking me?

16 MS. WHITE: Yes.

17 MR. VAN PATTEN: I don't know the definition of  
18 "export" under that specific county regulation, well  
19 registration or what have you. All I have is what I just  
20 testified to, which is when I asked the county what could  
21 I do to obtain an export permit, as was required by the  
22 condition that the CEC imposed, would they be willing to  
23 give me one, they pointed me to the Boyer well  
24 registration, which implied to me that that was the permit  
25 by the county, and that if I wanted something in writing,

1 they could give me something, but it would not be by this  
2 Monday.

3 MS. WHITE: So what do you understand the term of  
4 "export" to be that staff has directed you to --

5 MR. VAN PATTEN: That I could export out of the  
6 Coyote Wells/Ocotillo basin up to 40 acre feet per year,  
7 from that well, that he had the right to sell to folks  
8 that would export outside of the Ocotillo/Coyote Wells  
9 basin.

10 MS. WHITE: Okay. Thank you. I appreciate the  
11 clarification.

12 MS. MILES: Can I ask one clarification?

13 With regard to the Ocotillo Coyote Wells basin,  
14 when you refer to that, are you referring to the sole  
15 source aquifer?

16 MR. VAN PATTEN: I believe so, yes.

17 MS. MILES: Thank you.

18 HEARING OFFICER RENAUD: And just for  
19 clarification, referring to the registration which has all  
20 these specific terms with the T numbers, number 2 limits  
21 it to 40 acre feet for groundwater extraction and  
22 exportation. That might be -- do you think that might be  
23 what he was referring to?

24 MR. VAN PATTEN: That is specifically what he  
25 referred me to, was condition T-2.

1 HEARING OFFICER RENAUD: Thank you. All right.  
2 Are we done?

3 MS. FOLEY GANNON: Yeah. So that's our witnesses  
4 on groundwater need and water usage, so if we want to have  
5 the other parties have witnesses on this subject then --

6 HEARING OFFICER RENAUD: Good. That's what we'll  
7 go to.

8 Staff, do you have witnesses to call?

9 MS. HOLMES: I do.

10 HEARING OFFICER RENAUD: All right.

11 MS. HOLMES: On water supplies, staff witnesses  
12 are Christopher Dennis, John Fio, and Steven Deverel.

13 COMMISSIONER BYRON: Ms. Holmes, I don't think  
14 they can hear you on the phone.

15 MS. HOLMES: Staff's witnesses on water supply  
16 are Christopher Dennis, John Fio, and Steve Deverel.

17 (Christopher Dennis, John Fio, and Steven Deverel  
18 were sworn.)

19 THE REPORTER: Independently state and spell your  
20 name for the record.

21 MR. DENNIS: Christopher Dennis,  
22 C-h-r-i-s-t-o-p-h-e-r D-e-n-n-i-s.

23 MR. FIO: John Fio, J-o-h-n F-i-o.

24 MR. DEVEREL: Steven Deverel, S-t-e-v-e-n  
25 D-e-v-e-r-e-l.

## 1 DIRECT EXAMINATION

2 MS. HOLMES: Did you gentlemen prepare the water  
3 supply section of the water resources section of  
4 Exhibit 302?

5 MR. FIO: Yes.

6 MR. DENNIS: Yes.

7 MR. DEVEREL: Yes.

8 MS. HOLMES: And were statements of your  
9 qualifications included in Exhibit 302?

10 MR. FIO: Yes.

11 MR. DEVEREL: Yes.

12 MS. HOLMES: I'm going to direct these things to  
13 Mr. Dennis to hopefully go a little faster.

14 Mr. Dennis, do you have some changes to your  
15 pre-filed testimony?

16 MR. DENNIS: Yes, I do.

17 MS. HOLMES: Could you please begin with the  
18 change on page C.7-1 in the second paragraph?

19 MR. DENNIS: Yes. We failed to adequately  
20 identify a second significant impact associated with water  
21 quality and sedimentation.

22 MS. HOLMES: Thank you.

23 And that impact is, in fact, analyzed in the  
24 analysis, is it not, it just was omitted from the summary.

25 MR. DENNIS: Yes.

1 MS. HOLMES: Thank you.

2 Could you please move on to the next correction?

3 HEARING OFFICER RENAUD: Please give us page  
4 numbers as you do this.

5 MR. DENNIS: Okay. I will.

6 On page C.7-46 we would like to remove the column  
7 in Table 8 called "Well I.D."

8 MS. HOLMES: Thank you.

9 We'll explain the significance of that in a  
10 moment.

11 Could you please move on to the next change?

12 MR. DENNIS: Page C.7-82. We would like to  
13 remove the words, quote, "and approved" from condition of  
14 certification soil and water 5.

15 MS. HOLMES: Thank you.

16 And are there any other changes?

17 MR. DENNIS: Yes. We would, on page C.7-87, we'd  
18 like to eliminate condition of certification 12; however,  
19 we want to make sure that the Dan Boyer well is not used  
20 as a drinking water supply. To do this, we'd like to have  
21 time to amend construction and operation water supply  
22 conditions of certification to ensure compliance with  
23 Title 22 for drinking water supply that's used.

24 MS. HOLMES: Thank you.

25 And staff plans to submit those as soon as we're

1 done testifying and have the opportunity to write them.

2 MS. FOLEY GANNON: I'm sorry, you said you were  
3 going to amend which condition?

4 MS. HOLMES: Why don't you explain it,  
5 Mr. Dennis.

6 MR. DENNIS: Okay. These are conditions for  
7 construction and operation water supply. I think those  
8 are conditions 4 and 9.

9 MS. HOLMES: This is intended to take the place  
10 of soil and water 12, trying to achieve the same intent.  
11 You commented on soil and water 12. He can go into more  
12 detail if it's necessary.

13 MS. FOLEY GANNON: Okay. I just wanted to make  
14 sure I understood. Thank you.

15 MR. DENNIS: And then I believe Mr. Lohan's two  
16 additional changes.

17 MS. HOLMES: Go ahead. We'll get to those later.

18 MR. DENNIS: Oh, sorry.

19 MS. HOLMES: With those changes, are the facts in  
20 your testimony true and correct to the best of your  
21 knowledge?

22 MR. DENNIS: Yes, they are.

23 MS. HOLMES: And do the opinions represent your  
24 best professional judgment? I'm asking you as a proxy for  
25 all three of them?

1 MR. DENNIS: Yes, they do.

2 MS. HOLMES: Thank you.

3 Mr. Dennis, would you please provide a brief  
4 summary of the staff's conclusions with respect to water  
5 supply issues and water -- excuse me, just water supply  
6 issues?

7 MR. DENNIS: Staff concluded that unmitigable  
8 impacts would occur to groundwater storage in the  
9 Ocotillo/Coyote Wells basin. This basin is in a state of  
10 ongoing overdraft, and the approximate use of this  
11 groundwater would exacerbate this condition. With the  
12 exception of this unmitigable impact, the proposed  
13 mitigation measures -- the proposed mitigation measures to  
14 reduce identified impacts would reduce impacts that are  
15 less than significant.

16 In addition, the proposed project would conform  
17 to applicable water LORS.

18 The proposed use of air cooled radiators fitted  
19 on each engine for heat rejection would substantially  
20 reduce water use and is consistent with energy commission  
21 water policy. The project's primary water use would be  
22 for routine mirror washing and dust suppression. Existing  
23 well yields would not be significantly impacted by the  
24 proposed project's extraction of groundwater from the  
25 Dan Boyer well. There are no reported springs in the area

1 of the Dan Boyer well, and the present day water table is  
2 too deep to support phreatophytic vegetation.

3           Increased pumping from the basin from the  
4 Dan Boyer well can increase upward flow, upflux of  
5 relatively poor groundwater from underlying water-bearing  
6 zones into overlying water-bearing zones that are pumped  
7 by most wells. This upflux is estimated to be at most  
8 0.4 percent of the minimum affected aquifer volume and,  
9 therefore, is considered insignificant. This finding is  
10 consistent with water quality data from this well  
11 indicating little to no water quality change over the past  
12 35 years.

13           The Dan Boyer well has only recently come into  
14 compliance with its well registration requirements  
15 allowing legal pumping for the first time from this well  
16 in the last several years. The Dan Boyer well is  
17 permitted to extract up to 40 acre feet per year. A  
18 portion of this water supports existing residential  
19 demand, which staff conservatively estimates to be six  
20 acre feet per year. This is based upon a doubling of the  
21 2.9 acre feet sold in 1993, a year in which there appeared  
22 to be little to no commercial water sales.

23           Staff believes it's important to protect  
24 residential water users who may have few water supply  
25 options. This is consistent with, as is mentioned

1 earlier, the May 27th, 2010, Imperial County letter, which  
2 strongly recommends the energy commission take into  
3 account historical residential use when licensing this  
4 project.

5           Staff also analyzed potential impacts associated  
6 with the use of recycled water from the expansion of the  
7 Seeley Wastewater Treatment Plant if it becomes available  
8 sometime during the life of the project.

9           Staff concluded that use of this water would not  
10 cause significant unmitigable impacts to soil and water  
11 resources and is consistent with applicable soil and water  
12 LORS.

13           We just recently went over this, but  
14 approximately four percent of the project overlies the  
15 Imperial Valley Groundwater Basin. The remaining 96  
16 percent is in the Ocotillo/Coyote Wells groundwater basin.  
17 This means about four percent of the water purchased from  
18 the Dan Boyer well would be exported to the Imperial  
19 Valley Groundwater Basin, something that we believe is --  
20 appears is prohibited, what is prohibited under Imperial  
21 County Land Use Ordinance Number 9.

22           Now, looking at the permit, it specifically says  
23 that it's allowed for export from the Dan Boyer premises  
24 in Ocotillo, not out of the basin. So I think there's  
25 some confusion there.

1 MS. HOLMES: And is exportation also limited to  
2 tanker trucks in that particular condition?

3 MR. DENNIS: I would imagine so. That was our  
4 reading of it anyway.

5 MS. HOLMES: That would be condition T-2 of the  
6 groundwater well registration?

7 MR. DENNIS: And lastly, we looked at  
8 alternatives; and water resources would not be affected by  
9 the alternatives we analyzed.

10 MS. HOLMES: Thank you. My first question in  
11 follow up to that, is to Mr. Fio.

12 Could you please explain the effect and the  
13 reason associated with removing the well I.D. column in  
14 Table 8 on page C.7-46?

15 MR. FIO: Yes. This is John Fio.

16 The reason is because the well numbering in  
17 Table 8 has no bearing or has no relationship with  
18 Figures 9, and with Tables 9A and 9B and Figures 12 and  
19 13. This is a -- using these arbitrary numbers is kind of  
20 a standard practice when we're using well information  
21 that's given to us from the state that is confidential.  
22 And so we replace the well I.D. numbers with an arbitrary  
23 number. And we were using this table during a -- you  
24 know, during the working portions of developing our  
25 analysis, and we never deleted it. And I think there was

1 some confusion by CURE when they were doing their analysis  
2 in that Figures 12 and 13 have I.D. numbers on some wells,  
3 but those I.D. numbers have no relationship to this table  
4 here. In fact, it changes the conclusions that they came  
5 to.

6 For example, they looked at it, at wells number 1  
7 through 9 in our figures and thought they were wells 1  
8 through 9 in this table, and came up with a set of  
9 conclusions using water levels from the 70s and 80s, when  
10 in fact, the wells in -- in the figures and in the tables,  
11 the wells 1 through 9 actually correspond with numbers 34  
12 through 37 and 39 through 44 in Table 8. And those are  
13 the wells that have the current water level measurements.

14 MS. HOLMES: Thank you.

15 Did you read CURE's testimony about the water  
16 quality implications of a potential upflux caused by  
17 project pumping?

18 MR. FIO: Yes.

19 MS. HOLMES: Do you have a response to that?

20 MR. FIO: Yes. Basically in our analysis we  
21 cited the impact based on a volumetric basis, which  
22 indicated that under worst-case conditions, you could get  
23 an upflux of .4 percent of the volume, which we calculated  
24 from the minimal impacted area. And this translates to a  
25 higher percentage in terms of water quality. It's

1 basically about four and a half percent.

2 But that four and a half percent is still  
3 insignificant, as was testified earlier today, that  
4 basically over the past 35 years there appears to be no  
5 water quality change from a well that has been pumping and  
6 based on, you know, other records, probably was pumping a  
7 lot higher than what is planned in this situation.

8 To put it in perspective, if you used the numbers  
9 that CURE presented, being 300 milligrams per liter for  
10 the upper aquifer and 4,000 milligrams per liter from the  
11 lower aquifer, and you have complete mixing within the  
12 water column, you're looking at a change in TDS from 300  
13 milligrams per liter to 316 milligrams per liter. And  
14 like I said earlier, the actually observed -- the actual  
15 observed data indicated that there's essentially been no  
16 change in TDS for 35 years.

17 MS. HOLMES: Thank you.

18 And do you have a specific response to CURE's  
19 recommendation that additional modeling be conducted?

20 MR. FIO: Yes. It's been recommended that we  
21 utilize a numerical groundwater flow model that was  
22 developed for the U.S. Gypsum EIR. We did utilize results  
23 from that model as part of our analysis in terms of water  
24 volumes or fluxes, but what's been recommended is to use  
25 that modeling and to expand its capabilities into solute

1 transport analysis.

2           And from our perspective, that would be an  
3 excessive effort. And the reasons are is that our entire  
4 analysis was conducted in an extremely conservative  
5 fashion, trying to isolate the worst-case scenario. For  
6 one, we assume that pumping occurred over the entire life  
7 of the project, over 43 years for construction and  
8 operation, when it's been stated that this water supply,  
9 this groundwater supply is a temporary supply. So we  
10 looked at the worst case in terms of the volume of water  
11 that would be pumped.

12           We also utilized pumping volumes that were higher  
13 than what is being planned. For example, we simulated  
14 51.1 acre feet per year for construction, which is  
15 actually higher than the total amount that the well is  
16 allowed to pump.

17           We also conducted our analyses to look at the  
18 effects of natural uncertainty by varying the various  
19 aquifer parameters to look at how they impact the  
20 significance of the effects.

21           And then finally what we did is we looked at the  
22 potential area that was impacted -- that could be impacted  
23 from this upflux caused by pumping the Dan Boyer well, and  
24 we looked at the minimum area of all of our analysis.

25           And so you work in all of those conservative

1 assumptions and look at this worst-case scenario, and  
2 there still is not a significant impact. We don't see a  
3 reason to develop a new tool that at the get-go we really  
4 don't know whether it would be successfully calibrated to  
5 try to identify an impact where our conservative analysis  
6 indicates there is none.

7 MS. HOLMES: Thank you.

8 Mr. Dennis, have you read CURE's testimony  
9 regarding cumulative impacts?

10 MR. DENNIS: Yes, I have.

11 MS. HOLMES: And did staff, in fact, take the  
12 gypsum facility into account in its cumulative impacts  
13 analysis?

14 MR. DENNIS: Yes, it's part of the background.

15 MS. HOLMES: And are you aware of other  
16 facilities that also could have potential cumulative  
17 impacts associated with groundwater pumping?

18 MR. DENNIS: Yes.

19 MS. HOLMES: Did you recently become aware of  
20 another one?

21 MR. DENNIS: Yes, the Wind Zero project.

22 MS. HOLMES: Can you just in one or two sentences  
23 summarize what that project is and when you became aware  
24 of it?

25 MR. DENNIS: I became aware of it just a few days

1 ago. This project is both a military training facility  
2 and a race course facility that's going to use up to, I  
3 think, 65 acre feet of water, which will exacerbate the  
4 water impacts.

5 MS. HOLMES: So that was going to be my next  
6 question.

7 What would the results be of staff's cumulative  
8 impact, if that had been included?

9 MR. DENNIS: It would exacerbate demand on the  
10 aquifer.

11 MS. HOLMES: Thank you.

12 We heard some discussion earlier this afternoon  
13 about the applicant's mitigation proposal to purchase  
14 water in the future and have it remain in the aquifer and  
15 not be pumped.

16 Can you please summarize what staff's response is  
17 to that particular proposal?

18 MR. DENNIS: Well, we don't think it will be  
19 successful mitigation. The commission has always required  
20 mitigation to overdrafted groundwater basin. It either  
21 consists of adding water to the basin or reducing demand.  
22 This mitigation would do neither.

23 MS. HOLMES: Is what you're saying that the  
24 staff's position is, that the groundwater basin should  
25 remain unchanged as a result of the project?

1 MR. DENNIS: Yes.

2 MS. HOLMES: Thank you.

3 And I think we've been through the exporting  
4 water. It appears that we have some confusion about that,  
5 which we will brief or get more information on.

6 I guess I have a question.

7 Does the applicant want the staff to walk through  
8 the proposed changes that were contained in your  
9 testimony, or do you want to do that on cross-examination?  
10 It makes no difference to me.

11 MS. FOLEY GANNON: Go ahead. I'm talk for a long  
12 time.

13 MS. HOLMES: All right. I have to find them  
14 first.

15 MS. FOLEY GANNON: That was why I wanted you to  
16 do it first, so you could find them.

17 MS. HOLMES: So I could say I don't know where  
18 they are? It worked.

19 I believe it's Exhibit 122 or 3 -- 122. And they  
20 begin on page 10 of Exhibit 122. And I can perhaps,  
21 again, cut this a little bit short.

22 Mr. Dennis, in soil and water 2 in the first  
23 paragraph, other than the reduction in the limitation on  
24 water use -- I'm going to have to start over again because  
25 I see there are additional changes.

1           Could you walk through the staff's response to  
2 the changes in the applicant's proposed changes in soil  
3 and water 2?

4           MR. DENNIS: Yes. There are a number of changes.  
5 The first change -- if we just walk through them, they're  
6 all okay until we get down to the numerical volume of  
7 water. This will be true for all the conditions of  
8 certification.

9           We believe the number should be 34 acre feet per  
10 year rather than 39.5.

11           Secondly, there's, in the first paragraph, last  
12 sentence, there's the word "any." We believe the word  
13 should be "all."

14           And the proposed mitigation --

15           MS. HOLMES: Staff does not approve of the  
16 proposed mitigation.

17           MR. DENNIS: Yes.

18           And again, for verification, in the second  
19 paragraph there's the underlined words that were inserted,  
20 "of sales to Imperial Valley Solar." We believe this  
21 should be "all."

22           MS. HOLMES: Thank you. Moving on to soil and  
23 water 9.

24           MR. DENNIS: Again, we have a correction to the  
25 amount of water, the volume of water. We believe it

1 should be 34 rather than 39.5. That will be true on the  
2 same for the verification.

3 MS. HOLMES: Thank you. And with respect to soil  
4 and water 11, I think that the staff would prefer to try  
5 to discuss this with Mr. Minnick. We had tried to get  
6 clarification on this point earlier, did not get the  
7 clarification that Mr. Van Patten is referring to to  
8 staff's way of thinking that condition T-2 is somewhat  
9 ambiguous, and we would prefer to hold off on that until  
10 we've had a chance to try to confirm what the story is.

11 HEARING OFFICER RENAUD: When are you thinking of  
12 doing that?

13 MS. HOLMES: As soon as the witnesses are through  
14 testifying.

15 HEARING OFFICER RENAUD: All right. Thank you.

16 MS. HOLMES: And did you testify earlier,  
17 Mr. Dennis, with respect to preparing a revision to  
18 conditions to reflect the concerns that staff has about  
19 potable water use that's currently in soil and water 12?

20 MR. DENNIS: Yes, I did.

21 MS. HOLMES: Okay. Thank you.

22 I think that's it with that. The witnesses are  
23 available for cross-examination.

24 HEARING OFFICER RENAUD: Let me ask first about  
25 what you just said. I believe it was Mr. Minnick?

1 MS. HOLMES: Yes.

2 HEARING OFFICER RENAUD: With respect to the  
3 testimony about the conditions of the registration?

4 MS. HOLMES: Correct.

5 HEARING OFFICER RENAUD: Your thought is what?  
6 You or Mr. Meyer or somebody will, what, phone him and ask  
7 him?

8 MS. HOLMES: Right. It's my understanding that  
9 the -- it appears that the plain language of the condition  
10 does limit exportation to tanker trucks off the property,  
11 and we certainly would like the county's help in  
12 interpreting that. At this point --

13 HEARING OFFICER RENAUD: What isn't clear about  
14 that? I'm just trying to save you some time.

15 MS. HOLMES: Well, I think --

16 HEARING OFFICER RENAUD: If you want to export,  
17 you have to put it in a tanker truck. I don't see that  
18 it's any more complicated --

19 MS. HOLMES: Well, I think that there's a  
20 difference between off of the premises and out of the  
21 groundwater basin. I mean, the whole purpose, as I  
22 understand it, of much of the county's regulatory  
23 requirements go to ensuring the water that's pumped is  
24 used within the basin and not exported.

25 HEARING OFFICER RENAUD: All right. Well, let me

1 suggest then that rather than having a private discussion  
2 with this person, that if you can reach him by phone, that  
3 he appear here.

4 MS. HOLMES: That would be fine.

5 HEARING OFFICER RENAUD: We'd prefer that. Thank  
6 you.

7 All right. It's somebody's turn for  
8 cross-examination.

9 Applicant?

10 MS. FOLEY GANNON: I guess that's to me. Thank  
11 you.

12 CROSS-EXAMINATION

13 MS. FOLEY GANNON: Mr. Dennis, you were giving us  
14 sort of the overall view of the staff's assessment. And  
15 just to be clear, as you summarize that looking at the  
16 specific physical environmental effects of withdrawing  
17 40 acre feet from the Boyer well, you didn't see any signs  
18 of that in terms of impacts like influx or vegetation or  
19 drawdown to other wells; is that correct? Or is that  
20 not -- I'm sorry, I may be confused about who I'm supposed  
21 to be speaking to about this, but --

22 MR. DENNIS: Sorry.

23 MS. HOLMES: We'll help.

24 MS. FOLEY GANNON: But whoever I'm speaking to,  
25 answer, whoever feels most appropriate.

1 MR. FIO: Okay. This is John Fio.

2 Can you repeat it please, the question, please?

3 MS. FOLEY GANNON: So in looking at the staff  
4 assessment, supplemental staff assessment, you evaluated  
5 the potential impacts associated -- the actual physical  
6 environmental impacts associated with pumping from the  
7 Boyer well at 40 acre feet. It sounded like the factors  
8 you were looking at were similar to those that Mr. Scott  
9 testified to earlier, vegetation, drawdown, other wells,  
10 potential for influx from toxins; is that correct?

11 MR. FIO: Yes, and decrease in storage.

12 MS. FOLEY GANNON: And decrease in storage.

13 And based on those physical effects, you can --  
14 what was your conclusion?

15 MR. FIO: We concluded that there was no  
16 significant impact in terms of well interferences, which  
17 would be the drawdowns that you were referring to. We  
18 concluded that there was no significant impact on water  
19 quality due to upflux. And we concluded that because this  
20 is an overdrafted basin and it will consume groundwater  
21 and exasperate the overdraft situation, and there is no  
22 means to mitigate it in terms of bringing in an imported  
23 supply, conservation, or basically turning wells off, that  
24 it would be a significant impact.

25 MS. FOLEY GANNON: So is it your -- just to

1 understand the conclusion, because it was somewhat unclear  
2 to me looking at the staff assessment what the standards  
3 of significance were that you were using, I'm assuming  
4 that you're relying on Appendix G to the CEQA guidelines  
5 as your basic standards for this area, but it wasn't  
6 entirely clear to me.

7           So is -- would you conclude then, based on your  
8 analysis or the way you would approach it, that taking one  
9 acre feet from an overdraft basin on an average year  
10 would -- because it would in some way potentially lessen  
11 what's in the basin, would that be a significant  
12 environmental impact?

13           MR. FIO: It's a significant environmental impact  
14 because of the fact that this is a drinking water supply  
15 and it's been designated as a sole source aquifer, so  
16 basically people rely only on this groundwater system for  
17 their water supply.

18           It's also significant from the standpoint that we  
19 are in a desert basin, and the consumption of water, it's  
20 not a temporary thing, it's consumed and it's gone.

21           And then I also would think that there are, what  
22 I would term "policy issues" in terms of management that I  
23 would not be the one to answer, but I think those come  
24 into play as well.

25           MS. FOLEY GANNON: So I guess so I can understand

1    though, so it would be one acre foot of use would be  
2    significant in your mind, I mean --

3           MR. FIO:   In this situation.

4           MS. FOLEY GANNON:  -- given the situation.

5           MR. FIO:   In this situation.

6           MS. FOLEY GANNON:  So all of the users in this  
7    basin are essentially having a significant adverse impact  
8    on this basin; every existing user, any new user, anybody  
9    who's going to come in to that basin, just given the  
10   particular parameters and the status of this basin, that's  
11   just going to be an adverse effect.

12          MR. FIO:   Collectively, if the consumption is  
13   greater than the recharge, then they're collectively  
14   having an impact on the basin.

15          MS. FOLEY GANNON:  Okay.  I just wanted to  
16   understand.  These are difficult subjects, and as you  
17   said, there are many policy issues involved, but it is a  
18   difficult subject.

19          In terms of the mitigation that has been  
20   proposed -- first, I'm sorry, before we get to the  
21   mitigation, I guess given your conclusion that if you're  
22   just taking one acre foot from this particular basin, the  
23   fact that this is a temporary use, if this was a use that  
24   was going to be limited to, say, one year or two years,  
25   would that affect your analysis or your conclusion?

1 MR. FIO: It would alter the volume of depletion,  
2 but it wouldn't change the basis for my conclusions. It  
3 would still be a depletion. As you said, one acre foot.

4 MS. FOLEY GANNON: So, right, one acre foot, in  
5 your view one acre foot is a significant and unmitigable  
6 impact, then this would have to qualify for that.

7 In terms of potential mitigation -- I just want  
8 to make sure I understand. So if the Boyer well would be  
9 selling 40 acre feet a year every year, and the applicant  
10 was able to -- again, let's just for purposes of  
11 discussion so I can understand how you would view this,  
12 let's say that the Imperial Valley Solar Project used the  
13 39.5 acre feet, or we can get to that discussion about  
14 what that number should be, but we might as well use my  
15 number since I'm asking the question, 39.5 acre feet a  
16 year for a year, and then the following year they  
17 purchased the amount of water that would have been used by  
18 somebody else and left it in the basin, or they purchased  
19 it and then they put it back in the basin, so that in the  
20 end of day they're replacing the water that would have  
21 been used by somebody else to make up for the water that  
22 they used, you don't think that would be an effective  
23 mitigation measure?

24 MR. FIO: I think based on what I've read, I  
25 believe somewhere there is a statement that Dan Boyer

1 would sell 40 acre feet a year regardless of whether this  
2 project purchased the water.

3 MS. FOLEY GANNON: Uh-huh.

4 MR. FIO: So that indicates to me that there's a  
5 demand for that water. By the solar power plant  
6 purchasing the water, that demand does not go away. It  
7 has to come from somewhere else in the basin. And so with  
8 that -- based on that assumption, you're consuming water,  
9 and by -- by -- to say it simply, you're not creating new  
10 water by delaying the pumping, because the background  
11 demand is still there and your demand is a temporary  
12 increase.

13 MS. FOLEY GANNON: I'm not sure that I see the  
14 basis for saying that the water -- the alternative -- the  
15 demand would be satisfied by somewhere in the basin. One  
16 does not seem to be equated with the other to me. That  
17 would seem to be dependent upon facts which I haven't seen  
18 which says that there are all of these supplies available  
19 out there in the basin that somebody could go and draw  
20 upon and is going to be able to draw upon, and, in fact,  
21 is going to have access to.

22 I mean, based upon the applicant's experience of  
23 trying to find water in this area, that doesn't seem to  
24 necessarily be a truism. So I --

25 MS. HOLMES: Can I ask for clarification then of

1 the hypothetical?

2           Is the hypothetical that if the Boyer well is  
3 currently selling 40 acre feet a year, which we have not  
4 heard that it is, but if the hypothetical were to be  
5 selling 40 acre feet of water per year and that the result  
6 of the project purchasing the water meant that the other  
7 demand went away, what would the effect be of the  
8 mitigation?

9           Is that the hypothetical?

10           MS. FOLEY GANNON: I'm not saying that the other  
11 demand goes away, I'm just saying that I don't think you  
12 should assume that the other demand is satisfied by the  
13 basin.

14           MS. HOLMES: It's your hypothetical; we need to  
15 know what the facts are.

16           MS. FOLEY GANNON: Well, I'm not assuming that  
17 that demand is satisfied by the basin. I'm assuming  
18 that --

19           MS. HOLMES: You're disagreeing with his answer,  
20 which is fine, you're welcome to do that --

21           MS. FOLEY GANNON: No, no. But I'm just saying  
22 that his answer, as I was hearing it, was assuming facts  
23 that are not in evidence, that we don't know --

24           MS. HOLMES: It's a hypothetical.

25           MS. FOLEY GANNON: There still has to be -- we

1 should still say -- then if it's my hypothetical, I'm  
2 supplying the facts. I didn't supply that fact. That's  
3 all I'm saying.

4           So if you could -- if you took away the  
5 assumption that the water would be supplied by somewhere  
6 else in the basin, would that mitigation measure be  
7 effective?

8           MR. FIO: You were talking to me now? I'm sorry.  
9 I was letting you battle it out.

10           MS. FOLEY GANNON: I'm sorry, I should have  
11 clarified.

12           MS. HOLMES: Do you understand all of the  
13 assumptions in the question?

14           MR. FIO: To be honest, no.

15           But what I would say, in listening to your dialog  
16 there, is that my assumption would be conservative to  
17 assume that demand does not go away, which apparently it's  
18 there because, based on the facts, he'll be -- Dan Boyer  
19 will be selling the water whether Imperial Valley Solar  
20 buys it or not. So the demand is there.

21           To be conservative, for the sake of the basin, I  
22 would assume that that demand would be met by water from  
23 the basin somehow. And that's just an assumption.

24           MS. FOLEY GANNON: Again, so if we took that  
25 assumption away and you were able to say, so, 40 acre feet

1 that would have been taken out isn't taken out, would that  
2 be effective mitigation?

3 I know you disagree with some of those  
4 assumptions, but if you could just assume that they were  
5 true for a moment, excepting your disagreement.

6 MR. FIO: I'm sorry, but I cannot give you an  
7 answer on that because I'm failing to see how you're  
8 creating new water.

9 MS. FOLEY GANNON: I'm not creating new water.  
10 I'm saying that the water -- the other demand is satisfied  
11 by something other than this groundwater basin.

12 MR. FIO: In order to mitigate --

13 MS. FOLEY GANNON: I mean, we're going to be  
14 getting water eventually from Seeley, so we are going to  
15 get water from someplace else other than this groundwater  
16 basin, we assume. So I'm just saying that other users may  
17 have other alternatives. I was just trying to explore the  
18 notion of if -- we're not creating new water, but if that  
19 other water user got their water from someplace other than  
20 pumping from the groundwater basin.

21 HEARING OFFICER RENAUD: Let's cut this short  
22 here. I think what we need is an indication of whether or  
23 not the Boyer well is currently supplying 40 acre feet or  
24 something in that area of water to users who would then,  
25 assuming Imperial Solar takes over that water, those users

1 would go get their water somewhere else.

2           And do we know that? Do we know who he's selling  
3 to and how much he's selling currently? I'm not sure I've  
4 seen that fact anywhere.

5           MS. FOLEY GANNON: I mean, Marc, you can answer  
6 that.

7           MR. VAN PATTEN: What we do know is that he's got  
8 some records, I'm assuming, I haven't looked at everything  
9 in, explicit, for the last two years other than when we  
10 specifically talked about the personal users; but given  
11 the restrictions on the well in his recent ownership of  
12 it, all we know is that he has a desire and a belief that  
13 there is demand in the valley.

14           I don't know that we can demonstrate that he's  
15 been selling 40 acre feet in the last two years. I think  
16 if we investigated, we'd find that he's less than 40 acre  
17 feet per year, and he'd like to have and believes there is  
18 the ability to sell up to 40 acre feet of new users that  
19 might be today going to IID or, I don't know, San Diego  
20 County or some other place. That's speculation on my  
21 part.

22           MR. DENNIS: I'd like to add a comment.

23           You know, still, I don't see how this mitigation  
24 actually brings in new water or is effective. If you  
25 assume that Dan Boyer's selling no water, still, you're

1 consuming however much water for however much period of  
2 time from that -- from the basin, and it's not being  
3 replaced.

4 MS. FOLEY GANNON: The mitigation is premised on  
5 the fact is that he is going to sell 40 acre feet a year,  
6 every year, and if we buy 40 acre feet every year and use  
7 it and we -- or if we demonstrate, you know, we look at  
8 the records and it shows that he was selling 35 acre feet  
9 a year, whatever the use would be, if we buy that and have  
10 him keep it in the basin, water that would have been taken  
11 out of the basin is not taken out. And if the net effect  
12 is equalized, we believe that should be efficient.

13 It's just like buying water and putting it in the  
14 basin. It is -- there is a time lag. There would be a  
15 difference in the time when the water would be replaced,  
16 quote, unquote, but it would still be, we think in terms  
17 of particularly given the analysis that says that, you  
18 know, the actual physical effects on neighboring wells,  
19 et cetera, appears not to be significant, that -- provided  
20 you could do it in a certain time frame. That's what --  
21 that's what it's premised upon.

22 MR. DENNIS: I can understand that, but what's to  
23 limit the existing demand, like John was saying, migrating  
24 to elsewhere within the basin which would be most  
25 convenient for them?

1 MS. FOLEY GANNON: We just haven't seen any  
2 evidence that that's true, that's where they're getting  
3 water. I mean, there doesn't seem to be -- again, that  
4 disappears.

5 But we can move on.

6 HEARING OFFICER RENAUD: Commissioner Eggert has  
7 a question.

8 COMMISSIONER EGGERT: I wonder if I can maybe ask  
9 a slightly different question, which is that if you were  
10 to bring this, say, subsequent to the Seeley water supply,  
11 if you were to for a given period of time use that water  
12 to supply some existing demand within that basin, would  
13 that be considered -- that was based on no increase in  
14 demand, you weren't inducing any new demand by doing that,  
15 would that be something that would be sort of a  
16 replacement function?

17 MR. DENNIS: Yes, I think so.

18 COMMISSIONER EGGERT: Because you're offsetting  
19 what would otherwise -- okay.

20 MS. FOLEY GANNON: And we have explored the idea,  
21 the notion of trying to say -- I mean, you can't use -- I  
22 probably can't use water from Seeley to recharge the basin  
23 because --

24 COMMISSIONER EGGERT: Right.

25 MS. FOLEY GANNON: -- it's a different quality

1 well, and we don't want to have that happen. But I -- you  
2 know, I think we would welcome the notion of something  
3 like that to be able to use the water, the additional  
4 water we could access from Seeley, to offset other --  
5 maybe other construction users, which does seem to be the  
6 evidence that we've seen, that's what he's selling to. So  
7 we are certainly very open to exploring those -- concepts  
8 like that and we appreciate you saying it.

9 That's good. Thank you. And now I'll move on.

10 I want to go to the estimates of the residential  
11 users in the staff -- and I think that's -- is that you?  
12 Who is the residential users?

13 Okay. This -- I have to admit, in reading the  
14 assumptions, I understand that you said you were making  
15 conservative assumptions, but I really had a hard time  
16 following the factual basis for the six acre feet. I  
17 mean, it really seemed to be assumption built upon  
18 assumption, assumption with no way of tying it back to  
19 residential uses.

20 Can you walk me through how you came to these  
21 conclusions?

22 MR. FIO: Sure. We were provided, I think it was  
23 in Appendix D, Appendix C of Appendix D, or whatever the  
24 water sales data for the period May 1990 through June  
25 2004, it was monthly volumes.

1 MS. HOLMES: Excuse me. That's summarized on an  
2 annual basis; that's page C.7-52 in the staff assessment.  
3 It's not the monthly data, it's the annual total.

4 I'm sorry, Mr. Fio.

5 MR. FIO: That's fine.

6 And the monthly water sales are variable. We  
7 looked at the data over the period of record, and we  
8 assume that the variability that we were observing was  
9 related to non-residential use, which is fairly typical in  
10 a water use environment. Residential use is typically  
11 called hard demand because it doesn't go away. But if  
12 there's a temporary project that comes through and they  
13 need water, then you see an uptick in the sales.

14 So we assume that the variability was based on  
15 the commercial water use being for construction and dust  
16 suppression and so forth.

17 Then we looked at the temporal variability and we  
18 identified that February was the lowest water use. So all  
19 we know at this point is in terms of factual evidentiary  
20 data is that the low -- the low water use period is in  
21 February, and we actually have a number that we can tie to  
22 it.

23 So we made the assumption that the February water  
24 use would be representative of residential water use,  
25 assuming that the need for dust suppression and

1 construction would be a minimum at that time of the year.  
2 And that worked out to be about .15 acre feet per month.  
3 And then you pro rate that for a year, and that gives you  
4 a value of almost two acre feet per year. So that was one  
5 estimate that we made. Now, mind you, we're trying to be  
6 conservative here.

7           The second thing we did is we looked at all the  
8 historical sales data, and we noted that in 1993 was the  
9 minimum annual volume of water that was sold. That was  
10 2.9 acre feet. Okay? And then in looking at that number,  
11 you can make the assumption, well, perhaps under those  
12 situations during 1993 construction water uses were at a  
13 minimum, so there's an estimate of potential residential  
14 water use being 2.9 acre feet, which we rounded to being  
15 approximately three acre feet.

16           And then because this is a residential supply and  
17 we were trying to follow the directives of the county,  
18 they were strongly encouraging us to protect residential  
19 water supply, we made the conservative assumption of  
20 doubling it, because we don't know what the number is.  
21 And so that's where we came up with six acre feet being an  
22 estimate for potential residential water use based on the  
23 data that was available to us.

24           MS. FOLEY GANNON: It's tough to admit I'm just  
25 confused by this, because in the first assessment, you're

1 saying February you assume everything must be residential.  
2 It appears from looking at the record that there was a lot  
3 of construction uses and, you know, dust control may be  
4 less there in the winter, but isn't water used for dust  
5 control during winter as well on construction jobs?

6 MR. FIO: It could be.

7 MS. FOLEY GANNON: I mean, for the Imperial  
8 Valley water calculations, we're assuming we need water  
9 for dust control in the winter. So it seems, again, these  
10 figures -- I understand being conservative, I understand  
11 protecting existing residential uses. These numbers -- I  
12 still -- I appreciate you walking me through the analysis  
13 with me, I still just don't understand the basis for them.

14 Were you present today when Mr. Boyer joined us  
15 by telephone? And did you hear his testimony regarding  
16 the way that the residential uses is sold?

17 MR. FIO: Yes.

18 MS. FOLEY GANNON: Does his testimony affect your  
19 confidence in the six acre feet number at all, or your  
20 assessment of what you think the sort of on the ground  
21 residential use is likely associated with this well?

22 MR. FIO: I've not had an opportunity to fully  
23 evaluate that. What I do know is that I had what was over  
24 13 years' worth of data that was documented that I could  
25 actually analyze. And I had some information that was

1 provided over the telephone. I have not had an  
2 opportunity to evaluate what effect that would have on our  
3 estimate.

4 MS. FOLEY GANNON: I understand that, you know,  
5 you just heard that today. You may have seen the  
6 declaration that was submitted with our testimony as well.  
7 But again, I hope you will go back and look at this,  
8 because it seems that the data that you had from 13 years,  
9 I understand it's somewhat difficult to tie to, but  
10 doesn't seem to actually say anywhere this is residential  
11 use; is that correct? So these were all having to be  
12 assumptions based upon assumptions trying to make the best  
13 guesses from the information you had. Is that a correct  
14 assessment?

15 MR. FIO: The numbers we had were for total water  
16 use, and what we knew was that a portion of that was for  
17 residential.

18 MS. FOLEY GANNON: And again, once we get these  
19 numbers, and we're assuming that all these numbers are  
20 used for residential without any factual support --

21 MS. HOLMES: I'm going to object to that. I  
22 think there's a mischaracterization. I think what he just  
23 said is that he knows what the total is, he knows what the  
24 total is, and he had to make some educated, professional  
25 assumptions about which portion were residential. He did

1 not say that all of them are residential.

2 MS. FOLEY GANNON: But then that number was taken  
3 and doubled or tripled, right?

4 HEARING OFFICER RENAUD: Ms. Foley Gannon,  
5 please, you know, your questions do tend to get a bit long  
6 and include some speech making --

7 MS. FOLEY GANNON: I'm sorry.

8 HEARING OFFICER RENAUD: -- so please try and  
9 limit them to direct questioning.

10 MS. FOLEY GANNON: I'm sorry. Okay.

11 Going on to the analysis of Seeley, just so I  
12 understand, I think you stated you said you looked at  
13 the -- what you think the impacts associated with using  
14 the Seeley water would be, and your conclusions were --  
15 can you restate them?

16 MR. DENNIS: Yes. We found no significant  
17 unmitigable impacts with that water use. And it would  
18 comply with existing water LORS.

19 MS. FOLEY GANNON: Okay. Thank you.

20 MR. DENNIS: Actually, we would encourage it.

21 MS. FOLEY GANNON: And we encourage it as well.

22 In terms of the proposed changes to the soil and  
23 water 11, which is related to the export permit, I want to  
24 see if I can understand your analysis of the proposed  
25 changes.

1           The proposed change was to have a permit obtained  
2 or evidence that a permit isn't necessary from the county?

3           MR. DENNIS: With respect to soil and water 11 is  
4 it?

5           MS. FOLEY GANNON: Soil and water 11? Or am I  
6 messing up my numbers again?

7           Soil and water 11.

8           MR. DENNIS: I think we'd like to see evidence  
9 and a permit's not necessary, clarification from Jim  
10 Minnick, if he can call in.

11          MS. FOLEY GANNON: I understand we can try to get  
12 him on the phone, I'm just trying, again, to figure out if  
13 there's a way we can limit our issues.

14          So we had proposed as a condition of  
15 certification that a permit be acquired or evidence that  
16 no permit is needed. Would that address your concerns?

17          MR. DENNIS: Yes, it would.

18          MS. FOLEY GANNON: And then I just wanted to  
19 clarify, with regard to looking at alternatives, you  
20 analyzed the various alternatives including like drainage  
21 alternatives 1. Did you see a difference in impacts  
22 associated with drainage avoidance alternative 1 and the  
23 proposed project in terms of impacts to water resources?

24          MS. HOLMES: Are you talking about water supply  
25 only?

1 MS. FOLEY GANNON: Water supply only, yeah.

2 MR. DENNIS: No, we didn't. It's basically this  
3 would be a reduction of water supply. The impacts would  
4 be more associated with soil resources.

5 MS. FOLEY GANNON: Okay. I just wanted to make  
6 sure that I understood, because I thought that it said you  
7 looked at it for alternatives. Okay.

8 That is all the questions I have. Thank you.

9 HEARING OFFICER RENAUD: Thank you.

10 Cross-examination by CURE?

11 Do you have a time estimate for us, Ms. Miles?  
12 We're looking for a break.

13 MS. MILES: I only have a few questions, so --

14 HEARING OFFICER RENAUD: Just a few? All right.  
15 Go ahead.

16 CROSS-EXAMINATION

17 MS. MILES: So with regard to your analysis of  
18 upflux impacts, did you consider potential cumulative  
19 impacts to -- that could be caused by upflux?

20 MR. FIO: Yes. What we reported on was the  
21 increase in upflux attributed to just the pumping of the  
22 proposed water supply well. So there would be other  
23 processes going on as a part of the background pumping  
24 going on in the basin.

25 MS. MILES: And did you analyze those?

1           MR. FIO: No, we just looked at the impact from  
2 pumping the proposed water supply well. So the numbers we  
3 used represent the relative increase.

4           MS. MILES: So then I assume you also didn't  
5 analyze the Wind Zero project with relation to this  
6 project and potential upflux impacts.

7           MR. FIO: No, we didn't.

8           MS. MILES: Let's see. Sorry.

9           Did you account for any potential elevation  
10 changes surrounding the Boyer well when formulating your  
11 conclusions relating to potential impacts to phytophreatic  
12 plants?

13          MS. HOLMES: Can I ask a clarification?

14          MS. MILES: Sure.

15          MS. HOLMES: Are you referring to land elevation  
16 or are you referring to the groundwater depth?

17          MS. MILES: Land elevation. I mean, it's really  
18 I'm trying to get the land elevation relative to the  
19 groundwater surface level and whether there were elevation  
20 changes surrounding the property where there may have been  
21 impacts to phytophreatic plants.

22          MR. FIO: Specifically, no, but our analysis  
23 looks at depth to water, which is relative to the land  
24 surface, or drawdown, which is relative to the water  
25 table.

1           So, for example, if you have a drawdown of ten  
2 feet at one location and you move to another location that  
3 has an elevation that's ten feet higher, it's still going  
4 to be ten feet of drawdown.

5           MS. MILES: Yeah, I apologize, I'm not very  
6 fluent in this hydrology language.

7           But so I'm just trying to understand whether you  
8 say the elevation -- the surface elevation, land  
9 elevation, if it drops substantially near the Dan Boyer  
10 well, did you look at whether there was any areas around  
11 the Dan Boyer well where the elevation drops like that and  
12 so that there would be a higher, you know, groundwater  
13 level compared to land surface?

14          MR. FIO: No, we did not look at land surface  
15 elevation.

16          MS. MILES: Okay. Thank you. That's my only  
17 question.

18          HEARING OFFICER RENAUD: Thank you.

19          Questioning by Budlong?

20          MR. SILVER: I have no questions.

21          HEARING OFFICER RENAUD: Thank you.

22          CNPS?

23          MR. BELTRAN: No.

24          HEARING OFFICER RENAUD: Okay. Thank you.

25          I would like to ask a question too of John Fio.

1           We heard testimony from Mr. Boyer about  
2 residential users who bring containers and so forth to get  
3 water. Are there any residential users in the region or  
4 who use the Boyer well or -- yeah, the Boyer well, who are  
5 somehow connected to it by a pipe, like we in the big  
6 cities would have, so that you turn on a tap at home and  
7 water comes out?

8           MR. FIO: To my understanding, no.

9           HEARING OFFICER RENAUD: Okay. So knowing that  
10 to get your water you've got to go carry it, does that  
11 change your thinking about the estimates of residential  
12 water use?

13           My understanding is an acre feet is 326,000  
14 gallons, so, you know, you'd have to carry quite a lot of  
15 water it looks like to get anywhere close to that.

16           MR. FIO: No. 40 acre feet sounds like a lot of  
17 water to truck to me. And it will be done. You know, if  
18 people need the water, they'll do what it takes to get it.  
19 I do understand your point in that from what was said  
20 today there may be at most a dozen people, which would  
21 make it seem as though that would be a limiting factor.

22           HEARING OFFICER RENAUD: Not just the number of  
23 people but also the way in which they get the water; that  
24 is, going and collecting it. Doesn't that change the --  
25 your thinking about how much water they would be inclined

1 to use?

2 MR. FIO: No. I would put more weight on how  
3 many people need the water.

4 HEARING OFFICER RENAUD: All right. Okay. Thank  
5 you.

6 Any other questions of the panel?

7 MS. FOLEY GANNON: No.

8 MS. HOLMES: Can I ask one more redirect  
9 question?

10 HEARING OFFICER RENAUD: Yes, Ms. Holmes, please.

11 REDIRECT EXAMINATION

12 MS. HOLMES: We'll have to check the transcript  
13 when it comes out. I thought I heard Mr. Boyer say that  
14 there were 3 consistent users and 12 users that were on  
15 and off. I know you'd like a chance to think about this a  
16 little bit more, but is there anything off the top of your  
17 head that makes you think that 3 consistent users and 12  
18 off-and-on users is necessarily inconsistent with -- with  
19 the use that staff has identified?

20 MR. DEVEREL: I'd like to answer that.

21 This is Steve Deverel.

22 While we were listening to that, we just did some  
23 basic calculations of how much water that would be based  
24 on the Bookman Edmonston report, 2004 report on the  
25 groundwater flow model for the area, and I'll just read

1 from that.

2 A water use rate of 200 gallons per day per  
3 capita was computed for Ocotillo based on the population  
4 and water use records.

5 So using those numbers, just those three  
6 residents is already over .5 acre feet per year. I'm  
7 talking about almost .7 feet per year. So if we add to  
8 that an additional 12 residents, and we're probably  
9 over -- substantially over the half a foot per acre -- or  
10 half acre foot per year that Dan Boyer said. So that  
11 seemed significant. It seems in variance to what  
12 Dan Boyer's saying.

13 HEARING OFFICER RENAUD: All right. Thank you.

14 MS. HOLMES: Thank you. Those are all my  
15 questions.

16 HEARING OFFICER RENAUD: Anything else from these  
17 witnesses before we --

18 MS. FOLEY GANNON: Just one point of  
19 clarification.

20 HEARING OFFICER RENAUD: Please.

21 RE-CROSS-EXAMINATION

22 MS. FOLEY GANNON: I thought I heard him say that  
23 the 12 users were temporary users, so seasonal, occasional  
24 users. So I assume that that would affect the calculation  
25 and how you would -- like he said campers, really not

1 houses, more sort of camping type things. So would that  
2 affect those numbers? I know you need to think about it  
3 too, but --

4 MR. DENNIS: He said -- what I heard him say was  
5 there were 3 consistent people that took water and there  
6 were also 12 people on and off that took water. So I'm  
7 just looking at those 12 consistent people that, according  
8 to the Bookman Edmonston report, would use about 200  
9 gallons per day.

10 MS. FOLEY GANNON: The 12 consistent or the 3  
11 consistent?

12 MR. DENNIS: 3. 3 consistent users.

13 Now, we don't know if those people were  
14 individuals that just collected water for themselves or  
15 those were residences. If they're for residences, that  
16 would be more.

17 MS. FOLEY GANNON: All right.

18 No further questions. Thank you.

19 HEARING OFFICER RENAUD: Okay. Thank you.

20 We're done with that panel then. I think we  
21 should take a short break. Let's keep it to ten minutes.

22 COMMISSIONER BYRON: Gentlemen, thank you.

23 HEARING OFFICER RENAUD: Be back here at 4:30.

24 And thank you.

25 (Recess.)

1 HEARING OFFICER RENAUD: I think everyone's back.  
2 So let's get going again. Back on the record.

3 It looks to me like the next area would be the  
4 sedimentation part of water.

5 MS. MILES: Hearing officer, we do have a couple  
6 witnesses we wanted to tender.

7 HEARING OFFICER RENAUD: I'm just jumping the gun  
8 here.

9 All right. I'm sorry, I didn't mean to step on  
10 your toes there. So, CURE, go ahead with your witnesses,  
11 please.

12 MS. MILES: And just to clarify, we -- our  
13 witnesses do have testimony on water supply and what we're  
14 calling today sedimentation, and so we're just going to  
15 limit their testimony to water supply at this point.

16 HEARING OFFICER RENAUD: Sounds fine. Good.

17 (Christopher Bowles and Christopher Campbell  
18 were sworn.)

19 THE REPORTER: Please state and spell your names  
20 for the record.

21 MR. BOWLES: Christopher Bowles,  
22 C-h-r-i-s-t-o-p-h-e-r B-o-w-l-e-s.

23 MR. CAMPBELL: Christopher Campbell,  
24 C-h-r-i-s-t-o-p-h-e-r C-a-m-p-b-e-l-l.

25 THE REPORTER: Thank you. Please be seated.

1 HEARING OFFICER RENAUD: Let me remind you to  
2 identify yourselves when you're speaking for the benefit  
3 of those on the phone.

4 Thank you.

5 DIRECT EXAMINATION

6 MS. MILES: I guess I'll go ahead and address  
7 most of my questions to Mr. Campbell, just to keep things  
8 flowing more quickly, but if you want to interject,  
9 Dr. Bowles, feel free.

10 So, Mr. Campbell, whose testimony are you  
11 sponsoring today?

12 MR. CAMPBELL: Our own.

13 MS. MILES: Are you also sponsoring your exhibits  
14 and your rebuttal testimony with exhibits?

15 MR. CAMPBELL: That's true.

16 THE REPORTER: Is your microphone on, sir?

17 MR. CAMPBELL: Sorry about that.

18 MS. MILES: Do you have any changes to your sworn  
19 testimony?

20 MR. CAMPBELL: No.

21 MS. MILES: Are the opinions in your testimony  
22 your own?

23 MR. CAMPBELL: Yes.

24 MS. MILES: Hearing Officer, have I summarized  
25 their qualifications, or should I dispense with that?

1 HEARING OFFICER RENAUD: Unless any of the  
2 parties wants that, I don't think it's necessary.

3 MS. FOLEY GANNON: No. No.

4 HEARING OFFICER RENAUD: No? Anybody?

5 All right.

6 MS. MILES: Thank you.

7 HEARING OFFICER RENAUD: Go ahead.

8 MS. MILES: And at this time, before I forget,  
9 I'd like to move to enter Exhibits 499I and 499J into the  
10 record. This is additional rebuttal testimony with  
11 supporting declarations.

12 HEARING OFFICER RENAUD: Any objection from the  
13 parties?

14 MS. FOLEY GANNON: No.

15 HEARING OFFICER RENAUD: All right. That will be  
16 admitted. Thank you.

17 (Intervenor CURE's Exhibits 499I and 499J were  
18 received into evidence.)

19 MS. MILES: Dr. Bowles -- I'm sorry,  
20 Mr. Campbell, please describe for us what it was that CURE  
21 asked you to do since you testified at the last  
22 evidentiary hearing.

23 MR. CAMPBELL: They had asked us to review the  
24 supplemental staff assessment and the additional testimony  
25 by the applicant.

1 MS. MILES: And can you please just briefly  
2 summarize your findings in your testimony relating to the  
3 supplemental staff assessment?

4 MR. CAMPBELL: With respect to the SSA, most of  
5 the changes were with respect to groundwater and the water  
6 supply, and that's what we focused most of our additional  
7 testimony on.

8 MS. MILES: Thank you.

9 And what is the basis for your conclusion that  
10 the water supply estimates may be inaccurate or that the  
11 water supply would not meet demand?

12 MR. CAMPBELL: Well, for us, it is unclear  
13 whether or not the water supply numbers that are in the  
14 staff assessment and the supplemental staff assessment are  
15 accurate or not. There are no background detailed  
16 numbers, if you will, to justify those numbers like there  
17 were in the application for certification.

18 In the application for certification there was a  
19 detailed month-by-month log of construction demand water  
20 over that 39-month period, and that -- based on our own  
21 calculations, that equated to 439 acre feet. Based on the  
22 calculations in the supplemental staff assessment, we're  
23 now talking 166 acre feet. That's -- there is about 165  
24 percent increase, or decrease, if you will, in the  
25 estimated water demand for construction needs.

1           And so it's unclear how exactly that  
2 overestimation of 165 percent was generated or how the  
3 number was reduced from 439 to 166.

4           HEARING OFFICER RENAUD: Sir, could you pull the  
5 mic right up to you? You should be an inch or two away  
6 from it. They don't pick up unless you're right up there.

7           MR. CAMPBELL: Okay.

8           So we have -- there's uncertainty with respect  
9 to -- with respect to the water budget numbers for  
10 construction.

11           Let's assume, for instance, that the numbers of  
12 166 acre feet are correct. How are those numbers going to  
13 be distributed over the 39-month construction window? If  
14 we use the AFC construction schedule as a template, 52  
15 percent of that construction water demand would occur in  
16 the first 12 months. 52 percent of 166 acre feet is 86  
17 acre feet, which is more than two times the amount of  
18 water that is allocated from -- the maximum amount of  
19 water that's allocated from the Dan Boyer well. So it's  
20 uncertain to us how the product schedule could be modified  
21 to accommodate such a gross discrepancy between 40 acre  
22 feet and 86 acre feet potentially.

23           Additionally, it is unclear -- now we're going to  
24 jump to operations. It's unclear with the operations  
25 water budget numbers. In the table -- in one of the

1 tables that describe the operation water budget numbers,  
2 it says something like that nine acre -- or nine mirror  
3 washings, but in other instance in the text, it says that  
4 mirror washing will occur on a monthly basis and that  
5 access to them will be 12 times a year. So that would  
6 lead us to believe that maybe these -- the water budget  
7 numbers for the mirror washing are inaccurate and need to  
8 be pumped up a little bit.

9           There's also concern with the dust control  
10 numbers for operation. They don't account for -- what is  
11 it -- there's soil and water -- soil and water condition  
12 of certification number 8 that addresses Valley Fever and  
13 the need for additional or contingency water to mitigate  
14 for extra dust.

15           And so when you take into consideration a lack of  
16 contingency for dust and maybe for lack of consideration  
17 for additional mirror washing as well as some other  
18 considerations, the total operational demand might be less  
19 than -- would be greater than the 33 acre feet that's been  
20 specified in the table per year.

21           Finally, what the water budget calculations fail  
22 to address is the overlapping demand for water between  
23 construction and operations. Should they occur  
24 simultaneously, it is stated somewhere in the -- I believe  
25 it's the air quality section of the supplemental staff

1 assessment, that -- well, they did take into account  
2 overlapping operations and construction on air emissions,  
3 but it was not addressed -- but that did not transfer over  
4 to the water budget calculations.

5           And so there is, in our opinion, a lack of taking  
6 into account overlapping use or overlapping need for water  
7 for construction and operations as the project becomes --  
8 as components of the project become phased and come  
9 online.

10           MS. MILES: And with regard to the Valley Fever  
11 condition of certification that you mentioned, I note that  
12 it states that it would include extensive wetting of the  
13 soil prior to and during construction activities.

14           Did you look at -- because this, I believe, was a  
15 new condition of certification in the supplemental staff  
16 assessment that was not included in the staff assessment,  
17 did you look to see if the water allocation changed  
18 between the staff assessment and supplemental staff  
19 assessment for operations to account for this new  
20 condition?

21           MR. CAMPBELL: I don't believe the water  
22 allocation changed. The operations table, I believe, has  
23 remained consistent from the application of -- the  
24 original application of certification up through the  
25 supplemental staff assessment.

1 MS. MILES: And can you talk about the gallons  
2 per day estimate relating to dust control a little more  
3 specifically? I know you mentioned that the dust control  
4 numbers were underestimated, I think, I'm not sure exactly  
5 how you characterized it, but can you talk a little bit  
6 more about that?

7 MR. CAMPBELL: With respect to operations?

8 MS. MILES: Yes, and how much they might need per  
9 day and whether it was calculated any additional need.

10 MR. CAMPBELL: The operations water budget  
11 numbers assumed 5,000 gallons per day, and then there was  
12 also a maximum number in that table of 10,000 gallons per  
13 day; but the 10,000 gallons per day contingency, if we  
14 call it that, was never accounted for in the annual water  
15 budget for dust control, and so it was only based on the  
16 5,000 gallons per day number.

17 So it's conceivable, that, you know, maybe  
18 there'll be -- 20 percent of the days in the year will be  
19 high dust days, and on those days, 10,000 gallons per day  
20 will be required. And so the water budget just for dust  
21 control would actually go up. And so the table is not an  
22 accurate reflection of what could possibly occur.

23 MS. MILES: Are there any other groundwater  
24 issues that you want to highlight?

25 MR. CAMPBELL: I guess I would just say that

1 the -- it's not necessarily groundwater, but just water  
2 supply in general. The Seeley Wastewater Treatment  
3 Facility upgrade is an uncertainty, if it happens, it may  
4 happen. The applicant has stated that they can -- should  
5 it come online, that they could partake of 200,000 gallons  
6 per day. But even that is an uncertainty because the EIR  
7 process that the treatment facility is currently going  
8 through will likely determine whether or not that's a  
9 possibility and will determine if there will be impacts to  
10 the Salton Sea water quality impacts as a result of the  
11 project by the applicant securing up to 200,000 gallons  
12 per day.

13 All I will say is that with respect to the  
14 200,000 gallons per day, that equates to 224 acre feet --  
15 224 acre feet -- well, I'll refrain from saying anything  
16 further to that. That number, the 224 was reflective of  
17 the original water budget for the application for  
18 certification. So if we assume that that is inaccurate  
19 and that the numbers that the applicant are providing of  
20 166 acre feet are more accurate, then no point to comment  
21 on that further.

22 MS. MILES: And I remember in your testimony you  
23 talked about that the budget for water supply from the AFC  
24 matched the amount of water that the applicant was going  
25 to require -- had asked for from the Seeley Wastewater

1 Treatment Facility; is that correct?

2 MR. CAMPBELL: Yeah. Well, that's where I was  
3 just -- yeah. So if I continue where I decided to stop,  
4 so based on our calculations of the AFC water budget, the  
5 first 12 months would require 228 acre feet, which is  
6 close enough to 224 acre feet or 200,000 gallons per day,  
7 which is the maximum amount of water that the applicant is  
8 trying to secure from the Seeley Wastewater Treatment  
9 Plant upgrade. So it seems like -- yeah.

10 MS. MILES: So are you saying that an inference  
11 could be made that they asked for that much water from the  
12 Seeley Wastewater Treatment Facility that they anticipated  
13 that that was their water need for the project?

14 MR. CAMPBELL: Yes.

15 MS. MILES: And have you seen anything -- I mean,  
16 have you reviewed the staff assessment and the testimony  
17 from the applicant and have you seen anything that showed  
18 like a contract for water from the Dan Boyer Water  
19 Company?

20 MR. CAMPBELL: No.

21 MS. MILES: So have you reviewed the will serve  
22 letter that was from the Dan Boyer Water Company?

23 MR. CAMPBELL: With respect to the will serve  
24 letter, I simply was going on the basis of what was in the  
25 supplemental staff assessment text indicating that Dan

1 Boyer was going to provide temporary water up to 11  
2 months. Thereafter, it's an unknown whether he would  
3 supply water to the project.

4 MS. MILES: So did that raise any concern about  
5 the reliability of that water supply?

6 MR. CAMPBELL: It raises concern overall in  
7 general, because if Dan Boyer doesn't continue to step up  
8 to the plate and Seeley Wastewater Treatment Plant doesn't  
9 come online, then there is no -- no water supply is  
10 identified for the project beyond 11 months.

11 MS. MILES: And although the supplemental staff  
12 assessment identifies that the project overlies the Coyote  
13 Wells water basin, where is the -- would the water well be  
14 a part of the Coyote Wells water basin, or how would you  
15 describe the basin or sub-basin or --

16 MR. CAMPBELL: The Dan Boyer well is inside of  
17 the Ocotillo/Coyote Wells sole source aquifer, which is a  
18 component of the Coyote Wells Valley Groundwater Basin.  
19 And the project, while 96 percent might lie within the  
20 Coyote Wells Valley Groundwater Basin, 100 percent of the  
21 project lies outside of the sole source aquifer.

22 MS. MILES: Thank you.

23 Please describe the location -- okay, you just  
24 did, sorry.

25 MS. JENNINGS: This is Jennifer Jennings.

1           Can we ask what you're doing? Are you showing  
2 something on the screen?

3           MR. BOWLES: Yeah, we're trying to get it on the  
4 screen.

5           MS. JENNINGS: Okay. Can you do it through  
6 WebEx?

7           MR. BOWLES: I think we are doing -- are we not?

8           HEARING OFFICER RENAUD: I have it on my WebEx.

9           MS. JENNINGS: We don't have it on ours.

10          HEARING OFFICER RENAUD: There's a tab called EPA  
11 overlay. It might be you should open that up.

12          MS. JENNINGS: I would if I had it.

13          WebEx has bumped us off the connection. We'll  
14 try to get back on.

15          MS. MILES: In the interest of time,  
16 Mr. Campbell, maybe I could go ahead and ask you a couple  
17 more questions while they're trying to sort that out that  
18 are unrelated to the graphic that they're working on.

19                 In Robert Scott's rebuttal testimony from  
20 July 21st, he states based on the groundwater evaluation  
21 report for the Dan Boyer well, the water quality tests  
22 indicate that the quality today is the same as it was  
23 decades ago.

24                 And I was wondering, do you agree with that  
25 opinion?

1           MR. CAMPBELL: We would disagree, because I think  
2 that's -- they're trying to infer a static condition, and  
3 it's somewhat misleading to assume that that static  
4 condition will continue into the future, even though the  
5 groundwater basin will not only be stressed by the  
6 Dan Boyer well extractions, but by extractions from  
7 neighboring wells as well.

8           If these extractions continue into the future, at  
9 some point there could be a threshold reached whereby  
10 additional groundwater upflux could be enhanced and due to  
11 pumping. And so over the life of the project it is  
12 uncertain whether or not we would cross this threshold,  
13 and I don't think it's actually been analyzed.

14           And so if upflux were to become more of an issue  
15 into the future, then we would foresee groundwater impacts  
16 to the aquifer, alluvial aquifer.

17           MS. MILES: In your opinion do you think that  
18 staff should have analyzed cumulative impacts relating to  
19 upflux and the other wells surrounding the Dan Boyer well?

20           MR. CAMPBELL: I do believe -- I mean, it's my  
21 understanding that staff used a relationship developed by  
22 Todd, which was an independent review of the Bookman  
23 Edmonston Groundwater Model for the U.S. Gypsum DEIR to  
24 come up with these relationships between what percent of  
25 water is upflux versus what percent of water is not going

1 through the south, so on and so forth, where it was  
2 identified that nine percent of the water for every  
3 hundred acre feet of pumping would be a result of upflux  
4 from the underlying Imperial Palm Springs Formation into  
5 the upper alluvial aquifer.

6           And so using that nine percent figure, they  
7 applied that to the pumping for the project itself, they  
8 did not -- I do not believe that they considered the  
9 pumping from the project in aggregate with neighboring  
10 well users. And so I don't believe that they addressed  
11 cumulative impacts.

12           MS. MILES: Also, I don't think that you've  
13 addressed the issue relating to well interference. And in  
14 your testimony you discussed the potential for the project  
15 pumping at the Boyer well to cause interference to other  
16 well users.

17           Can you explain that?

18           MR. CAMPBELL: I would only say that I believe  
19 what I was saying was with respect to cumulative impacts.  
20 So if you were to consider other users in the system  
21 pumping at the same time, that there could be an amplified  
22 impact or there could be an impact of U.S. Gypsum on the  
23 Dan Boyer well that has not been addressed.

24           MS. MILES: Was there a potential based on the  
25 project's pumping to drop the water table below well

1 screens for any of the nearby wells?

2 MR. CAMPBELL: So if you were to -- yes, there  
3 was.

4 MS. MILES: And do you remember how many wells  
5 that might have dropped below their well screen?

6 MR. CAMPBELL: There were maybe two wells.

7 MS. MILES: Nearby that may have had impacts that  
8 were not analyzed in --

9 MR. CAMPBELL: Yes, if you were to take into  
10 account specific well characteristics in depth to  
11 groundwater and the well screen below the ground surface  
12 rather than using typical or average values across all  
13 wells.

14 MS. MILES: Did you want to explain this graphic,  
15 the figure?

16 MR. CAMPBELL: Shall I stand up there and do it?

17 MS. MILES: Yeah, please. But you'll have to  
18 speak into the microphone. I don't know if it's on up  
19 there.

20 MS. JENNINGS: This is Jennifer.

21 May I interrupt?

22 We have the map now. Thank you.

23 MR. CAMPBELL: So the graphic demonstrates here's  
24 the project area, here's the outline of sole source  
25 aquifer, clearly shows that the project lies outside of

1 the sole source aquifer.

2 MS. MILES: What is that dividing line between  
3 the aquifer and --

4 MR. CAMPBELL: This is an extension of the  
5 Eleanor Fault.

6 MS. MILES: Elsinore Fault? I believe it's the  
7 Elsinore Fault. And I can't really read it from here,  
8 but --

9 MS. WHITE: I just want to remind folks that when  
10 you're using your pointer on the screen there, that people  
11 on WebEx won't actually be able to see what you're  
12 highlighting.

13 MR. CAMPBELL: Sorry about that.

14 MS. MILES: Yeah, if you could please describe  
15 the line that you're referring to.

16 MR. CAMPBELL: So to reiterate, here's the  
17 project area in red I'm circling, the dark line is the  
18 outline of the sole source aquifer, and right through here  
19 is the Elsinore Fault. And what this demonstrates is that  
20 the project is 100 percent outside of the sole source  
21 aquifer.

22 MS. MILES: Thank you.

23 In the testimony of Marc Van Patten, he states  
24 that the project will adjust the construction schedule as  
25 necessary to ensure that construction does not use more

1 water than the amount allotted by the Dan Boyer well and  
2 that there are no aspects of construction that would make  
3 it impossible to construct the project using only 39.5  
4 acre feet.

5 In your opinion, is that accurate?

6 MR. CAMPBELL: If I could interrupt, can I  
7 continue to address another figure from the last -- that  
8 we'd like to bring up for the last question?

9 MS. MILES: Sure.

10 MR. CAMPBELL: So can everybody online see the  
11 additional graphic, or new graphic?

12 MS. JENNINGS: We can in El Centro. Thank you.

13 MR. CAMPBELL: So what this graphic shows is  
14 information that was pulled from the U.S. Gypsum DEIR that  
15 was an attachment to some version of applicant's  
16 testimony. I don't know the exact exhibit number. But it  
17 shows on the Y axis, it says TDS concentration, milligrams  
18 per liter; and on the X axis is time. And these in the  
19 legend are a handful of wells in the vicinity of the  
20 Dan Boyer well, to include the Dan Boyer well. The  
21 information presented by the applicant for the Dan Boyer  
22 well is this dot and this dot over here. Those are the  
23 two measurements that are in their testimony.

24 What this graphic demonstrates is that TDS  
25 concentrations in the system are not static, that they

1 have increased in time, and that pumping can create spikes  
2 that could be associated with upflux from the underlying  
3 aquifer. So to simply assume that two points make a  
4 straight line and then you can extend that straight line  
5 into the future as a trend of the future is grossly  
6 inaccurate. There is greater variability that could have  
7 occurred between those two points, and that could continue  
8 into the future.

9 MS. MILES: Okay. So back to the question that I  
10 was asking, in Robert -- no wait, it was in  
11 Marc Van Patten's testimony regarding the fact that they  
12 estimate they can still fully construct with the water  
13 restriction, and I wanted to know, in your opinion, is  
14 that accurate?

15 MR. CAMPBELL: I don't think that it is  
16 necessarily accurate because they have not provided or  
17 demonstrated numbers for their construction water demands.  
18 As I previously stated, if we were to assume the  
19 construction schedule, water demand schedule, not  
20 necessarily the water demand numbers but the schedule on a  
21 percent -- by percent, month-by-month basis, 52 percent of  
22 the construction demand would need to occur in the first  
23 12 months. So that could easily push the first 12 months  
24 out. Let's assume we can get 39.5 acre feet per year, or  
25 the project can use 39.5 acre feet per year. I would

1 easily push the construction schedule out a full year for  
2 the first 12 months. So it is unclear how the project  
3 will -- could be modified in order to meet the contractual  
4 obligations for San Diego Gas & Electric.

5 MS. MILES: Was there anything else you wanted to  
6 add?

7 MR. CAMPBELL: I believe -- I believe that's it.

8 MS. MILES: Okay. Thank you.

9 The witness is available for cross-examination.

10 HEARING OFFICER RENAUD: Applicant, cross?

11 MS. FOLEY GANNON: No questions.

12 HEARING OFFICER RENAUD: Staff?

13 MS. HOLMES: No questions.

14 HEARING OFFICER RENAUD: Budlong?

15 MR. BUDLONG: I have a couple questions.

16 HEARING OFFICER RENAUD: Go ahead.

17 CROSS-EXAMINATION

18 MR. BUDLONG: Mr. Campbell, you were talking  
19 about where the SSA talks about the amount of water needed  
20 for dust control, and it was an average of 5,000 gallons  
21 per day with a maximum of 10,000. Did you find anywhere  
22 in the documentation how they arrived at the numbers that  
23 were used?

24 MR. CAMPBELL: No, I did not investigate that in  
25 detail. All that I know is that that number was

1 consistent from the AFC up until the supplemental staff  
2 assessment.

3 MR. BUDLONG: Did you find anywhere where it  
4 talked about how much area is needed to have dust control?

5 MR. CAMPBELL: I believe that it probably was,  
6 but I did not do an independent calculation, such as  
7 yourself, to determine how much water would be applied  
8 over --

9 MR. BUDLONG: Excuse me. I was interested in how  
10 much area was -- needed dust control.

11 MR. CAMPBELL: I don't have that number off the  
12 top of my head.

13 MR. BUDLONG: Do you remember seeing it anywhere  
14 in the documentation? Because I didn't myself, and I'm  
15 wondering if I missed it.

16 MR. CAMPBELL: I do not recall.

17 MR. BUDLONG: Okay. Did you do a calculation to  
18 determine whether that was a reasonable number for dust  
19 control or not?

20 MR. CAMPBELL: No, I did not. I just did a  
21 calculation to determine if that -- if the water budget  
22 numbers would be sufficient with respect to the supply.

23 MR. BUDLONG: Okay. Those are my questions.  
24 Thank you.

25 MR. SILVER: And I had one question to

1 supplement.

2 HEARING OFFICER RENAUD: Go ahead, Mr. Silver.

3 CROSS-EXAMINATION

4 MR. SILVER: With respect to your testimony  
5 concerning the site being outside of the sole source  
6 aquifer, does that have any implications with regard to  
7 effects with regard to drawdown of the sole source aquifer  
8 in terms of, I suppose, the capability of water to return  
9 to the source from which it was drawn?

10 MR. CAMPBELL: That, I am not certain of.

11 MR. SILVER: No further questions.

12 HEARING OFFICER RENAUD: Is the Boyer well  
13 outside the sole source aquifer?

14 MR. CAMPBELL: No.

15 HEARING OFFICER RENAUD: It's within it?

16 MR. CAMPBELL: It's within.

17 HEARING OFFICER RENAUD: Okay. What was the  
18 significance -- why did you want to tell us that the  
19 project site is outside the sole source aquifer? Why is  
20 that important to you?

21 MR. CAMPBELL: I believe it potentially gets down  
22 to the issue of exportation outside of the sole source  
23 aquifer.

24 HEARING OFFICER RENAUD: All right. Thank you.  
25 Any further questions?

1 MS. FOLEY GANNON: Not from applicant.

2 HEARING OFFICER RENAUD: All right.

3 Let's see.

4 MR. SILVER: Could I ask --

5 HEARING OFFICER RENAUD: Mr. Silver, sure.

6 MR. SILVER: With regard to the issue of  
7 exportation, why -- what is the usual rationale with  
8 regard to a prohibition on exportation from one aquifer  
9 site to another?

10 MR. CAMPBELL: Because this is a sole source  
11 aquifer with 50 percent of its water being used for  
12 domestic purposes. I mean, it has been designated by the  
13 EPA as an overdraft, and so abstractions from it into  
14 another aquifer could have a potential impact on that.

15 MR. SILVER: To preserve and maximize essentially  
16 that source --

17 MR. CAMPBELL: Any potential return back to that  
18 aquifer from the water that was abstracted from it.

19 MR. SILVER: Thank you.

20 HEARING OFFICER RENAUD: All right.

21 Ms. Miles, do you have another witness?

22 MS. MILES: Not regarding water supply.

23 HEARING OFFICER RENAUD: All right. So where  
24 does that leave us?

25 Yes, it looks like, Mr. Budlong, you would be the

1 next in line here. Do you have a witness to call on water  
2 supply?

3 MR. SILVER: Yes, Edie Harmon, who is down in  
4 El Centro.

5 HEARING OFFICER RENAUD: All right. Bear in mind  
6 we have to stop at 5:30 to hear public comment. Would you  
7 like to start? Do you think you could complete it between  
8 now and 5:30?

9 MR. SILVER: I'm not confident that that would be  
10 possible. It may be. We can start.

11 HEARING OFFICER RENAUD: I guess we'll just  
12 start. Okay.

13 I think we need to swear the witness.

14 MR. SILVER: I think she was sworn in last time,  
15 because she did testify with regard to the well  
16 registration permit.

17 HEARING OFFICER RENAUD: We've decided those are  
18 too old so we're just starting over.

19 (Ms. Harmon was sworn.)

20 THE REPORTER: Could you please state and spell  
21 your name for the record, please.

22 MS. HARMON: My name is Edith Harmon, E-d-i-t-h  
23 H-a-r-m-o-n.

24 THE REPORTER: Thank you.

25 ///

## 1 DIRECT EXAMINATION

2 MR. SILVER: So, Mrs. Harmon, you have prepared  
3 several pieces of testimony with regard to this hearing.  
4 If I'm not mistaken, you tendered a document, opening  
5 affirmative testimony on May 10th, 2010; is that correct?

6 MS. HARMON: Yes.

7 MR. SILVER: You tendered also on May 17th, 2010,  
8 testimony on alternative water supply?

9 MS. HARMON: Yes.

10 MR. SILVER: And you also tendered testimony on  
11 alternative water supply by way of rebuttal testimony  
12 or -- on July 21st, 2010; is that correct?

13 MS. HARMON: Yes.

14 MR. SILVER: And you have also tendered in  
15 connection with these three pieces of testimony, I  
16 believe, exhibits -- I may need some help here from  
17 Mr. Budlong to separate out -- I think Mrs. Harmon's  
18 exhibits started --

19 MS. HARMON: I think it's 515 to 599A.

20 MR. SILVER: Okay. 515 to 5- -- I have 515 to  
21 591.

22 MS. HARMON: I had submitted some more last  
23 night, if that's okay.

24 MR. SILVER: The hearing officer has indicated  
25 that that's not okay. I think we'll tender the exhibits

1 that have heretofore been submitted. So I think that's  
2 through 591.

3 Mr. Budlong, are you there?

4 MR. BUDLONG: Yeah, I am here.

5 Yeah, it does go through 591. I have the ones  
6 that Edie put in last night, and I have not tendered them  
7 yet.

8 HEARING OFFICER RENAUD: Are all of these about  
9 water quality?

10 MR. SILVER: These generally --

11 HEARING OFFICER RENAUD: I'm sorry, water supply?

12 MR. SILVER: They're in support of her testimony.  
13 They concern -- yes, they concern water supply and to some  
14 extent water quality.

15 MS. HARMON: And may I add Exhibits 599 and 599A  
16 are graphs, a map and two graphs of USGS groundwater  
17 monitoring data that indicate the decline in static water  
18 level and in feet above mean sea level from the northeast  
19 to the southwest and then the west to the east, and it's a  
20 very significant decline.

21 HEARING OFFICER RENAUD: We're not -- excuse me,  
22 Ms. Harmon, the committee isn't interested in a massive  
23 submission of documents, some of which aren't about water  
24 supply. I'm looking, just, for example, at 533, which is  
25 a paper called "How to Increase Renewable Energy

1 Production on Big Buildings and Other Local Spaces";  
2 obviously not about water supply. We're going to need  
3 some limits on this to documents that are in support of  
4 your water supply testimony.

5 Counsel, can you help out?

6 MR. SILVER: Well, I'm not aware of any  
7 objections that have been submitted to any of these  
8 exhibits. I was going to move her testimony into evidence  
9 after she avers that she prepared -- she prepared this  
10 testimony.

11 HEARING OFFICER RENAUD: I don't think she  
12 prepared that document I just referred to.

13 MR. SILVER: No, I'm sorry, I'm referring to the  
14 three testimonial statements that she made.

15 HEARING OFFICER RENAUD: All right. If we could  
16 get exhibit numbers for those, we'll look at those.

17 MR. SILVER: All right. Well, the three  
18 documents, I think the latest was Exhibit 591, the  
19 May 17th, 2010, statement --

20 MS. HARMON: Is 567.

21 MR. SILVER: Thank you.

22 And the May 10th opening affirmative testimony.

23 MS. HARMON: Was 566.

24 MR. SILVER: So at this point I would like to --  
25 and you, Mrs. Harmon, prepared these documents; is that

1 correct?

2 MS. HARMON: Yes, I did.

3 MR. SILVER: I'd like to move those into evidence  
4 at this point in time as the testimony of Edie Harmon with  
5 respect to water supply and quality.

6 HEARING OFFICER RENAUD: All right.

7 Is there any objection to the admission of 566,  
8 67 and 91?

9 MS. FOLEY GANNON: Applicant has no objection.

10 HEARING OFFICER RENAUD: All right.

11 MS. HOLMES: No objection.

12 HEARING OFFICER RENAUD: Those will be admitted.

13 Thank you.

14 (Intervenor Budlong's Exhibits 566, 567, and 591  
15 were received into evidence.)

16 HEARING OFFICER RENAUD: You can proceed with  
17 your questioning.

18 MR. SILVER: Well, I'm not sure where we are with  
19 regards to the exhibits. I'm sort of at a loss here too.  
20 I mean, there are, admittedly, many of them she has cited  
21 these. Most of them are from documents -- for example,  
22 some are planning documents from the county, others are  
23 USGS documents, and there are a number of documents from  
24 the U.S. Gypsum EIR. As I say, there haven't been any  
25 objections. And I would propose that they be moved into

1 evidence for, you know, what they are at this point in  
2 time. They have supported the points that she's made in  
3 her testimony.

4 HEARING OFFICER RENAUD: We're really just trying  
5 to limit it to water supply testimony, and I think you've  
6 indicated that those three are for water supply.

7 MR. SILVER: Well, those are her testimonial  
8 statements. All the other documents are essentially cited  
9 there. I could move that all the documents be admitted  
10 into evidence except those that basically have no bearing  
11 on water supply.

12 HEARING OFFICER RENAUD: Okay. Here's what we'll  
13 do. You're indicating that 566, 67 and 91 contain  
14 specific references to other documents.

15 MR. SILVER: To the documents which she has --  
16 yes, to the documents that are listed in this 500 series  
17 list.

18 HEARING OFFICER RENAUD: All right. So what will  
19 be admitted is 566, 567, 591, and any documents that have  
20 been placed in the record and are referred to therein.  
21 That make sense?

22 MS. FOLEY GANNON: No objection.

23 MR. SILVER: I'm not sure what you mean by then  
24 are placed in the record.

25 HEARING OFFICER RENAUD: Well, that have been

1 submitted --

2 MR. SILVER: In connection with the testimony and  
3 referenced in the testimony.

4 HEARING OFFICER RENAUD: Yes.

5 MR. SILVER: Yes, that would be acceptable.

6 HEARING OFFICER RENAUD: That would be the order.

7 MR. SILVER: Okay. So the motion has been made  
8 and granted to the extent you just indicated. The  
9 exhibits are in evidence then except those that are not  
10 related to her testimony --

11 HEARING OFFICER RENAUD: The ones that are  
12 referred to in the testimony specifically are in evidence.

13 All right. Now, you have some questions?

14 MR. SILVER: Yes.

15 So, Mrs. Harmon, I know it's been a long day,  
16 there's been a lot of testimony already which I think  
17 deals with many of the points which you made. I'd like to  
18 confine your testimony now to just a few points in which  
19 you may wish to elaborate.

20 It's been stated that residents of Painted Gorge  
21 and West Texas do get water trucked from the Boyer well.  
22 Do you have knowledge based on your testimony concerning  
23 how many people live in those places and why they get  
24 water from the Boyer well?

25 MS. HARMON: I do not know how many people live

1 there, how many are permanent or how many are temporary.  
2 But the county in all the documents on environmental  
3 review, whether it was U.S. Gypsum or any other project in  
4 the Ocotillo Groundwater Basin, has already referred to  
5 the residents of West Texas and Painted Gorge as getting  
6 their water from the Westwind Water Company, which is now  
7 the Boyer well, and it's because the water in -- the  
8 groundwater in West Texas and Painted Gorge is  
9 non-potable. I mean, there is water there, but it's not  
10 potable for drinking and some of the wells have really  
11 highly saline water. And the table that I submitted,  
12 Exhibit --

13 HEARING OFFICER RENAUD: Ms. Harmon, please, you  
14 were asked a very limited question, and would you please  
15 limit your answers to the question that was asked. We're  
16 on a limited time budget here and we're trying to keep  
17 things clean. So answer the questions that you were asked  
18 and don't expound or elaborate until you're asked to.

19 MR. SILVER: I'll try to refine it.

20 Do you recall whether or not there's a table in  
21 the Bookman Edmonston study which references populations  
22 or estimates populations for 2010 for Painted Gorge?

23 MS. HARMON: Yes, there is. In exhibit, I think  
24 it was 592 that I submitted, it shows -- it's from the  
25 Bookman Edmonston study 2004, and Table 4.1 on page 4.1

1 talks about land use and mentions West Texas, and then on  
2 page 4.4 there's population and applied water use and  
3 projections of how much water was used in the past and how  
4 much in the future for these areas. So my information and  
5 apparently the information from the county is coming from  
6 the Bookman Edmonston study.

7 And the assistant planning director told me that  
8 the county believed that all the people in West Texas and  
9 Painted Gorge relied on the water from that well.

10 MR. SILVER: And I take it -- you did cite in  
11 your testimony the 2004 appendix to the 2006 U.S. Gypsum  
12 DEIR, which suggests that residents in those areas might  
13 be using or hauling 60 gallons a day per person. Did you  
14 reference that document?

15 MS. HARMON: Yes.

16 MR. SILVER: And did you make a calculation that  
17 using that figure contained in the U.S. Gypsum DEIR/S that  
18 the total usage in Painted Gorge could be as much as 4.23  
19 acre feet per year?

20 MS. HARMON: I don't recall whether I made that  
21 calculation, but I think that's in the document.

22 MR. SILVER: In your testimony, okay.

23 MS. HARMON: It's in the Bookman Edmonston study,  
24 in fact, for Painted Gorge. It's on page 4.4, it would  
25 be -- there would be estimating a total of 4.3 acre feet

1 for the year 2010 for Painted Gorge and West Texas.

2 MR. SILVER: All right. Just one or two other  
3 questions relating to other projects.

4 We've had some testimony concerning -- from staff  
5 concerning whether or not the water for Wind Zero was  
6 considered. Could you be as specific as to what stage at  
7 this point in time the Wind Zero project is in terms of  
8 its proceeding through the county?

9 MS. HARMON: The Final EIR for Wind Zero project  
10 came out. There is a hearing before the Imperial County  
11 Planning Commission scheduled for August 11th, and a  
12 hearing before the Imperial County Board of Supervisors  
13 scheduled for September 14th. And the planning department  
14 mailed notices to all property owners within a half mile  
15 of the project. And I think they said they sent out a  
16 hundred notices.

17 MR. SILVER: And does that project FEIR or CWSP  
18 FEIR reference possible use of 65 acre feet per year use  
19 of groundwater for the project?

20 MS. HARMON: Yes, it does.

21 MR. SILVER: You also have indicated in your  
22 testimony with regard to alternative water supply for the  
23 project two possibilities. IID, west side main canal, and  
24 the alternative -- also another alternative, Centinela  
25 State Prison to the north. Could you indicate briefly for

1 the hearing officer the nature of those projects as  
2 possible alternatives?

3 MS. HARMON: For Centinela State Prison, I've  
4 tried to get information. The prison has an inmate  
5 population of over 5,000 and has over a thousand  
6 employees, according to information on Wikipedia. I don't  
7 know the total amount of water that they are using. My  
8 understanding from IID staff is that the city of Imperial  
9 annexed Centinela State Prison and that the prison is  
10 getting water from the City of Imperial.

11 Nobody yet has been able to answer my questions  
12 as to what happens with their wastewater, how much it is  
13 and how it's disposed of. I've looked on Google Earth,  
14 and I'm not sure whether -- it looks like there's ponds on  
15 there -- I think it sort of looks blue-green, so there may  
16 be some evaporation ponds or settling ponds for sewage.  
17 So I have no idea.

18 And then I raised the question of water from  
19 Imperial Irrigation District, because in 2006 IID had  
20 signed an agreement to provide up to a thousand acre feet  
21 a year to the Plaster City factory from a pipeline from  
22 the west side main canal. And that was approved -- I  
23 mean, a right of way to extend the IID boundaries was  
24 approved by Congress, I believe, in 1981 in an attempt to  
25 stop the export of groundwater for industrial purposes.

1 The status of that right now is that we're still waiting  
2 for a biological opinion for that water source.

3 MR. SILVER: For purposes of serving U.S. Gypsum,  
4 IID had to change its service boundaries; is that correct?

5 MS. HARMON: That's correct.

6 MR. SILVER: And do you see any impediment to  
7 doing that with regard to providing water to this project?

8 MS. HARMON: I don't know what the process is.  
9 When I've talked to IID, they would have to file -- they  
10 would have to go through the same process. I think it was  
11 rather quick on the U.S. Gypsum one because there were  
12 pressures for development. There were other industrial  
13 purposes. And so I think that the boundary was extended  
14 way back then. But also the demands for water in 1981  
15 were not the same as the demands today, so I'm -- you  
16 know, it was just a question that needed to be asked  
17 because there is going to be available Colorado River  
18 water for Plaster City.

19 MR. SILVER: I have no other questions, and the  
20 witness is submitted for cross-examination.

21 HEARING OFFICER RENAUD: Cross by applicant?

22 MS. FOLEY GANNON: No questions. Thank you.

23 HEARING OFFICER RENAUD: All right. Staff?

24 MS. HOLMES: No questions.

25 HEARING OFFICER RENAUD: Let's see. CURE? Any

1 questions?

2 MS. MILES: No questions.

3 HEARING OFFICER RENAUD: CNPS?

4 MR. BELTRAN: No questions.

5 HEARING OFFICER RENAUD: All right. Thank you.

6 Any other witnesses for Mr. Budlong?

7 MR. SILVER: No, not with respect to water.

8 HEARING OFFICER RENAUD: You know, I guess I have  
9 a question, but I'm not sure if it's for you Mr. Silver or  
10 for the witness, but I'm going to ask it.

11 You referred in one of your questions,  
12 Mr. Silver, to the Painted Gorge and West Texas, people  
13 getting water trucked from the Boyer well. What does  
14 "trucked" mean? Is that people picking it up in their  
15 pickup trucks, or is it tanker trucks delivering it or  
16 what?

17 MR. SILVER: I think Mrs. Harmon can answer that  
18 question.

19 MS. HARMON: I believe what I've seen and other  
20 residents have seen is pickup trucks with containers in  
21 the back of the pickup truck and water being transported  
22 that way. I think it was last week I saw a pickup truck  
23 leaving the property with a very large plastic container  
24 in the back that looked like water in it.

25 HEARING OFFICER RENAUD: All right. Thank you

1 very much. That clarifies my questions. I appreciate  
2 that.

3 Okay. I guess we're done with Edie Harmon for  
4 this topic, correct?

5 MR. SILVER: Yes.

6 HEARING OFFICER RENAUD: Thank you for  
7 testifying.

8 Well, I think that's probably a good point to  
9 break. Public comment is scheduled to start at 5:30, and  
10 we like to be on time for that as members of the public  
11 may have planned their day around getting to our  
12 proceeding in time to make their comments.

13 I know Public Advisor Jennifer Jennings is down  
14 in El Centro and will be managing public comment from that  
15 end. And we'll manage it from this end.

16 If there are members of the public present who  
17 wish to comment, out on the table by the front door of  
18 this room you'll see blue cards. You could fill one of  
19 those out and bring it to me.

20 If there are members of the public on the  
21 telephone, we'll get to you shortly.

22 COMMISSIONER BYRON: In fact, Ms. Jennings, this  
23 is Jeff Byron, can I ask if you can give us a sense of how  
24 many members of the public you have there that wish to  
25 speak this evening?

1 MS. JENNINGS: There are five at present.

2 COMMISSIONER BYRON: All right. I think from our  
3 clock we're about five minutes away from 5:30. Do you  
4 have a sense also if you expect other people to arrive at  
5 5:30 this evening there?

6 MS. HARMON: I have a feeling that there may be  
7 some people that expressed an interest to me, and I sent a  
8 reminder to them --

9 COMMISSIONER BYRON: Is this Ms. Jennings?

10 MS. HARMON: Oh, wait, this is Ms. Harmon  
11 speaking.

12 COMMISSIONER BYRON: Okay. Thank you,  
13 Ms. Harmon. We'll assume that there will be other folks  
14 coming.

15 You want to break for five minutes and then start  
16 at 5:30?

17 MS. HOLMES: Could I make just one comment to the  
18 committee. I'm assuming you're planning to continue after  
19 public comment. I wanted to make it clear if I didn't  
20 this morning that staff's witness on sedimentation and  
21 erosion is not available tomorrow, so we do need to get  
22 through that testimony tonight.

23 HEARING OFFICER RENAUD: Well, I think we can do  
24 that. We may lose a commissioner during that, but I think  
25 since we don't have a witness available, we'll go ahead.

1 MS. HOLMES: Thank you.

2 HEARING OFFICER RENAUD: Five minutes, we'll see  
3 you back.

4 Thanks.

5 (Recess.)

6 HEARING OFFICER RENAUD: Here at the Imperial  
7 Valley Solar Evidentiary Hearing, July 26th, 2010. We  
8 have forums for public comment here with us in Sacramento  
9 via our telephone and WebEx connections and at a cite in  
10 El Centro, California. And I understand we have  
11 commenters in El Centro, we have one commenter who  
12 submitted a blue card here in Sacramento, and we may have  
13 commenters on the phone.

14 And in no particular order, I think I'll just go  
15 ahead and call Daniel Curtin, who is here in Sacramento,  
16 to give his public comment.

17 MR. CURTIN: Mr. Chairman, any particular  
18 microphone? There's a little one --

19 HEARING OFFICER RENAUD: The tall one that you  
20 were just pointing at, make sure that's turned on.

21 MR. CURTIN: I'm assuming green means on?

22 HEARING OFFICER RENAUD: Yes.

23 MR. CURTIN: Okay. Thank you very much for the  
24 opportunity, Mr. Chairman and Commissioners.

25 Let me get comfortable here so I don't hit my

1 knee.

2           My name is Danny Curtin. I'm the director of the  
3 California Conference of Carpenters. I've come to this  
4 hearing for the public testimony portion to indicate on  
5 behalf of the carpenters' union, and I distributed a  
6 letter at an earlier hearing and I have copies of a  
7 similar letter for the two commissioners which I'd like to  
8 give you afterwards, but we want to indicate our support,  
9 the carpenters' union for this particular project. And in  
10 general we want to encourage the renewable energy industry  
11 in its efforts to build in California.

12           We have a tremendous respect for the process,  
13 having been to three hearings. It's very, very detailed,  
14 very meticulous, very complex. And we appreciate the due  
15 diligence that you apply to this process. It's important,  
16 of course, but it's particularly important now because we  
17 think this issue has now taken on global significance.  
18 What may appear and did appear and still appears as a  
19 ministerial function, so to speak, is absolutely critical  
20 on a large scale perspective.

21           We're in the midst of a virtual energy  
22 revolution. We are moving from fossil fuel to renewables.  
23 There's still plenty of debate, there's still plenty of  
24 hair pulling and teeth gnashing over it, as you'll see on  
25 the ballot in November for those of you who are not from

1 California, but it's absolutely critical, and it's  
2 absolutely urgent, because of the global warming issues,  
3 the greenhouse gas issues, and also the international  
4 politics that associate with renewable energy.

5           But just as importantly from our perspective is  
6 it couldn't come at a better time for those of us who work  
7 in the construction industry for a living. This is the  
8 worst downturn in California and this nation, I believe,  
9 since the Great Depression. We're seeing over  
10 12-and-a-half percent or 12-percent unemployment in  
11 California for almost four months now, maybe five months,  
12 or at least four. In the construction trades we're 25- to  
13 30-percent unemployed. The communities that will be  
14 around where these projects are located are in desperate  
15 need of the employment that some of them will see if  
16 they're sited.

17           So we're here to encourage you to site these  
18 projects as quickly as you possibly can with all the due  
19 diligence that you must apply statutorily and otherwise.

20           But in that context, we also want to make it  
21 clear that we are particularly annoyed, and I am  
22 particularly annoyed and frustrated with the role that the  
23 intervention of the California Unions for Reliability  
24 Energy plays in these hearings.

25           It's a critical issue that you're dealing with,

1 and what we find is that their role is constantly  
2 obstructionist, and we believe it's for one purpose and  
3 one purpose only, and that is to extract -- and I'm glad  
4 you're here so you can perhaps comment if I wish -- it's  
5 to extract the contract from the applicants or the  
6 contractors that the applicants hire.

7           Through the use of this process, which is  
8 essentially an environmental review process, we believe  
9 that they are abusing this process. And we want to make  
10 it clear once again to members of the commission, we think  
11 that they're here for one reason, which is to extract or  
12 shoehorn this company, this industry into a project labor  
13 agreement that is not only costly and restrictive but  
14 inappropriate under these circumstances. To use the  
15 environmental issues to extract this is really shameful.

16           On top of that, and I'm not positive about this,  
17 we'd like you to take a look perhaps, if you have the  
18 authority, at some of these contracts. We believe that  
19 they actually get these companies to sign these companies  
20 through this process and then get the privilege of paying  
21 for the intervention that they are being subjected to, the  
22 abuse of the system.

23           So we believe that this shameful practice needs  
24 to stop. It's obvious because, I've been here twice, one  
25 day after CURE got a project labor agreement, all of their

1 biological ecological environmental issues seemed to be  
2 resolved at the same time. So anybody who can put those  
3 two pieces together, it seems to be a commonly known or at  
4 least suspected connection.

5           We're not building strip malls here. These are  
6 not gas stations. These kind of labor tactics, whether  
7 they are tried and true, are really inappropriate in this  
8 context. This is not a strip mall, a gas station, or  
9 anything like that. This is a revolution, energy  
10 revolution that is so desperately needed, not just from  
11 the planet's point of view, let's be blunt about it,  
12 everybody in the process. And we think this is an abuse.

13           We'd like you to make it clear that all of the  
14 issues that you're dealing with here, please be  
15 meticulous, resolve these issues and move forward and site  
16 these projects in spite of CURE's intervention. We really  
17 need to do that once or twice, and we can convince people  
18 that you meet the rigorous standards that this commission  
19 sets, you will be sited, whether you have a project labor  
20 agreement or not. That's what I have to say.

21           Thank you very much.

22           HEARING OFFICER RENAUD: Okay. Thank you for  
23 your comment.

24           COMMISSIONER EGGERT: Thank you very much,  
25 Mr. Curtin. Is it Curtin? And I appreciate your

1 comments.

2 I think I share some of your perspective with  
3 respect to the importance of achieving our energy and  
4 environmental goals; and, yeah, you're right, here in  
5 California in particular, we are sort of at the potential  
6 transition away from fossil fuels towards renewables. I  
7 think there's tremendous opportunity, there's significant  
8 challenge. And I think, you know, we're all sort of part  
9 of this very exciting time. And I, you know, appreciate  
10 your organization's participation in that transition.

11 I would also say that my own personal experience,  
12 at least as far as that CURE has brought some value to  
13 this process. I think they do bring, oftentimes,  
14 testimony and expert witnesses that do provide additional  
15 insights, provide additional value in considering  
16 different issues associated with the CEQA process.

17 And so I think we do have a very open and  
18 transparent process, it does allow for anybody who has  
19 sort of standing to come in and participate, but, and  
20 again, I would also invite your organization as well, even  
21 in support of projects. Again, I really appreciate your  
22 coming forward and providing that perspective.

23 But I do think it is also very valuable to have  
24 participation of organizations like CURE.

25 MR. CURTIN: If I may, Mr. Chairman.

1           In spite of the charge intervention that has been  
2 dealt here at this hearing, we believe it's their right to  
3 do that. We have no question about that. And in some  
4 cases it may actually be helpful.

5           We want you to question the motivations, because  
6 from my perspective, and many, their motivation is very,  
7 very important here. And if they feel like they can cause  
8 delay when a delay is really detrimental to the process,  
9 I'm not that concerned with the issues they're raising any  
10 longer. There are other ways to hear about those issues.

11           I think the staff at this organization is  
12 unbelievable considering the situation they're under at  
13 state employment level, they are very thorough, and I am  
14 also very impressed with the commissioners and the  
15 chairman and those who run these meetings. There's very,  
16 very few issues that go unresolved or at least unlooked  
17 at. And what we wanted to do was lift the veil on the  
18 motivation behind one of the intervenors here because we  
19 think it's thoroughly inappropriate, particularly  
20 considering renewable energy.

21           Like I said, if it was just a normal little  
22 construction project, big deal, who cares, somebody makes  
23 a little more money, somebody makes a little less money.  
24 This is way too important for that.

25           Thank you.

1           COMMISSIONER BYRON: Mr. Curtin, thank you for  
2 being here, very much appreciate it.

3           We don't look into the motivation behind the  
4 reason our intervenors put the time and effort into the  
5 project that they do; but, again, I do appreciate your  
6 comments.

7           I think it would also be appropriate if Ms. Miles  
8 wanted to respond at this point, although you're under no  
9 expectation, Ms. Miles.

10          MS. MILES: Well, I would like to respond in  
11 particular to one accusation regarding just biological  
12 impacts going away, a reference you made relating to a  
13 PLA. I am not the attorney representing CURE in that  
14 case, so I can't speak about intimate details, but I can  
15 tell you that there was a substantial biological component  
16 to the decision to not intervene; in fact, there was a  
17 settlement that included mitigation to our biological  
18 concerns.

19          And we do not participate, you know, bringing  
20 irrelevant information; we are, you know, genuinely  
21 looking to make projects better so that we can have future  
22 potential for employment, because when there are projects  
23 that are permitted that are not well-designed, then it  
24 actually can create a lot of problems for community  
25 members so that they ask for no development in the future.

1           And there have been a lot of projects that have  
2 been improved, I believe, at this commission as a result  
3 of CURE's participation.

4           MR. CURTIN: Ms. Miles, you do a wonderful job, I  
5 must say, but it's odd to see the connection between the  
6 contract labor agreement and an objection on the basis of  
7 environmental grounds. I'm not saying you don't improve  
8 the project, you very well may, but at this point in time,  
9 some of these projects need to be sited and on the ground  
10 by the end of the year. This ARRA funding does all sorts  
11 of things of that area. You can improve the project to  
12 death or love it to death, which some people do here, and,  
13 you know, that's the point we're raising.

14           HEARING OFFICER RENAUD: Okay. Thank you.

15           This is public comment. We do have other people  
16 waiting, so I'm going to ask that we move on.

17           Ms. Jennings, you're down in El Centro. Do you  
18 have some commenters for us?

19           MS. JENNINGS: Yes. We'll start with the first  
20 commenter.

21           MS. HILL: Yes, I am Barbara Hill, that's  
22 H-i-l-l. I live in Nomirage, Ocotillo, California, and  
23 I'm going to be testifying on what I know personally.

24           Our well has dropped over 10 feet. Marty up the  
25 street from me, which he is a well driller, has dropped

1 13 feet. Sylvia down -- Gobel, down two blocks down the  
2 street from me, her well went dry. They had to redrill  
3 it. Tom Walker lives one block up from me; his well went  
4 dry. He had to redrill his well. Now, this is all in a  
5 proximity of approximate -- a mile and a half from your  
6 source well that you will be drawing from.

7 I'm also across the street from Wind Zero's  
8 project. From the solar panels, I'm approximately nine  
9 miles.

10 I'm also a construction worker; would you believe  
11 it? I was a water truck driver. I know exactly how much  
12 water it will take. You will have to have at least two  
13 water tankers, and that's running about ten hours a day.  
14 You're dropping two loads about every 25 minutes. The  
15 figures do not add up.

16 U.S.G. uses 85 cubic -- 85 acre feet of water --  
17 85 acre feet of water. You propose 40 acre feet of water.  
18 Wind Zero wants 6 acre feet of water. And Granite wants  
19 70 acre feet of water that's been proposed.

20 This little aquifer is not one of the great  
21 lakes. We will end up going down to zero. And if we put  
22 in a deep well, you are going to get salt water, and  
23 everybody's going to lose.

24 That's just about all I have to say.

25 HEARING OFFICER RENAUD: All right. Thank you

1 for your comment.

2 Ms. Jennings, can you present the next commenter?

3 MS. WARE: I am Laurel Ware, L-a-u-r-e-l W-a-r-e.  
4 I thank you for the opportunity to speak to you.

5 The conservation and preservation of our aquifers  
6 is of prime importance to us. We are now under  
7 consideration for cumulative projects that may be a  
8 cross-purpose and detriment to this. Imperial Valley  
9 Solar Project requests 40 acre feet of water per year. I  
10 spoke to a family whose well also dried up last month, and  
11 they're concerned for their neighbors. I will read,  
12 perhaps, from this lady if I may.

13 "To whom it may concern: My well has gone  
14 dry in this last month. I now have to truck my water  
15 in. The cost of digging a deeper well is well over  
16 \$10,000, not to mention getting information or a  
17 permit and permission from the environmental lists. It  
18 is my further concern that my neighbors may have this  
19 problem since their water table has decreased  
20 significantly.

21 "With your request of such great amount to be  
22 drawn from the aquifer, I fear this will happen to  
23 many of my Nomirage residents.

24 "Sincerely, Donna Austin of Nomirage."

25 She lives near Barbara Hill as well.

1           It would be unconscionable, unconscionable to  
2 subject the residents to projects that could threaten the  
3 quality and availability of water. We need water to live.

4           A few further concerns for disruption of scenic  
5 beauty, burial sacred sites and wildlife habitat. I live  
6 here because it is so beautiful.

7           I sincerely request that you deny this project.  
8 I hear people looking for jobs and that; well, perhaps  
9 they'd like it in their backyard. I live a little further  
10 out than Barbara, approximately another few miles, and you  
11 cannot put back what is destroyed. Please do not  
12 sacrifice our town by taking away our water.

13           I thank you very much for your time.

14           HEARING OFFICER RENAUD: All right. Thank you.

15           Next commenter, Ms. Jennings, please.

16           MS. CONKLIN: My name is Diane Conklin. I'm the  
17 spokesperson of the Mussey Grade Road Alliance in Ramona,  
18 California.

19           The alliance is a grassroots community-based  
20 organization dedicated to the preservation of historic  
21 Mussey Grade and environment. As background, the alliance  
22 was an intervenor in the Sunrise Powerlink proceeding and  
23 brought the issue of fire to the CPUC. As a result, the  
24 CPUC for the first time included fire issues in the EIR  
25 EIS. Fire was deemed an unmitigable significant impact of

1 the line. As a result of the approval of the line, a  
2 southern route, the alliance continues to oppose the  
3 Sunrise -- (static on phone line).

4 The alliance is also engaged in several other  
5 CPUC proceedings at this time, including a rule-making --  
6 (static on phone line) in which --

7 HEARING OFFICER RENAUD: Hold on one second.

8 Ms. Harmon, is that you?

9 MS. JENNINGS: No, this is Jennifer Jennings, and  
10 we're getting a lot of backfeed while the mic's on.

11 HEARING OFFICER RENAUD: I'm hearing someone else  
12 talking.

13 MS. JENNINGS: No, she's with us.

14 HEARING OFFICER RENAUD: Oh, all right.

15 One person at a time please. Those of you  
16 listening in, please, please keep quiet so we can hear  
17 this speaker.

18 MS. CONKLIN: I appreciate your attention.

19 The alliance is also engaged this several other  
20 CPUC proceedings at this time including a rule-making  
21 proceeding in which the alliance has proposed new rules re  
22 the issue of power line ignited wildland fires.

23 From our past experience in CPUC proceeding, the  
24 alliance has learned that in large projects there are  
25 often promises made. Here in this CEC proceeding we have

1 promises made about a lot of issues; for example, promises  
2 made as to the efficacy of the Stirling technology, that  
3 is, will it work; the promise that the project's use of  
4 local water will not deplete the existing water basin; and  
5 the parallel promise that another source of water will be  
6 forthcoming soon.

7           The assurance that there are no significant wind  
8 impacts related to this project, including the continuous  
9 control of the dust of the desert after 30,000 Stirling  
10 dishes are installed, while the western area in the  
11 vicinity of this project is eyed for energy wind  
12 generation.

13           The assurance that there will be no adverse  
14 effects on this project by future earthquakes, including  
15 any disruption of generation or the chance of explosions.  
16 And this in light of the fact that recent earthquake  
17 activity in Mexico affected the area.

18           On the other side of these promises is and are  
19 the generated use of public land -- excuse me, the  
20 guaranteed use of public land to develop a project that is  
21 private and profit making. The assured use of public  
22 stimulus funds to scale up an essentially untested and  
23 unproven technology. The fact that Sempra's Sunrise  
24 Powerlink, which is connected at the hip to this project,  
25 was not affirmatively conditioned by the CPUC to carry any

1 required percentage of renewable energy.

2           While we purportedly have a buyer and a seller of  
3 electricity, we do not have a guarantee of what will  
4 actually be bought and sold or used. A potential  
5 eventuality that should SDG&E not actively use electricity  
6 generated by this project, the investors in Stirling could  
7 conceivably recover lost revenues by payments for energy  
8 not taken. The certainty that overriding considerations  
9 of environmental concerns will be forthcoming.

10           The basic fact that buying -- going in this  
11 energy direction, massive Stirling dish technology with  
12 its massive environmental impacts also has other not so  
13 obvious effects which are generally ignored such as, the  
14 tethering of the rate payer to investor-owned industrial  
15 projects that serve the privately-owned utility industry  
16 and private energy suppliers at the expense of energy  
17 reliability and sustainability for the future.

18           For example, think of rooftop solar installation.  
19 All over the county of San Diego, SDG&E's service  
20 territory, versus a two-plus billion dollar transmission  
21 line, and an approximately two billion dollars for  
22 Stirling dishes. Ask yourself which you think will be  
23 more viable in the decades to come. As rooftop solar  
24 technology advances, can you imagine these Stirling dishes  
25 serving the rate payers and public better than the

1 electricity they could generate for themselves on their  
2 own property and without the massive impact this project  
3 will also deliver. This local generation, direct and  
4 combined with conventional technology is the obvious  
5 choice for the future.

6 Another effect not discussed so readily is the  
7 mutual support between the Sunrise Powerlink and the  
8 Stirling project. From the beginning, the alliance has  
9 been concerned with the interconnection between those two  
10 projects, especially the relevance -- excuse me, the  
11 reliance of SDG&E on Stirling at the CPUC and the reliance  
12 by Stirling on SDG&E's purchase of their power at the CEC.  
13 This is a exercise in mutual back-scratching.

14 But the most serious problem of all is whether  
15 this 100-year-old technology, not used very often in the  
16 past century, will actually work. The 2007 PUC testimony  
17 of expert Dr. Barry Butler, former SAIC, science  
18 applications international corporation, a competitor of  
19 Stirling SES, along with his cross-examination gives us  
20 another picture, to wit: One, that the Stirling dish  
21 technology is not cost competitive with conventional power  
22 generation such as wind and solar at this time. Two,  
23 major reliability problems exist with these dishes. On  
24 average once every 40 hours a problem occurred which  
25 required shutdown and maintenance, which means that a

1 great deal of time and effort and money must be spent on  
2 maintenance. Three, Dish Stirling is a pre-commercial  
3 technology that hold promise, but, quote, "there is no  
4 possible way," unquote, Dish Stirling solar can move from  
5 high-cost prototype models to large-scale production now.  
6 And four, solar concentrating photovoltaics don't have any  
7 moving parts, they just sit there and look at the sun.

8           With bad federal regulation in front of us all in  
9 the form of BP and the gulf oil disaster, the alliance  
10 respectfully requests that the CEC exercise its best and  
11 highest judgment with respect to this application, which  
12 the alliance believes should be denied and requests that  
13 you do so.

14           Thank you for this opportunity to speak.

15           HEARING OFFICER RENAUD: All right. Thank you.

16           Do we have another commenter?

17           MS. JENNINGS: Yes.

18           MS. TISDALE: This is Donna Tisdale,  
19 T-i-s-d-a-l-e. I reside in Boulevard, California, but I  
20 am a property owner in Imperial Valley.

21           I'm speaking for myself as an individual on  
22 behalf also of my non-profit group called Back Country  
23 Against Dumps.

24           First of all, I want to request the commissioners  
25 reject the applicant's and staff's request for overrides.

1 It is unconscionable to cut corners to meet an arbitrary  
2 deadline for this project. I would also like to mention  
3 that the Imperial Valley Solar Project is connected to the  
4 Sunrise Powerlink, and the PUC still has an outstanding  
5 decision on that final modification report and whether or  
6 not to reopen the CEQA-NEPA review process for that  
7 project.

8           Here's a direct quote. It says, "An agency  
9 memorandum will be prepared by the PUC and BLM to document  
10 the changes in the final project modification report  
11 document to determine whether additional CEQA NEPA review  
12 is required." That is still unresolved.

13           On the access roads and the air quality and all  
14 the grading that's going to be done for this project, I --  
15 I have family members who live here to suffer from asthma,  
16 and I strongly disagree with the conclusions from certain  
17 people that that's not going to be a significant impact.  
18 When you include the destruction of the other desert  
19 facilities for wind energy and solar, the impacts are --  
20 and you add in the off-road vehicle recreation adjacent,  
21 the impacts are significant.

22           Hydrology soils and water on page EF-34 talks  
23 about significant cumulative impacts to water; Ocotillo,  
24 Coyote Wells, sole source aquifer is rated as unmitigable.  
25 You can mitigate those by denying the use of that scare

1 desert groundwater resource.

2           That's a low-income community. This is an  
3 environmental justice issue in my opinion. They have no  
4 economically-feasible source of water, and regardless of  
5 how many residential users rely on the Boyer well, you  
6 heard testimony today of people who live in the impact  
7 zone of the Boyer well whose wells are most likely being  
8 impacted by that drawdown.

9           I was alarmed to see that the people cannot read  
10 the maps and that the project was purported to be located  
11 96 percent over the designated sole source aquifer.  
12 Evidence today proved that false.

13           I am concerned that there's never been any  
14 environmental impact report on the withdrawal of water  
15 from that well. That should be done -- that should be  
16 done as a stipulation before the CEC allows any use of  
17 this water from this low-income community.

18           I was also alarmed under the power plant  
19 reliability says, quote, "Staff cannot determine what the  
20 actual availability factor for the long-term operation of  
21 Imperial Valley Solar Project would be." I'm wondering  
22 how can the CEC or BLM even consider approving any form of  
23 this large-scale project that will withdraw public land  
24 from public use and use hundreds of millions of dollars of  
25 taxpayer funded dollars. Approval is unconscionable

1 unless and until there is a more lengthy and  
2 well-documented track record on the new SunCatcher design.

3           Transmission lines and safety. This section in  
4 the EIS 45, page 46, it says that the line for phase one  
5 and two, quote, "would traverse under disturbed desert  
6 land with no nearby residents, thereby eliminate potential  
7 for residential electric and magnetic field exposures." I  
8 don't know how you can ignore the Sunrise Powerlink,  
9 because that is the transmission line for this project.  
10 That traverses about 120 miles, it comes within several  
11 hundred feet or closer of properties in eastern San Diego  
12 County, it runs through the Cleveland National Forest, it  
13 will actually be buried under the road in front of the  
14 Alpine Elementary School and their major business  
15 district. They have major concerns there. That cannot be  
16 ignored because this project phase two totally relies on  
17 that line.

18           Visual resources. This whole thing should just  
19 be denied. But the visual resources, the public would not  
20 benefit with this project for recreation resources, the  
21 people that travel I-8 on a daily basis and enjoy the  
22 view. The pilots from the nearby naval air facility,  
23 they're going to have to deal with glare from this project  
24 and have to try to dodge the new wind turbines. And you  
25 also have the Homeland Security and the commercial and

1 private pilots that use this route as an air travel route.

2 Waste management. I'm concerned, I didn't see  
3 anything on there about potential stockpiling of discarded  
4 SunCatchers and SunCatcher parts. Our public lands are  
5 littered with failed projects, and there's no requirement.  
6 I understand you're talking about decommissioning, but I'm  
7 talking about during the life of the project.

8 We've got problems with Kumeyaay Wind right now.  
9 They just replaced all 75 blades. They're laying at the  
10 base of the towers. The Department of Interior will not  
11 respond to our request on what's going to happen to those  
12 and where they're going to be moved to recycle.

13 Worker safety, fire protection. We concur with  
14 the information presented by the staff rebuttal testimony  
15 July 21 regarding the potential for the hydrogen fuel  
16 explosion, conflagration that could impact I-8; but an  
17 accident of that magnitude could also impact the adjacent  
18 U.S. Gypsum wallboard factory, the Plaster City OHV park  
19 and camping area, and that could also take out the  
20 Southwest Powerlink and the proposed Sunrise Powerlink.

21 Professional firefighters have informed us that  
22 they cannot drop fire retardant on or near electrical  
23 lines, whether they are energized deenergized, and they  
24 generally do not fight a ground fire within a thousand  
25 feet of high power lines due to the potential for

1 electricity to arc to the ground through the smoke. So  
2 there may be a no-firefighting zone within the project  
3 site because of the two 500 kV power lines that transverse  
4 it.

5 I also feel that this project is inconsistent  
6 with Executive Order 12212, the non-existence and repair  
7 link in phase two relies on it. They are in violation of  
8 this order which mandates that agencies act expediently  
9 and in a manner consistent with applicable laws to  
10 increase the production, transmission of energy in a safe  
11 and environmentally-sound manner. I don't think this  
12 project or Sunrise Powerlink can comply with those.

13 Site selection criteria. The IV Solar Project is  
14 not consistent with the fifth bullet on page B.2-19 that  
15 states that the site must be located close to a CAL ISO  
16 transmission line with adequate capacity and should have  
17 an adequate water supply. And the site should have few or  
18 no environmentally-sensitive areas, particularly  
19 biological and cultural, and should allow development with  
20 minimal environmental impacts.

21 Only phase one has existing transmission  
22 capacity, and no water sources are fully vetted or  
23 approved. And the project represents significant and  
24 cumulative impacts to a variety of environmental  
25 biological and cultural resources.

1           Our rationale for elimination of distributed  
2 solar generation from page B.2-114, the elimination of a  
3 far superior way to generate renewable energy much closer  
4 to the point was eliminated because staff could not  
5 conclude that will happen, quote, "within the time frame  
6 to implement the Imperial Valley Solar Project," unquote.

7           I want to go on record that the time frame is an  
8 arbitrary fast-track date for projects that could comply  
9 with applicable rules and regulations. And here we're  
10 talking about overrides, shortcuts; it's just beyond  
11 belief.

12           So in our opinion, IV Solar and the connected  
13 Sunrise Powerlink cannot meet the required criteria.

14           Thank you very much.

15           HEARING OFFICER RENAUD: Thank you.

16           Next commenter?

17           MS. JENNINGS: Yes.

18           MS. HARMON: Edie Harmon from Ocotillo.

19           And I'm going to add some of the things that I  
20 would like to have said earlier on water. And I have  
21 forwarded to Tom Budlong, and he said he would distribute  
22 the graph that I submitted last night and I identified as  
23 Exhibit 599 and 599A.

24           With that, there is a map which shows the  
25 location of private property within the Ocotillo/Coyote

1 Wells sole source aquifer. There is a fairly large  
2 surface area in the sole source aquifer, but only 15,500  
3 acres are privately owned. All of the water that is  
4 pumped for domestic use comes from that private land. BLM  
5 is not authorizing wells to pump large quantities of water  
6 and transport it to any of the existing communities.

7 In Ocotillo there are two mutual water companies  
8 where the shareholders get water. I believe they are  
9 bound by requirements to provide water only to those who  
10 have been long-term and paying a monthly basis for the  
11 ability to use water at some point in the future.

12 In Nomirage, which is to the southeast of the  
13 Boyer well, there was originally a subdivision put in with  
14 a single well intended to provide water to all the lots,  
15 but the groundwater basin was not capable of yielding the  
16 quantity of water necessary to supply the existing lots,  
17 so all of the lots now have private domestic wells,  
18 everybody had to drill their own well.

19 The information that I got, I provided  
20 information in Exhibit 516, which I gathered from the USGS  
21 website. All of the information on water wells, depth to  
22 water, characteristic, monitoring water level and water  
23 quality is public information, it is not confidential.  
24 When I do maps and provide information, I provide the USGS  
25 well identification and where I know, because I do it for

1 local people also, I put the identity of the property  
2 owner so people can understand where certain wells are  
3 located.

4 I've drawn a transect through the figure that I  
5 provided, which shows water level from the Ocotillo area  
6 flowing to the southeast. There is about a 60-foot drop  
7 in the static water level in terms of feet above mean sea  
8 level from Ocotillo six miles to the southeast. So 60  
9 feet in six miles is a significant drop.

10 If we draw a transect across the groundwater  
11 basin from Miller's well, the western part to Coyote  
12 Wells, in 3.75 miles there's a 69-foot drop in static  
13 water level above mean sea level. And each one of these  
14 transects goes through the area with the U.S. Gypsum well,  
15 36H-1.

16 And I've shown where the -- in testimony that  
17 I've submitted I've indicated well interference and some  
18 very serious questions about the change in water quality  
19 on the first well that was on the Westwind water property,  
20 I think it was 36G-1, which was the well prior to the well  
21 that's owned by Boyer now. That well stopped being used  
22 because the salinity increased so greatly from 1951 to  
23 1975, so that well was drilled.

24 Given that location, it's not only the high  
25 fluoride levels that raise concerns, but I know from

1 seeing years ago water quality data from the Plaster City  
2 factory, I don't know how much is being pumped from each  
3 one of the U.S. Gypsum wells, but I know there has been a  
4 change in water quality at the U.S. Gypsum factory from  
5 blending. I think it's important if you're going to make  
6 determinations on a groundwater basin to know what the  
7 largest wells are pumping and what's well interference.

8           There's documented changes in water quality in  
9 Ocotillo and in the area where I live. And David Huntley,  
10 who is a groundwater geologist, at one point when I was in  
11 his office talking to him and crying, he said if I weren't  
12 crying, he would think I didn't understand enough about  
13 the groundwater basin. He told me I couldn't -- I didn't  
14 have the technical ability to understand all the modeling,  
15 but he was seeing more information than I was on  
16 degradation of water quality with increased pumping from  
17 wells.

18           The basin is very complex, and I think that  
19 there's some real concern.

20           In talking with Dr. Izbicki at USGS, it's fossil  
21 groundwater. I've asked the county repeatedly when there  
22 are mitigation measures that require additional monitoring  
23 wells to be put in, that those wells be drilled to the  
24 specifications of USGS so that for, I think it was an  
25 additional like \$2,000 we could actually date the water to

1 find out when the last significant recharge was. Some  
2 basins in southern California, it's 32,000 years ago;  
3 other basins it's 14,000 years ago. So any recharge is  
4 really insignificant, and when the water's gone, it's  
5 gone. And that's why the concerns. It's local impacts to  
6 the local community.

7           If we're not seeing changes in the portion of the  
8 groundwater basin five or ten miles away from where  
9 there's domestic use, that's, you know, not as important  
10 as what's happening where people live and the very large  
11 cone of depression.

12           I want to talk also briefly about seismic impacts  
13 and earthquakes. It was June 14th, there was a 5.7 -- at  
14 one point I say 5.9 earthquake. My house was about a half  
15 mile from the epicenter of it. The house survived, but  
16 the inside, everything is two to three feet deep in books  
17 and papers. And when I talked to the border patrol, they  
18 said that the bolts sheared off of one of the remote video  
19 surveillance towers from the concrete at the ground  
20 because the shaking was so violent.

21           I can't imagine the kinds of turmoil that cause  
22 rocks to roll down the hill so that I had to stop four  
23 times to get out of my car to even be able to get to my  
24 home.

25           Fortunately, I wasn't there when the earthquake

1 happened, but I cannot imagine what would have happened if  
2 these SunCatchers had been installed or stored on the  
3 property and there was an earthquake of even like a 5.7,  
4 5.9 or something there, because the damage that I saw is  
5 just incredible. And my understanding is that some  
6 people's homes were knocked off their foundations, that  
7 wells were damaged and water electric and sewer lines were  
8 destroyed. So I think that the -- there hasn't been  
9 adequate consideration of what might happen with the  
10 recent -- you know, a big earthquake.

11 I was shocked in -- I was in San Diego, and how  
12 strong the 5.4 in Borrego Springs felt. It sounded like  
13 the house I was in was going to lose all the windows. And  
14 that was certainly a long ways away.

15 And anyway, we're still having earthquakes; it's  
16 still a big issue.

17 There's also some really serious air quality  
18 issues. And if we disturb the surface of the ground  
19 repeatedly when there's large wind and dust storms, you  
20 can't really tell the difference from the sky and the  
21 ground, and it's people downwind that are going to feel  
22 the really significant impacts of additional particulate  
23 matter.

24 And when I was talking last week with people from  
25 farm bureau, they expressed some real concerns saying

1 that, you know, the agricultural community is getting  
2 blamed for a lot of particulate pollution in the valley  
3 because there are air quality problems here. But if we're  
4 going to talk about or consider disturbing additional  
5 thousands of acres of public land, that's additional  
6 thousands of acres that are going to have tremendous  
7 amount of wind-blown particulates.

8           And it just -- it's amazing that there are not  
9 questions about having a solar project like this, and as  
10 soon as you get off -- you go a little bit further west, I  
11 don't know whether it's feet or miles, and you suddenly  
12 have 15,000 acres of land being proposed for wind  
13 turbines. There must be something that I don't understand  
14 about some of these violent winds. I know when I look at  
15 trees, 12-inch diameter trees that end up getting twisted  
16 and breaking down, it's hard to imagine that that would be  
17 less than 35 miles an hour or that the SunCatchers could  
18 survive.

19           It doesn't seem to me to make much sense to be  
20 considering disturbing this much public land when there  
21 are currently proposals already being considered, there's  
22 notices of preparation for two photovoltaic projects on  
23 disturbed agricultural land on the west side of Imperial  
24 County. The land is not contiguous. One project was 1103  
25 acres, and the other was 903 acres. Obviously with the

1 same applicant looking at both, I question whether some of  
2 the considerations of alternatives were really serious.

3           And I think that BLM has told me that they can  
4 only look at alternatives on public lands, but that  
5 doesn't make sense. If we're talking about energy and we  
6 look at \$four billion, two billion for this project, two  
7 billion for Sunrise Powerlink, if people are concerned  
8 about jobs and energy, just imagine how many people could  
9 be put to work improving insulation in homes and putting  
10 distributed rooftop solar and doing other things; and as a  
11 result, we wouldn't have the disturbance of 6,000 acres of  
12 public lands and the losses that -- some of us went to the  
13 site, it did not look as if that site were heavily  
14 impacted by off-road vehicles. I mean, the washes were  
15 wonderful, we were finding a lot of cultural materials,  
16 and it looked great.

17           I just want you to please take serious  
18 consideration as to whether there's really any  
19 justification for basically sacrificing public lands. I  
20 mean, it hurts a lot to see so many times when  
21 economically-disadvantaged rural communities are looked at  
22 as sacrifice areas so that there can be higher levels of  
23 consumption in some remote urban area.

24           Thank you.

25           HEARING OFFICER RENAUD: Thank you.

1           Ms. Jennings, could you give me an estimate of  
2 the time length for any remaining public comment that you  
3 have --

4           MS. JENNINGS: Don't have any remaining people  
5 who would like to comment here, but I think there are on  
6 the line.

7           HEARING OFFICER RENAUD: Okay. And is there  
8 anyone on the phone who would like to comment?

9           MR. TRAFICANTE: Dennis Traficante. Can you hear  
10 me?

11          HEARING OFFICER RENAUD: Yes. Go ahead, sir,  
12 please.

13          MR. TRAFICANTE: Okay. Thank you.

14                I'm not going to try to repeat.

15                My name is Dennis Traficante, and I live in  
16 Santa Isabel, and I frequent the desert land all the time,  
17 and I'm a member of the Protect Our Community Foundation,  
18 and I've spoken to you before.

19                One of my concerns is that I wrote comments and I  
20 also appeared in El Centro. I couldn't tonight because I  
21 couldn't get out there because I am -- I have a full-time  
22 position. But I submitted comments on May 24th, and I  
23 never saw them posted on the website. And I wondered if  
24 there was any place that I could send these comments to an  
25 individual and they could acknowledge to me that they're

1 going to put them on the website as official comment.

2 HEARING OFFICER RENAUD: Well, this is  
3 Raoul Renaud. I'm the hearing officer.

4 When you submit a document, it would be docketed,  
5 but necessarily -- we don't put everything on the website.  
6 There's too much.

7 MS. JENNINGS: Hearing Officer Renaud?

8 HEARING OFFICER RENAUD: It has been docketed, as  
9 far as I know.

10 Yes.

11 MS. JENNINGS: And I did ask that it be put on  
12 the website, a link so that people could see other  
13 people's comments. So it is under the section of public  
14 comments under intervenors and others' documents.

15 HEARING OFFICER RENAUD: Okay. Well, thank you  
16 for that clarification.

17 MR. TRAFICANTE: Well, let me -- let me -- I'm  
18 going to try to do my best to not comment on things that  
19 have already been commented on so that we can all get on  
20 to bigger -- well, not bigger, but other things, other  
21 personal things.

22 First of all, I'm really concerned about  
23 distributed generation in major metropolitan areas, and  
24 I'm concerned that I've heard people say it just won't be  
25 enough. And yet the solar on my rooftop doesn't ever get

1 counted by anybody; and there's a lot of people, there's  
2 no statistics on it because I'm not one megawatt or  
3 whatever the cut-off is. And I just think it's totally  
4 unfair to dismiss the public and all their efforts to  
5 reduce their use of energy.

6 I actually, for one, I provide about 50 percent  
7 more energy than I use on my own back to the grid. And  
8 I've said it before and I'm going to continue to say it,  
9 that someone's got to pay more attention to Bill Powers'  
10 2007 Smart Energy Plan for San Diego and really give it  
11 some intelligent discussion and not just dismiss it.

12 Further, I'm concerned about, you know, 60-plus  
13 years of preservation of our environment and our public  
14 lands and our state parks, et cetera, et cetera. And  
15 we've got these fine organizations, CEQA and NEPA, and we  
16 just can't, like the gentleman carpenter that first spoke,  
17 we just can't rush something to judgment by December 31 to  
18 get stimulus money from the government for foreign  
19 corporations, which my understanding is that IV Solar is  
20 financed primarily by a foreign corporation. So I just --  
21 that doesn't make a whole lot of sense to me.

22 When I was -- went out to the May 24th meeting,  
23 my wife and I ran into a herd of about four or five big  
24 horn sheep, and when we did it, we commented on it. And I  
25 made a request that we allow sufficient time for the

1 weather to get a little bit cooler so that we could do  
2 more than the type of site viewing that there's done on  
3 that property. Because I can't believe that we could  
4 dismiss endangered big horn sheep corridors just because  
5 somebody thinks -- and I think it was on a Tuesday when  
6 that gentleman saw it -- someone thinks that there's a  
7 bunch of off-road vehicles scaring up the sheep and  
8 sending it off -- in other words, it's an isolated  
9 incident. I don't believe we've done enough to determine  
10 whether or not it is an isolated incident.

11           The one thing that the -- that I want to say, and  
12 I'm going to keep repeating as well, is that if you decide  
13 to dismiss all the comments that are being made against  
14 this project that can't even be proven to be reliable, if  
15 you continue to approve it, you must fund -- must require  
16 the owners and investors to fund a bond to restore all of  
17 that land, including footing, dishes, roads, trenching,  
18 back to the original condition. And that's going to be a  
19 bond that can't be dismissed from us by a bankruptcy.

20           As I think, Donna Tisdale I believe said, there  
21 are so many of these projects that are out there, for  
22 example, the blades on the wind project on I-8, they're  
23 still laying on the ground. There are so many of these  
24 things that are occurring to our public land, it's  
25 unconscionable that you wouldn't require a bond to do your

1 best, all of our best to restore the land to its original  
2 condition.

3 But I don't believe it should be built in any  
4 event, I don't think it's been proven technology. You  
5 don't need a Sunrise Powerlink to carry the power for at  
6 least half of it, and I think it's probably all of the  
7 power that you're talking about generating.

8 There's extensive cultural and historical  
9 resources placed -- that are there and are going to be  
10 placed at risk, including cremation and sacrifice areas.

11 So the quick deadline, I don't -- we can't -- and  
12 as I think Commissioner Byron said at one time, we're not  
13 going to rush to judgment on this, we're going to look at  
14 all the comments, and we can't be concerned about whether  
15 or not there is stimulus money, especially when it's going  
16 out of the country in most cases.

17 So please do not allow this project to continue,  
18 please consider all the comments from all the other people  
19 that are there tonight. And thank you very much for your  
20 time.

21 COMMISSIONER EGGERT: Actually, if I may -- this  
22 is Commissioner Eggert.

23 Thank you, Mr. Traficante. In Commissioner  
24 Byron's absence, I will I guess reiterate what I think you  
25 heard him say, and that is that we will be definitely

1 considering all of the evidence and weighing that evidence  
2 as we deliberate before making a decision.

3 I did also want to comment, I mean, you had  
4 mentioned the fact that we're not necessarily taking into  
5 account the actions of individuals such as yourself that  
6 are putting on rooftop solar. And as a matter of fact, we  
7 are taking those into consideration and supporting them  
8 substantially through the California Solar Initiative. We  
9 have a number of programs that are promoting the  
10 development and deployment of solar rooftop, PV solar both  
11 on residential and commercial buildings.

12 We see tremendous potential. It's a technology  
13 that we've been supporting through our Public Interest  
14 Energy Research Program. We're seeing great progress in  
15 terms of cost reductions.

16 And so we definitely are not ignoring that, we're  
17 not -- we're paying great attention, and we're looking at  
18 all of the options that we have to meet our energy and  
19 environmental goals.

20 HEARING OFFICER RENAUD: All right. Thank you  
21 for your comment, Mr. Traficante.

22 Is there anyone else on the phone who wants to  
23 make a comment? And I'm just trying to get a sense of  
24 what we need to do, what's remaining.

25 Anyone on the phone?

1 Ms. Jennings, anyone there in El Centro?

2 MS. JENNINGS: No, no one right now, but there  
3 had been people earlier who had contacted us over the  
4 phone saying they were going to make a comment, but  
5 perhaps they --

6 HEARING OFFICER RENAUD: Okay. We have people  
7 present here who are parked in a nearby garage which  
8 closes at 7:00, so I think we better take a break now to  
9 let people get out of that garage, and then we'll come  
10 back.

11 I know staff has a witness, we'll do that, and  
12 we'll check one more time for public comment.

13 So come back as soon as you can, hopefully no  
14 more than about ten minutes.

15 (Recess.)

16 HEARING OFFICER RENAUD: In addition to the staff  
17 witness, whom staff requested testify tonight because he  
18 will not be available tomorrow, applicant has requested  
19 that we put on the testimony of their witnesses Moore and  
20 Chang tonight and promised that that will not be very  
21 long.

22 We're in favor of it up here.

23 Does anybody have any objection?

24 MS. HOLMES: No objection from staff.

25 HEARING OFFICER RENAUD: Let's get that done, and

1 then we can start with bio in the morning.

2 MS. MILES: Also, CURE has a witness for  
3 sedimentation -- it's late, sorry, and so I'd like them to  
4 go on tonight too if possible because --

5 HEARING OFFICER RENAUD: We're up for it if you  
6 all are. Let's do it.

7 Applicant, you can proceed, please.

8 MS. FOLEY GANNON: Oh, absolutely.

9 We call Dr. Howard Chang and Matt Moore.

10 Can we please swear them in.

11 (Howard Chang and Matthew Moore were sworn.)

12 THE REPORTER: Please spell your names for the  
13 record.

14 MR. CHANG: Howard Chang, spelled C-h-a-n-g.

15 MR. MOORE: Matthew Moore, M-a-t-t-h-e-w  
16 M-o-o-r-e.

17 DIRECT EXAMINATION

18 MS. FOLEY GANNON: Starting, Dr. Chang, with you,  
19 are you the same person who offered testimony in these  
20 oral proceedings in May as well as rebuttal testimony  
21 submitted in July?

22 DR. CHANG: That's correct.

23 MS. FOLEY GANNON: And I will ask that  
24 Dr. Chang's testimony provided in our rebuttal testimony  
25 be marked as Exhibit 139. I'm looking at my next exhibit

1 in order. 141.

2 (Applicant's Exhibit 141 was marked for  
3 identification.)

4 MS. FOLEY GANNON: So Dr. Chang, in your previous  
5 testimony you provided an overall discussion of the  
6 assessments that you had done, so we won't go back through  
7 that. But can you provide a brief summary of what you had  
8 analyzed on the site with regard to potential impacts  
9 associated with the project?

10 DR. CHANG: I did sedimentation modeling study of  
11 three or four different washes at the site. The purpose  
12 of the study was to determine the project impact on  
13 sediment transport and also on the hydrology flow,  
14 including the velocity, the flow depth, sediment  
15 transport, and the potential stream channel changes as a  
16 result of the project.

17 In doing so, of course, we modeled the stream  
18 channels using the hydrology, established hydrology for  
19 the 10-year storm, for the 100-year storm. We used the  
20 stream channel geometry, detailed stream channel geometry,  
21 we used grain size distribution of the bed material. And  
22 we modeled the stream channel changes during such storms.  
23 And we compared all the hydraulic sediment parameters for  
24 existing condition that's the pre-project condition, with  
25 a post-project condition to determine and assess any

1 potential projects due to the proposal project.

2           We found out -- now these stream channels have  
3 moderate to low-flow velocity, even during the peak  
4 100-year storm. The velocity in the stream channel is  
5 generally lower than three feet per second. So sediment  
6 transport is not very active in the stream channels.

7           Now, what's examining is the flow depth, the flow  
8 depth in the stream channels during the peak discharge are  
9 generally lower at one foot now, with exception of some  
10 very local areas, otherwise, the flow depth is less  
11 shallow than one foot.

12           Now, we compared the sediment delivery toward the  
13 downstream properties. We wanted to make sure we do not  
14 change existing regime. We do not change existing  
15 sediment delivery toward downstream properties. We  
16 compare that, we found out that, now there's really no  
17 change in sediment delivery.

18           Now, I have to point out something. Previously  
19 there was proposed sediment debris basins. Because  
20 results of the modeling study shows the sediment debris  
21 basins would actually change the sediment delivery toward  
22 downstream, I recommended that we remove sediment basins.  
23 Now, after removing the sediment basins, we would have no  
24 impact on sediment delivery toward downstream areas.

25           The stream channel changes during a hundred-year

1 storm. For all the four washes we modeled, are very  
2 limited in magnitude, I'm talking about general scour, due  
3 to the imbalancing sediment transport. The general scour,  
4 the depth are universally less than one foot. Of course  
5 there is also local scour. We recognize the local scour  
6 at the base of the SunCatcher pedestals. That scour depth  
7 can be deeper than a foot, but that scour actually affects  
8 very small areas. The total expected area by the local  
9 scour, even during the peak discharge, is less than one  
10 percent of the surface area for the washes.

11 So basically --

12 MS. FOLEY GANNON: So, Dr. Chang, your  
13 conclusions regarding the fact that there won't be any  
14 real sedimentation impacts as a result of the project, I  
15 understand, was based on the model that you ran.

16 There has been some criticisms raised about the  
17 model, about its ability to predict, make these kind of  
18 predictions. Are you aware of any shortcomings with this  
19 model?

20 DR. CHANG: Well, I'm quite familiar with the  
21 model because I'm the developer of the Fluvial-12 model,  
22 which has been used for over 35 years. We have users  
23 throughout this country and also, in fact, in many other  
24 countries as well. The study has been -- over hundreds of  
25 studies have been made using the Fluvial model,

1 particularly in the arid west.

2           Now, we have done many studies, such studies were  
3 reviewed by many federal agencies, USGS, and RCS, Army  
4 Corps of Engineers, California State Department of Water  
5 Resources, and also counties, cities, and all the studies  
6 have been reviewed and approved by the agencies.

7           MS. FOLEY GANNON: And can you describe have  
8 there been cases in which you ran the models, you made  
9 predictions about the likely outcome, and then subsequent  
10 to the activities that you had studied you went back to  
11 calibrate it or to verify whether your results were  
12 accurate or the degree of accuracy?

13           DR. CHANG: The validity of the model, of course,  
14 depends on the calibration results. The model has been  
15 calibrated using 14 sets of field and laboratory data. In  
16 the calibration study, we simulate stream channel changes,  
17 sediment transport. We compared the simulated results  
18 with actual measurement. Now, this has been going on --  
19 we have done this for 14 -- using 14 different sets of  
20 river data.

21           MS. FOLEY GANNON: And have you run calibration  
22 tests also on ephemeral washes or on any places where they  
23 have similar types of aquatic resources that would be at  
24 issue in this project site?

25           DR. CHANG: Many studies we've made were dealing

1 with ephemeral streams. In fact, most streams in this  
2 area are ephemeral streams. We have only a major storm  
3 flow during major floods, otherwise the streambed can be  
4 totally dry for the most part of the year.

5 MS. FOLEY GANNON: And so based on the  
6 validations that you have seen in these studies for all  
7 the years, what is your level of confidence in the  
8 predictions that you have seen made with your model on  
9 this project?

10 DR. CHANG: Based on the calibration studies for  
11 a major stream, I'll give you an example in San Diego  
12 County, San Diego River, which is a major river in  
13 San Diego County, the maximum deviation for actual  
14 measurement is one foot; in other words, the accuracy's  
15 plus/minus one foot. But for such a small streams, which  
16 we calibrated based upon laboratory model, is measured in  
17 very small quantities, may be an inch or so.

18 MS. FOLEY GANNON: And so your level of  
19 confidence in these results would be described as you  
20 described them as highly, medium?

21 DR. CHANG: I have high degree of confidence in  
22 the modeling results because of extensive experiences and  
23 the tests and calibrations we've made in the past.

24 MS. FOLEY GANNON: And just to clarify them, so  
25 the final conclusion of your analysis was that

1 construction of the project as it's now proposed, would --

2 DR. CHANG: Would have no impacts, ER say  
3 insignificant impacts on sedimentation of the stream  
4 washes.

5 MS. FOLEY GANNON: Upstream and downstream?

6 DR. CHANG: In both directions. You know, we're  
7 going to place a lot of SunCatchers in the washes.

8 MS. FOLEY GANNON: And I understand you also did  
9 look at as part of your study the potential for there to  
10 be some hydromodification or changes in the intensity or  
11 timing of the runoff. Can you comment on your findings  
12 with regard to that?

13 DR. CHANG: Well, we going to have so many  
14 SunCatchers at the project site. SunCatchers should have  
15 insignificant effects on the surface water runoff. See,  
16 what determines surface water runoff is the rainfall.  
17 Rainfall is unaffected by SunCatchers. SunCatcher does  
18 not retain water. It's not a storage reservoir.  
19 SunCatcher does not change infiltration rate.

20 See, for rainfall, part of the rainfall becomes  
21 groundwater through the infiltration or recharge process,  
22 and part of the rainfall becomes surface water runoff.  
23 The entire processes are not affected by the presence of  
24 SunCatchers. So therefore, the hydrology of surface water  
25 runoff would not be impacted by the project.

1 MS. FOLEY GANNON: Would you agree those if there  
2 was -- if the project was resulting in significant  
3 creation of impermeable surfaces, that there would be a  
4 change in the runoff?

5 DR. CHANG: Well, we have done analysis on that.  
6 You see, the total -- we'll pave the roads, the surface  
7 roads would be paved. We also have other roads, dirt  
8 roads; some of the roads will have surface treatment.  
9 Now, the pavement and a surface treatment would actually  
10 reduce the permeability of the surface. The total surface  
11 area affected is about five percent of the total project  
12 area. When the permeability is reduced from the road  
13 surfaces, water will actually infiltrate in adjacent areas  
14 because infiltration rate is very high for the kind of  
15 soil we have. And also, rainfall durations are very  
16 short. The groundwater, the infiltration will never  
17 saturate the groundwater.

18 So even though we have surfaces with reduced  
19 permeability, that should not change the total amount of  
20 infiltration or groundwater recharge.

21 MS. FOLEY GANNON: Thank you.

22 I think those are all the questions for you,  
23 Dr. Chang.

24 The one thing I forgot to ask you in the  
25 beginning of your testimony, do you have any corrections

1 or additions to make to the rebuttal testimony that were  
2 submitted and is now marked as Exhibit 141?

3 DR. CHANG: I can't think of anything offhand.

4 MS. FOLEY GANNON: Thank you.

5 I will now turn to Matt Moore.

6 And are you the same Matt Moore who submitted  
7 testimony earlier in this proceedings and also  
8 participated in the oral proceedings in May?

9 MR. MOORE: Yes, I am.

10 MS. FOLEY GANNON: I understand you did not  
11 actually submit any rebuttal testimony in -- associated in  
12 preparation for this hearing; is that correct?

13 MR. MOORE: I did not submit any rebuttal  
14 testimony for this hearing.

15 MS. FOLEY GANNON: Is the c.v., the credentials  
16 that were submitted with your earlier testimony still  
17 valid?

18 MR. MOORE: Yes, they are.

19 MS. FOLEY GANNON: Thank you.

20 Have you had an opportunity to review the  
21 supplemental staff assessment?

22 MR. MOORE: Yes, I have.

23 MS. FOLEY GANNON: And I understand that you were  
24 in charge of evaluating and looking at the potential for  
25 there to be erosional impacts as a result of the project

1 construction, either during construction or during  
2 operations; is that correct?

3 MR. MOORE: That's correct.

4 MS. FOLEY GANNON: And what was your conclusion  
5 based on, the studies that you undertook on the site  
6 regarding the potential impact?

7 MR. MOORE: My conclusions, I did run a revised  
8 universal soil loss equation that is a national resources  
9 conservation service model, modeled existing soil  
10 conditions as well as proposed soil conditions with and  
11 without anticipated construction best management practices  
12 and final operational best management practices on site.

13 My conclusions were that with proper selection  
14 and implementation of construction and post-construction  
15 best management practices, that the site could be designed  
16 and operated with insignificant impacts to soil erosion  
17 from gully formation on the site.

18 MS. FOLEY GANNON: There was a question earlier  
19 today about whether in identifying best management  
20 practices that would be used on the site whether you  
21 relied on the experience at Maricopa.

22 When you were looking at the potential impacts  
23 and the best management practice maybe needed and  
24 evaluating the potential for erosion, were you considering  
25 Maricopa?

1           MR. MOORE: No, I was not. I was considering  
2 general or typical best management practices that would be  
3 employed at a construction site here in California based  
4 on my knowledge of what the state construction general  
5 permit would require during construction.

6           MS. FOLEY GANNON: So it's fair to say that your  
7 analysis and conclusions were site specific; rather than  
8 looking more at the technology, you're looking at the --  
9 the specific conditions on the site?

10          MR. MOORE: The soil conditions on the site were  
11 utilized in the models.

12          MS. FOLEY GANNON: Very good.

13                 And there have been some questions raised about  
14 the conclusiveness of the revised universal soils  
15 calculation tests that you ran.

16                 Is this a standard test or model that's used?

17          MR. MOORE: Yes, it is a standard model used to  
18 predict pre- and post-construction BMP effectiveness in  
19 California and throughout the United States.

20          MS. FOLEY GANNON: Have you used it on other  
21 projects which have been approved by the commission or by  
22 other state or local agencies?

23          MR. MOORE: Yeah. We've used it on various other  
24 construction projects within southern California.

25          MS. FOLEY GANNON: And have you then subsequently

1 been involved in the actual construction of a project?

2 MR. MOORE: Yes, I have.

3 MS. FOLEY GANNON: And have you seen that  
4 effective management -- or can effective management  
5 measures be identified for these types of projects where  
6 the test results have indicated that that's going to be  
7 possible?

8 MR. MOORE: Yeah. If the BMPs selected are  
9 properly installed and maintained, they can maintain a  
10 level of control of the erosion and sedimentation on site.

11 MS. FOLEY GANNON: And I believe that the staff  
12 did a similar calculation or evaluation of the potential  
13 for these erosional impacts to occur.

14 Do you have any comments on their assessment or  
15 on their conclusions?

16 MR. MOORE: The conclusion was, I think, a  
17 similar calculation was performed and came up with similar  
18 results to what was prepared by me.

19 MS. FOLEY GANNON: And there is a -- there was a  
20 condition, Soil and Water 7, which was revised and  
21 distributed this morning as Exhibit 138.

22 Have you had an opportunity to look at the  
23 revisions proposed to Soil and Water 7?

24 MR. MOORE: Yes. This is in response to the  
25 storm water damage monitoring response plan.

1 MS. FOLEY GANNON: And can you just summarize the  
2 nature of the changes that are being requested in this  
3 condition?

4 You can take a moment. It's been a long day.  
5 You can look at it.

6 MR. MOORE: Yeah, I have looked at it, I'm just  
7 going back through here.

8 The -- one of the items requested is that the  
9 monitoring and inspection occur before the first seasonal  
10 and after every 10-year storm event because --

11 MS. FOLEY GANNON: As proposed by the applicant  
12 or as proposed by the staff?

13 MR. MOORE: Correct, that the 10-year would be  
14 proposed by the applicant, condition of that 10-year.

15 MS. FOLEY GANNON: So in the initial condition  
16 the staff had suggested, I believe, that there be  
17 monitoring every storm?

18 MR. MOORE: Every storm event. And we had  
19 requested to change that to every -- after every 10-year  
20 storm event.

21 MS. FOLEY GANNON: In your professional judgment,  
22 would monitoring after every storm give information that  
23 would be meaningful to assessing the potential impacts or  
24 to identifying necessary measures to address them?

25 MR. MOORE: I believe that requirement to monitor

1 the entire site after every storm event would be excessive  
2 in terms of the -- due to the size of the project as well  
3 as the -- every storm event may not produce runoff on site  
4 that would lead to erosion or potential damage to  
5 SunCatchers or site facility.

6 MS. FOLEY GANNON: Do you believe that condition  
7 will be effective in mitigating potential impacts as  
8 proposed by the applicant?

9 MR. MOORE: Yes.

10 MS. FOLEY GANNON: Thank you.

11 That ends my direct testimony of my witnesses.

12 HEARING OFFICER RENAUD: Thank you.

13 Cross-examination by staff.

14 MS. HOLMES: Staff has none.

15 HEARING OFFICER RENAUD: All right.

16 CURE?

17 CROSS-EXAMINATION

18 MS. MILES: Mr. Moore, I have a few questions.

19 Do the proposed application of soil binders  
20 reduce infiltration rates and thereby increase runoff on  
21 the site?

22 MR. MOORE: There is a potential with the -- if  
23 the surface is hardened in some fashion, that it could  
24 increase the runoff rate on that surface. But as -- and  
25 I'll let Dr. Chang speak again on this, but with the

1 surrounding soils having high-infiltration capacity, the  
2 additional runoff would be allowed to infiltrate.

3 MS. MILES: Say that last sentence again. With  
4 the surrounding soils being -- what was that?

5 MR. MOORE: That the surrounding -- the soil  
6 surrounding any of the areas that would -- surfaces that  
7 may have reduced impermeability would allow -- would --  
8 that water would infiltrate prior to -- in most cases,  
9 prior to going off site.

10 MS. MILES: Okay. Have you ascertained the  
11 potential impacts to cryptobiotic crust and desert  
12 pavement from project development?

13 MR. MOORE: No. In the model we did not  
14 evaluate, in my model and the RUSLE2 model I did not  
15 evaluate the cryptobiotic soils.

16 MS. MILES: Or the desert pavement?

17 MR. MOORE: The model utilized the general soil  
18 classifications without specifically looking at areas on  
19 site that may have desert pavement.

20 MS. MILES: Would construction of over 250 miles  
21 of access roads compact the soil and completely destroy  
22 the pavement and crust affecting infiltration and runoff?

23 MR. MOORE: The construction of the roadways on  
24 site, if, you know, as Dr. Chang had indicated, would  
25 potentially increase the impermeability of the soils

1 with -- you know, but the infiltration on site would, you  
2 know, overall that the soils are adequate to allow that  
3 infiltration.

4 Now, in regards to the construction of the roads,  
5 I can't necessarily speak to the destruction of desert  
6 pavement or cryptobiotic soils, because I -- you know, we  
7 haven't, as far as I know, mapped those out on site.

8 MS. MILES: Have you calculated how much soil  
9 binders will reduce infiltration and increase runoff?

10 MR. MOORE: I have not personally made that  
11 calculation to determine the total amount of, you know,  
12 potential increase or reduction in the amount of  
13 infiltration due to the soil tackifiers.

14 MS. MILES: Have you seen that calculation made  
15 by any of your colleagues on behalf of the applicant in  
16 this proceeding?

17 MR. MOORE: I have not evaluated those.

18 MS. MILES: How did you justify your soil loss  
19 factors used in the soil erosion calculations,  
20 specifically the cover management factor used to account  
21 for the effectiveness of the proposed best management  
22 practices?

23 MR. MOORE: I utilized in my best estimate the  
24 types of -- or equivalent cover management practices that  
25 would be employed.

1 MS. MILES: And did you -- where did you get your  
2 best estimate? What did you base your best estimate upon?

3 MR. MOORE: Based upon my personal experience at  
4 construction sites in southern California.

5 MS. MILES: Please explain your rationale for  
6 using the hydrologic analysis provided by RMT which  
7 Dr. Chang identified was not representative of the actual  
8 desert hydrology when he initially reviewed the RMT study.

9 MR. MOORE: If we're speaking towards soil loss  
10 calculations, I used standard parameters for that area.

11 DR. CHANG: If I may add something to that  
12 question. Actually, I reviewed hydrology study by RMT.  
13 In fact, in two different rounds. Both rounds I made  
14 comments that, in fact, they made some important  
15 revisions. Finally, I accepted that hydrology study.

16 MS. MILES: As you can tell, I've been assisted  
17 in developing these questions from our experts, so that's  
18 why I'm looking to them.

19 So I think that's -- okay. I have a couple more.

20 And how did you validate the sediment transport  
21 analysis when comparisons to field observations were not  
22 made and it is evident that the rainfall event was not a  
23 10-year event that you went out and monitored?

24 DR. CHANG: I guess I should answer that  
25 question.

1           In sediment transport, we don't have any data at  
2 project site, that's for sure, but in standard practice,  
3 here's how we do it. We use the grain size distribution,  
4 which is analyzed, we used actual hydrograph, which has  
5 been established. We model sediment transport using a  
6 model which has been extensively calibrated. These other  
7 things we have to take in order to produce something which  
8 can be, you know, verified, which can be considered as  
9 valid.

10           MS. MILES: And did you calibrate it on the  
11 project site?

12           DR. CHANG: No, we don't have any data to  
13 calibrate with.

14           To calibrate a model, we have to know the actual  
15 rainfall record, not a hundred-year storm, we may not have  
16 a hundred-year storm. You may not have one in my  
17 lifetime. We have to have the measurement before the  
18 storm, we have to have the measurement after the storm.  
19 Such data are not available at this point in time.

20           MS. MILES: Was it possible in the last, I don't  
21 know how long it's been since the application was filed,  
22 to get that data?

23           DR. CHANG: I can't think of anybody making  
24 measurements aside years ago before the storm, I can't  
25 think of any.

1 MS. MILES: So you know the -- I mean, you've  
2 looked into more recent data, and there was no major  
3 storms in the area.

4 DR. CHANG: I look, and there's no, nothing  
5 available for calibration purpose.

6 MS. MILES: Okay. I think that's -- oh, I'm  
7 sorry, one more question.

8 Dr. Bowles and Mr. Campbell testified that  
9 two-dimensional modeling provides a better representation  
10 of physical conditions than one-dimensional modeling.

11 Why did you not use two-dimensional modeling?

12 DR. CHANG: That's a very good question.

13 Two dimensional -- there are several  
14 two-dimensional models. They're hydrodynamic models; that  
15 is, they model the surface water flow, but they do not  
16 model the sediment transport of the bed material. The bed  
17 load transport is not modeled by two-dimensional model.

18 In addition, a two-dimensional model does not  
19 model the dynamic changes of stream channel geometry  
20 during the occurrence of a storm event. So such a model  
21 does not exist today.

22 MS. MILES: Would you say even with those  
23 deficiencies that a 2-D model would provide more realistic  
24 results?

25 DR. CHANG: Only for the surface water flow.

1 See, but being a stream wash, the flow's basically one  
2 dimensional. So the advantage gained by two-dimensional  
3 model over one-dimensional model as far as the flow is  
4 concerned is very limited, let alone, a two-dimensional  
5 model does not simulate a bed load transport, does not  
6 simulate stream channel changes which are required for  
7 this project. Therefore, we could not use because such a  
8 model does not exist.

9 MS. MILES: Thank you, Dr. Chang.

10 I have no further questions.

11 HEARING OFFICER RENAUD: Okay. Questioning by  
12 Tom Budlong?

13 MR. SILVER: No.

14 HEARING OFFICER RENAUD: CNPS?

15 MR. BELTRAN: I have one question.

16 HEARING OFFICER RENAUD: Go ahead, please.

17 CROSS-EXAMINATION

18 MR. BELTRAN: This is kind of a -- I think maybe  
19 I'm going to have a little difficulty formulating this  
20 question, but, Dr. Chang, you had said that after applying  
21 the soil tackifiers, and I don't remember the exact name,  
22 it was soil tack or soil tech, there was a pretty  
23 elaborate description in one of the responses to the data  
24 request, and it described mixing this product down to a  
25 depth of about six inches, and that this material would

1 reduce the infiltration, that it was -- it talked about  
2 the strengths of the material or the after product.

3 Is five percent the correct amount that you --  
4 the area of the project, that five percent will be treated  
5 with either roads or this soil treatment?

6 DR. CHANG: You know, I did not work on that  
7 aspect.

8 Did you? Are you familiar with that?

9 MR. MOORE: I didn't prepare that estimate, but  
10 that's what the latest number that I had received.

11 MR. BELTRAN: Okay. But five percent is  
12 something that I just heard here this evening; is that  
13 correct?

14 DR. CHANG: I don't know -- I don't know anything  
15 about it.

16 MR. BELTRAN: Okay. But, Mr. Moore, you had said  
17 that these surfaces -- that the water would flow off of  
18 these surfaces, and because of the highly-permeable nature  
19 of the surrounding soils, that it would be infiltrated,  
20 that there would be no runoff.

21 Is that -- did I hear that correctly?

22 MR. MOORE: Yeah, during the -- my estimate would  
23 be during low to moderate rainfall events, I mean, we  
24 can't guarantee there's not going to be runoff at any time  
25 from the site or from those areas. It would depend on the

1 rainfall amount and intensity.

2 MR. BELTRAN: I think that what I'm trying to get  
3 at is what -- what I think I understood is that these  
4 treatments would not affect -- would not increase runoff  
5 from this project.

6 Did I understand that properly? Correctly?

7 DR. CHANG: The treatment would actually reduce  
8 the permeability of the soil. That is very true.  
9 However, only five percent of the surface area would  
10 either be paved or treated, would reduce the permeability.

11 You see, we're talking about highly-permeable  
12 soil, it's called soil type A, soil type B in hydrologic  
13 soil classification, which has high permeability. See, we  
14 have a short rainfall duration and high soil permeability;  
15 even if certain surface areas, say five percent, does not  
16 have same permeability. Now, water would still  
17 percolate, would still recharge the groundwater in  
18 adjacent areas. They will not reach the saturation point  
19 for such a short duration rainfall with such high  
20 permeability. So therefore, the net effect on surface  
21 water runoff is really very, very small.

22 MR. BELTRAN: You're talking about small storm  
23 events?

24 DR. CHANG: Small storm events runoff itself  
25 would be very small.

1 MR. BELTRAN: And in larger --

2 DR. CHANG: Larger storm you would have more  
3 runoff, we would have more runoff.

4 MR. BELTRAN: So are you saying that in large  
5 storm events that the runoff from this project  
6 post-construction would be greater than pre-construction?

7 DR. CHANG: Would be -- the difference should be  
8 very small, should be very small.

9 MR. BELTRAN: Okay. Thank you.

10 HEARING OFFICER RENAUD: Okay. Any redirect?

11 MS. FOLEY GANNON: No redistrict. Thank you.

12 HEARING OFFICER RENAUD: All right. Thank you.

13 And I believe, let's see, staff, do you have a  
14 witness?

15 MS. HOLMES: I do. I'm still writing notes.

16 HEARING OFFICER RENAUD: All right.

17 MS. HOLMES: I'm almost through. Thank you.

18 Staff's witnesses are Mr. Dennis, who has already  
19 been sworn, and Philip Lowe, who needs to be sworn.

20 (Mr. Lowe was sworn.)

21 THE REPORTER: Could you please state and spell  
22 your name for the record?

23 MR. LOWE: My name is Philip Lowe, P-h-i-l-i-p  
24 L-o-w-e.

25 ///

## 1 DIRECT EXAMINATION

2 MS. HOLMES: Thank you. And I'll ask these  
3 questions to Mr. Lowe as a proxy for both members of the  
4 panel, but obviously if there's a question that's specific  
5 to Mr. Dennis, you can assume that he'll answer it.

6 Mr. Lowe, did you prepare the sedimentation and  
7 erosion discussion in Exhibit 302, which has been  
8 identified, which is the supplemental staff assessment?

9 MR. LOWE: Yes, I did.

10 MS. HOLMES: And was a statement of your  
11 qualifications included in that document?

12 MR. LOWE: Yes, my qualifications were in there.

13 MS. HOLMES: Do you have any changes to your  
14 testimony tonight?

15 MR. LOWE: Yes, I do.

16 MS. HOLMES: Could you please go through them for  
17 the committee and the parties?

18 MR. LOWE: Okay. I have two changes. It's a  
19 couple of paragraphs. I'll read them.

20 MS. HOLMES: My suggestion to Mr. Lowe is to read  
21 them into the record, and then we'll provide a written  
22 copy tomorrow morning since he won't be here at that time.

23 HEARING OFFICER RENAUD: All right. And please  
24 identify where these changes occur by page number, if you  
25 can.

1           MR. LOWE: Well, I can identify by section number  
2 in the staff assessment. I don't have the page numbers  
3 here in front of me.

4           Section C.7.4.3, which is CEQA level of  
5 significance for the project.

6           MS. HOLMES: That begins on page 58.

7           MR. LOWE: Let me see. Yes, actually the  
8 correction would be on page 59, because I'm talking --  
9 referring to the fourth bullet below the title.

10           And the wording "conditions of certification soil  
11 and water-1, soil and water-3, soil and water-5, soil and  
12 water-6, and soil and water-7, would ensure that the  
13 project not create or contribute runoff water that exceeds  
14 existing or planned storm water drainage system capacity  
15 or provides substantial additional sources of polluted  
16 runoff."

17           That statement should be replaced with, "with the  
18 exception of runoff pollution related to increased  
19 sediment load due to stream morphological changes,  
20 conditions of certification soil and water 1, soil and  
21 water 3, soil and water 5, soil and water 6 and soil and  
22 water 7 would ensure that the project not create or  
23 contribute runoff water that exceeds existing or planned  
24 stormwater drainage system capacity or provides  
25 substantial additional sources of polluted runoff."

1 MS. HOLMES: Could you read that one more time?  
2 I know you're going to be presenting it in writing, but I  
3 want to make sure I understand what it says. Could you  
4 read that again?

5 MR. LOWE: Starting from where? Starting from  
6 the beginning?

7 MS. HOLMES: So where -- you're inserting from  
8 the start?

9 MR. LOWE: That part that I just first read is to  
10 be replaced with the second part.

11 MS. HOLMES: Then can you just read the second  
12 part then? Whatever you're putting in.

13 MR. LOWE: Okay. "With the exception of runoff  
14 pollution related to increased sediment load due to stream  
15 morphological changes, conditions or certification, soil  
16 and water 1, soil and water 3, soil and water 5, soil and  
17 water 6, and soil and water 7 would ensure that the  
18 project not create or contribute runoff water that exceeds  
19 existing or planned stormwater drainage capacity or  
20 provides substantial additional sources of polluted  
21 runoff. Additional sediment load associated with stream  
22 morphological changes are considered a significant adverse  
23 water quality impact."

24 The second one is in section C.7.6.3. That would  
25 be CEQA level of significance for drainage avoidance

1 alternative number 1.

2 MS. HOLMES: That's on page 7.6-66?

3 MR. LOWE: Yes, it is.

4 That whole section which is very short, gets  
5 replaced with this: "CEQA level of significance is the  
6 same as for the proposed project in all areas except the  
7 following: Whether the project substantially alters  
8 existing site or area drainage patterns, including the  
9 alteration of streams or river courses, or substantially  
10 increases the rate or amount of surface runoff in a manner  
11 that results in on- or off-site flooding or substantial  
12 erosion or siltation. Conditions of certification soil  
13 and water 1, soil and water 5, and soil and water 7 would  
14 ensure no adverse alteration of drainage patterns related  
15 to flooding and would reduce stream morphology and water  
16 quality impacts related to sedimentation to a level not  
17 significant."

18 That's all the changes I have.

19 MS. HOLMES: And with those changes, are the  
20 facts in your testimony true and correct to the best of  
21 your knowledge?

22 MR. LOWE: Yes, they are.

23 MS. HOLMES: And did the opinions represent your  
24 best professional judgment?

25 MR. LOWE: Yes, they do.

1 MS. HOLMES: And have you had a chance to review  
2 Exhibit 138 which contains the applicant's revisions  
3 proposed today to soil and water 7, or do you need  
4 additional time to respond?

5 MR. LOWE: I need additional time to respond to  
6 those. I have not completed a review of them yet.

7 MS. HOLMES: Thank you.

8 MS. FOLEY GANNON: Can I have a -- add something.  
9 Do you have this electronically? Could you e-mail this to  
10 us, because I'm really having trouble understanding.  
11 Since you can't be available tomorrow, if I could look at  
12 it, I might be able to formulate -- I can hear your  
13 testimony, which, hopefully, will also help, but so that  
14 we can ask whatever questions we need to ask. Can you  
15 send that to us?

16 MR. LOWE: Okay. Yes. I can e-mail it to you.

17 MS. HOLMES: She means right now.

18 MS. FOLEY GANNON: Right now, yes.

19 MR. LOWE: Right now? I can't e-mail it right  
20 now, I'm not tied into the Internet, and I do not know how  
21 to tie into the Internet. I've tried --

22 MS. FOLEY GANNON: I can tell you.

23 MS. HOLMES: Can we go off the record for a  
24 moment, please?

25 HEARING OFFICER RENAUD: Yes. Off the record,

1 please.

2 (Recess.)

3 MS. HOLMES: Thank you.

4 Mr. Lowe, could you please provide a brief  
5 summary of your testimony focusing in detail on the area  
6 where you have identified significant adverse impacts?

7 MR. LOWE: The significant adverse impact, and  
8 recall I haven't reviewed -- completed a review analysis  
9 of the latest information submitted and testified to  
10 recently. The significant adverse impact had to do with  
11 stream changes related to the placement of SunCatchers in  
12 the washes. The plan that we were looking at had quite a  
13 few SunCatchers that would be placed in these large stream  
14 channels, and there would be vegetation removal associated  
15 with that. And there would also be a lot of sediment  
16 basins placed in these stream channels.

17 And the concern that I had was that the removal  
18 of the vegetation, the placement of this -- the  
19 SunCatchers in the stream path would alter the sediment  
20 transport characteristics of these large channels to the  
21 effect that they -- that they could have some adverse  
22 effects within the property as well as downstream.

23 The same would go for the sediment basins, which  
24 were designed by a regional equation that was applicable  
25 for the Mojave Desert, which I thought was not a rigorous

1 analysis for those kind of basins.

2           The types of effects that I expected to occur  
3 would be possible stream degradation, possible stream  
4 aggradaton; it could go either way, I did not know. Those  
5 could occur both on site and off site. Some of those  
6 water courses will be crossing to the north of the  
7 property across a railroad bridge -- or railroad -- the  
8 railroad that's there and some roadway culverts that could  
9 be adversely affected by this, and there could be some  
10 sedimentation accumulation impacts further downstream or  
11 some other stream morphological changes that could be  
12 adverse.

13           And as a result of that, in the absence of a  
14 detailed sediment transport analysis that was not  
15 available at the time, I came to the conclusion that there  
16 was a potential adverse significant impact that could not  
17 be avoided. And so that is the way the staff assessment  
18 is written.

19           MS. HOLMES: Thank you. And have you had the  
20 opportunity to read the rebuttal testimony provided by  
21 California Unions for Reliable Energy?

22           MR. LOWE: I have had an opportunity to read  
23 quite a lot of it. I don't know if I read all of it, but  
24 I read a lot of it.

25           MS. HOLMES: Can you respond to the concerns that

1 CURE has raised with respect to hydromodification and wind  
2 erosion?

3 MR. LOWE: With respect to hydromodification,  
4 hydromodification would be related to changes in the  
5 stream channel associated with the changing in the  
6 hydrology that would normally occur in urban areas where a  
7 lot of pavement and rooftops and stream channelization  
8 occur. The changes, the peak discharge rates normally go  
9 up, stream flow volumes generally go up, the frequency of  
10 discharges or of a given discharge normally become more  
11 frequent. Small floods become larger, large floods become  
12 larger.

13 And the sediment -- the sediment transport volume  
14 within these streams is generally reduced by these effects  
15 causing stream channels to degrade and to erode and to --  
16 the stream morphology to change usually for the worse.

17 I've looked at this site. I think that the  
18 hydromodification effects potential on this site are very  
19 small for very similar reasons to those testified to by  
20 consultants for the applicant. For one reason I think  
21 they're correct in assuming or the -- the infiltration  
22 rates within this property outside of the -- the areas  
23 that are treated with -- as roads would be substantial.

24 Another mitigating factor that I've taken into  
25 consideration is the fact that these increased runoff

1 coefficients only consider the site runoff itself. And if  
2 you look at Figure 1 in our staff assessment, the  
3 watersheds that we're dealing with extend off the site,  
4 and a lot of them extend to the south where there would be  
5 no effect. So the overall effect on the actual discharge  
6 within the watershed would be mitigated by that fact.

7           And also, I've done a back of the envelope type  
8 of a calculation, very crude calculation that would --  
9 basically looking at the amount of roads that would be  
10 unpaved on the site and paved. And increasing the curve  
11 numbers, the hydrologic soil group curve number from soil  
12 group C, which is roughly what was assumed in the RMT  
13 hydrologic analysis, to soil group D. And the results --  
14 the results indicate a very, very small increase in  
15 discharge.

16           So I think that the hydrologic -- or  
17 hydromodification effects would be very small.

18           MS. HOLMES: Did you have a response with respect  
19 to their concern about wind erosion?

20           MR. LOWE: The wind erosion, they -- CURE has  
21 commented that the wind erosion analysis was done using  
22 very simplistic methods and that a more site-specific  
23 method needs to be done. The wind erosion analysis was  
24 done with simplistic methods, but I think that wind  
25 erosion calculations are very difficult to make, and I

1 think that they were done using a normal standard of care  
2 for this type of work.

3           And that the conclusion that we made in the staff  
4 assessment was that there would be a significant adverse  
5 impact associated with wind erosion on this property  
6 unless mitigated. And as a result we've placed condition  
7 of certification in the staff assessment to mitigate the  
8 effects of wind erosion. And this is going to be a type  
9 of mitigation that would have to be monitored and adapted  
10 as the project goes through its life to make sure that  
11 these -- these best management practices for wind erosion  
12 are functioning.

13           MS. HOLMES: Thank you. Those are all my  
14 questions.

15           HEARING OFFICER RENAUD: Okay.  
16 Cross-examination?

17           Did you want to call your other witness too or --  
18 no.

19           MS. HOLMES: I don't think he -- do you have  
20 anything to add, Mr. Dennis?

21           MR. DENNIS: No, I don't. Thank you.

22           HEARING OFFICER RENAUD: Good. Thank you.

23           Cross-examination by applicant.

24                           CROSS-EXAMINATION

25           MS. FOLEY GANNON: Mr. Lowe, so based on looking

1 at these changes, I'm assuming that you are proposing to  
2 find a significant adverse and unmitigable impact  
3 associated with sediment for the proposed project?

4 MR. LOWE: For the proposed project as -- as it  
5 existed when I evaluated it. Now, the proposed project  
6 has changed, as I understand it. I have not evaluated the  
7 revised proposed project and I have not evaluated the new  
8 sediment transport study that was just testified to by  
9 Dr. Chang.

10 MS. FOLEY GANNON: Looking at your testimony from  
11 C.7-37 where you go through the factors which you  
12 identified as being potentially affecting stream  
13 morphology, I think there's a number of them that it  
14 appears you may not have had information either about the  
15 proposed project that you analyzed or the project as it  
16 has been revised.

17 In your first factor you talk about there being  
18 an increased production of sediment from the watershed  
19 surface. Dr. Chang had studied this in all of his --  
20 his -- his modeling analysis method that have been  
21 submitted to date.

22 Have you had a chance to review any of his  
23 studies?

24 MR. LOWE: Not in any detail. I'm aware of the  
25 conclusions he's made, but I have not evaluated it in

1 detail.

2 MS. FOLEY GANNON: So your determination about  
3 the fact that SunCatchers would change stream morphology  
4 was based on an independent analysis?

5 MR. LOWE: It was based on my personal experience  
6 as a civil engineer, and I've been working in this field  
7 for many years, more than 20 years, and I have experience  
8 in sediment transport analysis.

9 And in the absence of a study that specifically  
10 addressed this issue, I came to the conclusion there was a  
11 potential for a significant impact.

12 MS. FOLEY GANNON: I guess one thing I'm confused  
13 about is we had studies that specifically addressed this  
14 issue, and they were submitted. The first one was  
15 submitted, you know, I don't have the date right here, but  
16 quite some time ago.

17 MR. LOWE: That study didn't -- in my opinion,  
18 did not meet the expectation of evaluating the sediment  
19 impacts that I was looking for.

20 MS. FOLEY GANNON: On what basis?

21 MR. LOWE: It was, as I recall, it was only an  
22 existing condition sediment analysis, and it addressed  
23 scour, stream scour I think. I don't -- I don't recall it  
24 going into the type of detail that we discussed with  
25 Dr. Chang in doing his revised analysis.

1 MS. FOLEY GANNON: Dr. Chang has testified that  
2 he was looking at the stream morphology in all three of  
3 his analyses which have been submitted, and was evaluating  
4 them both pre-condition and post-condition, looking at the  
5 impacts of the sediment -- I mean, the construction of the  
6 SunCatchers in the washes, particularly focusing on that  
7 and analyzing the particular impacts.

8 So again, can you identify the specific parts --  
9 so if that report actually looked at post-construction  
10 conditions, can you identify what the problems were with  
11 the report that made you not accept the results?

12 MR. LOWE: I need to go back and look at that  
13 study. Can you bear with me a moment?

14 MS. FOLEY GANNON: Yes, absolutely.

15 HEARING OFFICER RENAUD: Perhaps while the  
16 witness is reviewing the document, the applicant can  
17 identify the document by exhibit number or some other way  
18 so we'll be on the same page?

19 MS. FOLEY GANNON: Absolutely.

20 HEARING OFFICER RENAUD: It's not -- is it 32,  
21 the supplement?

22 MS. FOLEY GANNON: I'm looking at -- that we have  
23 in the supplemental rebuttal testimony there was a --  
24 there was a report. This one was from May. I think we  
25 had copies of the earlier ones here too. But the report

1 was dated May 28th, that's what I was saying, which was  
2 Exhibit 120 to Dr. Chang's testimony, which was  
3 Exhibit 141.

4 HEARING OFFICER RENAUD: Looks like it might be  
5 30.

6 MS. FOLEY GANNON: Exhibit 30?

7 HEARING OFFICER RENAUD: Sediment study for three  
8 washes at the site? Yes.

9 MS. FOLEY GANNON: That would be one.

10 Yeah. If you look at just the executive summary,  
11 the first paragraph, it does state specifically the  
12 modeling study covers a ten- and hundred-year floods for  
13 the pre-project existing conditions and the post-project  
14 proposed conditions. That is on page 3 of Exhibit 30.

15 MR. LOWE: Well, for one thing, this study looked  
16 at only one wash.

17 MS. FOLEY GANNON: Three washes.

18 MR. LOWE: Three washes?

19 MS. FOLEY GANNON: Uh-huh.

20 MR. LOWE: Is this the November 24th study?

21 MS. FOLEY GANNON: This is the January 2010  
22 study.

23 MR. LOWE: That's the study I have not reviewed.

24 MS. FOLEY GANNON: It was submitted on exhibit --  
25 it was submitted on April 26th, 2010.

1           MR. LOWE: That's the one I'm saying I have not  
2 reviewed.

3           MS. FOLEY GANNON: So assuming there's a study --  
4 you've heard Dr. Chang testify to his methodology, and you  
5 may be even aware of the studies that he's done --

6           MR. LOWE: I'm very well aware of his study. I  
7 helped scope the study out with Dr. Chang.

8           MS. FOLEY GANNON: So you're aware that he has  
9 done this, he has reported his conclusions.

10           I know it's difficult to give definitive  
11 statements on something you haven't had an opportunity to  
12 read over the last time period, but if the report is  
13 consistent with what Dr. Chang has reported, would that  
14 change your conclusions?

15           MR. LOWE: It might. We discussed this in great  
16 detail with Dr. Chang at the time before he did that study  
17 and the scope that was to be done. And if that study was  
18 done according to what we talked about and it shows the  
19 results that Dr. Chang says that it does today -- which I  
20 have scanned the report and so I was aware of what it  
21 said, I just hadn't looked at it in a technical  
22 standpoint -- then I might change my opinion.

23           MS. FOLEY GANNON: So how were you proposing to  
24 be able to determine whether the project is or is not  
25 going to result in this type of impact?

1 MR. LOWE: I would need to review the report.

2 MS. FOLEY GANNON: And when do we anticipate that  
3 would happen? I mean, I guess it has to happen  
4 pre-approval, or is it pre-certification, or is it a  
5 verification? How are you anticipating handling it with  
6 this new change?

7 MR. LOWE: I will review the report as soon as  
8 possible upon given direction by California Energy  
9 Commission to do that.

10 MS. FOLEY GANNON: Okay. It's difficult to  
11 discuss this in substance.

12 But there obviously are, as you did reference,  
13 there are a number of changes that have been made, so you  
14 list other factors here which are going to influence your  
15 decision. So would it make a difference in your  
16 calculation if you found out that only 1.5 percent of the  
17 vegetation will be cleared in the washes?

18 MR. LOWE: That would make a difference.

19 MS. FOLEY GANNON: That's consistent with the  
20 proposed project.

21 MR. LOWE: But like I say, I can't testify ahead  
22 of time to what my conclusions would be. It would likely  
23 make a difference, but I can't say for sure.

24 MS. FOLEY GANNON: One factor that you may have  
25 thought about, because it does seem to be called out as

1 being something that seemed to be part of your -- basis  
2 for your conclusion, was the inclusion of sedimentation  
3 basins.

4 MR. LOWE: Right.

5 MS. FOLEY GANNON: I think you referenced you're  
6 aware that the applicant has proposed to remove the  
7 sedimentation basins?

8 MR. LOWE: I'm aware of that.

9 MS. FOLEY GANNON: You can't prejudge something,  
10 but do you assume that would change or influence your  
11 determination about the impact?

12 MR. LOWE: It would definitely be an influencing  
13 factor, yes.

14 MS. FOLEY GANNON: So again, are you proposing  
15 any mitigation measure? I guess because you haven't  
16 determined really whether there is a significant impact  
17 associated with the project, you haven't --

18 MR. LOWE: No.

19 MS. FOLEY GANNON: -- determined mitigation  
20 measures yet.

21 I have no more questions.

22 HEARING OFFICER RENAUD: Thank you.

23 Are there cross-examination questions by CURE?

24 MS. MILES: I have just have a few of the same  
25 questions I previously asked to a prior witness.

## 1 CROSS-EXAMINATION

2 MS. MILES: Have you ascertained the potential  
3 impacts to cryptobiotic crust and desert pavement from  
4 project development?

5 MR. LOWE: With regard to cryptobiotic crusts,  
6 no. Desert pavement, I've not done a detailed analysis.

7 I have been on the site. I'm familiar with  
8 desert pavements. I live in the desert, I grew up in the  
9 desert, lived there for almost all my life, pretty  
10 familiar with desert pavements and the desert pavements  
11 that are on that site that are not very well developed in  
12 my opinion, they are not -- they're very few -- I actually  
13 did not see any on the site that I would really --  
14 well-developed desert pavements, and what's there is few  
15 and far between.

16 As far as cryptobiotic crust, no. I did see a  
17 small amount of crust on the site. I imagine it might  
18 have been cryptobiotic in nature, but I really don't know.  
19 I haven't done an analysis on that.

20 MS. MILES: How much time did you spend on the  
21 site?

22 MR. LOWE: Probably, all added up, a day and a  
23 half.

24 MS. MILES: And did you travel around by roads or  
25 did you walk the site?

1 MR. LOWE: The entire site.

2 MS. MILES: By roads, or did you walk the site?

3 MR. LOWE: I traveled around by roads and I  
4 walked.

5 MS. MILES: Okay. Have you calculated how much  
6 soil binders will reduce infiltration and increase runoff?

7 MR. LOWE: The only thing that I've done is what  
8 I said earlier, was a back of the envelope type of a  
9 calculation assuming that the roadways, the unpaved  
10 roadways would increase the curve number, hydrologic soil  
11 group curve number up from hydrologic soil group C to soil  
12 group D. And whether that's representative of the soil  
13 binders, I don't know. And the result showed very little  
14 change in hydrology.

15 MS. MILES: Did you independently verify the soil  
16 loss factors used in the soil erosion calculations,  
17 specifically the cover management factor used to account  
18 for the effectiveness of the proposed best management  
19 practices?

20 MR. LOWE: No.

21 MS. MILES: That's all the questions I have.  
22 Thank you.

23 HEARING OFFICER RENAUD: All right. Thank you.  
24 Cross-examination by Budlong?

25 MR. SILVER: No.

1 HEARING OFFICER RENAUD: CNPS?

2 MR. BELTRAN: Yes.

3 HEARING OFFICER RENAUD: All right. Go ahead.

4 CROSS-EXAMINATION

5 MR. BELTRAN: My interests are in the wind  
6 erosion on the wind erosion subject.

7 You said that it's very difficult, that these  
8 calculations are very difficult. Did you basically use a  
9 model to estimate the wind erosion?

10 Did I understand that correctly?

11 MR. LOWE: The model was prepared by the  
12 applicant. I reviewed the model. And I reviewed the  
13 literature on the model. And it seemed reasonable to me,  
14 but I did not do an independent analysis.

15 MR. BELTRAN: And you said that you have 20  
16 years' experience in this field of expertise.

17 Have you ever done any in situ tests?

18 MR. LOWE: In situ tests on what?

19 MR. BELTRAN: On soil erosion?

20 MR. LOWE: No. My 20 years' experience is in  
21 sediment transport and hydrology and hydraulics.

22 MR. BELTRAN: So your testimony is only in water  
23 erosion?

24 MR. LOWE: My testimony is over the overall area,  
25 but my main area of expertise, the 20 years' experience is

1 in water erosion, hydrology and hydraulics.

2 MR. BELTRAN: Okay. Thank you.

3 HEARING OFFICER RENAUD: Okay. No further  
4 questions?

5 Any redirect?

6 MS. FOLEY GANNON: No redirect of this witness.

7 Oh, I'm sorry. Sorry. Sorry. Sorry.

8 MS. HOLMES: It's getting late.

9 MS. FOLEY GANNON: It is.

10 MS. HOLMES: I have no redirect; so she,  
11 therefore, has no recross.

12 MS. FOLEY GANNON: Yeah, no recross.

13 But I would like to -- and we can discuss this  
14 tomorrow -- we have not offered this rewrite into  
15 evidence, but I would like to be able to discuss that  
16 tomorrow before we submit that and have a chance to look  
17 at it as well.

18 HEARING OFFICER RENAUD: Very good. No problem.  
19 Okay. Let's see.

20 MS. FOLEY GANNON: Can we offer a brief rebuttal  
21 from Chang in response to --

22 HEARING OFFICER RENAUD: Sure. Right now?

23 MS. FOLEY GANNON: Yes, right now.

24 HEARING OFFICER RENAUD: Go ahead, please.

25 ///

## REBUTTAL EXAMINATION

1  
2 MS. FOLEY GANNON: Dr. Chang, you are still under  
3 oath.

4 I'm sure you had the opportunity to hear  
5 Mr. Lowe's testimony. Can you provide a response to his  
6 conclusions?

7 DR. CHANG: Mr. Lowe commented on the possibility  
8 that the SunCatchers placed in the washes may change the  
9 morphology and the sediment of the wash. We actually have  
10 analyzed the facts of SunCatchers in washes and how they  
11 affect sediment transport.

12 See, SunCatchers are supported on pedestals.  
13 Each pedestals has a diameter of two feet. I calculated  
14 the surface area occupied by the pedestals in comparison  
15 to the total surface area of the wash. That's about a  
16 one-thousandth. So we're talking about a very low density  
17 of the surface area occupied by SunCatchers. That effect  
18 should be very small.

19 We consider them as increase the surface  
20 roughness. In other words, SunCatchers would actually  
21 increase the surface roughness to flow.

22 On the other hand, we offered trimming of the  
23 vegetation. Right now the vegetation in the washes are  
24 very, very sparse. We're going to remove some vegetation,  
25 but we're adding the SunCatchers to compensate for the

1 effects of vegetation removal. So the net effects is  
2 compensated. In that way we are basically maintaining  
3 surface roughness of the flow. If we maintain the surface  
4 roughness, then we are maintaining the same sediment  
5 transport, we are maintaining the same sediment delivery  
6 toward downstream.

7           The other point I wish to make is that in every  
8 sediment study afterward, I mean, this is after Mr. Lowe  
9 had a chance to review, we understand the concern is the  
10 impact of the project, so therefore, for all the studies  
11 afterwards, all together four washes have been studied.  
12 For every study for every wash we covered the pre-project  
13 conditions and the post-project conditions because only  
14 from the results of these two conditions we can evaluate,  
15 assess the impacts of the project.

16           Another point I wish to make is that we made -- I  
17 made recommendation that we do away with all the debris  
18 basins. I believe right now we have no debris basins  
19 planned for the project site. With no debris basins, we  
20 are not going to reduce sediment delivery toward  
21 downstream, we are not going to create hungry waters  
22 scenario for the downstream properties.

23           MS. FOLEY GANNON: Thank you, Dr. Chang.

24           HEARING OFFICER RENAUD: Thank you.

25           Any cross-examination of the rebuttal?

1 MS. HOLMES: No.

2 MS. MILES: No cross.

3 HEARING OFFICER RENAUD: Anybody?

4 MR. SILVER: No.

5 HEARING OFFICER RENAUD: All right. Thank you.

6 MS. FOLEY GANNON: I think I forgot the first  
7 time Dr. Chang testified to ask that his testimony, his  
8 exhibit be offered into evidence. So I would ask that  
9 that be accepted now.

10 HEARING OFFICER RENAUD: That would be 141?

11 MS. FOLEY GANNON: 141.

12 HEARING OFFICER RENAUD: Any objection? Parties?

13 MS. HOLMES: No objection.

14 MS. MILES: No objection.

15 HEARING OFFICER RENAUD: No objections. That's  
16 admitted. Thank you.

17 (Applicant's Exhibit 141 was received into  
18 evidence.)

19 MS. FOLEY GANNON: Thank you.

20 HEARING OFFICER RENAUD: All right. Let's see.  
21 You're done. You're done.

22 CURE, I believe you had witnesses in this area?

23 MS. MILES: Yes. We would like to call our  
24 witnesses. Dr. Bowles and Chris Campbell.

25 HEARING OFFICER RENAUD: Thank you. They've been

1 previously sworn today?

2 MS. MILES: Yes, they have.

3 DIRECT EXAMINATION

4 MS. MILES: And we've already established that  
5 their testimony is their own, so I'm just going to go  
6 ahead and ask the questions.

7 Dr. Bowles, what outstanding issues do you have  
8 with the supplemental staff assessment?

9 MR. BOWLES: Yeah, the supplemental staff  
10 assessment I think primarily addressed water supply. From  
11 our review there weren't any huge changes to the previous  
12 information we'd been given, so really, you know, our  
13 testimony here is to reiterate what we've already said,  
14 which is we think the hydrology is flawed. The frequency,  
15 duration, timing and volume of runoff, we believe will  
16 change as a result of the project, and that the analysis  
17 has under-predicted that change between existing  
18 conditions and with project. And we're going to go into  
19 that in greater detail as we go through this.

20 The effect of that, the underestimation of the  
21 hydrology is that the flood plain inundation is likely  
22 underestimated. The scour around the pedestals might  
23 be -- is probably underestimated. Certainly sediment  
24 transport and soil erosion calculations are probably  
25 underestimated as well.

1           The SSA, supplemental staff assessment, did not  
2 consider compaction of over 250 miles of unpaved roads and  
3 the effect of soil binders and the increase and impervious  
4 area as a result of those, the compaction and construction  
5 of the roads. And I think we very clearly identified  
6 through previous testimony that no on the ground surveys  
7 of cryptobiotic crusts or desert pavement have been done.

8           In my opinion, a project of this magnitude, that  
9 really should have been one of the first surveys done  
10 because of the importance of desert pavement and  
11 cryptobiotic crust and the benefits to infiltration that  
12 they have. We really need to ascertain if they're even  
13 out there. And all we've got so far really is anecdotal  
14 evidence to suggest, well, we walked out on the site for a  
15 day, day and a half, and we didn't see any, or we did see  
16 some, but they weren't very prevalent. I think it's a  
17 huge question, the coverage of those cryptobiotic crusts  
18 and the desert pavement, fundamental to the analysis.

19           The flashiness and the peak magnitude and the  
20 volume of the runoff is underestimated and --

21           MS. MILES: Can you define "flashiness" too?

22           MR. BOWLES: Yeah. How rapidly the hydrograph  
23 rises and falls. Thank you. "Flashiness" isn't a very  
24 technical terminology; I apologize for that.

25           These increases in runoff as a result of the

1 project will, in fact, will affect sediment transport.

2           We've just become aware, I believe it's the LEDPA  
3 recommended by the corps, right, as recommended that the  
4 project be reduced to 709 megawatts. But the point is  
5 that still half the SunCatchers are in the primary washes,  
6 or should I say at least -- approximately half of the  
7 primary washes are still impacted by SunCatchers and all  
8 of the secondary washes still impacted by SunCatchers. I  
9 think in our opinion, the impact of the SunCatchers on the  
10 washes is significant. They'll have a major effect on the  
11 sediment transport regime of those washes.

12           I think we've already mentioned this. This SSA  
13 does not account for the current intensity of frequent  
14 storms and under-predicts flow pane potential impacts and  
15 scour and sediment transport.

16           And before we get on to more details, our -- in  
17 summary, our assessment of the sediment transport and  
18 hydrology and soil erosion has been that we're in a very  
19 fragile desert environment that is -- is -- can be highly  
20 impacted. The sediment transport processes are a function  
21 of a high-intensity predominantly summer storms. It's the  
22 short duration summer storms, which Dr. Chang has  
23 corroborated in his testimony, that really do all the work  
24 and rearrange these systems and really transport a lot of  
25 sediment. So with this very fragile environment that the

1 project is proposing to dramatically change has really  
2 been the fundamental basis of our whole testimony and our  
3 whole review.

4           And if it's okay, I think I'm allowed to do this,  
5 I was actually reading a report last night called the Arid  
6 Cram Assessment, which is the California Rapid Assessment  
7 Methodology. I don't know who commissioned this. Was it  
8 the applicant?

9           It was the corps. That would make sense. That  
10 would make sense.

11           So California Rapid Assessment Methodology hasn't  
12 been applied in desert environments very much. So they're  
13 using this project as kind of a case study of how to --  
14 how to apply the California Rapid Assessment Methodology,  
15 and the corps are requesting that on all new projects now,  
16 that CRAM be done. So it's important that it's tested in  
17 a desert environment.

18           But I'm not really going to talk about the CRAM  
19 scores because I think there's -- we could debate those  
20 CRAM scores till the cows come home tonight, and we all  
21 want to go home at some point. But if it's okay, there  
22 would -- there's some really important observations by  
23 very highly-reputable scientists in the field that are  
24 made in this report.

25           So could I just take five minutes to read some of

1 these? I think they're really important.

2 MS. MILES: Sure. Go ahead.

3 HEARING OFFICER RENAUD: Yes, go ahead. Sure.

4 MR. BOWLES: I've just highlighted some issues  
5 which do a really good job of summarizing what we're  
6 dealing with here.

7 These channels are highly susceptible to widening  
8 and avulsions, channel relocation -- avulsion is channels  
9 moving. This is all in the natural condition -- during  
10 moderate to high discharges, reestablishing a low-flow  
11 channel during subsequent low flows. In other words, this  
12 environment is changing after every major storm. A lot of  
13 sediment transport, lot of movement of material all over  
14 the place. It's very hard to predict where this stuff is  
15 going to flow, both the water and the sediment.

16 MS. MILES: And how do you define a major storm?

17 MR. BOWLES: I think I read somewhere here that  
18 it's got to be in excess of the ten year. I think a saw  
19 an 18-year storm. Yes, that doesn't happen very often,  
20 but imagine a scenario where you've got a wash full of  
21 SunCatchers and an 18- or 20-year or 30-year storm does  
22 come through here. Those SunCatchers are really going to  
23 exacerbate what's happening within those washes in terms  
24 of hydraulics and sediment transport.

25 Second quote here is discontinuous ephemeral

1 streams are characterized by alternating erosional and  
2 deep positional reaches. They are constantly in flux as  
3 head cuts, nick points originating at the downstream end  
4 of the sheet flood zone migrate upstream causing dramatic  
5 temporal and spatial changes in channel morphology at any  
6 location.

7           Again, highly dynamic system.

8           A high-density of closely spaced braided channels  
9 with high width to depth ratio and low sinuosity generally  
10 characterize the larger drainages on the study site. Most  
11 of the channels encountered tend to have deep sediment  
12 deposits -- there's a lot of sediment out there --  
13 composed of sands and gravels with widely scattered  
14 vegetation growing within the channel and its flood plain.  
15 Headwater drainages on the site are characterized by some  
16 gullying and bad land development. High width to depth  
17 ratios, braided channels, low sinuosity, are often the  
18 result of high sediment concentrations and coarse grain  
19 sizes.

20           And then not much more left to go.

21           Although the majority of the rainfall occurs  
22 during the winter, the majority, 65 percent of the annual  
23 runoff occurs during the summer months of July to  
24 September. Runoff events when they occur are generally  
25 activated by intense summer monsoon rains that produce

1 short duration flash flooding with high flow peaks.  
2 Although winter storms produce more rain on average than  
3 summer monsoons, they are widespread and low intensity and  
4 expected to contribute less to runoff events at the  
5 project site.

6 In other words, don't go and look at events in  
7 the winter, you need to observe summer high-intensity,  
8 rapidly-rising hydrographs. Those are the events that  
9 move all the sediment.

10 I'm almost finished.

11 The three most common indicators of aggradaton  
12 observed included an active flood plain with fresh splays  
13 of coarse sediment, perennial, terrestrial, riparian  
14 vegetation encroachments in the channel and a plainer bed.  
15 Erosion transport and deposition of sediment all have the  
16 potential to occur on the study site. Transport of  
17 sediments into the site commence from the south of  
18 Interstate 8 where several large basins drain into the  
19 site. When flooding occurs, detached sediments from these  
20 off-site basins can be deposited within the site.

21 Sediment from off-site basins entering the  
22 project's area south of the site is transported through  
23 the existing washes on site and typically exits through  
24 the north and northeastern sections of the site.

25 And then the final, so sediment is passing

1 through the site as we speak under existing conditions.

2           Finally, therefore, it is important to note that  
3 any indicators of aggradaton should be expected for  
4 naturally function arid ephemeral streams. Pertubation to  
5 the natural process of sediment delivery and flood waters  
6 could lead to incision and down cutting of the stream  
7 channel. Pertubation meaning changes to the watershed as  
8 it -- for example, as a result of the project.

9           Delivery of water to a channel is dependent  
10 largely on the timing, duration, and the amount of water  
11 that falls on the surface and subsequently runs off, which  
12 is dependent on soil type and condition of the  
13 contributing watershed and buffer. Small tributaries  
14 generally have land-dominated hydrographs. So the small  
15 tributaries here have land-dominated hydrographs as  
16 opposed to stream flow, such as the San Diego River,  
17 dominated because they mainly drain adjacent land  
18 surfaces.

19           Condition of the upstream basin contributing  
20 watershed is a driving factor for streams in arid land.  
21 So the condition of the watershed really has a huge impact  
22 on these washes.

23           Upstream condition of the contributing watershed  
24 may be a more appropriate measure for arid land streams.

25           So these channels -- these channels are highly

1 susceptible -- oh, that's where I started. I'm so  
2 excited -- the reason I wanted to read --

3 HEARING OFFICER RENAUD: Would you just read for  
4 the record what that was that you read from?

5 MR. BOWLES: Yes, it's the Arid California Rapid  
6 Assessment Methodology Assessment Draft June 2010. And I  
7 think it was in the supplemental --

8 MS. FOLEY GANNON: We'll be offering that into  
9 evidence tomorrow and discussing it.

10 HEARING OFFICER RENAUD: Good. Thank you.

11 MR. BOWLES: So the reason I read all that out is  
12 I think it corroborates a lot of our observations by local  
13 experts who spent a lot of time in these environments as  
14 well.

15 So that finishes the introduction.

16 MS. MILES: Okay. Thank you. I see that you're  
17 very enthusiastic about the results of that, and I think  
18 that it does really draw out the distinction from the  
19 analysis that, really, there's not a lot of movement of  
20 sediment on the project site. And so, thank you for  
21 sharing that.

22 Matt Moore and Dr. Chang said that roads  
23 represent only five percent of the total area that will  
24 infiltrate into the surrounding land.

25 Do you agree with that assumption?

1           MR. BOWLES: The thing to talk about there or to  
2 observe is that it all depends how these -- the access  
3 roads are graded. If they're graded and if they've been  
4 designed in such a way to run off to the side into the  
5 unimpacted areas, then, you know, that might reduce the  
6 impact. But I would imagine that there will still be a  
7 case where in the large summer monsoon, large summer  
8 storms these access roads will actually act as conveyance  
9 channels, if you like, passing these high flows into the  
10 washes.

11           So I think it's an oversimplification to say,  
12 well, the runoff from the access roads all run straight  
13 into the adjacent land. I don't think that's necessarily  
14 true. They will act as, in effect, in a large event as  
15 conveyance channels, and they will be more impervious than  
16 they are now.

17           The other thing to say is that Dr. Chang pointed  
18 out twice that the access roads represent five percent of  
19 the total area. A rough calculation. That represents an  
20 increase in percent impervious cover of over three  
21 percent. There's a lot of literature, research and  
22 literature to say that receiving waters and channels are  
23 impacted, the geomorphology of those channels due to  
24 hydromodification are impacted in cases of increase in  
25 percent impervious cover of less than percent. So in

1 other words, literature would suggest, prior research,  
2 that the increase in percent impervious cover that we will  
3 see at this site, you will see a response of the channels,  
4 of the washes, and that response will be, as has been  
5 corroborated by the CRAM study as well, a degradation of  
6 the channels. There's a lot of large, deep sediment  
7 deposits in the washes. You'll see increased runoff,  
8 which will increase the sediment transport through the  
9 site, and you'll see erosion and degradation of the  
10 washes, which is called incision.

11 MS. MILES: Did the applicant consider the  
12 difference between existing conditions and post-project  
13 hydrology?

14 MR. BOWLES: I think there's another question you  
15 were going to ask, is there?

16 MS. MILES: Sorry, I don't remember. Let me see.

17 MR. BOWLES: What we wanted to talk about --

18 MS. MILES: Yeah, please, talk about what you'd  
19 like to --

20 MR. BOWLES: Shall I just ask myself a question?

21 MS. MILES: You know this topic better than me.

22 MR. BOWLES: Dr. Chang brought up an issue about  
23 the hydrology, and we wanted to just summarize our  
24 observation of the hydrology. I think it's going to be  
25 very beneficial at this point to summarize our conclusions

1 on the four different hydrologic studies that were used  
2 and why we're of the opinion that the ultimate hydrologic  
3 study that was used is not representative of the  
4 hydrologic conditions actually at the site.

5           So, Chris, you should get behind the microphone;  
6 you're going to talk briefly about the various studies.

7           MR. CAMPBELL: Yes. So there were four -- three  
8 or four variations on the hydrologic studies that were  
9 performed by the applicant. The first study was conducted  
10 by Stantec in 2008, and that represents this black solid  
11 line, whereby they used regional regression, USGS regional  
12 regression in lieu of better information.

13           They then came back in in a second iteration,  
14 which was the second study, and did a more detailed local  
15 analysis of 15 USGS gauges, and came up with what is this  
16 green -- this green line. And the green dots that fall on  
17 that line are then -- represent each of the watersheds at  
18 the project site that were then a hydrologic model was  
19 developed for this site, and each watershed was basically  
20 calibrated such that the flow would fall on that green  
21 line, which seems appropriate.

22           Upon completion of that study, Chang had reviewed  
23 the Stantec 2008B study and concluded that the flows were  
24 too low. Following along from that, RMT came into the  
25 picture and developed a third hydrologic study using

1 hydroCAD represented by the blue dots. Chang then  
2 reviewed their study and determined that their flows were  
3 lower than the flows that he previously said were too low,  
4 and so upon that he made some recommendations for RMT to  
5 go in and revise their hydrologic analysis. Upon revision  
6 of their hydrologic analysis represented by these crosses,  
7 it may be difficult to see, but most of the crosses more  
8 or less fall on top of their previous study points. So it  
9 was unclear to us why the applicant continued to use a  
10 study based upon the recommendation of Dr. Chang that were  
11 too low for most of the project site.

12 MR. BOWLES: Okay. Does that make sense? Is  
13 that clear to everybody?

14 MS. MILES: Do you want to reiterate the  
15 conclusions from this, what this represents?

16 HEARING OFFICER RENAUD: May I just ask where is  
17 the figure that's been referred to so it will be clear for  
18 the record where he was talking about?

19 MS. MILES: Actually, I was going to offer these  
20 exhibits into evidence.

21 MR. CAMPBELL: But this particular figure is in  
22 our opening testimony.

23 MS. MILES: Okay.

24 HEARING OFFICER RENAUD: The opening testimony,  
25 all right.

1 MS. MILES: And the prior one need to be offered  
2 into evidence. The one from the water supply.

3 MR. CAMPBELL: The prior two?

4 MS. MILES: Yes.

5 MR. BOWLES: So the conclusion that we're drawing  
6 from this analysis that Dr. Chang recommended some  
7 modifications to the RMT study because he said the  
8 hydrologic estimates were too low. When we looked into  
9 it, we don't see a dramatic change in the hydrology. So  
10 in other words, the hydrology is still problematic, we  
11 believe.

12 MS. MILES: Thank you.

13 So back to that question that I asked, did the  
14 applicant consider the difference between existing  
15 conditions and post-project conditions?

16 MR. BOWLES: In our opinion, from our  
17 observation, only existing conditions, no project  
18 condition hydrology was run. Typically we would do an  
19 existing conditions hydrologic model, we would build a  
20 post-project conditions hydrologic model, we'd look at the  
21 changes in the hydrology, and then design the mitigation  
22 to reduce the hydrology down to existing conditions. Only  
23 in existing conditions a hydrologic model was built.

24 Anything to add there, Chris?

25 MR. CAMPBELL: No. That's correct.

1 MR. BOWLES: Okay. And it was simply assumed  
2 that -- we've had a bit of discussion about the BMPs, but  
3 it was assumed that the BMPs would be implemented to  
4 mitigate for project impacts.

5 So in other words, the applicant decided not to  
6 run project hydrology because the assumption had been made  
7 that best management practices would mitigate for the  
8 hydrology, and hence, match existing.

9 MS. MILES: And is that a reasonable assumption?

10 MR. BOWLES: Well, no, no, in our opinion, no  
11 analysis was performed to justify the performance of the  
12 best management practices.

13 MS. MILES: Okay. Was climate change considered  
14 in that hydrologic analysis that you reviewed?

15 MR. BOWLES: No. No, it wasn't. No.

16 MS. MILES: And what's the consequence of not  
17 considering climate change?

18 MR. BOWLES: Well, we realize climate change is a  
19 highly-contentious issue, however, I think most people  
20 accept that climate change is real. Obviously the IPCC  
21 has spent huge amounts of time on coming up with all the  
22 various predictions.

23 In our opinion, we think due diligence would  
24 include some sensitivity analysis on hydrology. There are  
25 estimation methods out there to bracket the range of

1 hydrologic estimates in different environments, including  
2 desert environments, that you should run hydrologic  
3 sensitivity to test for climate change. We believe that  
4 should have been done.

5 MS. MILES: Do you believe the soil erosion  
6 estimates that were undertaken are representative of the  
7 actual project conditions?

8 MR. BOWLES: No. We think that the analysis was  
9 highly simplified, there was no -- no consideration of the  
10 protection of the soils by desert pavement. We don't even  
11 know how much desert pavement or cryptobiotic soils are  
12 out there, that's the first thing; but secondly, no  
13 allowance was made for protection of soil erosion as a  
14 result of those soils.

15 Also, there's a parameter within the soil erosion  
16 called the slope length, and a default parameter was used  
17 for that, which is likely an order of magnitude too long.  
18 At least some sensitivity analysis on the selection of  
19 that parameter should have been done to show that various  
20 different scenarios had been tested and that they had used  
21 the right number.

22 BMPs did not consider compaction of the roads  
23 during construction, which of course reduces infiltration  
24 and increases runoff and increases soil erosion due to  
25 increased runoff.

1           The BMP factor was arbitrarily selected. I  
2 shouldn't say arbitrarily; it was selected based on  
3 engineering judgment, expert judgment. But our opinion  
4 there is expert judgment should always be verified by  
5 other techniques. Whether or not some field measurements  
6 should have been undertaken, rainfall runoff simulator,  
7 there's various techniques out there to try to verify  
8 expert judgment and verify the factors that you're using  
9 in soil loss equations are reasonable and realistic. And  
10 admittedly, in a very small project you might not have the  
11 budget to do those sorts of field measurements, but it's  
12 our opinion in a project of this size and magnitude that  
13 some of that, some field verification should have been  
14 done of the factors used in the soil loss equations.

15           MR. CAMPBELL: And I would just add that I don't  
16 believe any BMP effectiveness literature was cited to come  
17 up with that C factor in the soil loss equation.

18           MS. MILES: And what's the consequence of the  
19 simplification?

20           MR. BOWLES: Again, it's underestimation we  
21 believe of the amount of soil erosion and the impacts to  
22 the washes and off-site impacts downstream of the site as  
23 well.

24           MS. MILES: And what are the potential water  
25 quality impacts from this, especially when you're thinking

1 about downstream aquatic resources?

2 MR. BOWLES: I think overall we haven't seen any  
3 downstream analysis at all. The assumption has just been  
4 made that everything will be dealt with on site. Well, I  
5 think we're fairly conclusive in the sense that we don't  
6 believe everything will be dealt with on site and  
7 certainly some downstream impact assessment should have  
8 been done, that as a result of erosion of the washes and  
9 general increase in runoff and increase in soil erosion  
10 from the watershed as a result of the project, that's  
11 going to release soluble salts from the soils and could  
12 likely be transported down to the Salton Sea, which as you  
13 know, is a -- is an impaired water body, and that hasn't  
14 been analyzed, simply hasn't been analyzed.

15 The increased runoff will increase sediment scour  
16 and sediment transport through the site, and water quality  
17 constituents are transported on the finer sediments  
18 throughout absorption and will be transported downstream  
19 of the site and in solution as well as absorbed to the  
20 particles.

21 And the -- we do have a figure of the Salton Sea  
22 in relation to the project site.

23 And, Chris, if you just want to point out so  
24 everybody's clear on the receiving waters being the new  
25 river and the west side drain which ultimately lead to the

1 Salton Sea.

2 I think there's been so much attention and focus  
3 on the Salton Sea, and certainly the EPA have been  
4 commenting a lot about this I think, in the corps, that  
5 the impacts to the new river and the west side drain  
6 should be analyzed on the ultimate response in the  
7 Salton Sea.

8 MR. CAMPBELL: So I'm just going to trace out  
9 possible flow paths from the project site to either the  
10 west side main drain canal to the Salton Sea and/or the  
11 project site to the new river to the Salton Sea.

12 So the project site is in red -- do we have a  
13 colored marker?

14 MR. BOWLES: Do we still have people online?

15 MR. CAMPBELL: Here we go. Better?

16 MR. BOWLES: Yes. Okay.

17 MR. CAMPBELL: So here is the project site.  
18 Water flows eastward. So we can either enter the west  
19 side main canal, or it follows this path approximately,  
20 and can reach the Salton Sea, or water excess runoff and  
21 sediment can overshoot the west side main canal, hit the  
22 new river, enter the new river, flow downstream,  
23 eventually enter the Salton Sea.

24 MS. MILES: How will the project affect sediment  
25 transport processes within the existing wash system?

1           MR. BOWLES: I think we've beaten this one to  
2 death in terms of the frequency duration --

3           MS. MILES: Okay. Well, you don't have to answer  
4 it again then.

5           MR. BOWLES: I'll move on rapidly.

6           The frequency duration timing of the hydrology is  
7 going to change, and, hence, the runoff from the project,  
8 and, therefore, more sediment will be eroded from the  
9 washes, the primary and secondary washes through scouring,  
10 and particularly with the inclusion of the pedestals in  
11 the washes, which will have off-site impacts.

12           The amount of sediment transported through the  
13 site and downstream has been underestimated through the  
14 staff assessment.

15           MS. MILES: And do you consider 1-D modeling to  
16 be adequate for this project?

17           MR. BOWLES: No. No, we don't. We use -- we're  
18 very experienced in a whole suite of different hydrologic  
19 and hydraulic models, and we use one-dimensional models  
20 all the time. Fluvial 12, Dr. Chang's model, is -- you  
21 know, I would never criticize that particular model  
22 itself. Dr. Chang has a very -- a great reputation and  
23 many years experience with that model. It is a great  
24 model. The point is we wouldn't use a 1-D model for this  
25 type of physical situation.

1           In years gone by, 2-D modeling and 3-D modeling,  
2 to be practical, two-dimensional modeling was very  
3 expensive, it was financially expensive and  
4 computationally expensive. They were hard models to  
5 build, they were hard models to run. Literally, only 15  
6 years ago it often precluded the use of 2-D models, the  
7 financial and computational cost.

8           Now, in this day and age, computational power has  
9 improved so dramatically and the algorithms have improved  
10 and the public outreach tools of 2-D models, in many cases  
11 it's easier. A, it's easier to use a two-dimensional  
12 model; B, it's not necessarily more expensive than a  
13 one-dimensional model, provided you have the right input  
14 data. And we believe the right input data probably does  
15 exist for this project. And C, the accuracy of the  
16 results from a two-dimensional model and the  
17 representation of the actual physics on the ground are far  
18 better than in a one-dimensional model.

19           So that's our big issue; not the type of 1-D  
20 model that was used, whether it was Fluvial 12,  
21 Dr. Chang's model or HEC-RAS, another one-dimensional  
22 model, they're great models; the point is this is a  
23 two-dimensional issue.

24           And do you want to get that animation up?

25           MR. CAMPBELL: Yeah.

1           MR. BOWLES: The Goat Canyon, just to try and  
2 illustrate this as quickly and as briefly as I can.

3           The difference between a one-dimensional model  
4 and a two-dimensional model is that to a certain extent  
5 with a two-dimensional model the modeler has to understand  
6 where the water is going to flow on a site before he or  
7 she even builds the model, because you have to put a  
8 cross-section where you think the water is going to flow.

9           The second thing on a one-dimensional model is  
10 you can only predict your numerical parameters, whether  
11 it's depth, flow, velocity, sediment transport parameters  
12 wherever you have a cross-section. So it's very limited,  
13 one-dimensional is limited in the sense if you have a wash  
14 that's several thousand feet long you may only have a  
15 cross-section every 500 feet, therefore, you can only  
16 predict the hydrodynamic and sediment transport  
17 characteristics every 500 feet or wherever you have a  
18 cross-section.

19           With a two-dimensional model, you literally build  
20 a computational grid that represents the topography or the  
21 surface of the earth, and you force water in at the top  
22 end of the upstream end and the water finds its own way  
23 through the two-dimensional model just like it does it  
24 real life. So in other words, the modeler doesn't have to  
25 use his or her judgment to decide how to build that model

1 to a certain extent.

2           And that's a simply indication, but in essence a  
3 2-D model is a much more accurate representation of what's  
4 physically happening on the ground than a one-dimensional  
5 model, which you have to tell the model how to operate.

6           And it always makes me think of a classic quote  
7 that I love, which all models are wrong, and some are  
8 useful. And the point being there is that no  
9 computational model is right, but some are more right than  
10 others, and some are more useful than others.

11           And for this application a 2-D model is more  
12 useful than a 1-D model. There would be other  
13 circumstances where I would say, no, use a 1-D model,  
14 that's more useful than a 2-D model.

15           So the animation showing here is a very similar  
16 situation. It's an alluvial fan out wash area. It is in  
17 southern California in the San Diego region. But what you  
18 see here is a very -- it's an arid system, and you see  
19 here a summer pulse, nothing much is happening at the  
20 moment. Now you see that pulse come through. When I  
21 built this model, I didn't tell the water where to flow.  
22 I didn't build cross-sections. The water found -- the  
23 flows found its own way into those avulsions, those arms  
24 that you see, those two avulsions coming off the main  
25 channel. And that is the type of graphic and animation

1 that you would see if a two-dimensional model had been  
2 used for this project.

3           The final thing to clarify -- it's a shame  
4 Dr. Chang isn't here actually because I'd love to talk to  
5 him about this -- he stated that there are no  
6 two-dimensional sediment transport models available.  
7 There are several two-dimensional sediment transport  
8 models available.

9           MS. MILES: And what is the practical reason why  
10 you would recommend that the staff employ this 2-D model  
11 for this project specifically?

12           MR. BOWLES: Because we've -- initially you'd  
13 build a dimensional hydrodynamic model, and then if  
14 necessary you'd run the sediment transport component of  
15 that two-dimensional model, and the reason you would use  
16 it is many different reasons. Maybe I could just focus in  
17 on a couple.

18           In a two-dimensional model, you could actually  
19 model the flow around every single pedestal so you could  
20 calculate the flow field around every single pedestal. It  
21 wouldn't be too laborious of a job.

22           MS. MILES: And so would you be able to estimate  
23 the aggregate then rather than --

24           MR. BOWLES: I was getting there.

25           MS. MILES: Okay. Okay.

1           MR. BOWLES: I was getting there.

2           In a one-dimensional model, as Dr. Chang said and  
3 as we reviewed, each one of those pedestals isn't  
4 represented individually in a one-dimensional model. You  
5 just can't do that. You haven't got a cross-section where  
6 every pedestal is. So what he did is, and this is a  
7 standard 1-D technique, is he represented the impact of  
8 those pedestals on the primary and secondary washes as a  
9 roughness element. And a roughness element is essentially  
10 a knob that you tweak or turn in a model, a  
11 one-dimensional model, to represent the obstruction to the  
12 flow of usually trees and vegetation. In this case it's  
13 pedestals. And he talked about how there's going to be  
14 removal in the washes of vegetation and that will be  
15 mitigated by putting in pedestals.

16           I understood that, but -- but anyway, so the way  
17 those pedestals are represented in a one-dimensional model  
18 is as a roughness element, a knob that you tweak until you  
19 get the results that you want to see.

20           In a two-dimensional model you wouldn't  
21 necessarily represent those pedestals as a roughness  
22 element, you would model every single pedestal within the  
23 computational grid.

24           The point of all that being is that you get a  
25 better representation of the true physics on the ground.

1 We believe that representing those pedestals as a  
2 roughness element is underestimating the cumulative amount  
3 of scour.

4 Yes, Dr. Chang analyzed maybe one or a group of  
5 those pedestals and calculated the scour depth, but it's  
6 the cumulative impact of several hundreds or thousands of  
7 pedestals in the washes and how that would affect the  
8 geomorphology of the channel, the scouring of sediment and  
9 transport of that sediment downstream. That's the  
10 significance of why you should use a two-dimensional model  
11 for these types of analysis.

12 The other thing is these are not heavily-confined  
13 river channels, they are, as Dr. Chang said, they're very  
14 shallow sheet flow environments. 1-D model are  
15 inherently -- the use of 1-D models to analyze that type  
16 of physical situation is inherently difficult. I would  
17 always go with large, wide sheet-flow scenarios. Now that  
18 the 2-D models are readily available, I would always go  
19 with a 2-D model for that physical situation.

20 MS. MILES: Okay. Setting aside the issue of 1-D  
21 versus 2-D modeling, were there any other deficiencies you  
22 wanted to comment on in Dr. Chang's analysis?

23 MR. BOWLES: I think we've touched on this.

24 He used identical hydrology and soil erosion  
25 estimates for existing and project. I think the

1 assumption being that those would be mitigated in the  
2 project conditions. But we believe that he should have  
3 used existing and project hydrology, and existing and  
4 project soil erosion estimates.

5 Anything to add to that, Chris? No?

6 MS. MILES: What is the significance of the  
7 deficiencies in the analysis that have been undertaken?

8 MR. BOWLES: Well, the significance is that the  
9 analyses have not considered the very significant  
10 unmitigated impacts on the watershed of the project, and  
11 ultimately the new river west side drain and Salton Sea,  
12 we think there will be significant impacts on those  
13 receiving waters.

14 MS. MILES: Thank you.

15 One last question.

16 And will the project impact groundwater recharge?

17 MR. BOWLES: We believe it could with reduced  
18 infiltration, the increased runoff as a result of the  
19 reduced infiltration could impact groundwater  
20 infiltration.

21 MS. MILES: Thank you.

22 The witness is available for cross-examination.

23 HEARING OFFICER RENAUD: Applicant, would you  
24 like to go ahead?

25 MS. FOLEY GANNON: Yes. Just a couple of

1 questions here.

2 CROSS-EXAMINATION

3 MS. FOLEY GANNON: Have you done any field  
4 investigation on the site in particular? Have you been to  
5 the site?

6 MR. BOWLES: No. You asked that the last  
7 hearing --

8 MS. FOLEY GANNON: In May. I thought maybe  
9 between -- you didn't?

10 MR. BOWLES: No, we haven't been between May and  
11 now.

12 MS. FOLEY GANNON: Okay. So you still haven't  
13 been to the site.

14 Have you had a chance -- have you run any studies  
15 yourself on the site? I mean, you are asserting  
16 conclusions about what you think other studies may show.  
17 Have you run any of those studies?

18 MR. BOWLES: No, but we'd love to.

19 MS. FOLEY GANNON: Excellent.

20 You criticize the assumption that the -- that  
21 they should have had some different hydrology in their  
22 models for pre and post condition. Dr. Chang -- if  
23 Dr. Chang's conclusion that there isn't going to be any  
24 hydromodification is correct, would the model be correct  
25 that then you would have the same --

1           MR. BOWLES: But I -- we've seen nothing, nothing  
2 to prove that there wouldn't be hydromodification impacts.  
3 It's just been an assumption.

4           MS. FOLEY GANNON: Dr. Chang studied that and has  
5 reported it in three reports; so there is some basis for  
6 it.

7           And again, just a question, if it's true that  
8 there isn't hydromodification, then wouldn't the input for  
9 the hydrology be the same for pre and post conditions that  
10 you're studying?

11          MR. BOWLES: Theoretically, if there's no -- but  
12 the point is nothing's been demonstrated that there is no  
13 hydromodification impacts.

14          MS. FOLEY GANNON: That's your conclusion.

15          MR. BOWLES: Yes.

16          MS. FOLEY GANNON: And just so I can clarify, I  
17 heard in talking to Dr. Chang and hearing Dr. Chang  
18 testify today, I heard him say that he wasn't objecting to  
19 the idea of a 2-D model because it wasn't available, he  
20 was saying he didn't think it was the most meaningful way  
21 to analyze sedimentation.

22                 Did you hear him say something different -- did  
23 you hear him say it wasn't available?

24          MR. BOWLES: Yeah, he actually said there was no  
25 2-D sediment transport model available.

1 MS. FOLEY GANNON: He said there was no 2-D model  
2 that would meaningfully --

3 MR. BOWLES: Sediment transport --

4 MS. FOLEY GANNON: -- he said that would  
5 meaningfully analyze sedimentation. I think that's what  
6 he said, but we can check that out.

7 MR. BOWLES: I apologize if I'm misquoting him.

8 I heard -- what I heard was the reason he didn't  
9 use a 2-D model is because one didn't exist.

10 MS. FOLEY GANNON: Okay. That's all I have.  
11 Thanks.

12 HEARING OFFICER RENAUD: Cross-examination by  
13 staff.

14 MS. HOLMES: No questions.

15 HEARING OFFICER RENAUD: By Budlong?

16 MR. SILVER: No questions.

17 HEARING OFFICER RENAUD: CNPS?

18 MR. BELTRAN: No.

19 MS. MILES: Just a couple questions on redirect.

20 REDIRECT EXAMINATION

21 MS. MILES: Do you feel like you needed to  
22 undertake your own study to formulate conclusions, the  
23 conclusions that are in your testimony?

24 MR. BOWLES: No, no, no. I mean, our conclusions  
25 are based on review.

1           The reason I threw in that flippant comment is  
2 that we love doing 2-D modeling, and we'd love to model  
3 this project in 2-D; but that's not our job, our job is to  
4 review the applicant's testimony. And so that -- our  
5 conclusions are based on that.

6           MS. MILES: And you feel confident in your  
7 conclusions --

8           MR. BOWLES: Oh, yes --

9           MS. MILES: -- without undertaking your own  
10 model?

11          MR. BOWLES: Yes. Thank you for clarifying that.  
12 Yes, we do.

13          HEARING OFFICER RENAUD: What was the question  
14 again, please? You were both talking.

15          MS. MILES: I asked whether he felt comfortable  
16 with his conclusions even though he had not undertaken his  
17 own model.

18          HEARING OFFICER RENAUD: That's the word you  
19 used, "comfortable," or "confident"?

20          MS. MILES: Confident -- I'm not sure.

21          MR. BOWLES: Confident, we are confident with our  
22 testimony.

23          HEARING OFFICER RENAUD: All right.

24          MS. MILES: No further questions.

25          HEARING OFFICER RENAUD: All right.

1           Commissioner Eggert?

2           COMMISSIONER EGGERT: I was just going to make a  
3 comment.

4           I think -- I appreciate your comment about the  
5 fact that all models are wrong, as an agency that uses  
6 models for all sorts of different activities, including  
7 trying to evaluate the potential impacts of climate  
8 change, I think you're correct, that, you know, we do use  
9 models to try to provide guidance, insights to help us  
10 make decisions, including about projects and design of  
11 projects.

12           And so I guess I did have a question with respect  
13 to you had the video up here, but these 2-D models, are  
14 there papers on them and how they've been applied to  
15 similar landscapes, desert landscapes and such?

16           MR. BOWLES: Yes, yes. Lots and lots of  
17 literature. Two-dimensional models have been developing  
18 over the last 20 years. One-dimensional models have been  
19 developing over the last 40 years. But so there's a lot  
20 of literature out there.

21           COMMISSIONER EGGERT: Is there any case in which  
22 they've been applied to something similar to this project?  
23 I'm thinking of --

24           MR. BOWLES: Well, there's a paper on this  
25 project right here that was presented at the International

1 Association of Hydraulics Research in 2000.

2 COMMISSIONER EGGERT: Does that have any  
3 non-natural obstructions that it's modeling or is it --

4 MR. BOWLES: No, no. Well, actually, what it  
5 does have, it's very near the -- well, it's in the border  
6 patrol area, so it does have a whole bunch of border  
7 patrol access roads. And interestingly what we found was  
8 the water would preferentially flow down the roads rather  
9 than through the vegetation, because water follows the  
10 least path of resistance -- the path of least resistance,  
11 so the water would rather flow through the border patrol  
12 roads than through the vegetated areas. So that -- those  
13 are human-made obstructions, yes, but the water likes  
14 flowing down access roads.

15 COMMISSIONER EGGERT: Thank you.

16 HEARING OFFICER RENAUD: Well, I have a question.  
17 My ears perked up when I heard Ms. Miles ask you  
18 a question about the impacts.

19 Before I continue though, caller 50, I think  
20 we're hearing you; can you please keep is quiet or mute  
21 it?

22 That's better. Thank you.

23 All right. You were asked about the downstream  
24 water quality impacts. And most of your answer was about  
25 how the applicant's analysis didn't adequately or

1 accurately predict downstream impacts, but I never heard  
2 you say if you -- what your opinion was about downstream  
3 water impacts other than that there could likely, and I'm  
4 quoting, be some impacts. Can you go any further than  
5 that, or is that your testimony?

6 MR. BOWLES: I think sediment transport, there  
7 will be sediment transport impacts under the current plan  
8 downstream of the project site. How far that will extend  
9 to the Salton Sea, over time, sediments from the project  
10 site will ultimately end up in the Salton Sea.

11 Water quality, there's just not enough  
12 information to say, but in my opinion there will be --  
13 there will be water quality impacts under the current  
14 project, to the Salton Sea.

15 HEARING OFFICER RENAUD: Significant impacts?

16 MR. BOWLES: I haven't got the information.

17 Can I say that?

18 HEARING OFFICER RENAUD: You can say anything you  
19 want. Don't look at your counsel; I'm asking questions.

20 MR. BOWLES: Yeah, I couldn't say that it would  
21 be significant. I think it's something that should be  
22 looked at to ascertain whether it's significant or not.

23 HEARING OFFICER RENAUD: Okay. Thank you. I  
24 appreciate that. Thank you.

25 All right. Is there any further questioning of

1 Dr. Bowles?

2 All right. And any questioning of Mr. Campbell?

3 Ms. Miles?

4 No, all right.

5 Well, okay, I think that means we should stop.

6 And we will then, as I understand it, we'll start up with  
7 biology tomorrow morning at 9:00.

8 Same arrangement for those of you calling in,  
9 those of you who are on WebEx, except we're starting at  
10 9:00, but other than that, the access will be the same.

11 All right. Very good. We'll adjourn for the  
12 evening, and we'll see you at 9:00 in the morning.

13 Thank you.

14 (Thereupon the hearing adjourned at 8:45 p.m.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Evidentiary Hearing Before the California Energy Resources Conservation and Development Commission, that I thereafter had it transcribed under my direction.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

I WITNESS WHEREOF, I have hereunto set my hand this 30th day of July 2010.

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PETER PETTY