

COMMITTEE MEMBER PRESENT

John L. Geesman, Commissioner
Presiding Member

HEARING OFFICER

Susan Gefter, Hearing Officer

STAFF PRESENT

Darcie L. Houck, Staff Counsel

Jack Caswell, Staff Project Manager

Alvin Greenberg, Ph.D.

Susan P. Jones, Chief, San Joaquin Valley Branch
U.S. Fish & Wildlife Service, Endangered Species
Division

Andrea Erichsen

Brewster Birdsall, P.E., QEP, Senior Associate
Aspen Environmental Group, Air Quality &
Engineering

Mike Ringer

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

REPRESENTING THE APPLICANT

Scott A. Galati, Esq.
Galati & Blek, LLP

Florida Power & Light Energy
Scott A. Busa, Project Director

Tetra Tech FW, Inc.
Dwight R. Mudry, Ph.D., Consulting Scientist
Duane McCloud, Project Engineer

Dan Bartel, C.E., Assistant Engineer-Manager
Buena Vista Water Storage District

REPRESENTING THE APPLICANT (continued)

Rick Hopkins, Ph.D., Senior Wildlife Ecologist
Live Oak Associates

David A. Stein, PE, VP
URS, Environmental & Energy Services

Dennis Jang
Bay Area Air Quality Management District

INTERVENORS PRESENT

Robert Sarvey

Michael Boyd, President
Californians for Renewable Energy (CARE)

Bill Powers, Licensed Mechanical Engineer
and Professional Engineer, State of California
Environmental Engineer and Consultant

Seyed Sadredin, Director of Permit Services
San Joaquin Valley Unified Air Pollution Control
District

ALSO APPEARING

Barry Luboviski, Secretary/Treasurer
Building and Construction Trades Council
Alameda County, AFL/CIO

Dave Mann, President
Building and Construction Trades Council
Alameda County, AFL/CIO
Representative, Plumbers & Steamfitters Local 342

Victor Uno, Business Manager
International Brotherhood of Electrical Workers
Union, Local 595

Susan Sarvey
Clean Air for Citizens/Legal Equality

Leroy Ornellas, Board of Supervisors
San Joaquin County

Wes Hoffman, Councilman
Tracy City Council

ALSO APPEARING (continued)

Carole Dominguez
Resident of Tracy

Celeste Garamendi
Tracy Region Alliance for a Quality Community

Ann Mooney, President
Tracy Educators Association

Doyle Williams, Local 595
International Brotherhood of Electrical Workers,

Wayne Livingston, representative
IBEW, Local 595

Debbie Libhart, union ironworker

Paula Buenavista, Vice-Chair, Oversight Committee
Tracy Peaker Power Plant

Eric Parfrey, professional city planner
Chair, Motherlode Chapter, Sierra Club

Paul Sundberg, resident of Tracy
Irene Sundberg, resident of Tracy

Proceedings	1
Opening Remarks	1
Introductions	1
Public Comment	10
Irene Sundberg	10
Preliminary Questioning for Air Quality, Public Health & Dry Cooling	22
Intervenor witnesses Robert Sarvey and Bill Powers	22
Direct examination by Mr. Boyd	22
Comments from Leroy Ornellas	37
Topics	39
Biological Resources	39
Applicant witness Dwight Mudry	40
Direct Examination by Mr. Galati	40
Cross-Examination by Ms. Houck	65
Cross-Examination by Mr. Boyd	66
Cross-Examination by Mr. Sarvey	69
Redirect Examination by Mr. Galati	71
Applicant witness panel Dan Bartel and Rick Hopkins	54
Direct Testimony	54
Staff witness panel Andrea Erichsen and Susan Jones	72, 73
Direct Examination by Ms. Houck	73
Cross-Examination by Mr. Galati	82
Cross-Examination by Mr. Boyd	89
Cross-Examination by Mr. Sarvey	95
Examination by the Commission	98
Recross-Examination by Mr. Galati	99
Redirect Examination by Ms. Houck	100
Recross-Examination by Mr. Sarvey	103

Air Quality	104
Applicant witness David Stein	105
Direct Examination by Mr. Galati	105
Cross-Examination by Ms. Houck	154
Cross-Examination by Mr. Sarvey	169,171
Applicant witness Scott Busa	170
Direct Testimony	170
Redirect Examination by Mr. Galati	224
Recross-Examination by Ms. Houck	226
Applicant witness Seyed Sadredin [via telephone]	133
Direct Examination by Mr. Galati	134
Examination by Hearing Officer Gefter	134
Examination by the Commission	142
Cross-Examination by Ms. Houck	144
Cross-Examination by Mr. Sarvey	198
Applicant witness Dennis Jang	203
Direct Examination by Mr. Galati	203
Cross-Examination by Ms. Houck	206
Cross-Examination by Mr. Sarvey	209
Redirect Examination by Mr. Galati	214
Recross-Examination by Ms. Houck	215
Recross-Examination by Mr. Sarvey	216
Staff witness panel Brewster Birdsall and Mike Ringer	229
Direct Examination by Ms. Houck	229
Cross-Examination by Mr. Galati	342
Redirect Examination by Ms. Houck	356
Cross-Examination by Mr. Sarvey	357
Redirect Examination by Ms. Houck	387
Recross-Examination by Mr. Sarvey	388

INDEX (continued)

	Page
Public Comment	
Wes Hoffman	263
Carole Dominguez	272
Celeste Garamendi	277
Ann Mooney	289
Doyle Williams	291
Wayne Livingston	291
Debbie Libhart	291
Paula Buenavista	295
Eric Parfrey	298
Paul Sundberg	306
Irene Sundberg	306
Bill Powers	311
Susan Sarvey	321
Public Adviser Mendonca (on behalf of)	
Anna Aguirre	331
Maryanne and Gordon Griffith	332
Eugene Sparks	335
Leroy Ornellas	336
Public Health	391
Applicant witness David Stein	391
Direct Examination by Mr. Galati	391
Staff witness Alvin Greenberg	393
Direct Examination by Ms. Houck	393
Examination by Hearing Officer Gefter	397
Cross-Examination by Mr. Sarvey	402
Staff witness Mike Ringer	406
Redirect Testimony	406
Recross-Examination by Mr. Sarvey	407

INDEX (continued)

	Page
Socioeconomics	409
Applicant witness Scott Busa	409
Direct Examination by Mr. Galati	410
Staff witness Jack Caswell	411
Direct Examination by Ms. Houck	412
Cross-Examination by Mr. Sarvey	413
Redirect Examination by Ms. Houck	414
Recross-Examination by Mr. Sarvey	415
Redirect Examination by Ms. Houck	419
Discussion of Briefs	422
Closing remarks	422
Adjournment	422
Certificate of Reporter	423

P R O C E E D I N G S

11:05 a.m.

HEARING OFFICER GEFTER: This is a continuation of evidentiary hearings on the Tesla Power Plant Project sponsored by FPL. This is a Committee of the Commission, and before we begin I'd like to take introductions of the parties. The Committee consists of Commissioner John Geesman, I am the hearing officer, Susan Gefter. The other commissioner assigned to the case, Art Rosenfeld, isn't available today to join us.

I would ask the Applicant to please make your appearance at this point.

APPLICANT COUNSEL GALATI: My name is Scott Galati representing Midway Power. On my left is the project manager for the Tesla Power Project, Scott Busa. On my right is Dwight Mudry, who is the AFC project manager with Tetra Tech Foster Wheeler, and on his right is Duane McCloud, who is the project engineer for the Tesla project. And in the audience we have the vice president of western regional development, Darryl Grant. We have other cast of characters who will come up and testify during the particular subject matters.

HEARING OFFICER GEFTER: Thank you.

1 Staff?

2 STAFF COUNSEL HOUCK: Good morning. I'm
3 Darcie Houck, staff counsel representing Staff.
4 We have here today Andrea Erichsen and Jim Burnell
5 dealing with Biological Resources; Ila Lewis, the
6 compliance manager; Jack Caswell, the project
7 manager is here; Toni Midiotti, dealing with Water
8 Resources, Dr. Alvin Greenberg with Public Health;
9 and we have Brewster Birdsall for Air Quality; and
10 we are also sponsoring Susan Jones with the U.S.
11 Fish and Wildlife Service.

12 HEARING OFFICER GEFTER: Thank you.

13 And Intervenors, Mr. Sarvey?

14 INTERVENOR SARVEY: Bob Sarvey and Bill
15 Powers.

16 HEARING OFFICER GEFTER: Well,
17 Mr. Powers is not an intervenor, but Mr. Powers is
18 your witness; is that correct?

19 MR. POWERS: That's correct.

20 HEARING OFFICER GEFTER: And Mr. Boyd
21 for CARE is not here today, and I don't know if
22 there is a representative from CURE here, but I
23 know we do have Mr. Barry Luboviski, who is from
24 the Building and Construction Trades Council of
25 Alameda County.

1 And I think that CURE, who has
2 intervened in this case, is an umbrella
3 organization of which your organization is a part.
4 And I'll ask Mr. Luboviski to come up to the
5 podium at this point.

6 Also present today on the stand is
7 Dennis Jang from the Bay Area Air Quality
8 Management District. Mr. Jang? Yes, he's in the
9 back.

10 Are there any representatives, local
11 elected officials or any representatives from
12 local government agencies today? Okay, nobody has
13 indicated at this point.

14 We also want to introduce Roberta
15 Mendonca, the public adviser for the Energy
16 Commission. She is standing in the back there.
17 If anyone has any questions, please see her. She
18 can assist you in participating in the
19 proceedings.

20 I'm going to ask at this point
21 Mr. Luboviski, who has requested to address us, to
22 please make your comments. Spell your name for
23 the record.

24 MR. LUBOVISKI: Certainly. My name is
25 Barry Luboviski. That's B-a-r-r-y, Luboviski is

1 spelled L-u-b-o-v as in Victor-i-s-k-i. I am
2 secretary/treasurer for the Building and
3 Construction Trades Council of Alameda County,
4 AFL/CIO. Our council is comprised of 26 local
5 unions that represent workers in Alameda County.

6 Although we represent workers in Alameda
7 County, many of our local unions, in fact,
8 represent and have representation areas far
9 broader than just Alameda County alone. So, in
10 fact, in Tracy, in Stockton, in all of the
11 surrounding areas, and, in fact, in all of
12 California, you will see construction workers on
13 job sites that are members of unions that our
14 council represents directly or indirectly through
15 the State Building Trades Council through their
16 international unions. We're all tied together, in
17 essence.

18 As secretary/treasurer I sit on the
19 executive board of the State Building and
20 Construction Trades Council, which is one of the
21 parties as referenced earlier to CURE. And as
22 such, we see this project and concur with the
23 State Building Trades Council. And with all of
24 the 24 building trades councils in California, we
25 feel this project is, in fact, a benefit to the

1 local community and to the societal goals that
2 have been espoused by labor and by community
3 representatives over the years.

4 And that is for environmentally
5 responsible projects, for projects that not only
6 recognize the environment but also recognize the
7 local communities and benefit the local
8 communities directly by product or by services
9 that are of assistance, but also indirectly by
10 jobs.

11 In this case, we feel that the power
12 plant in question here, with the hearings that
13 have been very deliberative and we appreciate
14 that, we support the environmental goals, but that
15 these hearings also, as we've pointed out in the
16 past, should recognize the secondary benefits.
17 And that is that the workers that will construct
18 this facility and that will, in fact, ensure the
19 consistent running of this facility.

20 Our workers that receive wages and
21 benefits, pension and medical benefits
22 commensurate with their job and thereby are not a
23 drain on the communities from which they come. We
24 see this project as, in fact, meeting those goals.
25 And so, on behalf of myself and the other local

1 unions, we support the project.

2 I would like to also further point out
3 that with me today are Victor Uno, business
4 manager of the International Brotherhood of
5 Electrical Workers Union, Local 595 --

6 HEARING OFFICER GEFTER: Could you
7 please spell Mr. Uno's name for us.

8 MR. LUBOVISKI: Yes. It's Victor,
9 V-i-c-t-o-r Uno, U-n-o, and Victor's local union
10 represents a broad area, much broader than Alameda
11 County, and represents electrical workers or
12 workers, electricians that do a variety of tasks
13 and is here today to represent his support.

14 In deference to the council, we thought
15 that it was best to have one speaker and not try
16 to weigh you under with a lot of speakers. But
17 Victor drove on out from Dublin and feels that
18 this should be important. So although our remarks
19 in total may be brief, they should in no way
20 indicate our commitment to this project which is
21 extensive and extremely committed.

22 In addition to Mr. Uno, Dave Mann is
23 here. Dave Mann is the president of the Building
24 and Construction Trades Council. He also is a
25 representative of the Plumbers and Steamfitters

1 Local 342, which again represents workers in
2 multiple counties here in Northern California.

3 HEARING OFFICER GEFTER: How do you
4 spell Mr. Mann's name?

5 MR. LUBOVISKI: Dave, D-a-v-e, M-a-n-n.

6 HEARING OFFICER GEFTER: Thank you.

7 MR. LUBOVISKI: And Mr. Mann is here and
8 has driven from another meeting. As a matter of
9 fact, he left negotiations to be here today to
10 represent his membership and also to represent the
11 Building and Trades Council and all of the crafts
12 that are, in fact, here by way of the three of us.

13 In addition, and unfortunately we had a
14 representative of the Operating Engineers, Mr. Jim
15 Rodriguez, R-o-d-r-i-g-u-e-z. I'm not going to
16 spell "Jim" for you. And Mr. Rodriguez has been
17 driving out here and left a meeting;
18 unfortunately, because of I think traffic or some
19 other circumstance, he was not able to be here at
20 the appointed time. But it should be noted that
21 the Operating Engineers saw fit to request their
22 representative, Mr. Rodriguez, to be here to
23 express the interest of his membership. And he is
24 on his way.

25 So I think that that covers it. We've

1 driven a ways to get here from our various
2 locations, canceled meetings, changed our
3 schedule. We see this process as important. We
4 see it as also important to ensure that it's
5 clear, that labor stands steadfastly in support of
6 this project and sees it as an overall benefit.

7 Thank you for your time.

8 PRESIDING COMMITTEE MEMBER GEESMAN: Let
9 me say on behalf of the Committee that I
10 appreciate your comments, and also the
11 contribution that your organization and the other
12 members of labor that contributed to the
13 Commission's process over the last several years.
14 I understood your comments and I believe they were
15 intended to focus not just on the economic growth
16 aspect of jobs created by this project, but also
17 in a broader sense, the underpinnings of trying to
18 revitalize the California economy by projects such
19 as this. And they create jobs for your members
20 and for others far beyond a simple individual
21 power plant.

22 Since January 1st, 1999 the California
23 Energy Commission has permitted 41 power plants
24 all around California, brought 9500 megawatts on
25 line. There is no other five-year period in our

1 history of this state where we have put more
2 investment or more megawatts into modernizing our
3 grid. And I appreciate your help for the
4 Commission over the last several years in
5 accomplishing that.

6 Let me say also that our challenge here
7 today in this proceeding is assuring that this
8 particular application complies with all of
9 California's very demanding environmental
10 requirements, and we intend to be vigilant in
11 doing that. Our hope is to conclude the
12 evidentiary phase of the process today and go on
13 to briefs that will then result in decision a few
14 months down the road.

15 But thank you for your comments and I
16 would ask that you convey our best sentiments to
17 your members.

18 MR. LUBOVISKI: Thank you very much. I
19 appreciate your time and accommodations in
20 enabling us to appear at this time.

21 HEARING OFFICER GEFTER: Thank you very
22 much.

23 We have scheduled public comment this
24 evening at 6:00 p.m. for members of the public to
25 address us on Air Quality, Public Health, and any

1 other issues that they wish to discuss.

2 I understand that Ms. Sundberg is here
3 and may not be able to be back at 6:00 p.m. and,
4 therefore, I am going to ask you to come forward
5 and make your comments now to try to accommodate
6 your schedule.

7 Also, I know Mrs. Sarvey wanted to
8 address us, but we're going to ask her to wait
9 until 6:00 o'clock, because you have a lot of
10 issues you're going to talk to us about.

11 Mrs. Sundberg, would you just spell your
12 name for the record.

13 MRS. SUNDBERG: Irene Sundberg,
14 S-u-n-d-b-e-r-g. I'm a planning commissioner and
15 a resident at the City of Tracy.

16 You've demonstrated previously in these
17 hearings that you have a precommitment to the
18 ideas, and they're your ideas, not the ideas of
19 what is being presented today. We have been cut
20 off and have not been allowed to intervene, nor
21 has the Applicant been allowed to discuss the
22 ideas or concerns unless they fit into the agenda.

23 I intervened at the Tracy Peaker Plant,
24 and we discussed everything thoroughly. And the
25 hearing officer ruled on everything. We were not

1 cut off of our questions, we were not discouraged,
2 and we were encouraged to discuss what was being
3 presented.

4 We prefer dry cooling in this project
5 for Tesla. In the event this is not feasible, we
6 would like to have heard the Applicant's reasons
7 for their belief that this is not important and
8 that potable water is the acceptable use for this
9 plant.

10 You would not allow the Applicant's
11 experts to fully explain their position at the
12 last hearing I was at. Now we cannot fully
13 evaluate the idea of potable water, because we are
14 not in possession of all of the facts. And I
15 think that is a great disservice to our community.

16 We are now here to discuss air quality
17 and the community's most important topic this
18 afternoon will be Air Quality. Please allow a
19 full and open debate on the important topic before
20 you today before making a ruling. All sides must
21 be heard -- the Intervenor, the Staff, and the
22 Applicant -- for a valid ruling to be made. As
23 having been a past intervenor, I can tell you I
24 would have been appalled at the treatment that
25 these intervenors have been given at this hearing.

1 I hope that Bill Powers will be able to
2 present his evidence today, and that the questions
3 that he will be asked and the answers that he will
4 give will be listened to carefully, and determined
5 whether they are a benefit to our community and
6 how it will benefit our community.

7 Thank you.

8 HEARING OFFICER GEFTER: Thank you.

9 PRESIDING COMMITTEE MEMBER GEESMAN: I
10 want to make clear that the record that we base
11 our decision on consists of a lot more than simply
12 the verbal remarks that are made at these
13 hearings. We have a voluminous written record,
14 the information content of which is probably
15 several multiples of that of the simple transcript
16 of verbal comments here.

17 No one has been cut off nor will they be
18 cut off. Everyone has an opportunity to put
19 forward their best evidence and arguments into the
20 record. And that is the spirit with which we have
21 conducted the process thus far and it is the
22 spirit with which we will continue it to
23 completion.

24 MRS. SUNDBERG: I understand that
25 everything goes into the record. I was deeply

1 involved in the Tracy Peaker Plant and GWF, and
2 what I have seen here has not been an example of
3 what was shown at the hearings before or the
4 evidentiary stuff that we've put on the record
5 that should be appearing.

6 I'm sorry, that's my opinion and I'm
7 allowed to say that. Thank you.

8 HEARING OFFICER GEFTER: I wanted to
9 note for the record that Mr. Boyd on behalf of
10 CARE has just arrived and is now present in the
11 hearing.

12 The agenda for today is the first topic
13 that we're going to finish is Biology, Biological
14 Resources, and we will do that first. Then we're
15 going to do Air Quality, Public Health,
16 Socioeconomics. At 6:00 o'clock we are going to
17 take public comment on those topics and any other
18 topics that the public wishes to address.

19 At this point if the parties are ready
20 to proceed on Biology -- Mrs. Sarvey?

21 MRS. SARVEY: Excuse me, Mr. Geesman, I
22 was under the impression we were going to have an
23 opportunity to discuss dry cooling today. Water
24 was not mentioned in this agenda and it was not
25 closed at Friday's meeting, so when will we be

1 discussing water?

2 Water is very important and we need to
3 air all of the issues that I am concerned about
4 with recycled water, and I would like to hear --
5 Mr. Powers is an expert on that, and maybe he
6 could alleviate my concerns about recycled water,
7 and I would like him to be able to discuss dry
8 cooling. Water was not closed, and I was under
9 the impression we were going to discuss dry
10 cooling today.

11 PRESIDING COMMITTEE MEMBER GEESMAN: I
12 think Water was not closed because we wanted to
13 provide the parties an opportunity to cross-
14 examine Mr. Powers. It's my understanding that
15 neither the Staff nor the Applicant have any
16 questions on cross for Mr. Powers.

17 You're certainly welcome to say whatever
18 you would like to, as is he, during our public
19 comment period.

20 MRS. SARVEY: So you will not be able to
21 answer my questions?

22 PRESIDING COMMITTEE MEMBER GEESMAN: I
23 think I just did.

24 MRS. SARVEY: You can talk to me about
25 prions and Legionella?

1 HEARING OFFICER GEFTER: That's a public
2 health question, and we are taking testimony on
3 public health later today.

4 MRS. SARVEY: So he will testify then
5 and answer my questions.

6 PRESIDING COMMITTEE MEMBER GEESMAN: If
7 he has information on public health, he certainly
8 will.

9 MRS. SARVEY: Thank you.

10 HEARING OFFICER GEFTER: Okay.

11 Mr. Boyd?

12 INTERVENOR BOYD: Mrs. Sarvey asked me
13 to make a special trip to come here today because,
14 as I stated at the last meeting, I am bound for
15 life today, and the concern she expressed to me
16 was that our witnesses, Mr. Powers and also
17 Mr. Sarvey, that they wouldn't be admitted as
18 witnesses.

19 So what I decided to do was that I would
20 come here and ask your permission or whatever it
21 is to have them both, since CARE was originally
22 the one sponsoring them, to have them sworn and
23 also qualified I guess is what the term would be.
24 Because they're going to -- I'm sure that both the
25 Applicant and the Staff probably have some

1 questions about their qualifications as well.

2 And I wanted to take an opportunity to
3 do that before I have to leave. Because I can't
4 stay. I can only stay for a short time.

5 So why I came here was for that sole
6 purpose, so that they would be qualified as
7 witnesses, and then if I leave it will be possible
8 for them to be cross-examined, if need be. And
9 I'm just providing that opportunity, and that is
10 the only reason I'm here.

11 PRESIDING COMMITTEE MEMBER GEESMAN:
12 Mr. Boyd, you're sponsoring them on Air Quality or
13 Public Health?

14 INTERVENOR BOYD: I was sponsoring
15 Mr. Powers on Water, and I wanted to sponsor
16 Mr. Sarvey as a local air quality expert. And
17 there was a question at the last meeting about
18 some isopleths that Mr. Sarvey wanted to present,
19 but that he is not qualified to discuss.

20 But, on the other hand, Mr. Powers is
21 qualified to discuss those isopleths because he is
22 an expert in air quality as well. So that's what
23 I would like to have them qualified as.

24 HEARING OFFICER GEFTER: Okay. I'm
25 going to go off the record for a minute.

1 (Brief recess.)

2 HEARING OFFICER GEFTER: We're on the
3 record. As I indicated, Mr. Boyd will be allowed
4 to present his witnesses out of order to
5 accommodate his schedule, and then we will proceed
6 with Biology according to our original hearing
7 schedule.

8 Mr. Boyd, would you like to offer your
9 witnesses' testimony?

10 INTERVENOR BOYD: Certainly. Who do you
11 want me to start with?

12 APPLICANT COUNSEL GALATI: Ms. Hearing
13 Officer, may I have a clarification on that? Is
14 Mr. Powers going to be testifying on Water, or is
15 he going to be testifying on Air Quality and
16 Public Health?

17 HEARING OFFICER GEFTER: You can ask
18 Mr. Boyd what he is offering the witness for.

19 INTERVENOR BOYD: I'm offering him as a
20 witness both on Air Quality and Water, only
21 because I don't believe that Mr. Sarvey is
22 qualified to testify as an expert on air quality
23 on some of the technical exhibits I guess you
24 would say, the isopleths is what I was
25 specifically concerned about him not being

1 qualified to testify about.

2 And since Mr. Powers, when we go through
3 the qualification process, I'm sure you'll have
4 several questions about what makes him qualified
5 to be cross-examined on that air quality stuff,
6 and that's why I'm trying to do this now at this
7 time.

8 APPLICANT COUNSEL GALATI: I understand,
9 if I could ask for some further clarification.
10 When you talk about the isopleths, you're talking
11 about the isopleths submitted by Dr. Shawn
12 Smallwood?

13 INTERVENOR BOYD: No, the ones that
14 Mr. Sarvey has right here that he brought at the
15 last meeting.

16 HEARING OFFICER GEFTER: They're listed
17 in the exhibit list.

18 INTERVENOR BOYD: I don't know if
19 those -- Were they made part of the exhibits?

20 HEARING OFFICER GEFTER: They are listed
21 in the exhibit list.

22 INTERVENOR SARVEY: We haven't included
23 them yet.

24 INTERVENOR BOYD: They have not been
25 made exhibits yet.

1 HEARING OFFICER GEFTER: Apparently
2 there were some isopleths listed in Mr. Sarvey's
3 list of exhibits.

4 INTERVENOR SARVEY: Right.

5 HEARING OFFICER GEFTER: Are those
6 different, the ones that you're offering now?

7 INTERVENOR BOYD: No. No, ma'am.

8 HEARING OFFICER GEFTER: They're the
9 same?

10 INTERVENOR BOYD: They're the same.

11 HEARING OFFICER GEFTER: Mr. Sarvey,
12 could you identify the exhibits where these
13 isopleths are located?

14 INTERVENOR SARVEY: Yes. We have
15 isopleths located on Exhibit --

16 HEARING OFFICER GEFTER: I see, all
17 right, I found it. Exhibit 87 and Exhibit 88.
18 These are exhibits offered by Intervenor Sarvey.

19 INTERVENOR SARVEY: And we have 86 --

20 HEARING OFFICER GEFTER: Also 86?

21 INTERVENOR SARVEY: -- 87, 88, and
22 Exhibit 89. All these isopleths were generated by
23 Energy Commission staff during the East Altamonte
24 Energy Center hearings.

25 APPLICANT COUNSEL GALATI: And

1 Mr. Powers' testimony would be limited to those
2 isopleths? Talking about those isopleths and what
3 they mean?

4 INTERVENOR BOYD: In air quality, yes,
5 sir.

6 APPLICANT COUNSEL GALATI: Just in order
7 to be able to prepare --

8 INTERVENOR BOYD: In the area of air
9 quality, yeah. But there is also -- as you said,
10 also we may have a need for him to testify under
11 Public Health, specifically related to the water
12 issues like Legionnaire's and other airborne
13 pathogens, let us say we would like him to be
14 available for that as well under Public Health.
15 That's basically the limit of those areas.

16 Now, Mr. Sarvey, you already have his
17 prefiled testimony, so you know which areas he
18 should be covering under Air Quality.

19 HEARING OFFICER GEFTER: Do you have an
20 objection to Mr. Boyd?

21 APPLICANT COUNSEL GALATI: I would need
22 to check with my client. I don't think we have an
23 objection to that. What I did want to do was to
24 have another Water hearing on Mr. Powers' prefiled
25 testimony on Water which we have submitted that

1 can come into evidence.

2 I have no cross-examination questions
3 for Mr. Powers on that testimony, and when you
4 said he was allowed to testify I wanted to make
5 sure to what --

6 INTERVENOR BOYD: Well, we're not
7 offering that he has to testify. We just want to
8 make him available as an expert in case there are
9 any questions that come up. I'm not proposing
10 that I cross-examine him or go through the normal
11 procedure that would take a lot of time. I'm just
12 trying to make them available for you.

13 HEARING OFFICER GEFTER: All right. So
14 what you're doing, Mr. Boyd, is to introduce your
15 witnesses to us on the topics of Air Quality and
16 Public Health, and also to make Mr. Powers
17 available to us for cross-examination on dry
18 cooling?

19 INTERVENOR BOYD: On dry cooling, yes.

20 HEARING OFFICER GEFTER: All right, and
21 that is the limit of your witnesses' offer?

22 INTERVENOR BOYD: That's basically my
23 offer.

24 HEARING OFFICER GEFTER: All right.

25 INTERVENOR BOYD: Unless there is

1 something more you need.

2 HEARING OFFICER GEFTER: Staff, do you
3 have any objection or any questions before we
4 proceed?

5 STAFF COUNSEL HOUCK: No, Staff has no
6 questions.

7 HEARING OFFICER GEFTER: All right.

8 Mr. Boyd, do you want your witnesses
9 sworn and then you can offer their qualifications?

10 INTERVENOR BOYD: Certainly.

11 Would you guys stand, please.

12 Whereupon,

13 ROBERT SARVEY and BILL POWERS
14 Were called as witnesses herein and, after having
15 been duly sworn, were examined and testified as
16 follows:

17 THE REPORTER: The witnesses are sworn.

18 DIRECT EXAMINATION

19 BY INTERVENOR BOYD:

20 Q Starting with you, Mr. Powers, would you
21 please state your qualifications.

22 A My name is Bill Powers. I have a
23 mechanical engineering and professional engineer's
24 license in California and have been a practicing
25 environmental engineer and consultant in

1 California for the last 20 years, specializing
2 primarily in air permitting, air quality impact,
3 assessments, emission inventories, power plant
4 evaluations, power plant design, and most recently
5 involved in the evaluations of the design of air-
6 cooled condensing systems for power plants.

7 Q Bob, would you state your
8 qualifications.

9 A Yeah, my name is Bob Sarvey. I have
10 participated in all three of the siting cases and
11 several other siting cases around the state, and
12 I'm uniquely qualified to testify to the
13 mitigation that has been provided in these siting
14 cases, and I was a member of the San Joaquin
15 Valley Air Pollution Control Board Advisory
16 District, and I have been honored as an EPA
17 Citizen of the Year for hazardous waste and air
18 quality issues, and I serve as the main advisor to
19 the city council planning commission and the GWF
20 mitigation committee in an informal manner.

21 Q And, Mr. Sarvey, is it your
22 understanding that you're only acting as an expert
23 on local air quality issues here?

24 A That's correct.

25 HEARING OFFICER GEFTER: Are there any

1 questions or do any of the parties want to voir
2 dire the witnesses on their qualifications?

3 APPLICANT COUNSEL GALATI: I think I had
4 originally objected to Mr. Sarvey being able to
5 testify. It's been characterized as a local air
6 quality expert. I need to find out, are there any
7 more questions that Mr. Boyd -- I thought I would
8 handle them on an objection, point-by-point basis.

9 INTERVENOR BOYD: Certainly not. Feel
10 free.

11 HEARING OFFICER GEFTER: Okay. Do you
12 want to voir dire the witness?

13 APPLICANT COUNSEL GALATI: Well, I just
14 would ask either of the two witnesses if they had
15 any additions or deletions to the prefiled
16 testimony that I provided before we get into that.

17 WITNESS POWERS: I do not have additions
18 to my prefiled testimony.

19 BY INTERVENOR BOYD:

20 Q Okay. Bob?

21 A No additions.

22 INTERVENOR BOYD: So that's taken care
23 of. I don't know when --

24 HEARING OFFICER GEFTER: So you are
25 making your witnesses available for cross-

1 examination if the parties have questions of the
2 witnesses?

3 INTERVENOR BOYD: If they have
4 questions, certainly. And I don't know if this is
5 the appropriate time to offer our exhibits into
6 evidence or not --

7 HEARING OFFICER GEFTER: Yes, this is
8 the right time, unless Mr. Galati has any
9 objection.

10 Mr. Galati, do you have any questions or
11 objections to the witnesses at this point?

12 APPLICANT COUNSEL GALATI: No, I have no
13 objections. I assume there are going to be
14 additional questions regarding those exhibits and
15 I may have objections regarding those.

16 INTERVENOR BOYD: Certainly.

17 HEARING OFFICER GEFTER: All right.

18 Mr. Boyd, are you going to offer
19 exhibits into the record at this time?

20 INTERVENOR BOYD: Certainly. I have
21 exhibits 81 through 96.

22 HEARING OFFICER GEFTER: Okay, 81
23 through 96. Now, those are Mr. Sarvey's exhibits.

24 INTERVENOR BOYD: Certainly. That went
25 with his prefiled testimony.

1 HEARING OFFICER GEFTER: All right.
2 Exhibit 81 is the same as 57, which was offered by
3 Staff, so we will pass on that one.

4 INTERVENOR BOYD: That's fine.

5 HEARING OFFICER GEFTER: In other words,
6 57 will be admitted, and 81 will not.

7 (Thereupon Exhibit 57 was received into
8 evidence and Exhibit 81 was rejected.)

9 HEARING OFFICER GEFTER: Eighty-two,
10 motion to compel response to data request, does
11 anyone have objection to that one?

12 STAFF COUNSEL HOUCK: No objection.

13 APPLICANT COUNSEL GALATI: No objection.

14 HEARING OFFICER GEFTER: All right. So
15 that's received into the record today, Exhibit 82.

16 (Thereupon Exhibit 82 was received into
17 evidence.)

18 HEARING OFFICER GEFTER: Eighty-three is
19 a letter from Assembly Member Barbara Matthews to
20 Chairman Keese. Any objections to receiving that
21 letter?

22 STAFF COUNSEL HOUCK: No objection.

23 APPLICANT COUNSEL GALATI: No objection.

24 (Thereupon Exhibit 83 was received into
25 evidence.)

1 HEARING OFFICER GEFTER: Eighty-four is
2 a newspaper article. Objections?

3 APPLICANT COUNSEL GALATI: I object that
4 it's hearsay.

5 STAFF COUNSEL HOUCK: No objection for
6 purpose of public comment, but --

7 HEARING OFFICER GEFTER: But as an
8 exhibit, do you object to it?

9 STAFF COUNSEL HOUCK: Yes, we would
10 indicate that we believe it's hearsay as well.

11 HEARING OFFICER GEFTER: That objection
12 is sustained. It could be offered as public
13 comment.

14 (Thereupon Exhibit 84 was rejected.)

15 INTERVENOR BOYD: That's fine, as long
16 as it's in the record, that's all that matters.

17 HEARING OFFICER GEFTER: All right.
18 Eighty-five is a letter from the San Joaquin Air
19 District, City of Tracy. Any objection to that
20 one?

21 APPLICANT COUNSEL GALATI: No objection.

22 HEARING OFFICER GEFTER: Staff?

23 STAFF COUNSEL HOUCK: No objection.

24 HEARING OFFICER GEFTER: Eighty-six is
25 another letter from San Joaquin Air District. Any

1 objection to that one?

2 STAFF COUNSEL HOUCK: No objection.

3 APPLICANT COUNSEL GALATI: No objection.

4 HEARING OFFICER GEFTER: All right. So
5 85 and 86 are received into the record.

6 (Thereupon Exhibit 85 & 86 were received
7 into evidence.)

8 HEARING OFFICER GEFTER: Eighty-seven,
9 any objection?

10 APPLICANT COUNSEL GALATI: Excuse me,
11 does 86 include the isopleth?

12 HEARING OFFICER GEFTER: Apparently, it
13 did. Do you object to the isopleth?

14 APPLICANT COUNSEL GALATI: If he could
15 have a witness tell me that that isopleth was part
16 of the additional documentation. I'm not sure
17 that it is. Is that where it comes from?

18 HEARING OFFICER GEFTER: Okay. Where
19 does that isopleth come from, Mr. Sarvey, are you
20 the witness?

21 THE WITNESS: That is an isopleth
22 supplied to me by Energy Commission staff in the
23 East Altamonte Energy siting case.

24 HEARING OFFICER GEFTER: Okay.

25 APPLICANT COUNSEL GALATI: So it is not

1 part of 86, then, which is a letter from San
2 Joaquin Valley, correct?

3 THE WITNESS: Yes.

4 STAFF COUNSEL HOUCK: What exhibit
5 number is it?

6 HEARING OFFICER GEFTER: Eighty-six.

7 THE WITNESS: What it is is just
8 basically the Staff's interpretation of the
9 impacts from that particular facility.

10 APPLICANT COUNSEL GALATI: What I would
11 offer, in alternative, is for the Committee to
12 take administrative notice of the matter in East
13 Altamonte, because I can neither confirm nor deny
14 today that that is an isopleth provided or
15 developed by Staff. If it was in the East
16 Altamonte record, there would be a proper
17 foundation. For that purpose, I have no problem
18 with it being referred to. But without someone
19 telling me exactly what this is, then it's
20 hearsay.

21 HEARING OFFICER GEFTER: All right. I
22 think that's a reasonable approach, which is to
23 use the isopleths which Mr. Sarvey has offered
24 from the East Altamonte record?

25 THE WITNESS: That's correct.

1 HEARING OFFICER GEFTER: We'll take
2 administrative notice of that record, and we will
3 delete the isopleths from Exhibits 86, 87 and 88,
4 and Mr. Sarvey can tell us where in the East
5 Altamonte record he retrieved those isopleths.

6 So let's just look at 86, 87 and 88
7 without the isopleths. Is there any objection to
8 those documents being received?

9 APPLICANT COUNSEL GALATI: And I
10 apologize for being such a stickler on this. The
11 first page for 86 shows it's a letter from San
12 Joaquin Valley Air Pollution Control District.
13 When I go to the next page, it looks like it's an
14 excerpt from an environmental impact report. I'm
15 not sure that the two actually go together, which
16 is my objection. I would expect to see a letter
17 like this actually signed by the District, which
18 none of the pages of Exhibit 86 show that.

19 So it looks like I have a partial letter
20 and partial excerpts from an environmental impact
21 report.

22 THE WITNESS: That's the Tracy Gateway
23 EIR. That's what it's listed as, letter from the
24 City of Tracy emission summary.

25 APPLICANT COUNSEL GALATI: At a minimum

1 they ought to be numbered separately so we can
2 refer to them separately.

3 THE WITNESS: All right.

4 HEARING OFFICER GEFTER: I'll tell you
5 what. You know where you have objections, we'll
6 pend on Exhibit 86 and you can discuss it with
7 Mr. Sarvey off the record, and Mr. Sarvey can tell
8 us how he wants to offer those exhibits.

9 Is that the same situation with 87?

10 APPLICANT COUNSEL GALATI: That's
11 correct.

12 HEARING OFFICER GEFTER: So let's pend
13 86, 87 and 88 until you have a chance to discuss
14 them with Mr. Sarvey; is that acceptable?

15 APPLICANT COUNSEL GALATI: Correct, and
16 I also have, at least at this stage, no objection
17 to his witnesses referring to them, if it's
18 illustrative of what their contentions are.

19 HEARING OFFICER GEFTER: All right.

20 (Thereupon Exhibits 86-88 were held
21 pending receipt into evidence.)

22 INTERVENOR BOYD: Defining their source
23 first.

24 APPLICANT COUNSEL GALATI: Yes. But I'm
25 sure I'm in the record, if I don't know where they

1 came from, that they're authentic, there might be
2 other paragraphs in that same record that I might
3 want to refer to.

4 THE WITNESS: I think we probably have
5 Energy Commission staff that can verify these
6 isopleths here in the room as well.

7 HEARING OFFICER GEFTER: All right.
8 Well, you can do this later off the record. Let's
9 move on.

10 Eighty-nine, which is the -- What is
11 this, 89? Is this the FSA in East Altamonte? I'm
12 not sure what you're referring to in 89.

13 THE WITNESS: That is from the FSA in
14 East Altamonte. That's the Energy Commission
15 staff's CEQA analysis.

16 HEARING OFFICER GEFTER: For Air
17 Quality?

18 THE WITNESS: For Air Quality, yes,
19 that's correct.

20 HEARING OFFICER GEFTER: All right, and
21 this is part of the East Altamonte record?

22 THE WITNESS: That's correct.

23 HEARING OFFICER GEFTER: All right. We
24 can take administrative notice of that and we
25 won't receive that.

1 (Thereupon Exhibit 89 was rejected.)

2 HEARING OFFICER GEFTER: Okay.

3 Exhibit 90, the relevance of this?

4 THE WITNESS: It's information provided
5 by CARB on the local air quality conditions in San
6 Joaquin Valley, and also the San Joaquin County.

7 HEARING OFFICER GEFTER: Do you have a
8 date on this?

9 THE WITNESS: That's probably 2002.

10 HEARING OFFICER GEFTER: 2002 what?

11 THE WITNESS: 2002 Almanac.

12 HEARING OFFICER GEFTER: Any objection?

13 APPLICANT COUNSEL GALATI: My only
14 objection is the documentation that purports what
15 it is, that it is from CARB. So I object that it
16 lacks a foundation to be admitted. If there is
17 documentation that this came from CARB, I'd be
18 more than happy to let it in, but without that,
19 just this page, I'm not sure that came from CARB
20 or if the numbers on there are correct or a
21 correct representation from CARB. So I need to
22 object to it for that reason.

23 THE WITNESS: But would that qualify for
24 all references to the record from all witnesses
25 from CARB? I don't see any other verification

1 from any other witnesses as well.

2 HEARING OFFICER GEFTER: All right.

3 Well, again, this will pend and you can discuss it
4 with Mr. Galati off the record to identify how to
5 authenticate these documents.

6 THE WITNESS: Okay.

7 HEARING OFFICER GEFTER: The same would
8 be the case for Exhibit 91, and what was the
9 other -- I think those were the exhibits that you
10 were offering. Exhibit 92, is that the same
11 situation?

12 THE WITNESS: Yeah. I have the complete
13 document if you prefer to enter the whole
14 document.

15 HEARING OFFICER GEFTER: All right.
16 Let's just pend on 92 as well.

17 Any other exhibits that you wish to
18 offer, Mr. Boyd?

19 INTERVENOR BOYD: I'm not clear on
20 whether or not -- I know that we accepted
21 Mr. Powers' prefiled testimony at the last
22 meeting.

23 HEARING OFFICER GEFTER: Yes.

24 INTERVENOR BOYD: Did you do
25 Mr. Sarvey's at the same time?

1 HEARING OFFICER GEFTER: No, I have not
2 received Mr. Sarvey's.

3 INTERVENOR BOYD: Okay. So I would like
4 to offer Exhibit 102, which is the prefiled
5 testimony of Robert Sarvey.

6 HEARING OFFICER GEFTER: Is there any
7 objection to that, 102?

8 APPLICANT COUNSEL GALATI: No objection.

9 STAFF COUNSEL HOUCK: No objection.

10 HEARING OFFICER GEFTER: Okay, 102 is
11 now received into the record.

12 (Thereupon Exhibit 102 was received into
13 evidence.)

14 INTERVENOR BOYD: And is there anything
15 we missed? We did Mr. Powers, as I remember, at
16 the last meeting.

17 HEARING OFFICER GEFTER: Yes, and 101,
18 while you're here, Mr. Boyd, you did not offer
19 that, so is there an objection to 101?

20 INTERVENOR BOYD: Yeah, you objected at
21 the last meeting.

22 HEARING OFFICER GEFTER: Mr. Galati had
23 objected?

24 APPLICANT COUNSEL GALATI: Yeah, I did
25 have an objection pending on that, so -- hearsay

1 and irrelevant.

2 HEARING OFFICER GEFTER: Ms. Houck, 101?

3 INTERVENOR BOYD: I don't know about
4 hearsay, but I could see where it's irrelevant.

5 (Laughter.)

6 HEARING OFFICER GEFTER: Well, thank
7 you, Mr. Boyd. Your objection is sustained.

8 (Laughter.)

9 STAFF COUNSEL HOUCK: Objection on
10 relevance.

11 HEARING OFFICER GEFTER: The objections
12 are sustained and 101 is not received into the
13 record.

14 (Thereupon Exhibit 101 was rejected.)

15 HEARING OFFICER GEFTER: All right. So
16 we are finished right now with reviewing the
17 exhibits for Mr. Sarvey and Mr. Boyd.

18 Your witnesses are now available for
19 cross-examination.

20 INTERVENOR SARVEY: And I'd like to
21 enter one more exhibit, and I have copies for all
22 of the parties.

23 INTERVENOR BOYD: Ninety-nine?

24 INTERVENOR SARVEY: Yeah, but I think
25 it's already been noted.

1 INTERVENOR BOYD: Has it already been --

2 INTERVENOR SARVEY: No.

3 HEARING OFFICER GEFTER: All right.

4 That would not be 99, because 99 was offered in
5 the other hearing and it was not received.

6 So we would renumber this. This is on
7 air quality. Why don't you offer this when we get
8 to Air Quality, Mr. Sarvey, because we need to
9 move on.

10 INTERVENOR SARVEY: Okay.

11 HEARING OFFICER GEFTER: Off the record.

12 (Brief recess.)

13 HEARING OFFICER GEFTER: Mr. Boyd has
14 now offered his witnesses and they are available
15 for cross-examination.

16 We are going to move on to the next
17 topic, but before we do, Mr. Leroy Ornellas, who
18 is a member of the Board of Supervisors for the
19 San Joaquin County Fifth District is here to
20 address us, and you're welcome.

21 MR. ORNELLAS: Thank you. What I am
22 going to talk about is a little out of context and
23 I appreciate the opportunity to spend just a few
24 minutes. I received a phone call from a concerned
25 constituent about the cooling water that would be

1 used, the recycled water, and it was brought up
2 with the possibility, among other things, that Mad
3 Cow Disease could be transmitted through this
4 system.

5 As a dairy farmer, my antennae right
6 away went up. That's not how you get Mad Cow
7 Disease. Now, I know there is perhaps some
8 testimony, some different testimony that says yes,
9 you can, but no, you can't. I want to make that
10 clear.

11 I even called my vet up, and I said
12 you've got to send me something on this, and he
13 faxed this information to me. Where Mad Cow
14 Disease comes from, and, of course, it started in
15 Great Britain, we can trace back how and when and
16 where. It comes from blood meal fed to cattle.
17 Blood meal, of course, is a protein-rich feed that
18 is used extensively all through the world, but
19 when you start mixing species -- for example,
20 sheep blood meal fed to cattle livestock -- you
21 create a problem. And it's believed that it came
22 from scabies, I think -- I didn't pronounce that
23 correct.

24 You're not going to get it by recycling
25 water through a cooling facility. Now, I can say

1 that with some degree of accuracy. I'm just an
2 old country boy. But it ain't going to come from
3 there. Even if a mad cow dropped dead in a canal
4 and that water somehow got -- It's just not going
5 to happen, in my humble opinion.

6 And I just wanted to share with you and
7 to share with the constituent that called that I
8 don't believe that is going to be a problem. And
9 I appreciate taking a few minutes of your time
10 just to share that with you. Thank you so much.

11 HEARING OFFICER GEFTER: Well, that you
12 for being here.

13 PRESIDING COMMITTEE MEMBER GEESMAN:
14 Thank you for bringing that to our attention. We
15 have not yet heard it, but we may later today.

16 MR. ORNELLAS: Thank you.

17 HEARING OFFICER GEFTER: All right. At
18 this point we are ready to begin the testimony on
19 Biology, and I'll ask the Applicant to begin.

20 APPLICANT COUNSEL GALATI: Ms. Gefter,
21 Dr. Mudry has previously been sworn on another
22 day. Would you like to have him sworn?

23 HEARING OFFICER GEFTER: No, the witness
24 is still sworn.

25 I'll just remind you that you were sworn.

1 Whereupon,

2 DWIGHT MUDRY

3 Was recalled as a witness herein and, having been
4 previously sworn, was examined and testified
5 further as follows:

6 THE WITNESS: Yes.

7 APPLICANT COUNSEL GALATI: I'd also like
8 to remind the Committee that Dr. Mudry's
9 previously filed testimony, specifically Exhibit
10 55, the rebuttal testimony, and Exhibit 46 were
11 received into evidence last week. Since
12 Dr. Mudry's testimony is rebuttal testimony,
13 Exhibit 55 dealt primarily with the issues that
14 we're going to discuss today.

15 DIRECT EXAMINATION

16 BY APPLICANT COUNSEL GALATI:

17 Q I would just ask, Dr. Mudry, to
18 summarize for the Committee your rebuttal
19 testimony specifically identified as Exhibit 55.

20 HEARING OFFICER GEFTER: Okay.

21 Mr. Galati, I believe it's 155.

22 APPLICANT COUNSEL GALATI: You know, you
23 are correct.

24 HEARING OFFICER GEFTER: Yes, so we are
25 referring to Exhibit 155.

1 THE WITNESS: Yes. In summary, in the
2 second addendum to the final staff assessment,
3 Staff provided a letter from the U.S. Fish and
4 Wildlife Service, which I think is Exhibit 63 as
5 Appendix A regarding the biological opinion that
6 was being prepared for the project. In this
7 letter the Fish and Wildlife Service noted that
8 they had not completed the biological opinion on
9 the Tesla Power Project in part because of the
10 complexity of the assessment and needed to
11 determine the potential effects to the Buena Vista
12 Lake shrew.

13 I'm sure it's been introduced, I think
14 it had last week, the Buena Vista Lake shrew had
15 been recently listed as an endangered species and
16 it occurs in Kern County, where the water for the
17 project would be provided from, Buena
18 Vista/Rosedale-Rio Bravo Water Banking and
19 Recovery Program.

20 Because there was this concern from the
21 Fish and Wildlife Service expressed in that letter
22 and also in the Staff's assessment, I undertook to
23 visit the areas that were important for the shrew.
24 As was mentioned last week, and I think maybe
25 discussed later on today, the impacts of the Buena

1 Vista recharge program were the subject on an EIR.
2 They prepared a draft EIR and a final EIR. And
3 they determined in the final EIR that there would
4 be no possibility of impacts of their program to
5 the shrew.

6 BY APPLICANT COUNSEL GALATI:

7 Q Dr. Mudry, are you referring to
8 Exhibit 15?

9 A Yes.

10 Q The final EIR, Buena Vista/Rosedale-Rio
11 Bravo Water Banking and Recovery Program dated
12 September of 2002?

13 A Yes, Exhibit 15. Although the program
14 that Buena Vista has is separate from the Tesla
15 Power Project, it did come up in the Staff's
16 assessment and the Fish and Wildlife Service
17 letter, so I visited the area to provide some
18 background information for the Committee so there
19 would be a better understanding of that program
20 and the relationship between the power project and
21 the potential for impacts.

22 We did have a partial presentation last
23 week on the program from the districts. I visited
24 the ponds that had been constructed as a result of
25 their program. They had constructed, as was

1 mentioned last week, a 160-acre four-cell pond. I
2 visited that pond as well as the intake structures
3 for the program.

4 And I think it's important, if you could
5 look at the photographs that I provided in my
6 testimony, you can see that the pond has been
7 constructed in an agricultural area -- I think
8 it's cotton -- and, in fact, the pond is exactly
9 where cotton and I think alfalfa has been grown in
10 the past.

11 And the pond is actually a very low-
12 level pond. It has about a one-foot bank on one
13 end and about a five-foot bank on the other end,
14 because the topography is very flat there. But
15 already there is within the pond growth of weeds
16 and agricultural plants that are starting to grow
17 within this pond area.

18 The U.S. Fish and Wildlife Service
19 letter summarized the locational information for
20 the Buena Vista Lake shrew.

21 HEARING OFFICER GEFTER: Which letter is
22 that?

23 THE WITNESS: It's Exhibit 15, I
24 believe.

25 APPLICANT COUNSEL GALATI: No,

1 actually --

2 THE WITNESS: Sorry.

3 HEARING OFFICER GEFTER: No, it is not.

4 APPLICANT COUNSEL GALATI: I have it
5 here. I believe that it's --

6 THE WITNESS: Sixty-three.

7 APPLICANT COUNSEL GALATI: Yes, Staff's
8 Exhibit 63.

9 THE WITNESS: Staff's Exhibit 63.

10 HEARING OFFICER GEFTER: Thank you.

11 THE WITNESS: They summarized the
12 information about where the shrew is located.
13 When initially proposed as an endangered species,
14 it was believed to be located in only one
15 location, but there was some work completed that
16 showed that it was, in fact, in four different
17 locations.

18 Two of these locations were very close
19 to the area, the service area of the districts.
20 And, in fact, the letter mentions that two of
21 these areas where the shrew is located could be
22 impacted by that program. I visited both of those
23 locations. One of these locations, and it's good
24 to refer to photograph number three in my
25 testimony. One of these locations is within the

1 Coles Levee Ecosystem Preserve.

2 In this area, the shrew are differently
3 located at this location. In fact, Williams and
4 Harpster, who are the two people who did some of
5 the studies in the area, caught nine shrew at this
6 location when they trapped there during the 195
7 trap nights. So this is an area where the shrew
8 is definitely located.

9 Q Dr. Mudry, when you refer to Williams
10 and Harpster, are you referring to their report
11 documented now as Exhibit 58, which is entitled
12 Williams and Harpster 2001 Status of the Buena
13 Vista Lake Shrew, I believe it's dated
14 October 29th, 2001?

15 A Yes, that's correct. They describe the
16 habitat of this particular area, which is Coles
17 Levee Ecosystem Preserve, as being mostly highly
18 degraded upland saltbush and mesquite scrub. And
19 actually, in the photograph that I have,
20 photograph number three, you can see that scrub
21 area in the distance to the left in the
22 photograph. And it is a dry area surrounding this
23 pond, which is a manmade pond created in this
24 area.

25 They also refer to this pond and explain

1 that they captured the Buena Vista Lake shrew very
2 close to this pond. In the photograph you can see
3 this pond is a manmade pond, but it's one which is
4 supported by water from oil field activities. So
5 this pond is always well-watered is the best way
6 to put it. And the shrew have been caught
7 immediately adjacent to this pond.

8 HEARING OFFICER GEFTER: Okay, and
9 you're referring to photograph number three, page
10 five of your testimony.

11 THE WITNESS: On mine it's page six,
12 so --

13 APPLICANT COUNSEL GALATI: It's page
14 five, the photograph.

15 THE WITNESS: Okay, sorry, page five.

16 This particular site is separated from
17 the Kern River by the Coles Levee, and also there
18 are two other levees. So there is a triangular
19 area that surrounds the Coles Levee Ecosystem
20 Preserve. This triangular area is prevented from
21 flooding by these various levees. So the water in
22 this particular location is supplied by oil field
23 operations, is not impacted by flooding in the
24 area, and would, in fact, not be impacted by Buena
25 Vista's recharge program.

1 In the letter from the Fish and Wildlife
2 Service, they expressed a concern about this area
3 and the second area, which I'll speak about in a
4 minute. Their concern was that their program
5 could lower water levels in this area and thereby
6 impact the Buena Vista Lake shrew. At this
7 particular location, as you can see in the
8 photograph, there was a perennial water supply
9 which supports the shrew habitat.

10 The second area mentioned in the Fish
11 and Wildlife Service letter is an area called the
12 Kern Fan area, which is just south of the City of
13 Bakersfield. This is the Kern Fan recharge area.
14 It's a series of ponds, very similar to the ones
15 proposed or the ones actually part of the program
16 that Buena Vista has recently constructed. There
17 is a series of ponds there operated by the City of
18 Bakersfield in their recharge program.

19 There are many different entities and
20 Mr. Bartel, who I think is going to speak later
21 today, can talk about the other entities. But
22 there are many different entities who capture
23 water for infiltration for later use. They
24 capture floodwater or highwater events in ponds.

25 And this particular Kern Fan area is a

1 second area where Williams and Harpster collected
2 and captured Buena Vista Lake shrew, and they were
3 able to show that this area, which is an area of
4 operating ponds, has that species present.

5 Now, this particular area is operated by
6 the City of Bakersfield. The City of Bakersfield
7 has a slightly different operating program for
8 collecting water than that from Buena Vista. They
9 collect water on more frequent occasions. Buena
10 Vista's program captures water only under the
11 various, the highest flow periods so that when
12 these ponds have water in them which have, I
13 believe, provided habitat for the Lake shrew, when
14 these ponds have water in them they would always
15 have water when Buena Vista is diverting. These
16 ponds would be filled to capacity before Buena
17 Vista would be diverting, and Mr. Bartel can talk
18 about the operations later on.

19 So for that reason, the fact that the
20 City of Bakersfield program of diverting water to
21 these ponds has created habitat and, in fact, the
22 shrew has been found to be there, I believe that
23 this project or program operated by Buena Vista
24 would not have an impact on the shrew at that
25 location.

1 Part of my observations, very quickly,
2 also involved just a comparison or an observation
3 of the ponds at the various stages of their life.
4 As I mentioned, Buena Vista has just created a new
5 pond and one of the photographs shows some of the
6 weedy species going in it. And photograph number
7 four is a photograph of this Kern Fan area that I
8 was speaking about where the City of Bakersfield
9 stores water and then has an infiltrate.

10 As you can see in that photograph, the
11 habitat that has been created there and in their
12 more frequent flooding programs has created a lot
13 of weedy species but, as well, very large trees
14 are growing in these ponds. So the ponds actually
15 do create, their operation does create habitat.
16 And certainly, their operations provide more
17 wetter, the shrew need a wetted soil habitat, and
18 these operations provide that kind of habitat.

19 So the ponds do seem to have a positive
20 effect for habitat for the shrew. And this was
21 described in the Williamson and Harpster paper.

22 HEARING OFFICER GEFTER: Let's go off
23 the record for a minute.

24 (Brief recess.)

25 THE WITNESS: Just in summary, my

1 conclusion is that the program operated by Buena
2 Vista would not have an impact on the shrew. I
3 think that's it.

4 BY APPLICANT COUNSEL GALATI:

5 Q Dr. Mudry, because the Buena
6 Vista/Rosedale-Rio Bravo program would not have an
7 impact on the shrew, do you believe the Tesla
8 project, if it were allowed to use that project,
9 would have an impact on the shrew?

10 A I believe it would not have an impact.

11 APPLICANT COUNSEL GALATI: Ms. Gefter, I
12 would just like to provide some clarification.

13 Dr. Mudry was sponsoring what was previously
14 listed as Exhibit 151, which we understood is a
15 duplicate of Staff's Exhibit 58.

16 We would be more than happy to sponsor
17 that at this particular time and ask it to be
18 moved into evidence.

19 HEARING OFFICER GEFTER: Staff, do you
20 also want to -- do you want to sponsor 58 or it
21 doesn't matter?

22 STAFF COUNSEL HOUCK: I don't think it
23 matters who sponsors it, we would just like it in
24 the record and know which exhibit to refer to.

25 HEARING OFFICER GEFTER: All right. So

1 it's 58, and Applicant wants -- Actually, I'll
2 have both parties sponsoring it, and that way
3 we'll all be in agreement. So apparently there is
4 no objection to Exhibit 58?

5 APPLICANT COUNSEL GALATI: No objection.

6 STAFF COUNSEL HOUCK: No objection.

7 HEARING OFFICER GEFTER: So, then, 58 is
8 received into the record, and it is sponsored by
9 both Applicant and Staff.

10 (Thereupon Exhibit 58 was received into
11 evidence.)

12 HEARING OFFICER GEFTER: Anything else?

13 APPLICANT COUNSEL GALATI: Ms. Gefter, I
14 have nothing more for Dr. Mudry, although I would
15 point out that the District representative, Dan
16 Bartel, is here who wanted to address you with the
17 remainder of the presentation, specifically that
18 was identified and moved into evidence as
19 Exhibit 157.

20 And if you recall, part of the
21 presentation had some issues related to the shrew
22 which we deferred until today.

23 HEARING OFFICER GEFTER: Do you wish to
24 offer their testimony at this time?

25 APPLICANT COUNSEL GALATI: Yes, I think

1 so.

2 HEARING OFFICER GEFTER: If the witness
3 would come forward.

4 Do you want the witness to sit at your
5 table, or --

6 Off the record.

7 (Brief recess.)

8 Whereupon,

9 DAN BARTEL and RICK HOPKINS

10 Were called as witnesses herein and, after having
11 been duly sworn off the record, were examined and
12 testified as follows:

13 HEARING OFFICER GEFTER: I understand
14 the witnesses are going to be testifying from
15 Exhibit 157, which was received into the record at
16 the last hearing?

17 APPLICANT COUNSEL GALATI: That's
18 correct. I also notice that there is an
19 abbreviated version of Exhibit 157 that Mr. Bartel
20 has just handed out.

21 HEARING OFFICER GEFTER: Well, we will
22 just include that as subsumed by Exhibit 157.

23 Ms. Houck, did you have a concern?

24 STAFF COUNSEL HOUCK: Staff would just
25 like to note that the testimony and the names of

1 the witnesses were not prefiled in the proceeding,
2 and we would just ask that they state their
3 qualifications also for the record.

4 HEARING OFFICER GEFTER: All right.

5 Mr. Galati, would you ask your
6 witnesses -- The witness is Mr. Bartel, and
7 sitting with Mr. Bartel is his biologist, and are
8 you intending for the other individual to testify
9 as well?

10 APPLICANT COUNSEL GALATI: I would leave
11 that up to Mr. Bartel, if he needs support on
12 that. Again, I would describe this testimony as
13 was done in Water Resources, as the Committee
14 asked for agencies involved, also extended an
15 invitation. They are not my witnesses, I don't
16 intend to sponsor them, I just intended for them
17 to give a presentation similar to what had been
18 given before, so I would ask for the Committee's
19 indulgence in that.

20 HEARING OFFICER GEFTER: All right.

21 Mr. Bartel, could you introduce your
22 biologist there. I missed his name, I'm sorry.

23 MR. BARTEL: This is Dr. Rick Hopkins.
24 He is a senior wildlife ecologist with Live Oak
25 Associates. And he has also been to the site and

1 reviewed issues in regard to the shrew and spoken
2 about the recovery program.

3 HEARING OFFICER GEFTER: All right.

4 Dr. Hopkins, thank you for being here
5 today, and I'm sorry I missed your name before.

6 DR. HOPKINS: That's fine.

7 HEARING OFFICER GEFTER: Okay.

8 Whereupon,

9 DAN BARTEL

10 Was recalled as a witness herein and, having been
11 previously sworn, was examined and testified
12 further as follows:

13 HEARING OFFICER GEFTER: Mr. Bartel, do
14 you want to continue your presentation that you
15 began at the last hearing day?

16 THE WITNESS: All right. And I'll do a
17 little bit of recap from the previous presentation
18 because it pertains to the shrew, in that our
19 program is a high-flow program.

20 Just again, a program summary of the
21 Buena Vista/Rosedale Banking and Recovery Program.
22 This is a joint project between two districts,
23 adjacent districts, and it seeks to optimize the
24 utilization of wet year supplies, flood year
25 supplies through groundwater recharge and then

1 recovery for different third-party programs.

2 The proceeds go to fund new water
3 infrastructure, reduce overdraft and stabilize
4 water costs for agriculture in Kern County. This
5 program fits perfectly into our district's goals,
6 both ours and Rosedale-Rio Bravo's, and it fits
7 perfectly within our statutory authority.

8 I also included in here a map and it's
9 titled Disposition of Recharge Water with and
10 without the project, and it's dated 1998. This is
11 the last wet year down in Kern County in which we
12 would have a recharge type activity under this
13 program, and I just depicted how and when the
14 different kind of waters would go into the
15 Rosedale project and be diverted from the Kern
16 River Channel.

17 You notice that up in the right-hand
18 corner it says in '98 1.7 million acre-feet of
19 Kern River runoff, and that resulted in 460,000
20 acre-feet of entitlement for Buena Vista, in which
21 we have a demand for 150,000 acre-feet. So we
22 have to very resourceful in putting that water to
23 beneficial use to forego flooding in the Tulare
24 Lake area and nonbeneficial uses to putting the
25 water in the Kern River intertie.

1 HEARING OFFICER GEFTER: Mr. Bartel, I
2 want to interrupt. That page that you're
3 referring to, is that in the original Powerpoint
4 presentation?

5 THE WITNESS: Correct.

6 HEARING OFFICER GEFTER: If you have the
7 page number?

8 THE WITNESS: That's on page two, the
9 lower map.

10 HEARING OFFICER GEFTER: Thank you.

11 THE WITNESS: The point of this map is
12 to show, with and without this project, what would
13 have occurred. And it's hard to do this without
14 an overhead, but you can see that in 1998 we put
15 190,000 acre-feet into the Kern River intertie,
16 and we would put 50,000 acre-feet less into the
17 Kern River intertie, which is a flood diversion
18 structure that goes into the California Aqueduct.

19 And then also diversions to Tulare Lake,
20 we would diminish those flood diversions that go
21 onto agricultural lands from 40,000 acre-feet to
22 20,000 acre-feet from the Kern River. Now, the
23 Tulare Lake also receives huge amounts of water
24 from other creeks and rivers north of us, and in
25 '98 they received about 260,000 acre-feet from

1 those various streams. So there will still be
2 significant flooding in that area, but it is a
3 reduction and any reduction is appreciated by the
4 landowners in that area.

5 And the next page, page three is the
6 account model graph, and this graph, as I talked
7 about last week, depicts what years that recharge
8 would occur, what kinds of years that recharge
9 would occur on this project. And you can see the
10 taller darker bars denote the recharge activities
11 on the project, and when we would take diversions
12 from the Kern River and put it in there. And you
13 can see that about five to six years out of 35 we
14 would actually take diversions from there.

15 The next slide is just depicting, like
16 we said last week, that the status is operational.
17 We have completed our environmental review
18 process, we're constructing facilities, we're
19 expending money, and we're making recovery and
20 sales to third parties of which the environmental
21 water account has been our first customer to the
22 tune of 65,000 acre-feet. And we are soliciting
23 other buyers.

24 BY APPLICANT COUNSEL GALATI:

25 Q Excuse me, Mr. Bartel, I apologize here.

1 As I'm going through the abbreviated version, I
2 notice that there has been some condensing of
3 multiple slides. I think it would just be better
4 for the record at this point if I could mark this
5 as a different exhibit so we know which page
6 numbers are being referred to.

7 HEARING OFFICER GEFTER: Well, we can
8 call this Exhibit 157(a), and that way we know
9 that it goes with 157.

10 APPLICANT COUNSEL GALATI: And I would
11 ask that that be moved into the record as
12 evidence.

13 INTERVENOR SARVEY: We don't object.

14 HEARING OFFICER GEFTER: Exhibit 157(a)
15 is received into the record.

16 (Thereupon Exhibit 157(a) was received
17 into evidence.)

18 HEARING OFFICER GEFTER: And do you want
19 to tell us the title of this?

20 THE WITNESS: Same title.

21 APPLICANT COUNSEL GALATI: It's the same
22 title, Buena Vista/Rosedale-Rio Bravo Water
23 Banking and Recovery Program.

24 HEARING OFFICER GEFTER: The abbreviated
25 version.

1 APPLICANT COUNSEL GALATI:

2 September 18th, 2003.

3 HEARING OFFICER GEFTER: All right.

4 APPLICANT COUNSEL GALATI: And

5 specifically this document appears to be taking
6 the slide presentation, which was presented one
7 slide per page, presenting it two slides per page
8 and condensing some of the slides. Would that be
9 an adequate characterization?

10 THE WITNESS: Yeah, I took out some of
11 the District background things, just to get to the
12 shrew issues, but laying the foundation for those
13 issues relative to the flow periods when we put
14 water into Rosedale.

15 APPLICANT COUNSEL GALATI: Okay. Thank
16 you, Mr. Bartel. Sorry to interrupt you. Now we
17 probably can refer to the page numbers as you have
18 them on 157(a).

19 THE WITNESS: Okay, very good.

20 Now I'm on page four, top slide, CEQA
21 Process. As I said, the final EIR has been
22 certified and it went through the State
23 Clearinghouse. We received numerous comments from
24 various local and state water resource agencies.
25 We did receive one comment relative to the Buena

1 Vista Lake shrew from the Department of Water
2 Resources, not from any wildlife agencies, and we
3 did respond to that comment in the final EIR. And
4 we concluded that there was no impact expected due
5 to the operation of this project.

6 The bottom slide there, it does recap
7 some of Dr. Mudry's testimony. According to the
8 Williams report, as Exhibit 58, it was found in
9 four locations in the area, two of which are near
10 the Kern River and of concern of the Fish and
11 Wildlife in response to the letter that the Staff
12 received.

13 And a few comments there: In that
14 correspondence and also in that report, the shrew
15 requires continually moist habitat and is found in
16 thick ground cover. We did have a brief
17 discussion with U.S. Fish and Wildlife Service as
18 suggested by the Department of Water Resources,
19 and those conversations led to if there was a
20 problem, we'd contact you, and we have not been
21 contacted to date relative to this issue on our
22 CEQA documents.

23 HEARING OFFICER GEFTER: Okay. Let me
24 interject. I received a copy of the letter dated
25 September 10th from the Buena Vista Water Storage

1 District. Is that the letter that summarizes the
2 contacts you had with the U.S. Fish and Wildlife
3 Service?

4 THE WITNESS: That's correct.

5 HEARING OFFICER GEFTER: All right. I
6 want to identify that as Exhibit 158. It was
7 received in the Commission's docket on
8 September 15th.

9 Ms. Houck, do you have any copies of
10 that?

11 STAFF COUNSEL HOUCK: Yes, I do, and
12 there is no objection.

13 HEARING OFFICER GEFTER: Any objection?

14 INTERVENOR SARVEY: We have no
15 objection.

16 HEARING OFFICER GEFTER: Okay. So this
17 will be Exhibit 158. It will be received into the
18 record.

19 (Thereupon Exhibit 158 was received into
20 evidence.)

21 THE WITNESS: The next slide on page
22 five, the top of page five, is entitled Shrew
23 Issues, and we believe that there is no shrew
24 impact because diversions of the project, the
25 project recharge flows are in years when there are

1 extremely large flood control deliveries to the
2 Kern River intertie. And these three slides kind
3 of track with each other.

4 These are extremely wet years when we
5 divert water, when we would divert water to the
6 Rosedale-Rio Bravo newly constructed recharge
7 ponds, and there is water all over the country.

8 The next slide down depicts all of the
9 banking projects on the Kern River Fan. I did a
10 rough calculation. There will be about 15,000
11 acres wet during this period, and so there is
12 habitat all over the country whether we take
13 diversions out of the Kern River or not. But
14 remember that when we take diversions, our
15 diversions go into recharge ponds as well, which
16 will provide habitat for the shrew, as referenced
17 in the Williams report.

18 Page six, top slide, this is an aerial
19 photograph of the area when it is wet. Sorry this
20 is not in color, but this is looking west toward
21 the California Aqueduct across the Kern River Fan.
22 You can see, much of this picture is the City of
23 Bakersfield's project and also the Kern County
24 Water Agency's pioneer and the Kern Water Bank
25 project, and you can see there is water spanning

1 many square miles of area during the same times
2 that we would be diverting water. So you could
3 see that it would not impact what is going on
4 here.

5 The next slide down, this is the
6 opposite type of year, when we would not be making
7 diversions to Rosedale, and you can see the entire
8 area is dry. And so whether we make diversions in
9 a wet year or not, the impact to the habitat
10 during a dry year would not be on account of our
11 project.

12 The top slide there, Dr. Mudry also
13 addressed this. This is an aerial photo of the
14 pond on the Coles Levee Preserve, and you can see
15 that that habitat is supported not by diversions
16 on Buena Vista's account or associated with this
17 project, but it's associated with oil field water,
18 supposedly put into these ponds, and it's there
19 year-round and supports that habitat. You go a
20 hundred feet off this property and it is
21 definitely not shrew habitat. It is either bare
22 ground, alkali, just grasslands.

23 The next slide down is the Buena Vista
24 Aquatic Lakes and Recreational Area managed by the
25 County of Kern. The Williams report is a little

1 incorrect on this facility. It is not a
2 regulating reservoir for the Department of Water
3 Resources. It is a recreational facility for the
4 County, and we have storage rights there.

5 There is just no habitat along this
6 area. Any shrew habitat would have to be
7 artificially created and would not be associated
8 with our project.

9 The last slide is the one I showed
10 before, slightly condensed. Ground water banking
11 programs have proven to be environmentally
12 friendly, and in Kern County we give tours all the
13 time to environmental groups and folks that want
14 to come see what we're doing down there. Because
15 it enhances water resources and also enhances
16 wildlife and environmental issues. This project
17 puts floodwater to beneficial use, which is
18 greatly encouraged by the state legislation and
19 also by the voters of this state.

20 HEARING OFFICER GEFTER: Does that
21 complete your presentation?

22 THE WITNESS: Correct.

23 HEARING OFFICER GEFTER: Okay.

24 Does Dr. Hopkins have anything to add?

25 DR. HOPKINS: I'll just say, in the

1 interest of time, I'm here to answer questions, if
2 need be, but I would simply reiterate what's
3 already been shown.

4 HEARING OFFICER GEFTER: Staff, do you
5 have any cross-examination -- Well, let me ask
6 Mr. Galati.

7 Are you finished with presenting your
8 direct testimony on this issue?

9 APPLICANT COUNSEL GALATI: Yes, I am.

10 HEARING OFFICER GEFTER: Okay. Does
11 Staff have any cross-examination of the
12 Applicant's witnesses?

13 STAFF COUNSEL HOUCK: Yes, very briefly.

14 CROSS-EXAMINATION

15 BY STAFF COUNSEL HOUCK:

16 Q Dr. Mudry, are you aware that the U.S.
17 Fish and Wildlife Service needs to prepare a
18 biological opinion for the Tesla Power Project?

19 A Yes.

20 Q And are you aware that Ms. Jones from
21 the U.S. Fish and Wildlife Service is the
22 responsible staffperson assigned to that project?

23 A Yes.

24 Q And did you consult with Ms. Jones in
25 preparing your rebuttal testimony?

1 A No, I did not.

2 Q Thank you. My last question I think may
3 be better addressed towards the Water District.

4 You indicated in your letter that you
5 had made some contact with U.S. Fish and Wildlife
6 Service regarding the Buena Vista shrew; is that
7 correct?

8 A [Witness Bartel] Correct.

9 Q At any point did the Water District get
10 a concurrence from U.S. Fish and Wildlife Service
11 that their project was in compliance with the
12 Endangered Species Act, the federal Endangered
13 Species Act?

14 A No. We did not get a concurrence; in
15 fact, we could barely get a conversation.

16 STAFF COUNSEL HOUCK: Okay, thank you.
17 I have no further questions.

18 HEARING OFFICER GEFTER: All right,
19 thank you.

20 Mr. Boyd?

21 INTERVENOR BOYD: My questions are for
22 the District representative.

23 CROSS-EXAMINATION

24 BY INTERVENOR BOYD:

25 Q On page four of your presentation, you

1 referred to a CEQA process completed. Are you
2 referring to this CEQA project, the Tesla Power
3 Plant, or are you referring to the Buena
4 Vista/Rosedale-Rio Bravo Water Banking and
5 Recovery Program?

6 A [Witness Bartel] I'm referring to our
7 program. These are two separate programs. We
8 have various customers as part of our project, and
9 Tesla being a proposed one of those. So we did an
10 independent CEQA analysis on that.

11 Q On --

12 A On our project.

13 Q On your project.

14 A The Banking and Recovery Program.

15 Q The Banking and Recovery Program.

16 Did your district perform any
17 independent environmental assessment of the
18 impacts of this project in the proposed amount of
19 water you're using on your program? Did you do a
20 CEQA analysis on this specific project --

21 HEARING OFFICER GEFTER: Are you talking
22 about --

23 BY INTERVENOR BOYD:

24 Q -- for your district, as opposed to --
25 or are you assuming, or -- I'm asking --

1 A I don't understand --

2 Q Can I --

3 HEARING OFFICER GEFTER: Okay, Mr. Boyd,
4 let's reframe your question. Are you asking the
5 witness whether they did an environmental impact
6 report on the Tesla Power Plant?

7 INTERVENOR BOYD: Any sort of CEQA
8 analysis, or the District, on this. That's what
9 I'm trying to find out.

10 THE WITNESS: We did not do any --

11 INTERVENOR BOYD: It could be on any,
12 or --

13 HEARING OFFICER GEFTER: All right, let
14 the witness answer.

15 THE WITNESS: We did not do any analysis
16 on the program relative to what happens to the
17 water once it leaves our jurisdiction. That would
18 be their analysis and I assume this process is
19 that analysis.

20 BY INTERVENOR BOYD:

21 Q But you are providing water to the
22 project; is that correct?

23 A Correct, and we dealt with all issues
24 associated with providing the water to the
25 project, to that project.

1 Q So all environmental impacts associated
2 to your district from the use of that water has
3 been evaluated independently by the District,
4 that's what I'm trying to find out.

5 A Correct.

6 INTERVENOR BOYD: That's all I have.
7 Thank you.

8 HEARING OFFICER GEFTER: Mr. Sarvey, do
9 you have any questions?

10 INTERVENOR BOYD: Yeah, I'd like to ask
11 one question on the Water District's handout on
12 page three, please.

13 CROSS-EXAMINATION

14 BY INTERVENOR SARVEY:

15 Q On the top of that page you have your
16 account model there and I would like to ask you
17 why the information provided in that account model
18 is 40 years old.

19 A We did an analysis on four different
20 hydrologic periods. We went back to 1928 as being
21 the start of the worst recorded drought in
22 California. And so what we do is we model our
23 project using past hydrologic information, laying
24 on top what would we do today, how would that go
25 along with our activities. So we use runoff data

1 from the state water project, Kern River, and
2 associated other supplies to tabulate how that
3 would occur.

4 So you could take that and use 2005 as
5 the start date. It just happens that 1928 is the
6 first hydrologic date that we used in this period
7 so we would get an accurate picture of what would
8 go on in the future, or as accurate as you can
9 recreate.

10 So we did four different periods
11 starting in 1928 to get different variations to
12 see if our project would generate the water needed
13 for the power plant in our other potential sales.

14 Q So you have an account model that has
15 more recent data; is that correct?

16 A Yes. It's in the final EIR. I think
17 there are four different drafts similar to this
18 one that depict the different scenarios and what
19 occurred with the project.

20 INTERVENOR SARVEY: Okay, thank you.

21 HEARING OFFICER GEFTER: So does that
22 complete everyone's cross-examination?

23 APPLICANT COUNSEL GALATI: I have one
24 redirect question.

25 HEARING OFFICER GEFTER: A redirect?

1 Okay.

2 REDIRECT EXAMINATION

3 BY APPLICANT COUNSEL GALATI:

4 Q Mr. Bartel, page number three of
5 Exhibit 157(a), again referring to the account
6 model, you were asked a question by Mr. Sarvey
7 about why using the old data. You mentioned that
8 there were four scenarios which you evaluated; is
9 that correct?

10 A Correct.

11 Q Is this the worst one?

12 A This is the worst one that we modeled,
13 and it is the worst one that exists.

14 Q So your program was based on the worst
15 set of years that you could find, "worst" being
16 defined as least amount of water?

17 A Right. The Applicant requested that we
18 look at the worst scenario so they were sure that
19 they would have a water supply, and so we built it
20 around those worst-case conditions, to make sure
21 that they would have a firm supply, 100-percent
22 guaranteed.

23 APPLICANT COUNSEL GALATI: I have no
24 further questions.

25 HEARING OFFICER GEFTER: Let's go off

1 the record for a minute.

2 (Brief recess.)

3 HEARING OFFICER GEFTER: For the record,
4 Exhibit 15 is the final EIR for the Water Banking
5 and Recovery Program that was referred to during
6 the cross-examination by Mr. Boyd.

7 THE WITNESS: Right.

8 HEARING OFFICER GEFTER: Thank you.

9 Okay. At this point does Staff want to
10 begin your direct testimony?

11 STAFF COUNSEL HOUCK: Yes. We have
12 Ms. Erichsen available. She was previously sworn
13 in.

14 Whereupon,

15 ANDREA ERICHSEN

16 Was recalled as a witness herein and, having been
17 previously sworn, was examined and testified
18 further as follows:

19 STAFF COUNSEL HOUCK: And we have a
20 representative of the U.S. Fish and Wildlife
21 Service here today that will need to be sworn in.

22 HEARING OFFICER GEFTER: All right.

23 Would you swear in the witness, please.

24 THE REPORTER: Would you please stand
25 and raise your right hand.

1 Whereupon,

2 SUSAN JONES

3 Was called as a witness herein and, after having
4 been duly sworn, was examined and testified as
5 follows:

6 THE REPORTER: The witness is sworn.

7 HEARING OFFICER GEFTER: Thank you.

8 STAFF COUNSEL HOUCK: Thank you.

9 DIRECT EXAMINATION

10 BY STAFF COUNSEL HOUCK:

11 Q Can you please state your name for the
12 record.

13 A My name is Susan Jones.

14 Q And can you please state the agency
15 you're representing and your job title.

16 A I work for the U.S. Fish and Wildlife
17 Service in Sacramento, and I am the branch chief
18 for the San Joaquin Valley Branch.

19 Q Okay. And are you familiar with the
20 prepared testimony of Susan Jones, which is
21 labeled Exhibit 55(b)?

22 A Yes.

23 Q And are you familiar with Exhibit 63,
24 which is a letter dated August 25th from the U.S.
25 Fish and Wildlife Service to the Energy

1 Commission?

2 A Yes, I am.

3 Q And do both of those documents,
4 Exhibit 55(b) and 63, represent your testimony?

5 A Yes.

6 Q And do you have any changes or additions
7 to that testimony? Is there anything you want to
8 change about what was written?

9 A No.

10 Q Okay. And are you familiar with Staff's
11 testimony in this case, the final staff assessment
12 and the addenda to that document?

13 A Yes, I am.

14 Q Okay. Are you going to be the person
15 from U.S. Fish and Wildlife Service either
16 preparing or responsible for the preparation of
17 the biological opinion in this case?

18 A I'm responsible for getting it done,
19 yes. I have staff that work for me.

20 Q And can you state the status of that
21 document, when it will be released?

22 A We have been very short-staffed. I had
23 somebody working on this project, Nancy Pau, and
24 she moved on to a different location within the
25 Fish and Wildlife Service back in Massachusetts

1 last August. So at that point she had tried to
2 wrap up this project and get it pretty well
3 together so that it would be easy to write the
4 biological opinion, but then the water issue and
5 the Buena Vista Lake shrew issue was not quite
6 wrapped up.

7 So if that issue were to go away, I have
8 a new staffperson who I think could write the
9 biological opinion in the next three or four
10 months if we were using some other water supply
11 that didn't have all of these issues. I don't
12 have senior staff that have the expertise to
13 analyze such a complicated thing available in the
14 foreseeable future.

15 Q And you indicated there is an issue
16 concerning the Buena Vista Lake shrew associated
17 with the biological opinion for this project; is
18 that correct?

19 A Yes.

20 Q Can you please describe what the
21 outstanding issue is?

22 A We're concerned that the Buena Vista
23 Lake shrew was listed March 2002, while this
24 project was underway. And we are concerned about
25 the continued addition of additional, the addition

1 of water extraction from the Kern River area that
2 kind of piles up and cumulatively affects riparian
3 areas and the Buena Vista shrew, in particular,
4 that lives in those riparian areas.

5 We haven't had the time to do as much
6 analysis as the Applicant or the other people that
7 are present today. I haven't had the time to go
8 down there and look at that and assess kind of
9 what the situation is. We're still in kind of
10 preliminary stages of assessing this particular
11 issue because of lack of staff. My priority in
12 power projects over the last nine months has been
13 Path 15, and I have spent quite a bit of time on
14 Path 15 instead of this project.

15 Q Was U.S. Fish and Wildlife Service, to
16 your knowledge, involved with any aspect of the
17 CEQA documentation or approval for this project
18 that occurred in Kern County, the final document
19 being dated September 2002?

20 APPLICANT COUNSEL GALATI: I would just
21 ask for a clarification. When you say "this
22 project," are you talking about the banking
23 program?

24 STAFF COUNSEL HOUCK: Yes, I am.

25 HEARING OFFICER GEFTER: Are you

1 referring to Exhibit 15?

2 STAFF COUNSEL HOUCK: Yes. I am
3 referring to the project described in Exhibit 15,
4 which is the final EIR, the banking project.

5 HEARING OFFICER GEFTER: Right.

6 THE WITNESS: I know that Dave Hardt at
7 the Kern Wildlife Refuge was contacted and he
8 talked about how it would affect him. That refuge
9 is in the northern part of the county. And also I
10 think Nancy Pau from my staff, who was here at
11 that time, spoke to somebody on the phone briefly
12 about the project.

13 BY STAFF COUNSEL HOUCK:

14 Q And at any time has U.S. Fish and
15 Wildlife Service issued a concurrence or given a
16 concurrence that stated that this project is in
17 concurrence with the federal Endangered Species
18 Act?

19 A No, we haven't done that. I know I did
20 get a phone call from the Water District and I did
21 speak briefly with somebody, but our priorities at
22 that time were in other places, such as Path 15.
23 We're also being sued about the Buena Vista Lake
24 shrew, and I'm not clear on who is suing us, so
25 I'm a little gun-shy about talking to folks that

1 are possibly people suing us on that particular
2 issue. I'm not supposed to talk to people.

3 Q To your knowledge, was there ever a
4 Section 7 consultation initiated regarding the
5 Buena Vista shrew and the banking project?

6 A No, and we would expect either a
7 Section 7 through, if there was a federal nexus
8 for the Water District which there might not be,
9 although perhaps there is a core of engineers,
10 nexus for any activities that occur in the river,
11 but no initiation has occurred. And we would
12 expect that.

13 The Kern Water Bank has their own permit
14 from us through Section 10, which would be the
15 path to go if there is no federal nexus. But they
16 have ongoing similar activities at the Kern Water
17 Bank, which is adjacent, with banking water. And
18 we have issued a permit to them under Section 10
19 for their operations, and we would expect other
20 water districts to do the same in the area.

21 Q Without a Section 7 or a Section 10
22 consultation, would the Fish and Wildlife Service
23 be able to conclude that the project is in
24 compliance with the federal Endangered Species
25 Act?

1 A We would not be able to make that
2 assessment. At this point we don't know enough
3 about the project and, well, I'm learning more
4 today, but we would not consider it to be in
5 compliance with the ESA at this time.

6 Q And would those issues need to be
7 addressed in the biological opinion for the Tesla
8 Power Project if the Applicant were to use the
9 Kern County water?

10 A Yes. We would probably put -- I've been
11 in discussions with my management on this
12 particular issue, and we would be expecting to put
13 a term and condition in the biological opinion for
14 the Tesla Power Plant requiring compliance with
15 the Endangered Species Act for whatever water
16 source they use.

17 Q Could you briefly summarize, then, the
18 status of the biological opinion if the Buena
19 Vista shrew issue remains outstanding?

20 A I continue to be short-staffed. I don't
21 have a seasoned biologist that I could assign to
22 this that could -- I don't have a biologist that
23 could handle this that's available at this moment
24 to work on this. I don't know how long it would
25 take to finish the biological opinion with the

1 Buena Vista Lake shrew issue still outstanding.

2 (Thereupon, the tapes were changed with
3 no interruption in the proceeding.)

4 BY STAFF COUNSEL HOUCK:

5 Q And without that information, just to
6 reiterate, you would not be able to conclude the
7 project is in compliance with the federal
8 Endangered Species Act?

9 APPLICANT COUNSEL GALATI: Objection;
10 again, which project?

11 BY STAFF COUNSEL HOUCK:

12 Q In looking at the biological opinion for
13 the Tesla Power Project, if they were to use the
14 Kern County water, would U.S. Fish and Wildlife
15 Service be able to state today the project would
16 be in compliance with the federal Endangered
17 Species Act?

18 A No, I wouldn't be able to say it's in
19 compliance.

20 Q Thank you. Is there any additional
21 information that you would like to state or
22 provide for the Committee?

23 A Just that the Buena Vista Lake shrew was
24 listed as endangered very recently. "Endangered"
25 means in danger of extinction throughout a

1 significant portion of its range. We only know of
2 four locations. Two of those had been managed
3 privately, were on private lands and had been
4 managed through the Nature Conservancy. The
5 Nature Conservancy withdrew from the management of
6 those areas because not enough water was being
7 provided by the private owner, the private entity
8 down there. And they were not able to find
9 sufficient water.

10 So the situation for the Buena Vista
11 Lake shrew has been declining. They're worse off
12 than when we listed them just in March '02.

13 Q Thank you.

14 STAFF COUNSEL HOUCK: At this time I
15 would ask that Exhibit 55(b) -- Exhibit 58 has
16 also been introduced into the record, so I would
17 ask that Exhibit 55(b), 59, 60, 62 and 63 be
18 accepted into evidence.

19 APPLICANT COUNSEL GALATI: We have no
20 objection.

21 INTERVENOR SARVEY: No objection.

22 STAFF COUNSEL HOUCK: And, for
23 clarification, I believe the Applicant will be
24 sponsoring Exhibit 61, which is the biological
25 assessment that may be included in one of the data

1 responses.

2 APPLICANT COUNSEL GALATI: Yes, I agree.
3 Staff and I spoke earlier and we'll be sponsoring
4 61. I forgot to mention that during our direct.
5 I can't tell you which data response that was, but
6 we have agreed to sponsor Exhibit 61 and would ask
7 that that be moved into the record.

8 HEARING OFFICER GEFTER: All right. Any
9 objection?

10 INTERVENOR BOYD: No objection.

11 HEARING OFFICER GEFTER: All right.
12 Exhibits 55(b), 59, 60, 61 as sponsored by the
13 Applicant, 62 and 63 are received into the record.

14 (Thereupon Exhibits 55(b), 59-63 were
15 received into evidence.)

16 HEARING OFFICER GEFTER: Do you have an
17 additional witness?

18 STAFF COUNSEL HOUCK: For Biology? No,
19 I do not.

20 HEARING OFFICER GEFTER: Does the
21 Applicant have cross-examination of Ms. Jones?

22 APPLICANT COUNSEL GALATI: Yes, I do.

23 CROSS-EXAMINATION

24 BY APPLICANT COUNSEL GALATI:

25 Q Ms. Jones, when was the U.S. Fish and

1 Wildlife Service first consulted on the Tesla
2 Power Project?

3 A EPA initiated consultation on
4 February 21st. I don't know if there were
5 conversations before then.

6 Q What year was that?

7 A 2002.

8 Q Ms. Jones, in the letter -- I forgot
9 what exhibit this one is. This is a letter dated
10 August 25th, 2003 --

11 HEARING OFFICER GEFTER: Exhibit 63?

12 APPLICANT COUNSEL GALATI: Exhibit 63.

13 BY APPLICANT COUNSEL GALATI:

14 Q Could you please turn to page two of
15 that exhibit. At the top is a paragraph. I would
16 like to just start with the second sentence that
17 says, "It is possible that the withdrawal for
18 water." Can you read that? You can read it to
19 yourself, just to refresh your memory on that
20 particular issue.

21 A Okay.

22 Q Would it be fair to characterize that
23 U.S. Fish and Wildlife Service is concerned about
24 the possibility that the withdrawal of water could
25 affect the Buena Vista Lake shrew?

1 A We are concerned that the withdrawal of
2 water, as it states here, could affect the shrew.
3 We have not done a complete analysis and produced
4 a biological opinion.

5 Q With that in mind, it's also equally
6 possible that you could do that analysis and find
7 out it does not affect the shrew, correct?

8 A Correct.

9 Q Have you met with the District at all to
10 discuss their program?

11 A I have not.

12 Q Were you present in November of 2002 at
13 a workshop with the Energy Commission where the
14 District was present as well?

15 A Yes, I think they were on the phone.

16 Q And is it fair to characterize that we
17 discussed the U.S. Fish and Wildlife Service's
18 potential concern about the withdrawal of this
19 water?

20 A Yes.

21 Q Have you had any further discussion or
22 have any of your staff had further discussions
23 with the District to investigate that issue?

24 A No, we haven't. I haven't had staff
25 that I could assign to this.

1 Q I don't want to mischaracterize your
2 testimony, but neither you nor none of your staff
3 have actually visited the area where the banking
4 program will take place, correct?

5 A I am down in Kern County about once
6 every six weeks and I am quite familiar with Coles
7 Levee, Kern Water Bank, all of the areas directly
8 adjacent to their proposed site. So I am quite
9 familiar with banking operations in Kern County.
10 I haven't actually walked on their site, but I've
11 walked on adjacent properties.

12 Q I think you heard the District today
13 testify that their only diverting high-flow waters
14 during flood years. Do you recall that testimony?

15 A Yes.

16 Q I'm trying to understand how that would
17 affect continually moist habitat associated with
18 the shrew.

19 A I guess what we're looking at is this
20 project in context with previous projects, and the
21 present hydrologic regime and where that's gotten
22 us with Buena Vista Lake shrew. And so at that
23 November hearing, the Water District described the
24 hydrologic history of the Kern River and all the
25 different distractions and dams and withdrawals of

1 water from that.

2 In this case, we've had one survey
3 effort on the Buena Vista Lake shrew. We're not
4 sure that these are the only locations where
5 they're found. We are continuing to try to get
6 money to do additional surveys and to do genetic
7 analysis and all the things that need to be done,
8 and also to get firm water for some of the
9 locations where we know they are.

10 We don't have the money ourselves to do
11 all that.

12 Q I'm having difficulty understanding how
13 diversion water, on average, once every seven
14 years, could possibly affect continually moist
15 habitat for the shrew.

16 A I guess some of this water goes to, as
17 Mr. Bartel said, goes to Tulare Lake. And in the
18 past, there were areas in Tulare Lake that were
19 moist all year round because of that floodwater
20 going there and then sitting there. And now that
21 flood water will again be reduced by another
22 increment, and it's these increments that add up
23 to something that has brought this species to the
24 edge of extinction.

25 So this is just another increment being

1 added. You know, the first increment the
2 Applicant can say, well, we're not going to have a
3 big effect. And the second increment, and now
4 we're getting to the last increment, with four
5 locations, none of them with firm water. The Kern
6 Wildlife Refuge does not have sufficient water to
7 do the things they want to do to provide perennial
8 water, continually moist habitat for this shrew.

9 Q With respect to the Kern Wildlife
10 Refuge, are you aware that, did you hear
11 Mr. Bartel's testimony regarding whether or not
12 there would be a reduction of flood waters that
13 affect the Kern Refuge?

14 A I guess I didn't hear the part about the
15 Kern Refuge.

16 Q With respect to Tulare Lake, my
17 understanding is that that's farmland now; is that
18 correct?

19 A I think most of it is farmland, yes.

20 Q Did you hear Mr. Bartel say the only
21 time that there would be diversion of water for
22 their program would be when everywhere else is
23 flooded with water?

24 A I'm sorry, I don't understand the issue.

25 Q Well, first time today. I'll ask

1 another question today that nobody will
2 understand, but let me go back and try to clarify
3 that one.

4 Are you aware that water will only be
5 diverted during times when there is an abundance
6 of water in the entire Kern County area?

7 A Okay. I mean, I believe that.

8 Q How long would it take U.S. Fish and
9 Wildlife Service to make a determination whether
10 or not it's possible that the withdrawal of water
11 and its use by Tesla could reasonably be expected
12 to reduce appreciably the likelihood of both the
13 survival and recovery of the shrew?

14 A We would need additional information
15 from the Water District on what their program is
16 and what they plan to do. We had received a CEQA
17 document, but that does not fulfill all of the
18 requirements of a biological assessment, which is
19 usually the submittal document that we receive for
20 a Section 7 consultation.

21 Q Have you asked the District for any of
22 that information?

23 A I don't remember exactly our
24 conversation on the phone. It was quite brief. I
25 may have said that I don't have staff that can

1 look at it right now, but I don't think I said
2 we're not interested. I just said I'm sorry, I
3 can't get to that right now.

4 APPLICANT COUNSEL GALATI: May I have
5 just a moment?

6 HEARING OFFICER GEFTER: Off the record.

7 (Brief recess.)

8 HEARING OFFICER GEFTER: Back on the
9 record.

10 APPLICANT COUNSEL GALATI: I have no
11 further questions for Ms. Jones.

12 HEARING OFFICER GEFTER: Thank you.

13 Do the Intervenors have any questions
14 for Ms. Jones?

15 INTERVENOR BOYD: I do.

16 HEARING OFFICER GEFTER: Mr. Boyd.

17 CROSS-EXAMINATION

18 BY INTERVENOR BOYD:

19 Q Ms. Jones, earlier you stated that you
20 don't yet have a biological opinion and it appears
21 that until we resolve the shrew issue that we
22 don't really have any prognostication on when such
23 opinion would be issued; is that correct?

24 A Yes.

25 Q So I guess what I would like to know is

1 I'm the Intervenor and a member of the public.
2 I'd like to know where, as a member of the public,
3 we will have an opportunity to comment on the
4 opinion or have input in the formulation of the
5 opinion.

6 Is this the only opportunity that we
7 will really have to do that?

8 A Yes. Actually, the only opinions where
9 there is discussion and public notice and public
10 involvement is when we participate in the Energy
11 Commission licensing for power plants. Other than
12 that, the Fish and Wildlife Service does not have
13 a system set up for, I don't know what the legal
14 term is.

15 Q For comment?

16 A You could comment on something to us if
17 you knew what was happening, but we don't have
18 public meetings and we don't have open meetings
19 with applicants.

20 Q So would this be the appropriate time,
21 then, to ask you questions on the possible content
22 of your opinion or what your analysis, what issues
23 or what areas you're going to analyze in that
24 opinion?

25 A Yes.

1 Q Okay. Did you, by any chance, see
2 Dr. Shawn Smallwood's testimony, which is
3 Exhibit 103?

4 A Well, you know, I haven't read it in
5 detail and I know it exists, but --

6 Q You know it exists.

7 A -- I looked at it a while ago.

8 Q So what I would like to ask is some of
9 the issues that he raised, if they are going to be
10 analyzed. That's the direction I'm going in, if
11 that's okay.

12 A Okay.

13 Q I'm curious to know, in performing your
14 analysis do you take into consideration the impact
15 on biological resources of the emissions from the
16 project, the criteria pollutants and the toxic air
17 contaminants that will be coming out of the
18 plant's smokestacks, and do you analyze that
19 impact over what I call the zone of deposition of
20 those pollutants?

21 A We do analyze that. We often don't have
22 any information, like environmental toxicology
23 information, to compare known deposition to
24 effects on species, but we acknowledge that those
25 effects might occur. For some of the plants on

1 serpentine soils in the Bay Area, we have one or
2 two studies that have been done, and we can show
3 deposition from vehicles will have an effect on
4 plants on these specific types of soils.

5 But I am not aware of any --

6 Q You're speaking of serpentine soils?

7 A Yes.

8 Q Okay.

9 A There are some concerns about H2S
10 emissions from oil field activities and their
11 effects, because it's heavier than air, on
12 burrowing mammals, but there hasn't ever been a
13 peer review article written on that.

14 Q And how about vernal pools? Would
15 vernal pools be sensitive to nitrogen deposition
16 in the invasive species like high native grasses?

17 A Yeah, I'm not a vernal pool expert, so
18 I'm --

19 Q But would that be possibly one of the
20 areas that you would analyze, since there are
21 vernal pools in the vicinity of this project?

22 APPLICANT COUNSEL GALATI: I would
23 object to the characterization of the testimony.

24 INTERVENOR BOYD: Okay, if there were
25 vernal pools, let's say.

1 BY INTERVENOR BOYD:

2 Q If there were vernal pools in the
3 vicinity of the project, would that also be
4 analyzed for those deposition effects?

5 A Yes.

6 Q Also, in your analysis do you do a
7 cumulative impact analysis that would include some
8 of the other power plants that had recently been
9 approved, the one at East Altamonte Energy Center
10 which was approved in August, and one, Tracy
11 Peaker, which is already operating? Would there
12 be a cumulative impact analysis of those emission
13 impacts is what I'm trying to find out?

14 A In endangered species parlance, those
15 previously approved projects where we've already
16 issued a biological opinion are part of what we
17 call our baseline.

18 Q Okay.

19 A And we would do an analysis along the
20 lines that you describe. For us, cumulative
21 effects is anything that is reasonably foreseeable
22 in the future and would not get a federal permit.

23 Q Do you have knowledge or do you
24 understand that the staff basically has been
25 advocating for the use of recycled water as

1 opposed to the Applicant's proposing with the
2 banked water? Were you aware of that?

3 A Yes. Yes, I am aware of that.

4 Q Were you aware that the Intervenors are
5 offering up dry cooling as our preferred
6 alternative?

7 A Yes.

8 Q Okay. In performing this impact
9 analysis where we're assessing the emissions from
10 the plant, will that analysis include an analysis
11 of the effects of possible pathogens or prions or
12 other types of airborne contaminants that might
13 come from using wastewater in the cooling system?
14 For example, Legionnaire's is one that's been
15 identified by the Energy Commission itself.

16 A I'm not sure we know anything about the
17 effects of such biological contaminants that
18 you're discussing, the effects on wildlife. I'm
19 not aware of any literature on that particular
20 topic, but it's possible that somebody --

21 Q Is that one of the areas that you could
22 analyze if, in fact, they do decide to go with the
23 recycled water, could we ask that that also be
24 analyzed when you perform your analysis?

25 A We can look at it. If you have some

1 scientific literature on the pathways and effects,
2 that would be very useful.

3 Q Certainly.

4 A I should tell you that we do have a very
5 well-respected contaminants division within our
6 office. They have been heavily involved in
7 Kesterson and we have people with many years of
8 service that are widely published on selenium and
9 mercury and those kinds of issues that are
10 waterborne issues that can assist me in this
11 analysis.

12 Q Okay, thank you. So I think I'm done.

13 INTERVENOR BOYD: I just would ask,
14 though, that until we -- in the absence of a
15 biological opinion, I don't understand how you can
16 close the record on Biology. And so if the intent
17 is to close the record after this hearing, I would
18 ask that it be at least kept open to accept the
19 biological opinion when it's produced. Thank you.

20 HEARING OFFICER GEFTER: Okay.

21 Mr. Sarvey?

22 CROSS-EXAMINATION

23 BY INTERVENOR SARVEY:

24 Q Have you had an opportunity to view the
25 proposed mitigation parcels for this project?

1 A Yes, I have.

2 Q Okay.

3 INTERVENOR SARVEY: Could you give her
4 copies of Exhibit 14, please?

5 THE WITNESS: I think I have it.

6 BY INTERVENOR SARVEY:

7 Q The adjacent parcel there that's shaded
8 in purple is the Herrera mitigation bank, an
9 existing biological preserve. Do you feel that
10 it's appropriate to set an 1160-megawatt power
11 plant next to an existing biological preserve?

12 A I think when this project first started,
13 we wrote a letter and suggested that there might
14 be better locations for the project. You know, we
15 prefer projects to be set on areas that have
16 already been industrialized -- you know, brown
17 fields as opposed to green fields. So the Service
18 is probably on the record saying that they would,
19 you know, if we were building a power plant, which
20 we're not, that we would prefer that it was in an
21 industrial area, as opposed to next to this bank.

22 Q Well, since this area is being proposed
23 as a kit fox mitigation habitat corridor, do you
24 feel that the light and noise from the 1100-
25 megawatt plant would effectively defeat the

1 purpose of this mitigation?

2 A I think -- I have been to meetings to
3 talk about light and noise and also landscaping,
4 and I think the effects of those things have been
5 minimized. I have a lot of experience with kit
6 fox down in Kern County and deal a lot with them
7 down in the oil fields. And there is a lot of
8 light and noise down in the oil fields scattered
9 about, and the kit fox habituate to that type of
10 activity and get used to it, and seem to do quite
11 well in the oil fields, actually.

12 Q Well, the adjacent parcels that are
13 being proposed as mitigation are currently grazing
14 plants. Would you expect any restrictions on the
15 grazing or any special preparations for that land
16 adjacent to the project for the proposed
17 mitigation parcels?

18 A There are grazing guidelines put out by
19 various agencies, the BLM being one of them, and
20 it's my understanding that those guidelines will
21 be followed for these lands. But I will verify
22 that before I finish the biological opinion.

23 Q Well, are you aware of any special
24 restrictions that will be placed on these grazing
25 lands that are being proposed as mitigation?

1 A I think there is a management plan that
2 addresses grazing.

3 INTERVENOR SARVEY: Thank you.

4 HEARING OFFICER GEFTER: Before we close
5 with Ms. Jones, I wanted just to confirm with the
6 Intervenors that Exhibits 14 and 14(a), which you
7 had not seen last week and now you've had an
8 opportunity to review them and you've actually
9 questioned the witness on these exhibits. So at
10 this point I presume you have no further concerns
11 about 14 and 14(a), which have been received into
12 the record.

13 INTERVENOR BOYD: No, we withdraw our
14 objection.

15 INTERVENOR SARVEY: No objection.

16 HEARING OFFICER GEFTER: All right.

17 Commissioner Geesman?

18 EXAMINATION BY THE COMMISSION

19 BY PRESIDING COMMITTEE MEMBER GEESMAN:

20 Q Ms. Jones, you indicated that one of
21 your key staff -- I believe the woman's name was
22 Nancy Pau -- had left last August, and I wasn't
23 clear from your references as to whether you meant
24 August of 2003 or August of 2002.

25 A 2002.

1 PRESIDING COMMITTEE MEMBER GEESMAN:

2 Thank you.

3 HEARING OFFICER GEFTER: Okay. Is there
4 cross-examination of the witness after --

5 APPLICANT COUNSEL GALATI: Just one.

6 RECROSS-EXAMINATION

7 BY APPLICANT COUNSEL GALATI:

8 Q Ms. Jones, in response to Mr. Boyd's
9 question on public involvement in the biological
10 opinion, I think you testified that there was no
11 opportunity for public hearings and comment on the
12 biological opinion; is that correct?

13 A Yes, that's correct.

14 Q In this case there was a Section 7
15 consultation from one federal agency to another,
16 correct?

17 A Right.

18 Q In that case, U.S. EPA actually
19 consulted with you before they were going to have
20 approval for the Tesla Power Project, correct?

21 A Right, that's true.

22 Q Are you aware of any public process
23 associated with US EPA's action?

24 A It's the Air Division, I guess, that
25 we're working with, and I don't know what their

1 process is. I'm not aware of their process.

2 Q Well, then I can't ask you the next
3 question.

4 APPLICANT COUNSEL GALATI: Thanks.

5 (Laughter.)

6 HEARING OFFICER GEFTER: All right.

7 Redirect?

8 STAFF COUNSEL HOUCK: Yes.

9 REDIRECT EXAMINATION

10 BY STAFF COUNSEL HOUCK:

11 Q Ms. Jones, Mr. Galati asked you about if
12 you were aware that U.S. EPA had initiated
13 consultation in I believe it was February of 2001?

14 A 2002.

15 Q 2002. As part of the Section 7
16 consultation, is the Applicant required to submit
17 a biological assessment?

18 A Yes, they are.

19 Q And did the Applicant submit a
20 biological assessment to U.S. Fish and Wildlife
21 Service dated December 2001, which is marked as
22 Exhibit 61?

23 A I guess the date I had for biological
24 assessment was March 28th, 2002, but --

25 Q I have a docket-stamp date of

1 March 28th, 2002. I've got a document date of
2 December 2002.

3 A Oh, okay.

4 Q Does that sound about accurate?

5 A Yes.

6 Q Okay. To your knowledge, was there
7 anything in the biological assessment that the
8 Applicant provided to U.S. Fish and Wildlife
9 Service that would have given U.S. Fish and
10 Wildlife Service concern regarding the Buena Vista
11 shrew?

12 A It's my understanding the biological
13 assessment focused on the project site in the East
14 Altamonte area, and that the Buena Vista Lake
15 shrew issue only came up much later in the
16 process, when Nancy and I found out that the
17 water -- you know, started talking to Energy
18 Commission staff and found out the water was
19 coming from a different location.

20 So we were not aware until much later in
21 the process. Let's see, I guess June 2002 is when
22 we found out about the water coming from Kern
23 County.

24 Q And so, then, it would be your testimony
25 that to your knowledge the Buena Vista shrew was

1 not listed in the list of endangered species in
2 the biological assessment?

3 A It's my understanding, yeah.

4 Q Okay.

5 STAFF COUNSEL HOUCK: And then I have
6 one question for Ms. Erichsen.

7 HEARING OFFICER GEFTER: And
8 Ms. Erichsen is still under oath from the previous
9 testimony.

10 BY STAFF COUNSEL HOUCK:

11 Q At this time, having heard Ms. Jones'
12 testimony, could Staff conclude that the Tesla
13 Power Project would be in compliance with all
14 laws, ordinances, regulations and standards if it
15 uses the Kern County water supply?

16 A No, Staff could not conclude that.

17 STAFF COUNSEL HOUCK: Okay, thank you.

18 HEARING OFFICER GEFTER: With respect to
19 the biological opinion, which would be required by
20 a condition of certification, even though there is
21 no biological opinion available at this point and
22 you can't really predict when there would be one
23 available, the condition would require the
24 Applicant and the project owner to provide a
25 biological opinion before construction begins; is

1 that the correct characterization of that
2 condition?

3 WITNESS ERICHSEN: Yes.

4 HEARING OFFICER GEFTER: Okay, thank
5 you.

6 At this point we're going to close
7 Biology and go off the record.

8 (Brief recess.)

9 HEARING OFFICER GEFTER: We're back on
10 the record. Before we move on, Mr. Sarvey
11 indicated he has one further cross-examination
12 question for Ms. Erichsen on Biology, so we are
13 reopening Biology for that one question.

14 Mr. Sarvey.

15 RE-CROSS-EXAMINATION

16 BY INTERVENOR SARVEY:

17 Q Ms. Erichsen, if this project adopted
18 dry cooling, would it be consistent with all laws,
19 ordinances, regulations and standards?

20 A Well, yes. If dry cooling were to be
21 approved for this project, it would have to
22 undergo the same process for ensuring compliance
23 with all of the federal and state permits and all
24 of the laws, ordinances and standards applicable
25 with the biological resources.

1 Q Did Staff analyze that scenario?

2 A Yes.

3 Q And did it comply with all laws,
4 ordinances, regulations and standards?

5 A Well, Staff did not analyze every
6 specific separate or detailed dry cooling
7 proposal, but analyzed what the general impacts
8 may be from alternative cooling systems.

9 INTERVENOR SARVEY: Okay, thank you.

10 HEARING OFFICER GEFTER: Thank you,
11 Ms. Erichsen.

12 Do you have return for the witness?

13 HEARING OFFICER GEFTER: No? Okay.

14 The topic of Biological Resources is
15 closed, and we're going to move on to Air Quality,
16 and I understand that Mr. Sadredin from the San
17 Joaquin Air District is going to be calling in.

18 Would the witnesses please take your
19 seats.

20 Off the record.

21 (Brief recess.)

22 HEARING OFFICER GEFTER: Mr. Galati.

23 APPLICANT COUNSEL GALATI: At this time
24 I'd like our Air Quality witness to be sworn. His
25 name is Mr. David Stein.

1 Whereupon,

2 DAVID STEIN

3 Was called as a witness herein and, after having
4 been duly sworn, was examined and testified as
5 follows:

6 THE REPORTER: The witness is sworn.

7 DIRECT EXAMINATION

8 BY APPLICANT COUNSEL GALATI:

9 Q Mr. Stein, can you please state your
10 name for the record and spell it, tell us who you
11 work for, and briefly describe what your role was
12 on the Tesla Power Project.

13 A Sure, I would be happy to. My name is
14 David Stein, S-t-e-i-n. I'm a vice president with
15 URS Corporation at 500 12th Street, Suite 200,
16 Oakland, California, 94607. My responsibilities
17 within URS include management of the air quality
18 and public health risk assessment practices in
19 Northern California. I hold bachelor degrees,
20 bachelor of science degrees in biological sciences
21 and environmental engineering, and a master's
22 degree in environmental health engineering.

23 I am also a registered chemical engineer
24 in California, and I have approximately 26 years
25 of experience managing, staffing, coordinating,

1 conducting multidisciplinary environmental
2 assessment for a wide range of development
3 projects with extensive experience in the
4 permitting and licensing of power plants here in
5 California.

6 I've worked both as a regulator and as a
7 consultant to state and local government as well
8 as private sector, so I have a pretty broad
9 background. I've testified before this Commission
10 as an air quality and public health expert in a
11 number of other cases, and I've been involved in
12 over a dozen siting cases in the last many years.

13 My technical expertise is in air quality
14 and public health risk assessment and a pretty
15 broad range of experience there, including
16 quantification of emissions, emissions control
17 technology, dispersion modeling, risk assessments
18 and risk assessment modeling, visibility impact
19 assessment and modeling, measurement, and
20 continuous emissions monitoring.

21 My role on this project was to manage
22 both the public health and air quality tasks. I
23 had a number of analysts working with me on that
24 effort.

25 Q Mr. Stein, are you familiar with

1 Exhibit 47, which is testimony of Dave Stein, Air
2 Quality, dated August 29th, 2003?

3 A Yes.

4 Q And is that your previously filed
5 testimony in this matter?

6 A Yes, it is.

7 Q Mr. Stein, do you have any corrections
8 or modifications to that written testimony?

9 A I do. There are just a couple, and let
10 me go through them very briefly. On page 10 of my
11 written testimony, the very last paragraph
12 beginning with the words, "In addition to," I
13 would strike at the end of that sentence,
14 beginning at the end of that sentence the words,
15 "memorandum of understanding" and insert the word
16 "letter." There is no memorandum of understanding
17 with the City of Tracy. It's actually a letter
18 that was executed by the Tesla project.

19 In addition, further on in the second
20 sentence where, after the word "which commits," I
21 would strike the word "commits" and insert the
22 word "offers."

23 HEARING OFFICER GEFTER: And that letter
24 we're going to identify as Exhibit 162 for the
25 record, and that is a letter from FPL to the

1 Director of Public Works for the City of Tracy.

2 The letter is dated April 16th, 2003.

3 APPLICANT COUNSEL GALATI: That is
4 correct, and I will update the Committee on
5 specifically when that letter was docketed. It is
6 my understanding that it was docketed.

7 THE WITNESS: Okay. In addition to that
8 correction, I would like to clarify my testimony a
9 little bit. I have outlined in some detail my
10 disagreement with the staff-recommended condition
11 AQ-SC 7. And I would just like to point out that
12 we are not opposed to a condition that would
13 reflect the San Joaquin Valley air quality
14 mitigation agreement that the project has entered
15 into.

16 And I have some specific language that
17 sort of covers that general statement, which I
18 would propose to insert under Section 9 of my
19 written testimony after the words in the fourth
20 line of the second paragraph --

21 THE REPORTER: Tell us what page,
22 please.

23 THE WITNESS: I'm sorry, page 16, and
24 Roman numeral nine, the second paragraph, line
25 four of that paragraph, after the words "be

1 deleted," period. I would insert the following:
2 "In addition, I disagree with CEC staff's proposed
3 condition AQ-SC 7, outlining additional mitigation
4 requirements for the project that are above and
5 beyond the ERCs to be provided to the Bay Area Air
6 Quality Management District, and the mitigation to
7 be provided to the San Joaquin Valley APCD under
8 the mitigation agreement.

9 "In lieu of the Staff-proposed AQ-SC 7,
10 I recommend the condition of certification that is
11 modeled after AQ-SC 5 from the recently decided
12 East Altamonte case, revised to reflect the
13 appropriate mitigation liability calculated under
14 the Tesla, San Joaquin Valley and PCD mitigation
15 agreement."

16 And in addition to that I would modify
17 the following sentence beginning with the proposed
18 language, and I would insert after that the words,
19 "for AQ-SC 1 through AQ-SC 3 is provided below."

20 Q Mr. Stein, would you consider this to be
21 clarification of your existing testimony or a new
22 position?

23 A It's simply clarification. I think my
24 testimony is pretty clear on these issues.

25 Q Mr. Stein, let's start with --

1 APPLICANT COUNSEL GALATI: Ms. Gefter?

2 HEARING OFFICER GEFTER: Yes?

3 APPLICANT COUNSEL GALATI: My

4 understanding is that Staff may be introducing a
5 new exhibit that may take care of some of the
6 issues in this testimony outlined regarding
7 construction equipment, particularly construction
8 mitigation. So I would just like to go ahead and
9 defer those issues until after Staff testifies,
10 because I think we're in agreement with any
11 modifications that Staff may propose.

12 HEARING OFFICER GEFTER: In other words,
13 if you have any questions on construction, you can
14 cross-examine Staff --

15 Off the record.

16 (Brief recess.)

17 HEARING OFFICER GEFTER: Okay,
18 Mr. Galati?

19 APPLICANT COUNSEL GALATI: Yes.
20 Ms. Gefter, with the clarification off the record
21 that we would be testifying on construction,
22 impacts and mitigation until after Staff
23 testifies, I'd like to move right now to
24 operational impacts and discussion.

25 BY APPLICANT COUNSEL GALATI:

1 Q And I'll ask Mr. Stein if you will
2 please describe the project's emissions and
3 whether or not, in your opinion, you believe the
4 project is using the best available control
5 technology.

6 A I'd be happy to. The project will be
7 exclusively fired on natural gas and will be the
8 source of several criteria, including emissions,
9 oxides of nitrogen or NOx, sulfur dioxide or SO2,
10 carbon monoxide or CO, PM 10 or particulate matter
11 less than 10 microns, and volatile organic
12 compounds sometimes referred to as unburned
13 nonmethane hydrocarbons.

14 The project has been subjected to an
15 extensive review by the Bay Area Air Quality
16 Management District and has, in fact, received a
17 determination of compliance with the District from
18 the District that confirms that the facility will
19 comply with all of the Air Quality Management
20 District's applicable rules and regulations,
21 including best available control technology.

22 Let me just summarize what that
23 technology is.

24 Q Mr. Stein, before you do so, you
25 referred to a determination of compliance from the

1 Bay Area Air Quality Management District. Are you
2 referring to Exhibit 23, the final determination
3 of compliance, Tesla Power Project, from Bay Area
4 Air Quality Management District, Application 3506
5 dated February 27th, 2003?

6 A Yes.

7 Q And its errata, which is identified as
8 Exhibit 24, which is dated May 2nd, 2003?

9 A That's correct.

10 Q Thank you.

11 A For oxides of nitrogen, the power plant
12 will use dry low-NOx combustion system in
13 conjunction with technology referred to as
14 selective catalytic reduction, which utilizes the
15 injection of ammonia to reduce emissions of
16 oxides of nitrogen to water vapor and molecular
17 nitrogen. The discharge from that process is at 2
18 ppm by volume dry, 15 percent oxygen.

19 The project will also use a different
20 type of catalyst, an oxidation catalyst for carbon
21 monoxide and will be restricted to 4 parts per
22 million at the same reference conditions for that
23 substance.

24 In addition, the facility will comply
25 with both the CARB's -- California Air Resources

1 Board, or CARB's guidance on emissions of fine
2 particulate matter and volatile organic compounds,
3 and I might add also will comply with the CARB
4 guidelines on ammonia and will accept an ammonia
5 limit of 5 ppm which, I might point out, is what
6 half of the ammonia slip that has been recently
7 been permitted by a number of other, permitted for
8 a number of other power plants including most
9 recently here the East Altamonte project.

10 That lower ammonia slip will certainly
11 result in an air quality benefit, although the
12 benefit is unquantifiable, but would most likely
13 be realized in the form of reduced secondary PM 10
14 creation.

15 Q Mr. Stein, did you conduct an air
16 quality impact analysis for the project?

17 A Yes, we did do an air quality impact
18 analysis.

19 Q And what were the conclusions of that
20 air quality impact analysis?

21 A We concluded that the project would
22 comply with all of the applicable ambient air
23 quality standards or would not significantly
24 contribute to an existing violation in and of
25 itself.

1 Q Did you propose mitigation for the
2 project?

3 A We did. We proposed mitigation that was
4 required by the Bay Area Air Quality Management
5 District, a number of emission reduction credits
6 that are outlined in a table that is provided on
7 page 7 of my testimony. We also included emission
8 reductions from a proposed road paving project at
9 the Waste Management Altamonte landfill that will
10 result in substantial reductions of fine
11 particulate matter that are more of a real-time
12 emission reduction relative to the project.

13 Q And, Mr. Stein, did the Bay Area
14 recently issue an authorization to create those
15 ERCs at the Altamonte landfill?

16 A Yes, it did.

17 Q And are you familiar with Exhibit 25,
18 which is entitled the Bay Area Quality Management
19 District Permit Evaluation and Emission
20 Calculations for Altamonte Landfill ERC, dated
21 February 10th, 2003?

22 A Yes.

23 Q Is that the authorization that you
24 previously testified to?

25 A That's correct.

1 Q Mr. Stein, is it a correct
2 characterization to describe that the project is
3 in the Bay Area Air Quality Management District
4 but may be viewed as being part of the San Joaquin
5 Valley?

6 A Yes. That's one of the sort of
7 unfortunate quandaries that this facility or this
8 proposed project found itself in is that the
9 physical air shed boundary and the political or
10 jurisdictional boundaries don't overlap
11 completely. And so the project is within the
12 regulatory jurisdiction of the Bay Area Air
13 Quality Management District in eastern Alameda
14 County, but the project is physically located
15 where its emissions are going to impact the San
16 Joaquin Valley Air District.

17 Q When you made that determination, did
18 you recommend that the Applicant do something
19 about that jurisdictional boundary issue?

20 A I did. We identified that as a
21 potential issue very early on. In fact, I think
22 the Applicant is to be applauded for their
23 initiative in reaching out to the Air Quality
24 District, the San Joaquin Valley APCD, before the
25 application was filed, to discuss the issue and to

1 begin a dialogue to determine how those impacts
2 could be mitigated effectively in the Valley.

3 And that discussion culminated in the
4 Air Quality mitigation agreement that I referred
5 to in my testimony.

6 Q Mr. Stein, is that Exhibit 22 entitled
7 Air Quality Mitigation Agreement Between San
8 Joaquin Valley Air Pollution Control District and
9 Midway Power, approved by the governing board on
10 May 16th, 2002?

11 A Yes. I would also like to point out
12 that we made every attempt to involve the San
13 Joaquin Valley APCD in the reviews of materials
14 that we were submitting to the Bay Area Air
15 Quality Management District so they were provided
16 with a copy of the modeling protocol that we
17 prepared prior to evaluating impacts from the
18 project.

19 We also provided them with a copy of the
20 AFC at the time that it was submitted, and that
21 was all part of the discussion that led to the
22 mitigation agreement.

23 Q Mr. Stein, the mitigation agreement
24 requires the project owner to give a sum of money
25 to the San Joaquin Valley Air Pollution Control

1 District; is that correct?

2 A Yes, it does.

3 Q Can you tell us how that sum of money
4 was derived?

5 A I've set forth in my written testimony
6 an outline of the methodology on pages 9 and kind
7 of spilling over onto page 10. Basically, we
8 evaluated, and I should point out that this was a
9 methodology that was developed under the direction
10 of the San Joaquin Valley Air District.

11 We were encouraged to look at such
12 things as wind rows and try to tie the impacts of
13 the project to the time, in order to determine how
14 much of the project's emissions would impact to
15 tie it to the percentage of the time that the wind
16 is blowing into the Air District in the time
17 periods when violations are primarily observed.

18 I should also point out that while these
19 are detailed calculations, there is really -- this
20 is not a precise science. The physical process of
21 transport is a very complicated process, and so
22 this is simply one methodology for evaluating that
23 transport phenomenon and reaching a conclusion
24 about how to mitigate that transport effect.

25 So once we identified the impact to the

1 Valley, then we looked at the ERCs that had
2 already been provided to the Bay Area Air Quality
3 Management District, I think the frustration for
4 the project was that the project had incurred a
5 substantial expense to comply with the regulatory
6 requirements of the Bay Area Air Quality
7 Management District and was certainly feeling a
8 little bit of double jeopardy in the notion that
9 they should be complying with resource review
10 regulations, basically, in both valleys, and the
11 San Joaquin Valley Air District personnel that we
12 dealt with understood that quandary.

13 So we looked at the ERCs in the Bay Area
14 Air Quality Management District and identified a
15 way to value the benefit that the San Joaquin
16 Valley would see from those emission reductions in
17 the Bay Area, and that is reflected in table two.

18 And then we took the project's impacts
19 in the Valley as calculated in the first table,
20 subtracted that from the second table, and
21 determined a balance of unmitigated emissions
22 impact that would need to be mitigated. And it
23 was the District's experience that they were able
24 to, historically have been able to achieve
25 emission reductions in the Valley for \$15,000 per

1 ton or less.

2 So we were asked to use the high side of
3 that range and to provide funding for a mitigation
4 program based on the mitigation balance that had
5 been calculated, 063.9 tons per year multiplied by
6 \$13,000 per ton, and that worked out to \$957,751.

7 Q Mr. Stein, what can the District do with
8 that money, according to the agreement?

9 A Well, there's considerable latitude in
10 what the District can do with that money, but some
11 specificity in what must be done. The agreement
12 specifies that the money be used to generate real
13 time air quality reductions with an emphasis in
14 reductions in the northern zone of the San Joaquin
15 Valley District with a preference for the City of
16 Tracy.

17 And then to the extent that that can be
18 achieved, then going out into San Joaquin County
19 there are some specific types of emission
20 reduction projects that are specifically named in
21 the agreement, but the agreement was intentionally
22 left open to other alternates in order to rely on
23 the District's extensive experience and expertise
24 in taking this funding and generating the maximum
25 air quality benefit from it.

1 Q Mr. Stein, are you familiar with the
2 final staff assessment, Exhibit 51?

3 A Yes.

4 Q Are you familiar with the portion in the
5 final staff assessment titled Air Quality in which
6 Staff points out that the PM 10 offsets have been
7 reduced by the Bay Area between the time that the
8 Air Quality Management agreement was signed and
9 the time that the ERC for Altamonte Landfill was
10 actually approved?

11 A Yes, I am aware of that portion of the
12 testimony.

13 Q And does that change the analysis on the
14 BAAQMD, and, if so, how?

15 A No, it doesn't, in short. There was a
16 minor change in the emission offset package as you
17 point out, and the reason for the change is as
18 follows. The road paving reduction program at the
19 Waste Management landfill was originally
20 anticipated to generate several hundred tons per
21 year of PM 10 reductions, according to the
22 calculations that were performed by Waste
23 Management's consultants, and through the review
24 process it was determined by the Bay Area Air
25 Quality Management District that those

1 calculations should be modified, and the
2 modification resulted in a reduction in the amount
3 of emission reductions that were available from
4 the road paving program to approximately one-half.

5 And as a result of that, the project
6 then looked for additional PM 10 reductions within
7 the Bay Area QMD bank to make up the shortfall.
8 Those reductions came from an ERC from a facility
9 located in northeastern Contra Costa County in the
10 Antioch area, and that minor change and the offset
11 package was not envisioned at the time that the
12 Air Quality mitigation agreement was entered into.

13 So we did go back and perform a
14 calculation to determine what the impact of that
15 change would be, and our conclusion was that
16 because of the way the calculation was performed,
17 emission reductions at the Altamonte landfill were
18 valued higher by the San Joaquin Valley Air
19 District than the emission reductions from the
20 Antioch facility. There was a reduced benefit to
21 the San Joaquin Valley from that substitution.

22 However, the total benefit that was
23 recalculated still exceeded the calculated impact
24 to the San Joaquin Valley, so it did not change
25 the PM 10 liability under the agreement. And no

1 change, therefore, was needed in the mitigation
2 fee that was originally agreed upon. We did
3 provide the District with copies of those
4 calculations.

5 Q In your review of the final staff
6 assessment, Exhibit 51 -- Strike that. Did you
7 also review Staff's second addendum, Staff's
8 supplemental sponsored testimony and rebuttal
9 testimony identified as Exhibit 54?

10 A Yes, I have.

11 Q Based on your review of the final staff
12 assessment and your review of the rebuttal, can
13 you briefly describe for us whether you agree or
14 disagree with Staff's approach to calculating the
15 impacts and/or benefits of the credits, as you
16 previously described?

17 A Yes, I can. I think in short we still
18 disagree with the Staff approach for calculating
19 emission impacts and the required mitigation in
20 the San Joaquin Valley. We believe that the
21 methodology developed by the Air District is based
22 on their experience and expertise and that they're
23 in the best position to determine what the impacts
24 are and what mitigation should be in their air
25 shed.

1 I would also point out that the Staff
2 rebuttal has misrepresented the APCD method for
3 providing mitigation under the agreement in that
4 it has made a change to the calculation
5 methodology that was not a part of the original
6 mitigation agreement. And the result of that
7 change, they refer to it as an update, but it's
8 more than an update, it's really a change in the
9 calculation method.

10 The result of their changing the method
11 is to project a much larger total air pollution
12 liability that would result in a much higher
13 mitigation fee.

14 Q Mr. Stein, are you referring to the air
15 quality attachment to rebuttal? I believe it's a
16 four-page document that was attached to
17 Exhibit 54?

18 A Yes, I am.

19 Q Can you specifically refer us to where
20 you're talking about the change not being part of
21 the agreement?

22 A I'd be happy to. On page two of four of
23 that document there is a series of tables with the
24 heading, "San Joaquin Valley APCD Method for
25 Mitigation." The Staff has inserted a column

1 which they label "Fraction of Seasonal Impact."
2 That column did not appear in the original
3 agreement.

4 Q Mr. Stein, what is the effect of that
5 column on the calculations?

6 A Well, the effect of that column is to
7 provide a mechanism for the Staff to then
8 subsequently insert a discount factor when they do
9 what they refer to as an update. So they have
10 used that column to insert another discount factor
11 into the calculation which results in an
12 additional emission shortfall that staff argues
13 should be mitigated.

14 Q With respect to Staff's analysis of fine
15 particulate impacts, can you describe for us the
16 difference between your impact analysis for fine
17 particulates and Staff's?

18 A Well, we did an analysis that looked at
19 the impact of the project on PM 10 standards, and
20 made a demonstration that the impacts of the
21 project would be very, very small. The Staff has
22 taken that one step further and is arguing that
23 impacts to PM 2.5 levels have to be evaluated and
24 addressed.

25 And while that may be arguable in

1 theory, the fact of the matter is that the PM 2.5
2 program is still in its infancy. While some data
3 has been collected in the San Joaquin Valley,
4 there have been no formal designations of PM 2.5
5 attainment or nonattainment under either the
6 federal or the state program, and there have been
7 no formal implementation plans adopted to begin to
8 comply with those ambient air quality standards.

9 So the Staff has sort of jumped ahead of
10 the regulatory machinery to devise a regulatory
11 system of their own, which is not used by any air
12 quality agency that I'm aware of in the state,
13 although the air quality agencies are regulated PM
14 10, not PM 2.5.

15 Q What is the result of looking at the
16 Altamonte landfill's benefit to San Joaquin
17 Valley, if you adopt Staff's approach?

18 A Well, the Staff has argued that the
19 emissions from the Altamonte landfill are larger
20 particles than PM 2.5 and, therefore, there should
21 be a substantial discount applied.

22 We disagree with that for a number of
23 reasons. First and foremost, there is some fairly
24 good evidence that the dust that's generated at
25 the Altamonte landfill is unusually fine

1 particulate matter and that the discount factor
2 that the Staff has applied using some generic
3 information from a national emission factor
4 compilation is not appropriate for that site.

5 But even beyond that, it sort of falls
6 back to the comments I was saying earlier, that
7 the PM 2.5 program has really not yet been
8 developed, and so the federal guidance has been to
9 utilize PM 10 as a surrogate for PM 2.5, and
10 that's consistent with what every air management
11 agency in the State of California is doing.

12 And we don't believe that the Staff
13 should be discounting these reductions simply
14 because this is a power plant project and not a
15 refinery project or a foundering project or any
16 other type of source that would be a source of PM
17 10.

18 Q Mr. Stein, Staff references a June 2000
19 CARB memo that they believe supports their
20 position on using PM 2.5. Are you familiar with
21 that memo?

22 A I am.

23 Q Are you familiar with CARB's position on
24 this issue?

25 A I am. You know, we were actually quite

1 concerned about the memo --

2 HEARING OFFICER GEFTER: Mr. Stein, one
3 minute.

4 Mr. Galati, could you refer to an
5 exhibit number that would include that memo?

6 APPLICANT COUNSEL GALATI: I think it
7 might be -- I did sponsor one --

8 STAFF COUNSEL HOUCK: It's 51. It's in
9 our final staff assessment.

10 APPLICANT COUNSEL GALATI: It's in
11 Exhibit 51.

12 HEARING OFFICER GEFTER: Thank you.

13 THE WITNESS: We were actually quite
14 concerned about the memo because it seems to
15 discourage the use of PM 10 reductions being used
16 for combustion sources. And so before we got too
17 far along with the Waste Management folks on
18 developing a road paving program, we wanted to be
19 sure that we were not doing something that was
20 inconsistent with ARB guidance.

21 So Waste Management had a meeting with
22 the Air Resources Board. We independently met
23 with the Air Resources Board back in 2002, and I
24 think the clear message from both of those
25 meetings was that this is a policy that has sort

1 of died on the vine. ARB is not enforcing this
2 policy.

3 My understanding is that the California
4 Air Pollution Control Officers Association has
5 actually froze the policy, and that subsequent to
6 the issuance of that policy that PM 10 reductions
7 from road paving have been approved for other
8 projects without opposition from the Air Resources
9 Board. And the Air Resources Board made it clear
10 to us that they would not oppose the use of road
11 paving reductions on this project.

12 STAFF COUNSEL HOUCK: I would object to
13 the characterization of CARB as hearsay. There is
14 no evidence in the record that CARB does not stand
15 by the 2001 memo that Staff has in its testimony,
16 the 2000 memo.

17 HEARING OFFICER GEFTER: Your objection
18 is sustained.

19 BY APPLICANT COUNSEL GALATI:

20 Q Mr. Stein, you have been involved in
21 many licensing projects between June 2000 and
22 today; is that correct?

23 A Yes.

24 Q Has CARB ever negatively commented on
25 any of the projects licensed by the Commission

1 that you were involved with on the use of road
2 paving credits for combustion sources offsets?

3 A I am not aware that they have negatively
4 commented on any projects that have used road
5 pave.

6 Q Did they comment on this project?

7 A No.

8 Q Mr. Stein, are you also aware that Staff
9 has proposed, in its conditions of certification,
10 a requirement for SO2 mitigation?

11 A Yes.

12 Q And do you agree with that?

13 A I don't. The air quality modeling has
14 demonstrated that the impacts from this project on
15 SO2 concentrations in the Valley are extremely
16 small, certainly very difficult to measure, very
17 probably immeasurable. And the impacts from that
18 SO2 on that conversion to sulfate would be even
19 lower.

20 There is no accepted methodology for
21 calculating what that conversion rate should be,
22 but I've noted from the literature that I've cited
23 in my testimony that gas phase conversion rates
24 for SO2 are very low, on the order of 1 percent
25 per hour or less in the western U.S. And even

1 assuming a much higher conversion rate for SO₂,
2 something like 10 percent, I estimate the impacts
3 to be only a few-tenths of a microgram per cubic
4 meter, which is pretty much immeasurable.

5 So we don't believe there are any
6 significant impacts from the emissions of SO₂ from
7 the project. And certainly with the PM 10
8 mitigation that has already been provided, there
9 are no significant impacts from the project.

10 Q Mr. Stein, you testified earlier that
11 you are familiar with the East Altamonte case. I
12 believe you referenced AQ-SC 5 in that decision as
13 a condition requiring additional mitigation in the
14 San Joaquin Valley; is that correct?

15 A Yes.

16 Q And is it correct to say that you have
17 modified your testimony today to ask for a
18 condition similar in nature to that one?

19 A Yes.

20 Q Can you describe for us how you would
21 fashion such a condition?

22 A Well, basically I would fashion a
23 condition that would incorporate the air quality
24 mitigation agreement that has been entered into by
25 both the Applicant and the San Joaquin Valley

1 AQCD, and I would make that part of the license.
2 I would identify the emission reduction that has
3 been calculated under the agreement as a target to
4 be achieved, and would include in the condition a
5 requirement for reporting back to the CPM on the
6 progress that the Air District has achieved in
7 dispersing the funds and implementing emission
8 reduction projects.

9 I think it's important that the
10 District, who has the most expertise in managing
11 and implementing these mitigation funds, that they
12 be given broad latitude in identifying how to best
13 allocate the dollar so that they maximize the
14 emission reductions and the air quality benefit to
15 the Valley.

16 Q Mr. Stein, did the East Altamonte
17 project have an air quality mitigation agreement
18 with San Joaquin Valley?

19 A Yes, they did.

20 Q And does the East Altamonte decision
21 reflect that agreement?

22 A Yes, it does. I might point out that
23 that agreement actually was entered into by the
24 East Altamonte project after we had initiated
25 discussion and had actually entered into a similar

1 agreement with the San Joaquin Valley Air
2 District.

3 So I think the proactive reaching out
4 that this Applicant engaged in, which culminated
5 in a productive air quality mitigation agreement,
6 served as a model for the East Altamonte project.

7 APPLICANT COUNSEL GALATI: May I have
8 just a moment?

9 HEARING OFFICER GEFTER: Off the record.

10 (Brief recess.)

11 HEARING OFFICER GEFTER: Mr. Galati?

12 APPLICANT COUNSEL GALATI: Yes. I have
13 no further questions for Mr. Stein. I would like
14 to ask the San Joaquin Valley District
15 representative, Seyed Sadredin, to be sworn in and
16 ask him some questions as well.

17 HEARING OFFICER GEFTER: All right.
18 Also, the Air District, the San Joaquin Valley Air
19 District is also an independent intervenor in this
20 case.

21 Mr. Sadredin, can you hear us?

22 MR. SADREDIN: [telephonically] Yes, I
23 can.

24 HEARING OFFICER GEFTER: Okay. Would
25 you be sworn by the reporter? The reporter is

1 going to speak to you in just a minute.

2 MR. SADREDIN: Okay.

3 HEARING OFFICER GEFTER: We note for the
4 record that Mr. Sadredin has been ill, and that is
5 the reason why he had to call in, because he
6 couldn't travel here today. And we are all giving
7 him that opportunity to participate by phone.

8 THE REPORTER: Sir, this is the court
9 reporter. Can you do me a favor and please raise
10 your right hand.

11 MR. SADREDIN: Okay.

12 Whereupon,

13 SEYED SADREDIN

14 Was called as a witness herein and, after having
15 been duly sworn, was examined and testified as
16 follows:

17 THE REPORTER: Thank you.

18 The witness is sworn.

19 HEARING OFFICER GEFTER: Thank you.

20 Would you please state your name for the
21 record.

22 THE WITNESS: My first name is Seyed,
23 last name is Sadredin.

24 HEARING OFFICER GEFTER: And tell us
25 your position with the San Joaquin Valley Air

1 District.

2 THE WITNESS: I am the director of
3 Permit Services for San Joaquin Valley Unified Air
4 Pollution Control District.

5 HEARING OFFICER GEFTER: Thank you.
6 Mr. Galati is going to ask you questions now.

7 DIRECT EXAMINATION

8 BY APPLICANT COUNSEL GALATI:

9 Q Mr. Sadredin, could you please spell
10 your name for the court reporter.

11 A The first name is S-e-y-e-d, and the
12 lastname is S-a-d-r-e-d-i-n.

13 Q Thank you, Mr. Sadredin. You just heard
14 the testimony of David Stein; is that correct?

15 A Yes, I did.

16 Q Would you believe that his testimony
17 accurately reflects the cooperative nature that
18 took place between the Applicant and San Joaquin
19 Valley in coming up with an air quality mitigation
20 agreement?

21 A Yes, I do.

22 Q Mr. Sadredin, do you believe that the
23 air quality mitigation agreement mitigates impacts
24 to your district to less than significant levels?

25 A Yes, we do. In fact, our view is that

1 that mitigation agreement, together with the
2 credits or ERCs have provided the Bay Area with
3 excellent results and a net benefit in air quality
4 in San Joaquin Valley.

5 Q Mr. Sadredin, you participated in the
6 East Altamonte case; is that correct?

7 A Yes, I did.

8 Q In that proceeding, you notified that
9 committee that you would be willing to work with
10 the CEC and the local community and the Applicant
11 to report progress in implementing the funds under
12 the AQMA?

13 A Yes. We are very interested in getting
14 the community involved and trying to find local
15 projects that we could implement using the funds
16 provided for this mitigation agreement and the one
17 with East Altamonte.

18 Q And that would be my followup question
19 is you're making the same commitment here today on
20 the Tesla project?

21 A Yes.

22 APPLICANT COUNSEL GALATI: That's really
23 all the direct questions I had for Mr. Sadredin.
24 He is a party if you want him to participate
25 otherwise. Those are all of my questions at this

1 time.

2 HEARING OFFICER GEFTER: Okay.

3 Mr. Sadredin, would you please stay on
4 the phone because some of the other parties today
5 may have questions for you.

6 INTERVENOR SADREDIN: Yes. Also, as an
7 Intervenor I would like to get a statement in at
8 the correct time that's appropriate for doing so.

9 HEARING OFFICER GEFTER: Would you like
10 to make your statement right now?

11 INTERVENOR SADREDIN: First I wanted to
12 thank the Commission for allowing me to do this by
13 phone, and I apologize for not being able to be
14 there.

15 I just wanted to point out that the
16 District was extremely concerned with this project
17 and East Altamonte, both because they were in
18 close proximity of our district boundaries, yet we
19 had no legal jurisdiction over the projects. And,
20 as you have heard, most of the impact from these
21 projects would land within our district
22 boundaries.

23 So we wanted to make sure that this
24 project is mitigated and would not interfere with
25 our efforts to attain air quality standards.

1 To address our concerns we set up two
2 goals to pursue. One was to make sure that if
3 this project is improved, it would employ the best
4 available control technology and comply with all
5 applicable local state and federal air
6 regulations. Second, we wanted to make sure that
7 any net impact on the Valley's air quality would
8 be fully mitigated.

9 And to accomplish these goals, we fully
10 participated in the Bay Area Air Quality
11 Management District's IBOC process. We carefully
12 reviewed the application and the Bay Area Air
13 Quality Management District's analysis of this
14 project.

15 We provided comments to Bay Area Air
16 Quality Management District under a preliminary
17 decision on this project, and at this point we are
18 satisfied that the project employs the best
19 available control technology and complies with all
20 applicable local, state and federal standards and
21 regulations relating to air quality.

22 As to the issue of mitigating the
23 impact, we worked extensively with the Applicant
24 to develop a methodology to mitigate the plant's
25 emissions. And at the District here, we have some

1 benefits, more than ten years of a study that
2 we've conducted for ozone and particulate matter
3 in the area. In fact, over the last decade the
4 District, along with other stakeholders, we have
5 spent over 31 million dollars in a study on ozone
6 and particulate matter impact.

7 We understand that the ozone formation
8 and the particulate formation and transport is a
9 very complex issue, and there is no one at this
10 hearing that could really come up to you and say
11 that they are able to come up with the precise
12 methodology to mitigate emissions.

13 Realizing those shortcomings yet taking
14 advantage of what we've learned through extensive
15 studies that we've done over the years, we used a
16 number of conservative assumptions and approaches
17 to this problem to basically come up with the best
18 estimate that we could, in terms of the amount of
19 pollution that needs to be mitigated and then
20 finding emission reductions to offset these
21 emissions.

22 We did develop a mitigation agreement
23 that was adopted by our governing board by
24 unanimous vote through a public hearing process,
25 and in response to questions just a minute ago, I

1 stated that we believe that that mitigation
2 agreement, together with the reductions that have
3 been provided in the Bay Area, would actually
4 provide a net air quality benefit to the Valley.

5 So, with that, we are in support of this
6 project proceeding with the control technology
7 that has been proposed and approved by Bay Area
8 Air Quality Management District, along with the
9 mitigation agreement that we have developed.

10 That concludes my remarks.

11 HEARING OFFICER GEFTER: Thank you.

12 EXAMINATION BY HEARING OFFICER

13 BY HEARING OFFICER GEFTER:

14 Q Mr. Sadredin, I have a question for you
15 regarding the agreement, which we call Exhibit 22.
16 And it indicates a total mitigation balance of
17 63.9 tons per day -- I'm sorry, tons per year,
18 TPY.

19 What does that refer to? Because that
20 table where that balance is determined includes
21 61.1 TPY for NOx and 2.7 TPY for VOCs. So it
22 seems to me that that generic total of 63.9
23 doesn't specifically refer to NOx or VOCs but is a
24 generic type of amount.

25 Would you explain that, please.

1 A Yes. Our basic goal here was to make
2 sure PM 10 emissions are mitigated and also ozone
3 is mitigated. As you may know, ozone is not a
4 directly emitted pollutant, it is formed
5 secondarily in the atmosphere by a reaction
6 between nitrogen oxide and VOCs and the presence
7 of sunlight.

8 Therefore, our approach to ozone
9 mitigation was to look at NOx and VOCs together.
10 So the number that you have here represents a
11 total of NOx and VOCs. And together we believe
12 that mitigates the ozone impact.

13 Now, NOx emission reductions would also
14 have a secondary benefit to help the PM 10
15 emissions, but in this case we did not even credit
16 for that. But, as it turned out, the ERCs that
17 they are providing in Bay Area and the methodology
18 that we've come up with did provide sufficient
19 mitigation for those emissions.

20 The 63.9 is the total VOC and NOx as a
21 comprehensive integrated approach to mitigate
22 ozone as a final target of our mitigation.

23 Q Okay, and does that include the ERCs
24 that are being made available for the road paving
25 at the Altamonte landfill?

1 A Yes. That was -- Basically the
2 methodology that we went through, we first
3 assessed how much of the emissions from the plant
4 would impact our district during the times of year
5 that we have problems with ozone and particulate
6 matter. So that established how many tons of
7 emissions are coming across that would be of
8 concern to us.

9 Then we gave them some credit, not 100
10 percent credit, for some of the ERCs that were
11 provided in Bay Area. Now, the paving ERCs that
12 were provided close to the plant, we gave them a
13 greater percentage credit for those, as opposed to
14 the 27 percent credit that we only provided
15 through other ERCs.

16 So in determining -- The net impact to
17 the Valley for PM 10 did include those ERCs on
18 paving as well as other ERCs that were provided.

19 PRESIDING COMMITTEE MEMBER GEESMAN:
20 Mr. Sadredin, this is John Geesman, the
21 Commissioner on this case. I want to thank you
22 for making yourself available today. I find your
23 guidance helpful, as I have in several other cases
24 that you've been involved with that I have also
25 sat on.

1 EXAMINATION BY THE COMMISSION

2 BY PRESIDING COMMITTEE MEMBER GEESMAN:

3 Q I have a question regarding PM 2.5. I
4 know that there has certainly not been any formal
5 designation made, but do you have any doubt that
6 your district will be in nonattainment status when
7 such a determination is made for 2.5?

8 A No, I don't. But the question is really
9 is what strategies would be effective in reducing
10 or controlling PM 2.5 versus PM 10. Now, they
11 have done quite a bit of studies and we're still
12 trying to learn about PM 10.

13 At this point, only a standard has been
14 established and we haven't really formulated a
15 strategy. Specifically regarding this particular
16 case, one could argue that PM 2.5, the smaller
17 particles, for instance, they are dense particles,
18 heavier particles that may fall relatively close
19 to the source where they were generated;
20 therefore, the impact from the source a mile away
21 from our boundary may not be as much for PM 2.5
22 versus PM 10, which would constitute all of the
23 larger particles that are then lighter in density
24 and might travel further.

25 Of course, all of that we need to study

1 and put a comprehensive PM 2.5 plan, which at this
2 point is a number of years away. So at this point
3 it would be premature to just say the PM 2.5
4 should be treated in the same manner as the PM 10
5 and whether the impact from this project to our
6 valley would be the same for PM 2.5 as it is for
7 PM 10.

8 Q But there is not really any question in
9 your mind that ultimately the District will be at
10 nonattainment for PM 2.5; is that correct?

11 A That's correct.

12 Q Thank you.

13 HEARING OFFICER GEFTER: Staff, do you
14 have questions for Mr. Sadredin, or do you want to
15 wait until after your direct?

16 (Thereupon, the tapes were changed with
17 no interruption in the proceeding.)

18 THE WITNESS: I might address one other
19 issue regarding that ARB letter on PM 2.5, if
20 that's appropriate.

21 HEARING OFFICER GEFTER: Oh, you have
22 another response on PM 2.5?

23 THE WITNESS: I understand, I heard the
24 discussion regarding the ARB's letter that a staff
25 member at ARB sent out a few years ago regarding

1 PM 2.5 credits, and their recommendation at that
2 point, that they thought PM 2.5 or the fraction of
3 the emissions that are PM 2.5 should be considered
4 in determining what ERCs are necessary.

5 And I could provide some additional
6 information to the Commission on the status of
7 that letter and what air pollution control
8 districts have done in California in response to
9 that, if you want me to.

10 HEARING OFFICER GEFTER: No, we're going
11 to be more specific to this case and I think Staff
12 has a question for you.

13 This is Ms. Houck, Staff counsel for the
14 CEC staff.

15 STAFF COUNSEL HOUCK: Yes.

16 CROSS-EXAMINATION

17 BY STAFF COUNSEL HOUCK:

18 Q Just for clarification, Mr. Sadredin,
19 did you just state that PM 10 is more dense than
20 PM 2.5?

21 A I said the opposite. And I remember all
22 this, you cannot, without detail, you just can
23 make a broad generic statement, but one could
24 argue that in general, smaller particles are
25 denser. So PM 2.5 would be a denser type of a

1 particle and, therefore, arguments could be made
2 that they may settle faster or nearer to the
3 source where they are generated.

4 Q Is there any documentation or studies
5 that you're aware of that would support the theory
6 that PM 2.5 would fall closer to the source?

7 A Well, there are various documents that
8 basically make that implication, but at this point
9 we are clearly not ready to accept that as a rule
10 that we should follow in every case, and that's
11 why we think it's premature to address PM 2.5
12 controls and impacts without much more study that
13 has to happen.

14 But yes, there is very little
15 information on how PM 2.5 behaves, but just a
16 general conclusion that one could make is that the
17 smaller particles, by their nature, they're dense.
18 That's why they're smaller, more compact as
19 opposed to the larger particles that could be
20 loosely bound together and may not be as dense.

21 Q Okay. I'm going to read a statement to
22 you, and could you please let me know if you agree
23 with this statement.

24 "The lifetimes of particles vary with
25 size. Coarse particles can settle rapidly from

1 the atmosphere, within hours, and normally travel
2 only short distances." Would you agree with that
3 statement?

4 A Could you read that again, please?

5 APPLICANT COUNSEL GALATI: I would
6 object. Would you identify what you're reading
7 from, please.

8 STAFF COUNSEL HOUCK: It's a Staff
9 report for initial statement of reasons for
10 proposed rulemaking from the California
11 Environmental Protection Agency Air Resources
12 Board, and it's public hearing to consider
13 amendments to the ambient air quality standards
14 for particulate matter and sulfates. And it's
15 dated June 20th, 2002.

16 THE WITNESS: If you could read that
17 slower. I didn't catch it the first time.

18 BY STAFF COUNSEL HOUCK:

19 Q "The lifetimes of particles vary with
20 size. Coarse particles can settle rapidly from
21 the atmosphere, within hours, and normally travel
22 only short distances."

23 A I think you can almost make any
24 statement, you know, out of context perhaps or
25 without really considering all of the other

1 variables that would go into that equation; for
2 instance, wind speed, the inversion layers, and
3 the mixing abilities that you have with impact.

4 But I'm sure what you said could be true
5 in some cases and not true in some others.

6 Q So would you agree with the statement
7 that PM 10 is four times bigger or four times
8 heavier than PM 2.5?

9 A Well, obviously, on the average that
10 would be the case. I guess PM 2.5 could be
11 anything that's less than 2.5, so PM 2.5 would
12 include things as small as, you know, half a
13 micron or even less. And if you compare that to
14 PM 10 it could be 20 times the difference.

15 So 10 versus 2.5, that's four times
16 bigger, but I don't think we have enough
17 information to say in our atmosphere in San
18 Joaquin what is the makeup of the actual
19 inventory. I think that would be more pertinent,
20 number two, to have. And that is something that
21 we would need ultimately when we try to decide
22 what sort of controls would be appropriate for PM
23 2.5.

24 Q But in general, would you agree with the
25 statement that lighter particles would travel

1 farther?

2 A I don't think I would agree with that.
3 I think the density would play a big role on that,
4 so depending on what type of material we're
5 talking about -- I mean, if you were talking about
6 loose dust, for instance, it may travel further.
7 So in this case, for instance, specifically for
8 this project, paving roads, which has looser,
9 lighter particles, we might see a greater batch of
10 control of those in the Valley.

11 On the other hand, combustion particles
12 that come out of the facility's stack, they might
13 be denser and fall closer to the source. I think
14 you need to be specific and really know what is
15 the composition of the particulate matter, instead
16 of making general statements.

17 HEARING OFFICER GEFTER: Ms. Houck, I
18 think the witness has answered the question
19 sufficiently at this point, and you are welcome to
20 put on your witnesses to testify on that issue.

21 STAFF COUNSEL HOUCK: Okay. I have some
22 other questions for Mr. Sadredin.

23 BY STAFF COUNSEL HOUCK:

24 Q You're familiar with the air quality
25 mitigation agreement that was adopted by the San

1 Joaquin Valley Air Pollution Control District for
2 the Tesla Power Project; is that correct?

3 HEARING OFFICER GEFTER: And that's
4 Exhibit 22.

5 BY STAFF COUNSEL HOUCK:

6 Q Exhibit 22?

7 A Did you say Tesla?

8 Q Yes, for Tesla.

9 A Yes, I am.

10 Q And did the District conduct a CEQA
11 analysis when preparing that agreement?

12 A Well, I'm sure you know that this
13 project is located in the Bay Area, so we really
14 have no legal jurisdiction over this project. We
15 did become an intervenor in this project so that
16 we could influence and have our input heard in
17 this project. We have no legal ability to do a
18 CEQA analysis, a formal CEQA analysis, but we did
19 act as a responsible agency would in a CEQA
20 process, even though we weren't even responsible,
21 like I said, because we basically don't have any
22 agency jurisdiction over this project.

23 We did carefully examine the air
24 emissions from the source and looked at other data
25 available that would help us develop a mitigation

1 agreement to this, but specifically to your
2 question, no, we had no platform to which to
3 conduct a CEQA analysis.

4 Q And typically a response -- Well, I'm
5 not going to ask that, strike that.

6 So your answer is no, you did not
7 conduct a CEQA analysis; is that correct?

8 A Not something that you could take to a
9 governing board or to a court of law and say this
10 is a CEQA analysis, but I think we performed an
11 analysis to estimate what the air quality impacts
12 of this project would be on our valley and how we
13 could go about mitigating that impact.

14 Now, whether we can say that equates to
15 a CEQA analysis for air or not, that's arguable.

16 Q And working with the Applicant to
17 develop this agreement, was there any public
18 review of the document prior to adoption by the
19 Air District?

20 A Yes. The document went out for public
21 inspection and review prior to the hearing.

22 Q And did you consult with the Energy
23 Commission, which is the lead agency for approving
24 this project in your negotiations with the
25 Applicant on this agreement?

1 A I believe we kept them apprised of what
2 was going on as we were negotiating with the
3 Staff, and we were open to any comments that they
4 would have had for us, but --

5 Q Did you provide a draft agreement to the
6 Energy Commission Staff to formally comment on
7 prior to adoption?

8 A I believe it was more of an informal
9 process that we went through, other than when it
10 went through the hearing we did send them a copy
11 when it was made available to the entire public to
12 comment on before the hearing.

13 But until that point we were hoping just
14 to work staff to staff and get their input on
15 that.

16 Q And how long before the public hearing
17 was the document available publicly?

18 A I believe it was about 10 days.

19 Q And did you receive any formal comments
20 from either EPA or CARB regarding the mitigation
21 agreement?

22 A No, we did not. No.

23 Q So neither EPA nor CARB has formally
24 endorsed the air quality mitigation agreement
25 between yourselves and the Applicant?

1 A I don't think they have formally, but in
2 conversations we've had with them, they seem to be
3 encouraged. Like I said, we did include or at
4 least, through our intervention, this issue of
5 transport did come to light and it was addressed.

6 But basically, their view was that the
7 expertise in establishing the mitigation approach
8 to this would better lie with the District as
9 opposed to the state or the federal government.

10 Q So they did not formally endorse the
11 agreement, correct?

12 A No. We didn't get anything in writing
13 from them.

14 Q Okay, thank you.

15 STAFF COUNSEL HOUCK: Just one second.

16 (Brief recess.)

17 HEARING OFFICER GEFTER: Ms. Houck?

18 STAFF COUNSEL HOUCK: I have no more
19 questions for Mr. Sadredin of the San Joaquin Air
20 District.

21 HEARING OFFICER GEFTER: Thank you.

22 Mr. Sadredin, could you please stay on
23 the line? Staff is now going to present their
24 witnesses, and we'd like your input if you have
25 any questions or any additional comments.

1 INTERVENOR SADREDIN: Yes, ma'am.

2 HEARING OFFICER GEFTER: Also, Staff,
3 were you going to sponsor Mr. Jang from the Bay
4 Area Air Quality District?

5 STAFF COUNSEL HOUCK: First, for
6 clarification, we do have questions for Mr. Stein.
7 Do you want us to address those now or after our
8 testimony?

9 HEARING OFFICER GEFTER: Actually, given
10 that there is a lot of testimony, it's your
11 choice. Do you want to cross-examine Mr. Stein
12 first or do you want to put on your direct? You
13 can decide kind of how you want to do it.

14 STAFF COUNSEL HOUCK: We'd prefer to
15 cross-examine Mr. Stein first.

16 HEARING OFFICER GEFTER: Go ahead.

17 But answer my question about Mr. Jang of
18 the Bay Area. Are you going to sponsor his
19 testimony?

20 STAFF COUNSEL HOUCK: We have no
21 objection to it. It was my understanding that the
22 Applicant was going to sponsor his testimony, but
23 either way, we have no objection.

24 HEARING OFFICER GEFTER: Okay.

25 Mr. Jang, thank you for your patience.

1 We'll get to your testimony in a while. Thank you
2 for staying.

3 APPLICANT COUNSEL GALATI: And,
4 Ms. Gefter, after cross-examination I still need
5 to go to my exhibits.

6 HEARING OFFICER GEFTER: Okay.

7 CROSS-EXAMINATION

8 BY STAFF COUNSEL HOUCK:

9 Q Good afternoon, Mr. Stein. Can you
10 explain or describe the distinction between PM 10
11 and PM 2.5?

12 A PM 10 is defined as particulate matter
13 less than 10 microns in diameter. PM 2.5 is
14 defined as particulate matter less than 2.5
15 microns in diameter.

16 Q And are the health effects of PM 2.5 any
17 different from those of PM 10?

18 A Well, there have been some studies to
19 suggest that PM 2.5 is respired into the deep
20 respiratory tract and may be more responsible for
21 adverse health effects than PM 10.

22 Q And does that information regarding the
23 distinction between the health effects that you
24 just described, was that one of the rationales
25 that a standard for PM 2.5 was developed?

1 A Yes.

2 Q And will the San Joaquin Valley Air
3 Pollution Control District need to develop special
4 strategies to manage PM 2.5?

5 A Absolutely.

6 Q And can you describe what portions of
7 the PM 10 emissions from the combustion turbines
8 at the Tesla Power Plant would qualify as PM 2.5?

9 A I would say that the majority of the PM
10 emissions are also PM 2.5 issues.

11 Q And can you describe what portion of the
12 PM 10 emissions that you're proposing, or offsets
13 that you're proposing through the road paving
14 would be PM 2.5?

15 A There is some data that was collected by
16 SCS engineers that suggests that it may be, as
17 much as half of the particulate matter from the
18 landfills is actually PM 2.5. I should also point
19 out that the data, that the calculation
20 methodology that was employed by the District
21 restricted the consideration of the fine nature of
22 this particular site that the calculation
23 methodology has a factor in it called silt
24 content.

25 And the AP 42, I should point out, is a

1 designation for an EPA compilation of emission
2 factors. It's sort of a cookbook for how to
3 calculate emissions from different types of
4 sources and is a widely used and recognized source
5 for determining how to quantify emissions from
6 sources.

7 It is, however, based on a broad range
8 of different types of facilities and the quality
9 of the emission factors varies, depending on the
10 underlying data. So I apologize, actually, for
11 that segue.

12 The AP 42 methodology was used to
13 calculate emission reductions from the landfill
14 project and those were documented in the
15 District's engineering analysis that is part of
16 the record now. And one of the factors it goes
17 over in that calculation is something called silt
18 content.

19 The silt content can range from a low of
20 one or two percent to as high as 70, 80 and in
21 some cases even 90 percent, depending on the site.
22 The District --

23 HEARING OFFICER GEFTER: Mr. Stein,
24 you're talking about silt, s-i-l-t; is that
25 correct?

1 THE WITNESS: S-i-l-t, yes, which is a
2 different measure of the fineness of particulate
3 matter.

4 The District felt that the calculation
5 should be kept at 35 percent, despite the fact
6 that there were many, many measurements provided
7 to the District that demonstrated that the actual
8 silt content at that particular site is much, much
9 higher, as a result of two things: one, the
10 unique nature of the native soil material on site,
11 and also the very high volume of traffic that
12 operates on those unpaved roads.

13 So that's why the original estimates of
14 the emission reductions were much higher and ended
15 up being reduced substantially, because the
16 District capped those calculations. So that I
17 think also should be factored into the assessment.

18 The reduction that has been calculated
19 for the Altamonte landfill is a very conservative,
20 very likely significantly understated estimate of
21 what the true reductions are from that road paving
22 program.

23 BY STAFF COUNSEL HOUCK:

24 Q But the calculations and methodology
25 used in AQMA did not specifically address PM 2.5;

1 is that correct?

2 HEARING OFFICER GEFTER: Referring to
3 Exhibit 22?

4 STAFF COUNSEL HOUCK: Yes, Exhibit 22.

5 THE WITNESS: No, they did not.

6 BY STAFF COUNSEL HOUCK:

7 Q Okay, thank you. In your testimony you
8 also discussed or described the methodology used
9 in calculating the required offset amount in the
10 AQMA, which is Exhibit 22. And you indicated that
11 that methodology tied the impacts to the
12 percentage of time that wind was blowing into the
13 Air District, and the times when the District
14 would be in nonattainment; is that correct?

15 A Yes.

16 Q And you looked at this in conjunction
17 with evaluating the transport effect and how to
18 mitigate the potential additional impacts; is that
19 correct?

20 A Yes.

21 Q You also stated that you identified the
22 impact and then you examined the offsets required
23 by the Bay Area Air Quality Management District;
24 is that correct?

25 A Yes.

1 Q In using a methodology that ties impacts
2 to the nonattainment times of year or the
3 percentage of the time the wind is blowing,
4 wouldn't it make sense that the mitigation should
5 also correspond with those impacts?

6 A Well, the methodology that the District
7 encouraged be used was to use a factor called the
8 contribution factor that was a very conservative
9 value that was intended to take those effects into
10 consideration and coming up with a way for
11 discounting the substantial reductions that were
12 being provided to the Bay Area Air Quality
13 Management District and translating those in a
14 quantitative way to benefit the San Joaquin
15 Valley, recognizing that there really is no hard
16 scientific basis to perform these types of
17 calculations.

18 Q But shouldn't mitigation coincide with
19 impacts?

20 A Yes, and I believe this does.

21 Q You also in your testimony mentioned
22 that there was a calculation error regarding the
23 road paving where the Bay Area Management District
24 recalculated the amount of offsets they were going
25 to give FPL credit for; is that correct?

1 A To describe it as an error may be an
2 overstatement. I don't think I used that term. I
3 think it was the Bay Area's determination to take
4 a very conservative approach to the issuance of
5 the reduction credit. It's a very conservative
6 calculation. We believe that the true air quality
7 benefit from that road paving program is
8 substantially greater than the credit that the
9 Waste Management folks will receive for conducting
10 the road paving program.

11 Q In the methodology utilized to determine
12 the potential additional offsets required under
13 the air quality mitigation agreement, did you use
14 a number that would reflect FPL's opinion that it
15 really provides greater mitigation or the number
16 that the Air District used in giving you your
17 offsets?

18 A We used the value that the District
19 ultimately issued in the form of an approved
20 emission reduction credit. We didn't further
21 discount it, as Staff has suggested doing.

22 Q Mr. Stein, what do you mean by an
23 approved emission reduction credit?

24 A The Bay Area Air Quality Management
25 District evaluated the road paving program and

1 issued a proposed ERC subject to the completion of
2 the road paving program, and that's the value that
3 we used in the air quality mitigation agreement.

4 Actually, let me correct that. In the
5 original agreement, we used the value based on the
6 reduction that we anticipated, which was a higher
7 value. And the agreement was executed actually
8 based on the higher value.

9 When the Bay Area Air Quality Management
10 District determined that in order to be
11 conservative they should substantially discount
12 the amount of credit to be received, we went back
13 to the District with a calculation that
14 demonstrated that there was no change needed in
15 the quantity of mitigation required because there
16 was still a surplus PM 10 benefit to the value,
17 even with the reduced road paving ERC.

18 APPLICANT COUNSEL GALATI: Ms. Gefter,
19 if I could just clarify for the record. You asked
20 a question and I believe it's reflected in
21 Exhibit 25, which was in his prior testimony, his
22 being Dave Stein, on the Bay Area Air Quality
23 Management District permit evaluation for the
24 Altamonte landfill ERC.

25 BY STAFF COUNSEL HOUCK:

1 Q Mr. Stein, the methodology used to
2 calculate the impact, as you stated earlier,
3 looked at the percentage of time or it tied it to
4 when the impact would occur, the nonattainment
5 times. That's what you testified to earlier; is
6 that correct?

7 A Yes.

8 Q The methodology used to calculate the
9 benefit, does it also look at this seasonal or
10 quarterly impact?

11 A I believe it does. It's all wrapped up
12 in that single factor that is called the SJV
13 contribution factor. That factor is a
14 conservative factor that is intended to capture
15 all of those different variables.

16 Q But if you look at, I guess it's page
17 nine of your testimony, the PM 10 factor of 66.2
18 percent, wouldn't that be the same factor that's
19 in the first portion of the column entitled
20 Percentage of Time Wind Blows into San Joaquin
21 Valley?

22 A I'm sorry, I'm not sure I understand
23 your question. Could you repeat it, please?

24 Q Hold on just one second.

25 HEARING OFFICER GEFTER: Let's go off

1 the record.

2 (Brief recess.)

3 HEARING OFFICER GEFTER: Ms. Houck?

4 BY STAFF COUNSEL HOUCK:

5 Q Please bear with me, Mr. Stein, I'm not
6 an air quality expert.

7 If you look at page nine of your
8 testimony, you have a table one and a table two,
9 correct?

10 A Yes.

11 Q Okay. Looking at table one for the
12 Tesla emissions impact in San Joaquin Valley, if
13 you look at the bottom pollutant represented,
14 that's PM 10, correct?

15 A Yes.

16 Q And under the column entitled Project
17 Emissions in Tons Per Year, you have 196.05 tons
18 per year reflected; is that correct?

19 A Yes.

20 Q And then the next column is entitled
21 Percentage of Time Wind Blows into San Joaquin
22 Valley, correct?

23 A Yes.

24 Q And that column is sort of divided up
25 into two subcolumns, correct?

1 A Yes.

2 Q And the first subcolumn has a heading of
3 Quarter One and Quarter Four, correct?

4 A Yes.

5 Q And the period of time for Quarter One
6 and Quarter Four would be approximately six
7 months; is that correct?

8 A Yes.

9 Q And the number you have in the column
10 under PM 10 is 66.2 percent, correct?

11 A Yes.

12 Q There is nothing in the second subcolumn
13 under the heading, I guess, April to November,
14 right?

15 A That's correct.

16 Q Should there be a factor of .5
17 represented there, since we're only talking about
18 half the year?

19 A No.

20 Q Can you explain why not, if we're
21 looking at quarter one and quarter four?

22 A Well, it's implicit in the calculation.

23 Q So it is implicit in the calculation.

24 A Yes.

25 Q Okay. And under the next column you

1 have Emissions into San Joaquin Valley During
2 Nonattainment Quarters and Tons Per Year, and you
3 have a 64.89 tons per year for quarter one and
4 four; is that correct?

5 A I'm sorry, can you repeat that again?

6 Q Under the third column, it's entitled
7 Emissions -- or the fourth, I guess. At the top
8 there is a heading that says Emissions into San
9 Joaquin Valley During Nonattainment Quarters.

10 A Yes.

11 Q And quarter one and four it says 64.89
12 tons; is that correct?

13 A Yes.

14 Q And that number represents the emissions
15 impact from the Tesla Power Project in San Joaquin
16 Valley; is that correct?

17 A Yes.

18 Q And that impact occurs in quarter one
19 and quarter four, correct?

20 A It's calculated for that period, yes.

21 Q Thank you. Now, looking at table two
22 where we're discussing Tesla ERC Benefits in San
23 Joaquin County, you have a number of headings.
24 And under the pollutant you have PM 10 is the last
25 pollutant listed; is that correct?

1 A Yes.

2 Q And under the column entitled ERCs,
3 BAAQMD, Tons Per Year, if you look at the line
4 reflecting PM 10 it says 196.1 tons per year,
5 correct?

6 A Yes.

7 Q And that number reflects almost the same
8 number in the project emissions tons per year
9 listed for PM 10 in table A, correct?

10 A Yes.

11 Q Okay. The next column in table two is
12 entitled San Joaquin Valley Contribution Factor,
13 and you have listed 66.2 percent; is that correct?

14 A Yes.

15 Q And that reflects the same number in the
16 first subcolumn under Percentage of Time Wind
17 Blows into San Joaquin Valley for Quarters One and
18 Four, correct?

19 A That's the factor that the Valley Air
20 District chose to use to value the ERCs that are
21 coming from the Air Quality Management District.

22 Q Okay.

23 A It happens to coincide numerically with
24 the value of the first table.

25 Q Now, the 196.1 tons per year listed for

1 PM 10 in table two reflects the credits, the ERCs
2 that BAAQMD would be allowing for FPL; is that
3 correct?

4 A The 196.1?

5 Q Yes.

6 A Correct.

7 Q And those are reflected on an annual
8 basis; is that correct?

9 A Yes.

10 Q So there is no .5 factor implicit in the
11 calculation that gives you 129.8, correct?

12 A Correct.

13 Q And in order to address the impact,
14 shouldn't the 129.8 have a .5 factor dividing that
15 in half?

16 A No.

17 Q So what happens to the fact that this is
18 dispersed over four quarters, yet the impact is
19 only in two quarters?

20 A Well, that's folded up in that San
21 Joaquin Valley contribution factor which the
22 District chose, and they chose to value the
23 reductions at 66.2 percent.

24 Q Okay, thank you.

25 HEARING OFFICER GEFTER: Mr. Stein, did

1 you say that the number 66.2 percent was
2 coincidental with the percentage that appears in
3 table one under quarters one and four?

4 THE WITNESS: They happen to coincide
5 numerically, yes.

6 HEARING OFFICER GEFTER: But they're not
7 referring to the same issues or the same
8 calculations?

9 THE WITNESS: The San Joaquin -- Well,
10 the contribution factor is intended to reflect
11 kind of an overall contribution to the San Joaquin
12 Valley, so it is an overall factor that the Valley
13 Air District chose to value the benefits of the
14 reductions of the San Joaquin Valley.

15 HEARING OFFICER GEFTER: I understand
16 that, but you said that these numbers are
17 coincidental; in other words, they don't refer to
18 the same thing.

19 THE WITNESS: No, they don't.

20 BY STAFF COUNSEL HOUCK:

21 Q Just to clarify that, table one is
22 addressing quarterly impacts and table two is
23 looking at an annual benefit.

24 A The ERCs are annual values. The
25 benefits are the benefits that accrue to the

1 Valley and are to be used to compare with the
2 emissions into the Valley in the first table.

3 Q Okay, thank you.

4 HEARING OFFICER GEFTER: Is Mr. Sadredin
5 still on the phone?

6 INTERVENOR SADREDIN: Yes.

7 HEARING OFFICER GEFTER: Okay. Thank
8 you for your patience.

9 STAFF COUNSEL HOUCK: I have no further
10 questions for Mr. Stein.

11 HEARING OFFICER GEFTER: Mr. Sarvey, do
12 you have cross-examination?

13 INTERVENOR SARVEY: Yes.

14 CROSS-EXAMINATION

15 BY INTERVENOR SARVEY:

16 Q In your testimony on page 10 of
17 Exhibit 47, and you've corrected this, you stated
18 you have executed a memorandum of understanding
19 with the City of Tracy, and you've since changed
20 that testimony to a letter; is that correct?

21 A That's correct.

22 INTERVENOR SADREDIN: Excuse me, I'm not
23 able to hear Mr. Sarvey.

24 HEARING OFFICER GEFTER: Is your
25 microphone on?

1 INTERVENOR SARVEY: Yes, it's on.

2 BY INTERVENOR SARVEY:

3 Q Is the Applicant prepared to make this
4 \$600,000 for air quality improvements in the City
5 of Tracy a condition of certification?

6 APPLICANT COUNSEL GALATI: Ms. Gefter,
7 may I have some latitude? I have an actual
8 representative of the company who can answer that
9 question.

10 HEARING OFFICER GEFTER: That's fine,
11 and we're referring to Exhibit 162, which has been
12 identified but not received yet.

13 Whereupon,

14 SCOTT BUSA

15 Was recalled as a witness herein and, having been
16 previously sworn, was examined and testified
17 further as follows:

18 DIRECT TESTIMONY

19 THE WITNESS: This is Scott Busa,
20 project director for the Tesla Power Project.

21 Yes, we would be willing to take that as a
22 condition of certification for the project.

23 INTERVENOR SARVEY: Can I request that
24 Staff draft that condition or is that out of line?

25 HEARING OFFICER GEFTER: The parties can

1 get together to draft the condition.

2 INTERVENOR SARVEY: Okay, thank you.

3 (RESUMED) CROSS-EXAMINATION

4 BY INTERVENOR SARVEY:

5 Q Did any other agency, other than the
6 CEC, perform an independent CEQA analysis of your
7 air quality mitigation agreement?

8 STAFF COUNSEL HOUCK: I would object. I
9 don't believe that the CEC conducted -- I mean, we
10 factored in the mitigation agreement, but the
11 mitigation agreement wasn't based on any
12 assessment by the CEC.

13 INTERVENOR SARVEY: I'm sorry, I said
14 that improperly. I'll withdraw that.

15 BY INTERVENOR SARVEY:

16 Q Did any agency perform an independent
17 CEQA analysis for this project's air quality
18 impacts other than the CEC staff?

19 A I'm sorry, Mr. Sarvey. My attorney was
20 speaking in my ear when you asked the question.
21 Could you please repeat it?

22 Q Yes. Did any agency perform an
23 independent CEQA analysis for this project's air
24 quality impacts other than CEC staff?

25 HEARING OFFICER GEFTER: That question

1 is very confusing.

2 INTERVENOR SARVEY: I'm sorry.

3 HEARING OFFICER GEFTER: Do you want to
4 reframe the question?

5 APPLICANT COUNSEL GALATI: Mr. Sarvey,
6 if I can be of some assistance, are you asking
7 Mr. Stein whether the District prepared a CEQA
8 analysis for their air quality mitigation
9 agreement?

10 INTERVENOR SARVEY: I think that's
11 already been asked and answered, so I'll withdraw
12 the question, thanks.

13 APPLICANT COUNSEL GALATI: Okay.

14 BY INTERVENOR SARVEY:

15 Q Did you develop the terms and conditions
16 of the air quality mitigation agreement listed in
17 the recital as Mr. Stein?

18 A I participated in the development of
19 those terms. I did not draft the agreement.

20 Q Okay. Now, on the third page of the
21 agreement, item five under Cooperation --

22 A I'm sorry, I need to get a copy of the
23 agreement in front of me, Mr. Sarvey.

24 Q Okay.

25 A Okay, I'm prepared.

1 Q Okay. Are the Applicant and the
2 District bound to cooperate with each other with
3 respect to any requests or actions related to this
4 agreement by the CEC by Article 5 of the AQMA?

5 A That section discusses cooperation and
6 it indicates if the two parties agree to cooperate
7 with respect to requests or actions. I think the
8 words in the agreement speak for themselves.

9 Q Does the Applicant have the option under
10 this agreement of providing emission reduction
11 credits in the form of ERCs, as opposed to the
12 \$957,000 that is proposed to be granted for air
13 quality programs in the San Joaquin Valley?

14 A I don't believe that that provision is
15 in the agreement.

16 Q So the Applicant is bound by this
17 agreement to provide the \$957,000 and does not
18 have the option to provide emission reduction
19 credits in lieu of that; is that correct?

20 A That's my understanding, yes.

21 Q Okay. Did you prepare the information
22 given to the CEC in data response 289?

23 HEARING OFFICER GEFTER: Is that an
24 exhibit?

25 INTERVENOR SARVEY: Yes, it is.

1 HEARING OFFICER GEFTER: Could you
2 identify the exhibit?

3 APPLICANT COUNSEL GALATI: Is that the
4 third set?

5 INTERVENOR SARVEY: I have a copy of it
6 here, but let me reference it.

7 APPLICANT COUNSEL GALATI: If it's the
8 third set, I believe it's Exhibit Five.

9 INTERVENOR SARVEY: August 2002.

10 HEARING OFFICER GEFTER: Let's go off
11 the record.

12 (Brief recess.)

13 INTERVENOR SARVEY: Okay.

14 BY INTERVENOR SARVEY:

15 Q So you're familiar with this document,
16 the East Altamonte Energy Center draft consensus
17 air quality mitigation plan?

18 A Yes, I'm generally familiar with it.
19 It's been quite some time since I --

20 HEARING OFFICER GEFTER: Mr. Stein, wait
21 a second. We need to identify this exhibit. This
22 is part of Exhibit Five. It's an attachment to a
23 data response provided to the Applicant in the
24 data response period.

25 APPLICANT COUNSEL GALATI: Yes.

1 Specifically, Ms. Gefter, it is attached as air
2 quality attachment to response to data request
3 289, and it's entitled East Altamonte Energy
4 Center draft consensus air quality mitigation
5 plan.

6 HEARING OFFICER GEFTER: All right.

7 Mr. Sarvey.

8 BY INTERVENOR SARVEY:

9 Q And you provided this as an example
10 mitigation for reductions that could be achieved
11 out of the air quality mitigation plan; is that
12 correct?

13 A Yes, it's one example.

14 Q Okay. Now, on the last page of this
15 handout, and it doesn't have a number so I can't
16 refer to it, what was the average cost per ton of
17 ozone precursor reductions under the heavy-duty
18 engine retrofit plan in the East Altamonte
19 drafting census mitigation agreement?

20 APPLICANT COUNSEL GALATI: I have to
21 object for this reason. You asked what it was
22 under the draft agreement. This is entitled a
23 plan. Is this still -- Are you referring to this
24 particular document or are you referring to
25 another document?

1 INTERVENOR SARVEY: This document. He
2 submitted it as an example of what could be
3 achieved, so I was asking what the cost was.

4 THE WITNESS: Are you asking me,
5 Mr. Sarvey, to read the lines at the bottom of
6 that page?

7 BY INTERVENOR SARVEY:

8 Q Please, Mr. Stein.

9 A What it says at the bottom of that page
10 is PM Precursors, Dollars Per Ton \$19,808.

11 Q Okay, thank you. Are you aware that the
12 average project life for a project in the heavy-
13 duty engine program is 7.7 years?

14 A Well, Mr. Sarvey, it has been my
15 experience that heavy-duty engines that are
16 operated in the Valley operate substantially
17 longer than seven years. Farmers are folks that
18 are running on a pretty limited budget, and I
19 think they find every possible way to keep their
20 equipment running. So I'd be hard-pressed to say
21 that it's seven years.

22 Q This document is from the San Joaquin
23 Valley Air Pollution Control District PM 10 plan,
24 page 59, which I have the entire plan here.

25 HEARING OFFICER GEFTER: Do you have

1 this marked as an exhibit?

2 INTERVENOR SARVEY: No, I don't.

3 APPLICANT COUNSEL GALATI: Ms. Gefter, a
4 couple of the documents that Mr. Sarvey has marked
5 are from this plan, and we have no problem letting
6 the plan be marked as an exhibit to replace those
7 particular exhibits. And he can maybe just
8 identify which pages he'd like to use from the
9 plan.

10 HEARING OFFICER GEFTER: Well, do we
11 have a copy of the plan itself?

12 INTERVENOR SARVEY: I have a copy of the
13 plan here, yes.

14 HEARING OFFICER GEFTER: So we'll mark
15 that as an exhibit.

16 INTERVENOR SARVEY: Okay. On the third
17 paragraph --

18 HEARING OFFICER GEFTER: Third paragraph
19 of what?

20 INTERVENOR SARVEY: The third paragraph
21 of page 4-59, and I have an underline there.

22 BY INTERVENOR SARVEY:

23 Q Could you read that?

24 A What this document says is the average
25 project life is 7.7 years, based on the mix of

1 projects received to date.

2 Q Okay, thank you. Can you tell me the
3 cost effectiveness per ton of ozone precursors in
4 the ag engine retrofit plan contained in this
5 draft mitigation plan? I believe it's the third-
6 to-the-last page.

7 A I'm sorry, I'm confused about which page
8 you're referring me to, Mr. Sarvey.

9 Q It's the third-to-last page. They're
10 not numbered, so I can't reference it to you.
11 Could you read what the cost effectiveness for
12 ozone precursors per ton is, please.

13 A I could. I'd also note that there is a
14 different value for PM 10 precursors --

15 Q Sure, but I just asked you to read the
16 ozone precursors per ton, please.

17 A The PM 10 value is 13,717, and the ozone
18 value is 17,165. That reflects an ag engine
19 retrofit as opposed to a heavy-duty diesel
20 retrofit.

21 Q Okay, thank you. What restrictions on
22 the project's operating parameters did you impose
23 to get the project's maximum PM 10 impacts under
24 the PSD significant levels in the FDOC?

25 A I'm sorry, can you repeat the question,

1 Mr. Sarvey.

2 Q Sure. What restrictions on the
3 project's operating parameters did you have to
4 impose to get the project's maximum PM 10 impacts
5 under the PSD significance level?

6 A Well, the project is committed to a PM
7 10 emission rate limit. In addition, the project
8 is committed to maintaining the total dissolved
9 solids in the cooling tower below, the circulating
10 water in the cooling tower below a certain level.
11 Is that what you're looking for?

12 Q Yes, thanks.

13 A Okay.

14 Q In Exhibit 93, I believe it's the Tesla
15 Power Plant Project Proposed Revision 224, Average
16 PM 10 Emission Rates, I believe that's one of the
17 issues that you were referring to, and I just
18 wanted to have you take a look at that real quick.

19 A Okay, I have that exhibit, Mr. Sarvey.

20 Q Okay. In that exhibit, what months did
21 you agree to limit the operation of the duct
22 burners to avoid the PSD significance level of 5
23 microgram per cubic meter?

24 A Well, this is a partial exhibit. Let me
25 refer to the entire document and I can answer that

1 question for you. It's the months of November
2 through January.

3 Q So you did not limit the project's duct
4 burners in the month of October; is that correct?

5 A They are limited, yes; it's just to a
6 different value.

7 Q But for purposes of this particular
8 revision, the month of October was not included;
9 is that correct?

10 A There is no reason to include it. There
11 was no significant impact predicted during that
12 period for several years of record.

13 Q And what were the years that you used
14 for meteorological data for this project, for the
15 assessment?

16 A Bear with me. I don't recall off the
17 top of my head, Mr. Sarvey. It's identified in
18 the SE.

19 Q Are you aware that the highest PM 10
20 measurement at the background monitoring station
21 in Stockton occurred on October 21st, 1989 or 1999
22 in the project area?

23 APPLICANT COUNSEL GALATI: I would
24 object to the extent it assumes facts not yet in
25 evidence. Mr. Sarvey has an exhibit demonstrating

1 that.

2 INTERVENOR SARVEY: It's not numbered as
3 of yet.

4 HEARING OFFICER GEFTER: Is this a new
5 exhibit?

6 INTERVENOR SARVEY: This is a new
7 exhibit, yes.

8 STAFF COUNSEL HOUCK: Can Staff also get
9 a copy of that?

10 INTERVENOR SARVEY: Definitely.

11 STAFF COUNSEL HOUCK: Thank you.

12 APPLICANT COUNSEL GALATI: Ms. Gefter,
13 this document has a heading that says California
14 Air Resources Board and it appears to have a web
15 site location from that, and with that we believe
16 the document is authentic and have no objection to
17 it.

18 HEARING OFFICER GEFTER: All right. So
19 this would be Exhibit 106 and sponsored by
20 Mr. Sarvey. It seems to be a page downloaded from
21 the Internet with the heading Air Resources Board,
22 Highest Four Daily PM 10 Measurements at
23 Stockton/Hazelton Street. Okay, Mr. Sarvey?

24 STAFF COUNSEL HOUCK: And Staff has no
25 objection.

1 HEARING OFFICER GEFTER: Okay. So we're
2 receiving Exhibit 106 into the record right now.

3 (Thereupon Exhibit 106 was received into
4 evidence.)

5 THE WITNESS: I'm sorry, Mr. Sarvey,
6 could you repeat the question? I lost track.

7 BY INTERVENOR SARVEY:

8 Q I just asked were you aware that the
9 highest PM 10 measurement recorded in a project
10 area, which is the Stockton/Hazelton Street that
11 is being used as the background station, occurred
12 in October of 1999?

13 A That appears to be what is stated in the
14 data that you've provided to me.

15 Q Thank you. On page 14 of your testimony
16 you said that you've spoken twice to Mr. Tollstrup
17 of CARB concerning the ERCs from road paving. Can
18 you provide any evidence of this conversation in
19 the form of a letter, e-mail or other
20 correspondence indicating CARB's revised position?

21 A I participated in that meeting. We
22 don't have Mr. Tollstrup on the phone but I'm sure
23 he would corroborate that the meeting occurred and
24 that we spoke. I'm under oath and I will tell you
25 that we had a meeting and a couple of

1 conversations with Mr. Tollstrup. That's not
2 something that's been manufactured out of my
3 imagination.

4 STAFF COUNSEL HOUCK: I would just
5 object to any opinions of Mr. Tollstrup being
6 allowed into the record.

7 INTERVENOR SARVEY: I would like to ask
8 that all that reference to Mr. Tollstrup be struck
9 from the entire record, if I could, please.

10 HEARING OFFICER GEFTER: Yes. The
11 references to Mr. Tollstrup will be stricken from
12 the record.

13 INTERVENOR SARVEY: Thank you.

14 BY INTERVENOR SARVEY:

15 Q I handed you earlier Exhibit 99. Well,
16 it's not 99, but --

17 HEARING OFFICER GEFTER: Okay. That has
18 been renumbered as Exhibit 100. It's a notebook
19 or a binder and contains several documents
20 submitted by Mr. Sarvey. Do you want to describe
21 these documents for us, Exhibit 100?

22 INTERVENOR SARVEY: Yes. The first
23 document is a cumulative air study submitted by
24 Mr. Stein. I believe it's for the Tracy Peaker
25 Project, cumulative modeling analysis. And the

1 second document is a cumulative modeling analysis
2 submitted on May 17th, 2002 by Mr. Stein.

3 And the third exhibit is a cumulative
4 study from the PSA, preliminary staff assessment,
5 authored by Mr. Birdsall. And the fourth one is a
6 cumulative study dated April 2003 from Exhibit 1
7 in the FSA, page 4.1-49.

8 And the last exhibit is a docketed item
9 from the East Altamonte Energy Center Staff Status
10 Report on Workshops and Errata to the File Staff
11 Assessment dated October 10th, 2002, and it has
12 been docketed on that same date in the East
13 Altamonte Energy Center proceeding.

14 APPLICANT COUNSEL GALATI: We have no
15 objection to the first two documents, because
16 Mr. Stein has been able to authenticate they are
17 documents he created. With respect to the other
18 documents, Mr. Stein has not created them and
19 unless somebody can authenticate where they came
20 from, I object to them.

21 INTERVENOR SARVEY: I'll be asking
22 Mr. Stein about the first two. I'll reference
23 Staff on the other three, thank you.

24 APPLICANT COUNSEL GALATI: Okay.

25 BY INTERVENOR SARVEY:

1 Q Okay, Mr. Stein, in your testimony, and
2 I apologize because the copy that you have given
3 me is very, very hard to read. And this is your
4 testimony, I believe it's Exhibit 41, but let me
5 check it to be sure.

6 APPLICANT COUNSEL GALATI: Mr. Sarvey, I
7 apologize for the quality of the document.

8 INTERVENOR SARVEY: Forty-seven.

9 APPLICANT COUNSEL GALATI: I have a
10 better one for you, if you'd like to use it. It's
11 not much better, but --

12 INTERVENOR SARVEY: That's okay, Dave
13 did that to me on purpose.

14 APPLICANT COUNSEL GALATI: No, actually,
15 I did that to you not on purpose.

16 INTERVENOR SARVEY: You did it to me.

17 (Laughter.)

18 APPLICANT COUNSEL GALATI: I did it to
19 everybody, because our copy machine had a problem
20 on that particular section.

21 INTERVENOR SARVEY: I'm only kidding,
22 Scott.

23 BY INTERVENOR SARVEY:

24 Q You referenced several cumulative air
25 studies on page six of your testimony. Is either

1 of these studies, number one or number two, the
2 studies that you were referring to in your
3 cumulative air quality impacts analysis statement,
4 page six?

5 A Yes.

6 Q Could you identify them.

7 A Well, the second study that included the
8 Tracy Peaker Project and the East Altamonte
9 Project, the Mountainhouse community, the Tracy
10 Hill development, Tracy Biomass owns the property
11 on that. That analysis is reflected in table
12 210-1.

13 Q So would Exhibit 2 be the most recent
14 analysis that you have developed, the May 17th,
15 2002 analysis?

16 A Yes, I believe so.

17 Q Okay.

18 HEARING OFFICER GEFTER: You're
19 referring to the second document in Exhibit 100.

20 INTERVENOR SARVEY: The second document
21 in Exhibit 100, correct.

22 BY INTERVENOR SARVEY:

23 Q This is a page from Exhibit 51, 4.5-18,
24 and --

25 HEARING OFFICER GEFTER: Mr. Sarvey is

1 distributing --

2 INTERVENOR SARVEY: Just for
3 convenience, so everybody can have the page --

4 HEARING OFFICER GEFTER: -- a copy of
5 Land Use Table One, which is part of Exhibit 51,
6 at page 4.5-18.

7 BY INTERVENOR SARVEY:

8 Q Now, Mr. Stein, looking at this exhibit,
9 Land Use Table One, prepared by CEC staff, can you
10 tell me which of the reasonably foreseeable
11 development projects are not included in your
12 cumulative analysis of May 17th, 2002?

13 A Are you referring to the cumulative
14 analysis done for the Tracy Peaker Project?

15 Q No, I'm referring to the most recent
16 one, which would be Exhibit 100, Number Two.

17 HEARING OFFICER GEFTER: And Mr. Sarvey,
18 we could make that comparison, comparing Land Use
19 Table One and the table that appears at Number Two
20 at Exhibit 100, we can see the difference by
21 reading the documents, so let's move on.

22 INTERVENOR SARVEY: Should I read it
23 into the record? I'd like to, if he doesn't want
24 to respond --

25 HEARING OFFICER GEFTER: It's not

1 necessary. Go ahead, you can read it into the
2 record and the witness can say if he agrees or
3 not.

4 INTERVENOR SARVEY: As I see, the older
5 specific plan is not in there, the Katellas
6 Project is not in there, Bright Development, Tracy
7 Gateway, North Livermore Plant is irrelevant, the
8 Calidfa community, and the others are there.

9 HEARING OFFICER GEFTER: You can ask the
10 witness if he agrees with that list.

11 INTERVENOR SARVEY: Okay.

12 BY INTERVENOR SARVEY:

13 Q Do you agree with that, Mr. Stein?

14 A I agree that the names of those projects
15 don't appear on my cumulative modeling sheet. I
16 can't --

17 Q Thank you.

18 A I can't confirm whether or not that
19 means that those projects aren't part of some of
20 the other plans that I included, I just -- I don't
21 know enough about what these represent to draw a
22 conclusion.

23 Q Thank you, Mr. Stein. What is the
24 background concentration for PM 10 in the project
25 area adopted for this analysis?

1 A Well, I think it was the value that you
2 cited previously, Mr. Sarvey. Our practice is to
3 look in the area and to look back three years of
4 record and to choose the highest backgrounds
5 observed and use that as background.

6 I'd note that that background value was
7 recorded in Stockton, which is some considerable
8 distance from Tracy. We don't really know the
9 true background concentration in the City of
10 Tracy. We're inferring that concentration from
11 Stockton data.

12 Q What is the maximum impact that you have
13 modeled in your cumulative air analysis?

14 HEARING OFFICER GEFTER: Could you be
15 more specific in your question, Mr. Sarvey?

16 INTERVENOR SARVEY: Okay.

17 BY INTERVENOR SARVEY:

18 Q Mr. Stein, you have several cumulative
19 air analyses for this project area. Referring to
20 Exhibit 100, Number Two, what was the maximum 24-
21 hour PM 10 impact that you modeled for this
22 facility?

23 A 6.07 micrograms per cubic meter.

24 Q Thank you. Does your air quality impact
25 analysis examine impacts to air quality when the

1 Applicant's pollution control equipment
2 malfunctions?

3 A No.

4 Q Are you aware that the Tracy Peaker
5 Plant that you designed had a malfunction of its
6 pollution control equipment on July 18th of this
7 year and exceeded its NOx-per-minute limit by 100
8 percent?

9 APPLICANT COUNSEL GALATI: Object;
10 first, it lacks foundation, assumes facts in
11 evidence. Ask Mr. Stein whether he designed Tracy
12 Peaker Project, and then to that, I would ask if
13 he is familiar with that.

14 BY INTERVENOR SARVEY:

15 Q Did you design the Tracy Peaker Project,
16 Mr. Stein?

17 A No, I did not.

18 Q Were you the air quality expert in the
19 Tracy Peaker Project?

20 A Yes.

21 Q Okay. And are you aware that on
22 July 18th of this year the Tracy Peaker Project
23 had a malfunction of its pollution control
24 equipment and exceeded its NOx-per-minute limits
25 by 100 percent?

1 A No, I was not aware of that.

2 Q Okay, thank you. Does your air quality
3 impacts analysis examine impacts to ambient air
4 when the Applicant exceeds his permit conditions?

5 A No. It also doesn't take into account
6 the fact that these plants are frequently
7 evaluated under a worst-case operating scenario
8 that includes many, many hours of operation beyond
9 what is probably likely to be typical.

10 For example, the Tracy Peaker Plant was
11 evaluated originally assuming 8,000 hours of
12 operation for a peaker plant in order to provide
13 that facility with flexibility to provide power
14 into the market. As you may know, living in the
15 community, that plant has only operated some, I
16 think it's less than a hundred hours since it's
17 been constructed. So the assumption that it's
18 going to operate for 4,000 hours or 8,000 hours is
19 obviously very conservative. That wasn't
20 considered in the analysis either.

21 Q And do you have any reason to believe
22 that this project won't run to its maximum
23 permitted hours?

24 A Well, I think it's unlikely. I think
25 most projects set their upper thresholds very

1 generously to ensure that they can operate well
2 below them. Most facilities don't like to operate
3 on the ragged edge of compliance.

4 Q And do the hours of operation of the
5 facility have any relation to the project
6 exceeding its permit limits for hourly emissions?

7 A I'm not sure I understand your question,
8 Mr. Sarvey.

9 Q Do the hours of operation of a facility
10 bear any relation to the project's impacts if it
11 would exceed its permit conditions for one hour?

12 HEARING OFFICER GEFTER: Mr. Sarvey,
13 what are you trying to ask? What is your
14 question?

15 INTERVENOR SARVEY: Basically, just that
16 I got an answer that wasn't responsive, so I'm
17 trying to get the answer that I wanted, because
18 the answer he gave me -- The question I asked was
19 does your air quality impacts analysis examine
20 impacts to ambient air when the Applicant exceeds
21 his permit conditions, which he said no, and then
22 he went into a long story about the hours of
23 operation of Tracy Peaker, which is irrelevant to
24 the question.

25 HEARING OFFICER GEFTER: Okay. Well,

1 what is this question?

2 INTERVENOR SARVEY: I'll move on, thank
3 you.

4 THE WITNESS: Yeah, I should point out,
5 you know, when --

6 HEARING OFFICER GEFTER: There is no
7 question pending.

8 INTERVENOR SARVEY: Thank you.

9 BY INTERVENOR SARVEY:

10 Q Are you aware of the Applicant's POSDEF
11 facility in Stockton has had violations of its
12 NOx, CO and SO2 emission limits?

13 APPLICANT COUNSEL GALATI: Again, I
14 would object to assuming facts not in evidence.
15 If Mr. Sarvey wants to bring facts of
16 noncompliance I think that is relevant, but to ask
17 this witness, as if it is a fact, is
18 inappropriate.

19 INTERVENOR SARVEY: Would you mark this
20 as an exhibit, please.

21 Staff, would you like a copy?

22 STAFF COUNSEL HOUCK: Yes.

23 HEARING OFFICER GEFTER: Mr. Sarvey,
24 what is this?

25 INTERVENOR SARVEY: This is a response

1 to information that was requested in San Joaquin
2 Valley Unified Air Pollution Control District and
3 it's related to compliance measures or compliance
4 violations that occurred at the Applicant's POSDEF
5 power company in Stockton.

6 HEARING OFFICER GEFTER: Okay. This
7 will be Exhibit 107. I think Mr. Galati prior to
8 seeing this document because he wasn't clear on
9 the foundation for the question.

10 My question is the relevance of this
11 document.

12 INTERVENOR SARVEY: Its relevance, the
13 question that I just asked was does your air
14 quality impacts analysis examine impacts to the
15 ambient air when the Applicant exceeds his permit
16 conditions, and I wanted to demonstrate that the
17 Applicant has exceeded permit conditions at his
18 facilities. And, of course, I don't have any
19 evidence of the Tracy Peaker's problems, but this
20 I do have evidence of.

21 HEARING OFFICER GEFTER: What is this
22 referring to?

23 INTERVENOR SARVEY: This is the POSDEF
24 power company in Stockton. It's about 20 miles
25 from here.

1 HEARING OFFICER GEFTER: And what is its
2 relationship to the Tesla Power Plant?

3 INTERVENOR SARVEY: Its relation is that
4 the Applicant and power plants in general do have
5 episodes where they do not meet their permit
6 conditions. And I was asking Mr. Stein if he had
7 modeled those impacts. Basically these conditions
8 are set for the public health, and I wanted to
9 know whether he had taken that into consideration
10 in his analysis.

11 HEARING OFFICER GEFTER: Mr. Sarvey, is
12 this POSDEF power company owned by FPL?

13 INTERVENOR SARVEY: Yes, it is.

14 HEARING OFFICER GEFTER: Is there
15 objection to this document, Mr. Galati?

16 APPLICANT COUNSEL GALATI: Actually,
17 there is really no objection to it. I believe
18 that is relevant for the limited purpose of
19 whether the project can and has a certificate of
20 compliance, which is required, from the District
21 that issues an FDOC.

22 And I would point out for the record
23 that by my quick glance at this document, the only
24 corrective action that I see, corrective action
25 for 11/12/2002. Everything else is 2001 or later,

1 or, excuse me, earlier.

2 HEARING OFFICER GEFTER: Okay.

3 Mr. Sarvey, what is your question related to this
4 document, Exhibit 107?

5 INTERVENOR SARVEY: Well, I already
6 asked the question, but I have another one related
7 to it as well.

8 The first question was did your air
9 quality impacts analysis examine impacts to
10 ambient air when the Applicant exceeds its permit
11 conditions, and I wanted to show that the
12 Applicant has in the past exceeded his permit
13 conditions at other plants and other projects.

14 Now, the other question I had is what
15 assurances can you give the Committee and the
16 public that this project would at all times
17 operate in compliance with its permit conditions
18 designed to protect the public's health?

19 HEARING OFFICER GEFTER: Is there an
20 answer to that question?

21 THE WITNESS: That question is asking me
22 what assurances I can provide that the facility
23 will comply with its permit condition? I guess
24 you're asking me will the Applicant comply with
25 their permit. I have to assume that, like any

1 good corporate citizen, FPL takes their permit
2 conditions seriously, and fully intends to comply.

3 Not being an employee of FPL Energy and
4 not being responsible for the operation of a
5 facility that has yet to be constructed, I would
6 just offer that it's my belief from working with
7 the good people of FPL Energy that they take their
8 environmental responsibility very seriously and
9 fully intend to comply.

10 INTERVENOR SARVEY: Thank you,
11 Mr. Stein. That's all I have.

12 HEARING OFFICER GEFTER: Do you have any
13 questions for the San Joaquin Air District,
14 Mr. Sadredin?

15 INTERVENOR SARVEY: Yes, I do.

16 HEARING OFFICER GEFTER: Mr. Sadredin,
17 are you still on the line?

18 INTERVENOR SADREDIN: Yes, I am.

19 HEARING OFFICER GEFTER: Okay.
20 Mr. Sarvey has some questions for you.

21 INTERVENOR SARVEY: And how are you,
22 Seyed?

23 INTERVENOR SADREDIN: Hi, how are you?

24 INTERVENOR SARVEY: Are you feeling
25 better, I hope?

1 CROSS-EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q Would the District accept banked
4 emission credits instead of the \$957,000 to
5 satisfy the terms of the AQMA that you have
6 executed with the Applicant?

7 A No, we would not.

8 Q Did the Applicant develop the air
9 quality mitigation agreement, or did the District
10 create it and present it to them?

11 A I'm sorry, I didn't hear that.

12 Q Did the Applicant develop the air
13 quality mitigation agreement, or did the District
14 create it and present it to them?

15 A I'm sorry, you were breaking up. I
16 still did not hear the question fully.

17 HEARING OFFICER GEFTER: Off the record.

18 (Brief recess.)

19 HEARING OFFICER GEFTER: Mr. Sarvey.

20 Q Did the Applicant develop the air
21 quality mitigation agreement, or did the District
22 create it and present it to them?

23 A There was a process for it. We became
24 an intervenor in this project saying that there
25 was a problem with this project, the way we saw

1 it, that the project needed to address the impact.
2 Based on that, the Applicant approached us and
3 wanted to know what we had in mind by way of
4 mitigation.

5 What we laid out was -- The agreement,
6 basically, I guess the way I would characterize
7 it, we told them what needed to go into the
8 mitigation agreement, what our ideas were in terms
9 of how to quantify the emissions and see how much
10 credit they should be entitled for the ERCs that
11 they provided in the Bay Area.

12 So I don't think it was primarily
13 something that we dictated to the Applicant. Of
14 course, we were open to any rebuttals or
15 suggestions that they had, but I would
16 characterize the agreement as basically our
17 product, although they did, for instance, when
18 they said you have to use the percentage of the
19 predominant wind direction, we had attempted to go
20 ahead and look at those numbers and at the various
21 documents that published those numbers.

22 So they just kind of worked at it, but
23 the direction of the policy primarily was ours.

24 Q Okay. Does the San Joaquin Valley
25 Unified Air Pollution Control District require

1 more emission offsets than the Bay Area Air
2 Quality Management District does in their
3 permitting process?

4 A That's true, yes.

5 Q Okay. Are the emission reduction
6 programs that are proposed in the AQMA, do they
7 require contributions by members of the public to
8 achieve these emission reductions? Are they
9 incentive programs, basically?

10 A They may or may not. We always think
11 that an effective incentive program or grant
12 program to ensure that in the long-term it's a
13 safe bet that it's maintained should require some
14 investment on the part of people that would
15 benefit or would continue devices and equipment.

16 So we like to make that part of most of
17 our grants that we would provide, but it's a case-
18 by-case determination, but I think as a general
19 rule that would be our preference, to have some
20 investment and some ownership idea, the recipients
21 of the grant and the program to ensure its long-
22 term success and operation.

23 Q You said earlier that this project was
24 circulated for public review. Can you describe
25 that process?

1 A We do have a list of several hundred if
2 not thousand log of people that have an interest
3 in reviewing issues that the Air Pollution Control
4 District deals with. There are people that
5 subscribe to our various public hearing notices
6 and so forth additionally. So we did send this
7 agreement when we had it available in a draft form
8 to the public, to that list prior to hearing it.
9 And also, the public comments obviously were
10 invited and we received some at the public
11 hearing.

12 Q So the project description and the --I
13 mean, the air quality mitigation agreement was not
14 circulated to the general public through
15 newspaper, notification or any normal process that
16 the District would use to notify for public
17 noticing requirements?

18 A Well, it would go through our normal
19 notification process for items that are placed on
20 the Board's agenda for hearing outside of, you
21 know, for instance, rules and regulations that
22 require a different set of procedures to go
23 through, by workshop and things like that.

24 In this case, it did go to the general
25 public that had expressed interest in air

1 pollution issues and the various organizations
2 that have expressed any interest in air pollution
3 issues with us over the years.

4 Q And you said this project was the
5 subject of a public hearing; is that correct?

6 A Yes, the mitigation agreement was.

7 Q Wasn't the mitigation agreement approved
8 as a consent item on the governing board's
9 calendar?

10 A Whether it was placed as a consent item
11 or in a regular part of the hearing, it is
12 available for the public to comment on and anyone
13 who wishes to can comment on those projects,
14 including the Board members as well as members of
15 the public. I don't remember exactly whether it
16 was on a consent or the regular agenda, as we call
17 it.

18 But in either case, it doesn't diminish
19 the ability of the public to comment on the
20 project.

21 INTERVENOR SARVEY: Thank you, Seyed.

22 HEARING OFFICER GEFTER: Does that
23 complete your cross-examination?

24 INTERVENOR SARVEY: I'm done, thank you.

25 HEARING OFFICER GEFTER: Okay. Off the

1 record.

2 (Brief recess.)

3 HEARING OFFICER GEFTER: Mr. Galati,
4 we're going to ask the Applicant to sponsor
5 testimony of Dennis Jang from the Bay Area Air
6 Quality Management District?

7 APPLICANT COUNSEL GALATI: Yes. Should
8 we have Mr. Jang sworn?

9 HEARING OFFICER GEFTER: Yes.
10 Mr. Jang, would you please be sworn.
11 Whereupon,

12 DENNIS JANG
13 Was called as a witness herein and, after having
14 been duly sworn, was examined and testified as
15 follows:

16 THE REPORTER: Thank you. Let's
17 proceed.

18 DIRECT EXAMINATION

19 BY APPLICANT COUNSEL GALATI:

20 Q Mr. Jang, could you please briefly state
21 your name and spell it for the record.

22 A Dennis Jang, J-a-n-g.

23 Q And with whom are you employed?

24 A Bay Area Air Quality Management
25 District.

1 Q And what was your role regarding the
2 Tesla Power Project?

3 A I prepared the determination of
4 compliance for the Tesla Power Project.

5 Q Okay. Are you familiar with what has
6 been marked in this proceeding as Exhibit 23, the
7 final determination of compliance? It's dated
8 February 27th, 2003.

9 A Yes, I am.

10 Q And are you also familiar with the
11 errata, which has been identified as Exhibit 24
12 dated May 2nd, 2003?

13 A Yes, I am.

14 Q And that would be an errata to the FDOC?

15 A That's correct.

16 Q And would those two documents represent
17 the final determination of compliance from the Bay
18 Area Air Quality Management District?

19 A Yes, they do.

20 Q Are you also familiar with a letter
21 which we have marked Exhibit 159 from yourself I
22 believe to the Commission dated September 17th,
23 2003, from yourself to the California Energy
24 Commission regarding the Tesla Power Project?

25 A Yes, I am.

1 Q And in that letter do you conclude that
2 the project will comply with permit conditions of
3 the FDOC?

4 A Yes.

5 Q And specifically, do you opine that the
6 offset package proposed for the Tesla Power
7 Project complies with Public Resources Code
8 25523(d)(2)?

9 A Yes.

10 Q Do you also believe that the project
11 complies with all Bay Area Air Quality Management
12 District applicable laws, ordinances, regulations
13 and standards?

14 A Yes, that's what is stated in the FDOC.

15 APPLICANT COUNSEL GALATI: I would like
16 Exhibit 159, Exhibit 23 and Exhibit 24 moved into
17 the evidentiary record at this time.

18 HEARING OFFICER GEFTER: All right. Any
19 objection?

20 STAFF COUNSEL HOUCK: No objection.

21 INTERVENOR SARVEY: No objection.

22 HEARING OFFICER GEFTER: Those exhibits
23 are now received into the record, thank you.

24 (Thereupon Exhibits 23, 24 & 159 were
25 received into evidence.)

1 APPLICANT COUNSEL GALATI: I have no
2 further questions for Mr. Jang.

3 HEARING OFFICER GEFTER: Staff, do you
4 have questions?

5 STAFF COUNSEL HOUCK: Yes, I do.

6 CROSS-EXAMINATION

7 BY STAFF COUNSEL HOUCK:

8 Q Mr. Jang, are you familiar with the
9 pollutants PM 10 and PM 2.5?

10 A Yes, I am.

11 Q And is there a difference in the
12 potential impacts between PM 10 and PM 2.5?

13 A Well, from what I understand, the health
14 impacts of PM 2.5 are considerably more serious
15 than PM 10 from the standpoint that they may be
16 inhaled and lodge in the lungs.

17 Q Did the Bay Area Air Quality Management
18 District consider potential impacts of PM 2.5 in
19 preparing its FDOC?

20 A No.

21 Q In your opinion as an air quality
22 expert, do you believe that it's reasonable for
23 Staff to consider the potential impacts of PM 2.5
24 in conducting its environmental impact review for
25 the project?

1 A Well, yes. I mean, under CEQA, I would
2 think that the Energy Commission can look at that.
3 Bay Area District, as has already been stated,
4 there is no standard currently promulgated and we
5 don't have any regulations that address it
6 directly at this point.

7 Q So just to summarize your testimony, you
8 do believe it's reasonable and appropriate for
9 Staff to look at potential environmental impacts
10 from PM 2.5 emissions?

11 A Yes.

12 Q And has the Bay Area Air Quality
13 Management District ever issued an ERC for road
14 paving before this project?

15 A No, not that I'm aware of.

16 Q And the PM 10 ERCs for the road paving,
17 is that predominantly -- Would the credit for the
18 PM 10 -- Strike that, let me rephrase.

19 Would the PM 10 that the Applicant is
20 receiving an ERC for the road paving be
21 predominantly composed of PM 2.5?

22 A We did not formally analyze the
23 composition of the PM 10 as to what percentage was
24 PM 2.5, so I don't -- offhand I don't recall the
25 percentages that were discussed, but it's not 100

1 percent PM 10 -- sorry, it's not 100 percent PM
2 2.5, so --

3 Q And there is a difference -- Oh, I'm
4 sorry.

5 A -- how it breaks down, I don't really
6 know.

7 Q And is there a difference between the PM
8 10 emissions that would be offset by the road
9 paving and PM 2.5 combustion emissions from the
10 power plant?

11 A Well, in the context of our regulations
12 there is no, we don't look at that. There is no
13 difference. Is that -- I'm not sure, maybe you
14 could restate the question.

15 Q Maybe I could restate it, all right.
16 Are you familiar with the memo from CARB that's
17 listed or referred -- a copy of the CARB memo that
18 is in the FSA, Exhibit 51, in the Air Quality
19 section?

20 A Yes, I've seen that memo.

21 Q Do you believe that memo accurately
22 describes the difference between PM 10 and PM 2.5
23 emissions?

24 A Well, it's been a while since I've read
25 it. I just remember the basic import which was

1 that they felt that the combustion emissions were
2 primarily from PM 2.5, and, therefore, PM 10
3 offsets might not be appropriate for offsetting
4 purposes. I'd have to read it again to really
5 answer that.

6 Q Okay. To your knowledge, has CARB
7 issued any formal retraction of that memo?

8 A No, not to my knowledge.

9 Q And do you believe the PM composition of
10 the road paving ERCs closely matches the PM
11 component of the combustion emissions from Tesla?

12 A Well, as I stated earlier, I don't
13 recall the exact breakdown of the road PM 10
14 emissions as relative to PM 2.5, but I would -- my
15 opinion would be that the fraction 2.5 in the
16 combustion emissions would be higher than the
17 fraction in the road emissions.

18 Q Okay, thank you.

19 STAFF COUNSEL HOUCK: I have no more
20 questions.

21 HEARING OFFICER GEFTER: Mr. Sarvey?

22 CROSS-EXAMINATION

23 BY INTERVENOR SARVEY:

24 Q Would the Bay Area accept mitigation
25 that did not mitigate the project's impacts for

1 the life of the project?

2 A Well, I think mitigation in a CEQA sense
3 is different than the offsets that the District
4 requires, so I don't know if I can really answer
5 that question, but our offsets don't -- our
6 offsets are really the no-net-increase program on
7 resource review, so they're not mitigation in the
8 CEQA sense, so --

9 Q But would your district accept ERCs that
10 did not provide mitigation for the life of the
11 project?

12 A Well, basically we accept offsets that
13 have been deposited in the District bank. So they
14 have gone through a review and they have been, in
15 many cases, subjected to public review. So they
16 are valid emission reduction credits.

17 They are quantified in terms of tons per
18 year, so once you offset under MSR and it's been
19 satisfied, it's considered to be valid for the
20 life of the project.

21 Q So they have to be permanent and
22 quantifiable; is that correct?

23 A Right, that's part of the review process
24 for banking of emissions.

25 Q What is the Bay Area Air Quality

1 Management District's understanding of the life of
2 the Altamonte landfill?

3 A I'm referring to the evaluation report
4 for the banking application and it says,
5 "projected life of approximately 30 years."
6 After, well, 30 more years, essentially from
7 today.

8 Q Did the EPA and the Energy Commission
9 disagree with the District's position that the
10 cooling towers were exempt from PM 10 impacts
11 analysis?

12 A The cooling tower PM 10 emissions were
13 included in the impact analysis, so I'm not sure
14 what your --

15 Q And the comments to the ADOC, you
16 received comments from the CEC and the EPA
17 concerning cooling tower emissions; can you
18 describe what those comments were?

19 A I get a lot of comments on a lot of
20 power plants. I need to look at the exact comment
21 you're talking about.

22 Q Okay. Well, give me a second here.

23 A In fact, I may not even have a copy of
24 all of those comments.

25 Q Would you like to have one?

1 HEARING OFFICER GEFTER: Off the record.

2 (Brief recess.)

3 HEARING OFFICER GEFTER: Mr. Sarvey, do
4 you want to ask a question of the witness?

5 BY INTERVENOR SARVEY:

6 Q Did the CEC and EPA provide comments
7 which disagreed with the District's handling of
8 the cooling tower PM 10 emissions?

9 (Thereupon, the tapes were changed with
10 no interruption in the proceeding.)

11 THE WITNESS: Well, I think the
12 disagreement was as to whether the cooling towers
13 were exempt from District permit requirements. We
14 made a determination that they were and they still
15 are; however, the emissions were modeled in the
16 impact analysis, and there are I believe two or
17 three permit conditions that apply to the cooling
18 towers. So, de facto, they are permitted even
19 though they aren't.

20 BY INTERVENOR SARVEY:

21 Q Did the District do an analysis of
22 project impacts in the San Joaquin Valley?

23 A Well, when we reviewed and performed the
24 modeling analysis, the PSD impact analysis, it
25 included an analysis of impacts all around the

1 facility, and it included some parts of San
2 Joaquin, since it was so close to the border
3 between the two counties. So yes.

4 Q Is it the Energy Commission's
5 responsibility to determine impacts related to San
6 Joaquin County and provide mitigation?

7 APPLICANT COUNSEL GALATI: I would
8 object. That calls for a legal conclusion on
9 legal responsibility.

10 HEARING OFFICER GEFTER: Your objection
11 is sustained.

12 BY INTERVENOR SARVEY:

13 Q Is it the Bay Area Air Quality
14 Management District's responsibility to determine
15 impacts related to San Joaquin County and provide
16 mitigation?

17 A No.

18 Q Is there any analysis of secondary PM 10
19 formation from the ammonia emissions from this
20 project?

21 A We discussed it in the final
22 determination of compliance. Our regulations do
23 not address secondary PM 10.

24 INTERVENOR SARVEY: Okay, thank you.
25 That's all I have.

1 HEARING OFFICER GEFTER: Do you have any
2 redirect, Mr. Galati?

3 APPLICANT COUNSEL GALATI: Yes, I do.

4 REDIRECT EXAMINATION

5 BY APPLICANT COUNSEL GALATI:

6 Q Mr. Jang, did CARB receive a copy of the
7 FDOC for review?

8 A Yes, they did.

9 Q Did you receive any objection from CARB
10 to the use of road paving reductions for the Tesla
11 project?

12 A No.

13 Q And, Mr. Jang, would you defer to San
14 Joaquin Valley Air Pollution Control District to
15 determine what impacts, if any, occurred to its
16 district?

17 INTERVENOR SARVEY: Objection.

18 HEARING OFFICER GEFTER: On what basis?

19 INTERVENOR SARVEY: There would be no
20 logical reason for him to defer to San Joaquin
21 County on any project related to the Bay Area Air
22 Quality Management District. That's their
23 jurisdiction.

24 HEARING OFFICER GEFTER: Well, the
25 witness can answer the question.

1 THE WITNESS: Well, yes, we would --
2 That is not in our jurisdiction, and we might
3 provide comments, but we would not obviously get
4 involved any more than we had to.

5 APPLICANT COUNSEL GALATI: Thank you.
6 No more questions for Mr. Jang.

7 HEARING OFFICER GEFTER: Recross?

8 STAFF COUNSEL HOUCK: Yes.

9 RECCROSS-EXAMINATION

10 BY STAFF COUNSEL HOUCK:

11 Q Mr. Jang, did the Bay Area Air Quality
12 Management District receive a copy of Staff's
13 final staff assessment?

14 A Yes, we did.

15 Q And did you receive a copy of the
16 preliminary staff assessment?

17 A Yes.

18 Q Did your district file any comments
19 objecting to the conclusions reached by Staff?

20 A No, we did not.

21 Q And is it your understanding that the
22 CEC is the lead agency for purposes of CEQA to
23 review the Tesla Power Project?

24 A Yes.

25 Q And would you defer to the CEC to assess

1 what is the appropriate mitigation for any
2 environmental impacts from the project?

3 A Yes.

4 STAFF COUNSEL HOUCK: Thank you.

5 INTERVENOR SARVEY: One more direct.

6 Redirect?

7 HEARING OFFICER GEFTER: You have

8 another question?

9 INTERVENOR SARVEY: One redirect.

10 HEARING OFFICER GEFTER: Okay, recross.

11 INTERVENOR SARVEY: Sure.

12 REXCROSS-EXAMINATION

13 BY INTERVENOR SARVEY:

14 Q Would you defer to the CEC's conclusions
15 on project impacts and the necessary mitigation to
16 San Joaquin County?

17 A Yes.

18 INTERVENOR SARVEY: Thank you.

19 HEARING OFFICER GEFTER: Mr. Jang, thank
20 you very much for your testimony and your
21 participation today.

22 Off the record.

23 (Brief recess.)

24 HEARING OFFICER GEFTER: Mr. Sadredin

25 had some comment for us before he leaves the

1 hearing.

2 Do you want to proceed now?

3 INTERVENOR SADREDIN: Thank you. I just
4 had a couple of brief items that I hope you find
5 probative in your deliberation on this. I believe
6 the primary area that would be before you that we
7 are involved with is this mitigation agreement and
8 what is an appropriate methodology. And our
9 questions have already come up and should have
10 been raised, and I thought I would just address a
11 couple of them and hopefully you'll find those
12 beneficial.

13 First, let me say that, in our opinion,
14 CEC's decision on the East Altamonte Project
15 provides if not an outright precedence for
16 approving the mitigation agreement before you, we
17 believe that the work that the CEC did in that
18 project lays out at a minimum here a reasonable
19 path for you to follow in evaluating what is an
20 appropriate methodology.

21 And I understand that CEC staff will
22 have some presentations later and some of this,
23 and they might be able to respond to this. But as
24 far as our methodology versus CEC staff, I believe
25 there is a philosophical approach in our approach

1 versus the approach that is taken by the CEC
2 staff.

3 In our opinion, CEC oversimplifies, the
4 staff oversimplifies a very complex matter and
5 assigns arbitrary percentages with really no basis
6 in science or any real support. They could do it
7 either way, one could almost make an allegation
8 that you just fill in the percentages until you
9 see what is the final dollar number that you'd
10 like to see. And if money is no object, you
11 should go with the proposal that gives you the
12 highest dollars for reducing emissions. We
13 obviously would welcome that and we would take
14 additional grants if that is the logic.

15 But in our case, we believe that our
16 understanding of the complexity and the enormity
17 of the mechanism and the factors that go into PM
18 10 at ozone formation played a big role in
19 developing our methodology. We understand that
20 there is no way, no one can really come to you
21 with a straight face and present a precise
22 equation that tells you here is how much credits
23 or mitigation has to be provided.

24 Our approach basically realizes those
25 complexities like this. We said there are a

1 number of factors involved in determining what
2 sort of mitigation should be provided, and we
3 looked at each factor and we said we will assign a
4 conservative but reasonable degree of safeguard to
5 each factor to make sure that at the end, the
6 mitigation is sufficient.

7 Now, the first factor to look at was the
8 emissions from the project, how much of those
9 emissions would impact the Valley. In our case,
10 although there have been studies that say that
11 only 27 percent of those emissions would impact
12 the Valley from Bay Area, we said for this
13 project, because of its proximity we will use 100
14 percent for the times that we think those
15 emissions would come our way.

16 But then we take a reasonable approach.
17 We said for ozone and for particulate, what kinds
18 of year could we possibly have any problem with
19 ozone or with particulate. Someone mentioned that
20 we used only the nonattainment time for our
21 approach. We actually went beyond that. On a
22 yearly basis, we might have 20 to 50 bases that we
23 are at nonattainment for ozone or particulate, but
24 for ozone we used a period of eight months, and
25 for particulate a period of six months.

1 So it goes way beyond just the
2 nonattainment days. It's based on years of a
3 study that we've done that we know what kinds of
4 year there is a possibility of forming ozone or
5 particulate matter, based on emissions. So we
6 only include emissions from those times of the
7 year, and during the times when the wind is
8 blowing in our direction. So we used that in the
9 emission estimate.

10 Now, if you use the CEC's approach that
11 they were implying and questioning the Applicant,
12 they would say you have to use the same
13 methodology that you used for ERCs, that you use
14 for emissions. And if you follow that logic, we
15 should have used only 27 percent factor for
16 emissions, because that's what we use for
17 emissions.

18 But we looked at each of these factors
19 independently and tried to look at each of them
20 over the conservative and reasonable approach.
21 And then finally, the other factor that goes into
22 mitigation is the amount of ERCs that are provided
23 in Bay Area, how much credit do you give those
24 emissions.

25 What we said is that because of that

1 study that shows during a certain period, during
2 our worst period only 27 percent of emissions from
3 Bay Area would impact our emissions, we will
4 discount all of those credits by 27 percent. Now,
5 that is more discounting, and through our
6 methodology compared to what CEC in our view
7 arbitrarily has come up by way of discounting the
8 ERCs.

9 They say in some cases in 27 percent.
10 In some other cases it's 70 percent. So overall
11 they actually give more credits to the ERCs than
12 we are giving. So we believe our approach is
13 conservative and we did not feel that we need to
14 add another, for the discounting, because we
15 pretty much discount a lot of those credits.

16 We also did not give credit to the
17 offset ratios that Bay Area applies. Under Bay
18 Area's rule and all the other districts' rule,
19 when you source of credits are from the source of
20 emissions, you apply this times ratio and the
21 conclusion there is that by that, you equate the
22 distance and those credits are just as good as
23 being generated right at the source.

24 We ignored that. We said no, we cannot
25 take that into account and we still discounted

1 them by 27 percent in all cases. So we believe
2 our approach is conservative and we concede that
3 there is no precise methodology that anyone could
4 bring to you.

5 And just one final comment regarding the
6 issue that Mr. Sarvey raised regarding the life of
7 heavy-duty engines. We had a quite lengthy
8 discussion over this issue during the East
9 Altamonte Project, and let me just say that that
10 7.7 average refers to the mobile equipment. When
11 you talk about heavy-duty engines, it covers a
12 broad range of devices. It could be pumps,
13 stationary pumps as far as for which the lifetime
14 is 20, 30 or even more, based on our experience.
15 Or it could be trucks or tractors that
16 theoretically they have a lesser what you refer to
17 as useful life.

18 But as we discussed during the East
19 Altamonte Project, even though that 7.7 or 7 years
20 is a theoretical life that you assign to it, any
21 replacement engine that comes into place after the
22 initial investment through this project to replace
23 those engines, the newer engines have to be clean
24 or cleaner. So the reductions will be permanent
25 even in those cases where we say the useful life

1 of the tractor was only seven years.

2 So I just wanted to make those points.

3 And if it's not out of order, I would like to
4 also, since I'm not going to be here, refer to
5 some conversations that I've had with Mrs. Sarvey
6 regarding the mitigation proposal, if I could.

7 HEARING OFFICER GEFTER: I'm not exactly
8 sure what your question is.

9 INTERVENOR SADREDIN: Mrs. Sarvey has
10 come to us and has asked for our support relating
11 to mitigation funds that the company, outside of
12 our mitigation, they have agreed to pay some
13 additional funds to the City of Tracy, I believe.
14 And she wanted our views on what she had proposed
15 on that.

16 If that's appropriate, I could comment
17 on that, or we could leave it alone at this point.

18 HEARING OFFICER GEFTER: How long are
19 your comments? Can you do it in a summary
20 fashion, because we have a lot of other witnesses
21 that need to testify.

22 INTERVENOR SADREDIN: Sure. I just want
23 to thank Mrs. Sarvey. I think her contribution to
24 these projects has been quite valuable and we look
25 forward to working with her. And not only the

1 projects where the company has agreed to
2 independently spend some money outside of our
3 agreement, but also through our agreement we hope
4 to work with her to get local interested parties
5 involved.

6 Like she had proposed that in her view
7 it would be an appropriate condition to put on the
8 license that the funds that go into this outside
9 agreement be dedicated to C&G buses and vehicles
10 at the school district, and that is something that
11 we could support at the District as being a worthy
12 project to pursue.

13 HEARING OFFICER GEFTER: All right.

14 Thank you very much.

15 I understand the Applicant now has some
16 redirect for your witness.

17 APPLICANT COUNSEL GALATI: Yes.

18 REDIRECT EXAMINATION

19 BY APPLICANT COUNSEL GALATI:

20 Q Mr. Stein, on page nine of your
21 testimony you were asked questions on cross-
22 examination regarding the percent of time the wind
23 blows in the San Joaquin Valley, listed in table
24 one on page nine, and the SJV contribution factor
25 in table two being the same number; do you recall

1 that?

2 A Yes, I do.

3 Q And, in fact, you had testified that
4 that was -- coincidentally they are the same,
5 correct?

6 A Yes.

7 Q If you look back on table one, when
8 you're identifying the project emissions, what was
9 the percentage used to identify impacts?

10 A I'm sorry, Mr. Galati, are you referring
11 to a specific pollutant, or --

12 Q Yes. If you would please look at NOx
13 and VOC.

14 A Okay. Yes, we used a factor of 77.5
15 percent. That's based on our examination of wind
16 rows for that period April through November.

17 Q And when it came to table two, where you
18 looked at the ERC benefits in San Joaquin Valley,
19 what did you use for NOx and VOC?

20 A Twenty-seven percent, and I would just
21 point out that that is a different value than the
22 value in table one.

23 APPLICANT COUNSEL GALATI: I have no
24 further questions for Mr. Stein.

25 HEARING OFFICER GEFTER: Thank you.

1 Does Staff have any recross of
2 Mr. Stein?

3 STAFF COUNSEL HOUCK: Yes.

4 RE-CROSS-EXAMINATION

5 BY STAFF COUNSEL HOUCK:

6 Q Mr. Stein, the 27 percent reflected in
7 table two under the column entitled SJV
8 contribution factor, was that percentage for April
9 through November as listed in table one or is it a
10 reflection of an annual percentage?

11 A That's a factor that was provided by the
12 District and is intended to value the air quality
13 benefit to the San Joaquin Valley of the BAAQMD
14 ERCs, and then once those credits are valued in
15 that way, then the benefit from the ERCs is to be
16 subtracted from the value that is calculated in
17 table one. That was the methodology that was
18 prescribed by the District.

19 Q So when you say "valued in that way," do
20 you mean that the 27 percent refers to the time
21 period of April through November?

22 A It refers to the emissions liability
23 that is calculated in table one.

24 Q Okay. So it would not be on an annual
25 basis, then.

1 A It's intended to offset the emissions
2 and calculated for the values that are shown in
3 table one.

4 Q And the values in table one are for the
5 period of April through November, correct?

6 A Yes, that's correct.

7 STAFF COUNSEL HOUCK: Okay, thank you.

8 HEARING OFFICER GEFTER: I think it's
9 now time for the Staff to present new direct
10 testimony.

11 STAFF COUNSEL HOUCK: Could we take five
12 minutes?

13 HEARING OFFICER GEFTER: We can take a
14 break, yes. We'll take a recess. Off the record.

15 (Thereupon a recess was taken.)

16 HEARING OFFICER GEFTER: Mr. Galati,
17 would you move your exhibits, please.

18 APPLICANT COUNSEL GALATI: Yes. Those
19 are identified as Exhibit 22, 23, 24 and 25, and
20 Exhibit 47. And, Ms. Gefter, within Exhibit 47,
21 which is the testimony of Dave Stein, he sponsors
22 several portions of exhibits that I'd like to go
23 through: a portion of Exhibit 1, specifically
24 section 5.2 and Appendix K-1 through K-11; a
25 portion of Exhibit 2, responses to CEC data

1 adequacy request number AQ-1 through AQ-15;
2 Exhibit 3, responses to the first set of CEC staff
3 data requests, specifically responses 1-13 and 131
4 and 137; a portion of Exhibit 4, responses 206-
5 210; and Exhibit 25, which is Bay Area Air Quality
6 Management District permit evaluation for the
7 Altamonte landfill.

8 I'd like all of those exhibits at this
9 time moved into the record, please.

10 HEARING OFFICER GEFTER: In addition,
11 Exhibit 159 and 162 were referred to during the
12 testimony.

13 APPLICANT COUNSEL GALATI: That is
14 correct, Exhibit 159 and 162.

15 HEARING OFFICER GEFTER: All right.

16 Any objection to those exhibits being
17 received?

18 STAFF COUNSEL HOUCK: No objection.

19 HEARING OFFICER GEFTER: Those exhibits
20 just identified by Mr. Galati are now received
21 into the record.

22 (Thereupon Exhibits 22-25, 47, 159, 162
23 and portions of Exhibits 1-4 were received into
24 evidence.)

25 APPLICANT COUNSEL GALATI: Thank you.

1 HEARING OFFICER GEFTER: Okay. Staff
2 needs to come forward with your direct testimony.

3 Off the record.

4 (Brief recess.)

5 STAFF COUNSEL HOUCK: At this time I
6 would ask that the witnesses be sworn in.

7 Whereupon,

8 BREWSTER BIRDSALL and MIKE RINGER

9 Was called as a witness herein and, after having
10 been duly sworn, was examined and testified as
11 follows:

12 THE REPORTER: The witnesses are sworn.

13 STAFF COUNSEL HOUCK: Thank you.

14 DIRECT EXAMINATION

15 BY STAFF COUNSEL HOUCK:

16 Q Can you please state your name for the
17 record.

18 A My name is Brewster Birdsall. The last
19 name is spelled B-i-r-d-s-a-l-l.

20 Q And was a statement of your
21 qualifications attached to the testimony?

22 A It should be, yes.

23 Q And could you briefly state your
24 education and experience as it pertains to air
25 quality.

1 A Well, I'll sum up my qualifications this
2 way. I'm a contractor to Staff for the topic of
3 Air Quality. I'm employed by Aspen Environmental
4 Group as a senior associate in air quality and
5 engineering.

6 I have nine years of experience
7 consulting on air quality related issues for both
8 private developers and public agencies. I'm
9 certified as a qualified environmental
10 professional, and I'm licensed as a professional
11 engineer and mechanical engineer in the State of
12 California.

13 Q Did you prepare the testimony entitled
14 Air Quality in the final staff assessment listed
15 as Exhibit 51 as well as the Air Quality sections
16 in Exhibits 52, first addendum to the staff
17 assessment, and Exhibit 54, staff supplemental and
18 rebuttal testimony to the final -- in regards to
19 response to Applicant's testimony?

20 A I did.

21 HEARING OFFICER GEFTER: Also 53?

22 BY STAFF COUNSEL HOUCK:

23 Q Oh, and 53 as well, which is addendum
24 two?

25 A Yes, I did.

1 Q And are you familiar with Exhibit Number
2 123, which is entitled Recommended COCs with Staff
3 Changes for Tesla, Originally from Applicant's
4 8/29/03 Testimony--Air Quality?

5 A Yes, I'm familiar with that.

6 Q And did you review this and make any
7 changes to what was originally proposed by the
8 Applicant in its 8/29/03 testimony?

9 A Yes. I'll back up and I'll explain.
10 Exhibit 123 is a package that I created with Staff
11 review from the Air Quality Unit at the Energy
12 Commission that provides CEC recommendations to
13 the Applicant's proposed construction conditions.

14 The Applicant's proposed construction
15 conditions came to us in Exhibit 49, which is I
16 believe Mr. Stein's testimony. The Applicant's
17 proposed construction conditions were reviewed by
18 the Air Quality Unit at the Energy Commission with
19 some changes that are reflected here in
20 Exhibit 123. They would be consistent with our
21 current state of practice and, therefore, these
22 revised construction conditions, which are called
23 AQ-C1 through C3 represent our recommendations for
24 replacing AQ-SC1 through AQ-SC4 of my final staff
25 assessment.

1 Q And, just to clarify, AQ-SC4 is not
2 listed in these recommended changes because what
3 would have been required under AQ-SC4 has been
4 subsumed into what is reflected as AQ-C1, AQ-C2,
5 and AQ-C3.

6 A That's correct. AQ-SC4 from the final
7 staff assessment had requirements for monitoring
8 the fenceline for visible dust plumes, and that
9 requirement has been absorbed into the revisions
10 that are included on AQ-C3 of this Exhibit 123.

11 STAFF COUNSEL HOUCK: And we would ask
12 that Exhibit 123 be entered.

13 HEARING OFFICER GEFTER: Any objection?

14 APPLICANT COUNSEL GALATI: No objection,
15 and if it would be appropriate at this time, the
16 Applicant agrees with those modifications to those
17 conditions.

18 HEARING OFFICER GEFTER: Okay.
19 Exhibit -- Mr. Sarvey, do you have any comments on
20 this?

21 Exhibit 123 is received into the record.

22 (Thereupon Exhibit 123 was received into
23 evidence.)

24 BY STAFF COUNSEL HOUCK:

25 Q Other than the changes that were just

1 discussed that refer to, related to Exhibit 123,
2 do you have any other changes to your written
3 testimony?

4 A I do not have changes to my testimony.

5 Q And in your opinion, is this project in
6 compliance with all laws, ordinances, regulations
7 and standards?

8 A Yes. In our final staff assessment, I
9 do make the conclusion that the project would be
10 likely to comply with all applicable air quality
11 laws, ordinances, regulations and standards.

12 Q In your opinion, does the project pose
13 any significant adverse impacts to the
14 environment?

15 A Staff has recommended a number of
16 mitigation measures that, when taken collectively,
17 would mitigate the project to a less-than-
18 significant impact for air quality. Some of these
19 mitigation measures have been a topic of
20 discussion, especially mitigation measures -- or
21 especially the measure AQ-SC7, which encompasses
22 mitigation that Staff recommends beyond the
23 Applicant's proposal of supplying emission
24 reduction credits from the Bay Area Air Quality
25 Management District in conjunction with their

1 proposed air quality mitigation agreement with the
2 San Joaquin Valley District.

3 Staff's recommended condition for AQ-SC7
4 includes mitigation that goes beyond what the
5 Applicant has proposed. If that mitigation is
6 incorporated in a final decision, then the project
7 would be mitigated to a level of less than
8 significance.

9 Q And if the Staff-proposed mitigation is
10 not incorporated into the project, do you believe
11 that it would have significant impacts to the
12 environment?

13 A We do.

14 Q Okay, thank you. Could you please
15 summarize your testimony.

16 A Sure. I think to sort of keep the
17 discussion streamlined, I'll focus on the issues
18 that seem to be unresolved or at least continue to
19 be in dispute. But before I do that, I'd like to
20 take a minute and explain the San Joaquin Valley
21 environmental setting, because I think the
22 environmental setting helps to frame why Staff is
23 concerned about certain aspects of the air quality
24 mitigation agreement and why we believe the
25 mitigation agreement may not fully achieve the

1 goal of mitigating project impacts.

2 The project is located physically within
3 the confines of the San Joaquin Valley, defined by
4 the Coastal Range on the west and the Sierra
5 Nevada on the east. The weather and the
6 topography and the seasonal source activity within
7 the Valley being primarily oriented towards
8 agricultural operations each conspire to cause
9 strongly seasonal air quality problems in the
10 Valley.

11 The final staff assessment goes into
12 explaining this at some level, and the District
13 Staff themselves, Mr. Sadredin just a moment ago,
14 did confirm that certainly nonattainment seasons
15 are very much a serious consideration in
16 developing the air quality mitigation agreement
17 that the Applicant and the Valley District
18 prepared.

19 The ozone violations are strongly
20 confined to the summer and fall because of the
21 sunshine and the high ambient temperatures in the
22 region. The particulate matter violations occur
23 mainly in the fall and winter because of the
24 stagnation. And during the fall and the winter
25 the particulate violations are even split into

1 their own seasonal behavior or subseasonal
2 behavior, even, in that during October, November
3 and December, the particulate matter problem seems
4 to be oriented more toward primary particles,
5 which means directly emitted geological problems,
6 like dust from roads especially and dust from
7 ongoing agricultural operations, because in that
8 part of the fall and the early part of the winter,
9 the ag sources are still operating in the Valley.

10 So the particulate matter problem for
11 the first half of the winter is strongly geologic.
12 In the more wet part of the winter, during
13 December, January and February, the District
14 experiences more of a secondary particulate
15 problem and secondary particles are those nitrates
16 and sulfates that react with precursors like
17 ammonia and are facilitated by the humid and foggy
18 conditions to create elevated particulate matter
19 levels that occur still in winter, but in the
20 second half of the winter.

21 So in the first half of the winter, it's
22 mainly dust-related and geologic particulate
23 that's causing the problem. And in the second
24 half of the winter, it's mainly secondary and
25 reactive particulates.

1 This is explained in our FSA a little
2 bit around page 4.1-14, but it's also illustrated
3 in the recent San Joaquin Valley Air District
4 publication of the 2003 PM 10 plan. And I believe
5 that that is going to be submitted as an exhibit
6 by the Intervenor, but it is a publicly available
7 document if it isn't.

8 The strongly seasonal air quality
9 problems in the Valley are at the core of Staff's
10 request for mitigation beyond the air quality
11 mitigation agreement. You've taken a look at the
12 project proposal as a whole, which involves, of
13 course, the installation of new sources of air
14 pollution, but also comes with it a proposal of a
15 certain package of offsets that are required by
16 the Bay Area rules and regulations.

17 Those offsets satisfy the requirement
18 for LORS and they partially mitigate the project's
19 impacts in the context of CEQA. The Applicant,
20 which I think is quite notable, recognized very
21 early on that impacts to the San Joaquin Valley
22 may not be fully mitigated by the required offsets
23 that the Bay Area District requires.

24 The Applicant entered into the agreement
25 with the San Joaquin Valley District and prepared

1 a calculation of what the Valley District and the
2 Applicant believed to be the residual impact to
3 the San Joaquin Valley, and this is the number at
4 the bottom of the air quality mitigation agreement
5 that is 63.9 tons per year of VOC and NOx.

6 Staff received that mitigation agreement
7 in May of 2002 and, upon review, we had questions
8 about the agreement and brought forward some of
9 those questions in our workshops that I believe
10 were held early on in the summer of 2002. And
11 because the mitigation agreement had been
12 finalized, we were essentially informally
13 instructed to commence with our CEQA analysis and
14 continue with our CEQA analysis, considering the
15 mitigation agreement as it stands, and that means
16 as it stood without CEC involvement.

17 With the agreement in front of us, we
18 began a technical review of how the agreement was
19 established and the components of the agreement
20 and the factors in the agreement and the
21 calculations that underlie the agreement. We
22 wanted to understand where the value was coming
23 from in calculating the residual impacts, and we
24 wanted to verify that the calculation was
25 reasonable and that it essentially -- we wanted to

1 simply verify that we agreed with the calculation,
2 the method of calculation.

3 We found that the benefits awarded to
4 the PM 10 emission reduction credits obtained in
5 the Bay Area District were outweighing the
6 project's impacts to the San Joaquin Valley. And
7 this is illustrated in Mr. Stein's testimony and
8 also in the two basic tables in the agreement that
9 we've been talking about.

10 Table one of the air quality mitigation
11 agreement shows the project emissions being --

12 Q When you say table one, are you
13 referring to Mr. Stein's testimony on page nine?

14 A I'm referring to Mr. Stein's testimony
15 on page nine, but this table is also identical to
16 the table in the air quality mitigation agreement.

17 And I'm trying to frame sort of the
18 foundation of why Staff felt compelled to go
19 beyond the mitigation agreement, and I think if we
20 follow the PM 10 calculation through this table
21 that I should be able to convince most people here
22 that the mitigation agreement is based on I think
23 a biased weighting of the project's benefits
24 obtained by the ERCs.

25 And I'd like to just kind of go through

1 the PM 10 numbers here, and if we could, if we
2 think of, as the project is constructed it's
3 emitting -- or when it becomes operational it
4 would emit 196.1 tons per year of PM 10 into the
5 air. And located very close physically to that
6 source of new pollution is a source of emission
7 reduction credits. The landfill is very
8 conveniently located. I think, from it's physical
9 location, it's an ideal source of emission
10 reduction credits.

11 I don't necessarily agree with the
12 composition of the particulate matter that --
13 Well, I don't think that the value of the PM 10
14 credits from the landfill is uniformly applicable
15 to the impact of the PM 2.5 emissions from the
16 plant, but the PM 10 and PM 2.5 discussion I think
17 we can postpone for a little bit.

18 At this point I'd like to just talk
19 about PM 10. And if we look at the project
20 emissions in table one and follow the calculation
21 across the page, we start off with 196 tons per
22 year. That's discounted and determined to only
23 impact the Valley during quarter one and quarter
24 four 66.2 percent of the time. And that's the
25 amount of time the wind blows into the Valley

1 during that half of the year that particulate
2 matter is a seasonal problem.

3 So you take one-third of 196, or, sorry,
4 you take 196, divide that in half because you're
5 only looking at quarter one and quarter four, and
6 then you multiply .662, so two-thirds, roughly, of
7 one-half of 196 gives us the project impact to the
8 Valley of being roughly 65 tons per year during
9 quarter one and quarter four.

10 When Staff looked at the air quality
11 mitigation agreement back in May of 2002 and
12 looked at the second table, table two has the
13 emission reduction credits from the landfill at
14 196.1 tons per year, which is then adjusted by the
15 contributions of the San Joaquin Valley of 66.2
16 percent.

17 What I would expect to see is a value of
18 the benefit that matches the impact to the Valley,
19 because the value of the benefits of the Valley
20 occurs year-round, but the impact is only analyzed
21 during quarter one and quarter four. So my first
22 reaction to reviewing table two was that there is
23 a factor missing of .5. And without that factor
24 of .5, we show that the landfill overmitigates or
25 overoffsets the project's impact to the Valley.

1 If a landfill is located right smack
2 next to the power plant and the calculation for
3 the project impact to the Valley follows the same
4 methodology of the calculation of the benefit to
5 the Valley, then the net impact of PM 10 should be
6 zero and not negative.

7 We noticed that this was, in our
8 opinion, possibly an error or an oversight in the
9 calculation, so Staff embarked on an independent
10 assessment that's illustrated in the FSA and well-
11 documented in the written record.

12 Q Mr. Birdsall, you just indicated that
13 Staff did its own independent assessment, and is
14 that assessment reflected in Staff's rebuttal
15 testimony, Exhibit 54, in the attachment for air
16 quality, pages one through four?

17 A Staff's independent assessment is
18 outlined in the most detail in the FSA, and it's
19 summarized in the exhibit just mentioned.

20 Q Can you walk through the summary of
21 Staff's assessment, please.

22 A Sure.

23 HEARING OFFICER GEFTER: I'm sorry,
24 Mr. Birdsall, perhaps your focus could be on your
25 calculations with respect to these tables,

1 because, again, I think you just finished
2 testifying on that and we need a little more
3 clarification.

4 THE WITNESS: Okay. I'll do my best.

5 The calculation that I just described,
6 or when reviewing the calculations that are
7 presented in the air quality mitigation agreement,
8 were calculations with two options. Staff could
9 go ahead and forge its own estimate of residual
10 impacts to the Valley, which is the path that we
11 ultimately took, or we could work with the
12 District to try to rectify what we see as an
13 error.

14 Because the air quality mitigation
15 agreement had been finalized between the District
16 and the Applicant and adopted by the District, we
17 were not -- the path of revising the air quality
18 mitigation agreement was not available to us. We
19 embarked on the path of conducting our own
20 independent assessment. It's illustrated in the
21 FSA, and it is summarized in a new way in the
22 attachment to the rebuttal, and this is the
23 attachment to Exhibit 54 that Ms. Houck just
24 mentioned.

25 There are a couple of things that Staff

1 wanted to capture. First of all, Staff wanted to
2 capture an equitable value of the Bay Area credit
3 on only the nonattainment seasons and compare that
4 to the project impact during only the
5 nonattainment seasons. But also Staff was
6 interested in assigning a special value to the PM
7 10 ERC from road paving to adjust it to match the
8 PM 2.5 impact of the project.

9 BY STAFF COUNSEL HOUCK:

10 Q Can you explain how you did that?

11 A Well, the valuation of the PM 10 ERC
12 from road paving is very simple and correlated to
13 a very general factor from EPA's AP 42 guidance
14 document, which, as the Applicant has correctly
15 portrayed, is a generalized compilation of factors
16 that can be applied to the PM 10 from road paving.
17 And that factor is a factor of .15, which is what
18 I call the road paving versus combustion
19 effectiveness. That's in the middle of page 4 of
20 4 in our air quality attachment to the rebuttal.

21 The other issue that Staff was eager to
22 capture in our calculation was this equitable
23 balance of impacts during nonattainment seasons
24 compared to the benefits observed during
25 nonattainment seasons. And the way that we did

1 that is by deferring the division of the year into
2 quarters until the very end.

3 We started off with the Tesla project
4 emissions. This is at the first half, now. I'll
5 just sort of go through the four tables in page 4
6 of 4 of our attachment. We start off with project
7 emissions, certain quantities of NOx, PM 10, SOX
8 and VOC. Let's ignore PM 2.5 for the time being.

9 Then the next step is to take a look at
10 the ERCs. The ERCs are definitely providing a
11 benefit to certainly the Bay Area and also the
12 downwind Valley District. We wanted to assign
13 some kind of a benefit to the transport of that
14 negative emission to the Valley.

15 We picked factors for the ERCs that
16 depend on the proximity of the ERC to the Valley.
17 For those ERCs that are far upwind of the Valley
18 and closer to the cities of, say, San Francisco
19 and the Peninsula, we assigned a very low
20 effectiveness. The effectiveness that we
21 assigned, though, matches exactly the
22 effectiveness that Mr. Sadredin talked about just
23 a moment ago of 27 percent.

24 That's the lowest value that we gave any
25 ERC from the Bay Area, but it's also the same

1 value that the Valley District set forth in their
2 agreement. So we felt justified in assigning a
3 value that low, because the Valley District had
4 already done it in the agreement.

5 As the ERCs come closer to the Valley
6 boundary, we assign more value to the benefit. We
7 assigned .7 to some ERCs that occur sort of in the
8 Carquinez Strait region, around Antioch and
9 Pittsburg. And we assigned a value of 1.0, which
10 is a 100-percent value to the landfill road paving
11 credit of PM 10 that was occurring right on the
12 boundary of the two districts because, like I said
13 a moment ago, the location of the landfill is
14 ideal.

15 When Staff did their calculation, when I
16 did my calculation, I assigned a lower value to
17 the other half of the PM 10 credit that comes from
18 Antioch, because that credit is located in the
19 Carquinez Strait.

20 The PM 10 credit that comes from Antioch
21 was assigned a .7 value so that we could reflect
22 what was happening with the final ERC package and
23 not the ERC package as it was back in May of 2002
24 in the agreement.

25 The third column in the second table of

1 this page is the adjustment for PM 2.5. This is
2 where Staff says we disagree that the road paving
3 credit provides 100 percent value to the project
4 because the project emissions are so heavily
5 balanced towards PM 2.5 and the road paving
6 benefit is so heavily, or more evenly weighted, at
7 least, throughout the whole particulate spectrum.

8 We feel that this correction is
9 necessary, because ARB does recommend it in the
10 written record of this memo from June of 2000.

11 HEARING OFFICER GEFTER: What exhibit is
12 this? This is the memo regarding road paving?

13 THE WITNESS: That's right.

14 HEARING OFFICER GEFTER: All right,
15 thanks.

16 STAFF COUNSEL HOUCK: It's in
17 Exhibit 51.

18 HEARING OFFICER GEFTER: Okay.

19 THE WITNESS: It's an attachment to the
20 FSA. It's the same CARB letter.

21 HEARING OFFICER GEFTER: All right.

22 THE WITNESS: Okay. So we make all of
23 these adjustments to the ERCs that are put forth
24 and proposed by the Applicant to try to estimate
25 what the benefit is to the San Joaquin Valley.

1 And I think that all of our adjustments are
2 actually very much in line with what the Valley
3 District did in their air quality mitigation
4 agreement.

5 We value the landfill at 100 percent,
6 because it's right next door to the power plant,
7 and we discount and devalue the ERCs that occur
8 much further upwind. This is almost identical,
9 and, in fact, it follows and we made it this way,
10 to follow the air quality mitigation agreement in
11 its table two, which has the contribution factor
12 of 27 percent for those credits from far upwind.

13 The independent staff calculation takes
14 that one step further by looking at the road
15 paving versus combustion, but I think that the ERC
16 effectiveness in the second column of this second
17 table, I think that very much follows with the
18 Valley District and does not deviate at all from
19 what they would recommend.

20 The Staff calculation then just takes a
21 look at the total overall annual balance of
22 benefits to the Valley versus impacts to the
23 Valley. The project impacts to the Valley,
24 because the project is located physically in the
25 Valley, we said are occurring 100 percent of the

1 time. The benefits are occurring, according to
2 their diluted evaluation. Then we applied the
3 seasonal factor.

4 We calculated the difference in the
5 third table of this page 4 of 4, and we applied
6 the seasonal factor in the fourth table of this
7 page. The seasonal factor that Staff took is,
8 again, I think, very much in step with what the
9 Valley agreement puts forward in its table one.
10 We just did the calculation last, whereas the
11 Valley did it first.

12 The Valley District in table one of
13 their mitigation agreement, and this is back on
14 page nine of Mr. Stein's testimony, the Valley
15 District only looks at the ozone precursors during
16 the eight months of ozone violations. That's the
17 April through November. The Valley District only
18 looks at PM 10 problems and PM 10 impacts during
19 half of the year, the six months of quarter one
20 and quarter four.

21 Staff took that lead. We tried to
22 refine it a little bit to really, to make it as
23 closely following the nonattainment problems of
24 the Valley as we thought we could, and so we
25 assigned a fraction of the seasons to each

1 pollutant, depending on whether or not it's a PM
2 10 precursor or an ozone precursor, and this is in
3 the bottom of, again, my page 4 of 4 and my
4 attachment to rebuttal.

5 And that's where we say, for example, if
6 you look across on VOC, there is no residual
7 impact in quarter one and quarter four. VOC is a
8 precursor to ozone and it's only a problem during
9 the ozone season. There is no -- If we look at PM
10 10, for example, there is no residual impact of PM
11 10 during quarter one and -- Excuse me, back up.
12 There is no residual impact during quarter two and
13 quarter three, because the Valley has no
14 nonattainment problem during quarters two and
15 three.

16 So the PM 10 impact is actually only
17 occurring during half of the year, and in that way
18 our calculation follows the first step of table
19 one of the air quality mitigation agreement that
20 the Valley put forward.

21 We tried to refine things a little bit
22 by saying that PM 10 impacts are really only a
23 problem during five of twelve months as opposed to
24 six of twelve months, but that I think is
25 something that is in the Applicant's advantage and

1 is not really worth disputing.

2 We go through this whole process and end
3 up with this little matrix of targeted reductions,
4 certain pollutants during certain quarters, and
5 Staff's conclusion gets recommended in AQ-SC7,
6 ultimately, to recommend 115 tons per year of
7 mitigation, which is a little bit less than double
8 what the Valley District concluded in their
9 calculation. But our reductions would occur to
10 certain pollutants during certain seasons when the
11 impact occurs.

12 And so we feel that our mitigation is in
13 balance and in concert with the impact, because
14 the impact was analyzed only during those
15 nonattainment seasons; therefore, the mitigation
16 should address the nonattainment seasons.

17 HEARING OFFICER GEFTER: On AQ-SC7,
18 there is a table, and does this table reflect, is
19 it consistent with your page 4 table?

20 THE WITNESS: Yes, Ms. Gefter, it is.
21 It's the same table.

22 HEARING OFFICER GEFTER: Well, I may be
23 looking at an earlier version of AQ-SC7. I'm
24 looking at the original one in the FSA. Is there
25 an updated version?

1 STAFF COUNSEL HOUCK: I think, just to
2 clarify, that it's the same table, except that the
3 pollutants are labeled down the side of the table
4 on four, and the quarters are across the top. But
5 I think the numbers are the same.

6 HEARING OFFICER GEFTER: This one does
7 not end up with a total of 115, the one in the
8 FSA.

9 THE WITNESS: It should, if you tally up
10 every ton in every quarter of every pollutant, the
11 residual impact, and this is before taking into
12 account the actual value of the agreement.

13 HEARING OFFICER GEFTER: I'm just
14 looking at the table that appears in AQ-SC7, and
15 my question is, is it the same table as the one
16 you just described to us?

17 THE WITNESS: Yes, it is.

18 HEARING OFFICER GEFTER: All right.

19 STAFF COUNSEL HOUCK: I think it
20 reflects the same information, but it is not set
21 up exactly the same and it doesn't have the
22 combined 115 factor listed in this table.

23 THE WITNESS: That's true, that's
24 correct. They're presented two different ways,
25 but the numerical values within the tables are the

1 same. Hence, with AQ-SC7, the air quality
2 mitigation agreement or really any other program
3 that the Applicant sponsors can be used to achieve
4 those emission reductions.

5 And if those emission reductions are
6 achieved, then the project would be fully
7 mitigated during the time of impacts, the project
8 impact to the San Joaquin Valley, that is, which
9 is really the only residual impact that we have.

10 HEARING OFFICER GEFTER: Okay. I have a
11 question on AQ-SC7, and again, I'm looking at the
12 original proposed condition in the FSA,
13 Exhibit 51, and it has not been modified since
14 that time.

15 THE WITNESS: That's true. This
16 condition has not been modified.

17 HEARING OFFICER GEFTER: My question is
18 regarding the language of the first sentence,
19 which says, "The project owner shall provide
20 emission reductions for the life of the project."

21 Does that include, is that life of the
22 project on a yearly basis?

23 THE WITNESS: What this means is that
24 the emission reductions should be permanent.

25 HEARING OFFICER GEFTER: Okay.

1 THE WITNESS: And I think that can be
2 achieved a number of different ways.

3 HEARING OFFICER GEFTER: My question is
4 whether, if we put language in there stating that
5 it should be for the life of the project on a
6 yearly basis, whether that achieves the goal that
7 you're aiming for here.

8 THE WITNESS: Well, I think that if a
9 reduction occurs and it's permanent, then it
10 occurs on a yearly basis, meaning that it would
11 occur in perpetuity. And I think that we could
12 add that language to the condition and it would
13 not alter its meaning or its stringency.

14 HEARING OFFICER GEFTER: We're off the
15 record.

16 (Brief recess.)

17 BY STAFF COUNSEL HOUCK:

18 Q Going back to page four of the
19 attachment to Staff's rebuttal testimony where you
20 have, the last table on page four that has a
21 heading that reads Residual Impact to San Joaquin
22 During Nonattainment Months, Staff Method, is it
23 accurate to say Staff believes that the impacts
24 from the Tesla Power Project would vary from
25 quarter to quarter and that in order for any

1 mitigation to be effective, this variance from
2 quarter to quarter should also be reflected in the
3 mitigation provided for the project?

4 A Yes, that's a fair characterization.
5 The definition of the impact is whether or not the
6 project could contribute to an existing violation
7 of the ambient air quality standards. And I think
8 that the project can only contribute to those
9 violations during the seasons that the violations
10 are occurring.

11 So the definition of the impact for
12 ozone, for example, is that the project can
13 exacerbate ozone violations during the summertime
14 months. So we've asked for mitigation of ozone
15 precursors to occur during summertime months.

16 Q So Staff would like to see mitigation
17 obtained in the quarters reflected in this chart
18 in the amounts reflected.

19 A That's correct.

20 Q Which, if you added up all the totals,
21 would be 115 tons per year that we want the -- Is
22 Staff asking for the mitigation based on seasonal
23 and particular pollutant?

24 A Yes. I'm asking for mitigation and I'm
25 recommending that the mitigation occur for special

1 pollutants during specific quarters, because some
2 pollutants in some quarters provide no mitigation
3 at all; for example, if the project owner comes
4 forward and demonstrates a large reduction of PM
5 10 that occurs during the summer, that doesn't aid
6 or mitigate the project impact because the PM 10
7 impact occurs during the winter.

8 Q Now, Staff's testimony, as you stated
9 earlier, also reflects a discounting of PM 10 for
10 potential PM 2.5 offsets; is that correct?

11 A That's right. This conclusion in AQ-SC7
12 embodies our adjustment of the PM 10 road paving
13 credit to PM 2.5.

14 Q You were here earlier when Staff asked
15 Mr. Stein if there was a difference between PM 10
16 and PM 2.5; is that correct?

17 A Yes, I was here.

18 Q And did you also -- Staff also asked
19 Mr. Stein to explain the difference in whether
20 there was a public health impact from 2.5; is that
21 correct?

22 A Yes.

23 Q And would you agree with Mr. Stein's
24 answer?

25 A Yes, I would. I would elaborate that PM

1 2.5 is recognized to have special health effects
2 and more severe health effects than PM 10.

3 Q And do you believe Staff, in conducting
4 its independent analysis for purposes of
5 compliance with the California Environmental
6 Quality Act has an obligation to look at potential
7 impacts to either the environment or public health
8 that could be caused by PM 2.5 emissions?

9 A Yes, I do believe that we have that
10 obligation, especially because PM 2.5 regulation
11 in a formal context from the local air districts
12 is not yet fully established. It falls into the
13 region of environmental impacts that may not be
14 fully addressed by the regulatory regime that
15 exists today.

16 Q Now, looking at the attachment,
17 Exhibit 54, that we've been examining on page two,
18 at the top there is a heading that says SJVAPCD
19 Method for Mitigation, May 2002, and then the
20 first table states Table One of the SJVAPCD
21 Mitigation Agreement; is that correct?

22 A That's correct.

23 Q And under the second column going down,
24 there is a title saying Fraction of Seasonal
25 Impact; is that correct?

1 A Right.

2 Q And do you recall earlier when Mr. Stein
3 stated that this column was an additive and it
4 wasn't part of the initial mitigation agreement
5 between FPL and the San Joaquin Air District?

6 A Yes, I was here.

7 Q Can you explain the figures in that
8 column and why they're included in this table?

9 A Yes, sure. The calculation in the air
10 quality attachment to the rebuttal -- This is,
11 again, Exhibit 54 -- is Staff's interpretation of
12 the air quality mitigation agreement signed
13 between Tesla and the Valley District. And it is
14 I think a more clear representation of that
15 calculation.

16 Mr. Stein earlier tonight pointed out
17 that in my table one of this page 2 of 4, in my
18 version of the table I show this column called
19 Fraction of Seasonal Impact. And for NOx and VOC
20 I gave it a .667, which is the same as saying
21 eight of 12 months. For PM 10 I gave that number
22 .5, which is six of 12 months, the winter.

23 What I'm trying to show here is that in
24 the Valley District's mitigation agreement,
25 they've taken a look at it in their very first

1 step, the impact to the San Joaquin Valley during
2 only part of the year. The impact of VOC and NOx
3 is only occurring during eight of 12 months, and
4 the impact of PM 10 is only occurring during six
5 of 12 months.

6 Q So does the .667 for NOx and VOC
7 represent that April to November portion of the
8 chart in Mr. Stein's testimony on page nine?

9 A Yes, it does.

10 Q And does the .5 reflect the potential
11 impacts of PM 10 in quarters one and four that was
12 reflected in Mr. Stein's table?

13 A Yes, that's the purpose of my .5 factor.

14 Q And in table two, your fraction of
15 seasonal benefit, the table there represents the
16 fact that they calculated the benefit on an annual
17 basis; is that correct?

18 A Yes. What I'm trying to portray in
19 table two in my version of the agreement is that
20 the Valley District, when they entered into the
21 agreement, valued the ERCs from the Bay Area
22 District on an annual basis. That is my opinion
23 and it's reflected in this factor of 1.00 in my
24 air quality attachment to the rebuttal.

25 Q Now, on page three of four, the title

1 there is SJVAPCD Method for Mitigation, Updated by
2 Staff September 2003; is that correct? On page
3 three.

4 A On page three, yes.

5 Q Okay. Now, do the tables reflected on
6 page three use what Staff believes is a similar
7 methodology to the tables you listed on page two,
8 and do the tables on page --

9 A [Nods].

10 Q I'm sorry, can you state the answer,
11 please. You nodded your head.

12 A Yes, I did nod my head.

13 Q Is the difference between the tables on
14 page three and page two the fact that Staff
15 factored in its discount for PM 10 to reflect what
16 it believes needs to be mitigated for PM 2.5?

17 A No. Even here, this discussion is, I
18 understand confusing, but the difference between
19 page two and page three of this Exhibit 54
20 attachment is to show how Staff would value the
21 benefits provided by the Bay Area ERCs on a
22 seasonal basis, meaning if we looked at the ERCs
23 that are being obtained in the Bay Area, and we
24 looked at them only during those months that the
25 impact is occurring -- for example, six months of

1 the year for PM 10 and eight months of the year
2 for ozone precursors -- then we would have to
3 adjust downward the value and the benefit of those
4 Bay Area credits, and that is what's shown in the
5 middle of this page three.

6 Q So the PM 10 East with the 98.0 number
7 under the heading ERCs Obtained in BAAQMD reflects
8 the correct, or the discount that BAAQMD
9 ultimately gave to the road-paving ERC in the
10 FDOC.

11 A Right. The PM 10 is split between east
12 and west because, in the ultimate final offset
13 package, that was arrived at in spring of 2003,
14 before the Valley District, or rather after the
15 Valley District had entered into agreement. The
16 ultimate PM 10 package involves credits from the
17 landfill that are east of Altamonte Pass, and some
18 credits, the 92.8 tons per year of PM 10, that
19 occur west of the Altamonte Pass, in the area of
20 Antioch and some other scattered sources.

21 Q Now, given the distance that the Antioch
22 credits that are reflected with the number 92.8 in
23 your table, given the location of those credits,
24 is the number .270 under ERC Effectiveness in San
25 Joaquin County of this table a reflection of the

1 methodology that the San Joaquin Valley used for
2 discounting credits that were farther away from
3 their air basin?

4 A Yes, it is.

5 Q Okay.

6 HEARING OFFICER GEFTER: Let me ask you
7 a question. On page three, the total amount of
8 tons per year is 116, and on page four it's 115.
9 Would you explain that?

10 THE WITNESS: That's the interesting
11 coincidence that we arrived at in this very
12 recalculation of the Valley's methodology. I
13 reassessed, when I prepared this attachment, I was
14 reassessing why Staff embarked on an independent
15 assessment. And I said, well, what if I make
16 those changes to the Valley District agreement
17 that I believe are appropriate, and also update
18 the Valley District agreement to reflect the final
19 ERC package of having PM 10 credits from both the
20 landfill and Antioch.

21 And without investigating PM 2.5
22 liability at all, by updating this calculation, in
23 our opinion, with these updates, we found that the
24 overall residual liability of the project to the
25 Valley was 116 tons per year, which surprisingly

1 matched very closely what Staff concluded on its
2 own in the FSA back in April.

3 HEARING OFFICER GEFTER: Okay. Off the
4 record.

5 (Brief recess.)

6 HEARING OFFICER GEFTER: We're taking a
7 break from direct testimony on Air Quality for
8 Staff to allow members of the public to address
9 us.

10 Mr. Wes Hoffman from the Tracy City
11 Council is here. Would you please introduce
12 yourself to us and give us your comments.

13 MR. HOFFMAN: Okay. My name is Wes
14 Hoffman from Tracy City Council. Thank you so
15 much for the opportunity to address this body. I
16 have a couple of faces I recognize that I've seen
17 once or twice before.

18 I was here earlier and I heard someone
19 comment and I thought people spent a lot of time
20 trying to figure out exactly what these impacts
21 were, and I'm very pleased that they're doing
22 that. But I thought one of the things that was
23 interesting was they said, well, we want to
24 measure the mitigation only for the really bad air
25 days.

1 And I thought, well, if they don't fix
2 the day before or the day after that, aren't there
3 additional pollutants, you know, additional
4 pollutants in the plant, and would those number of
5 days of bad air actually increase on the fringes
6 that aren't mitigated. I just threw that in as a
7 comment that I thought of after I got here and
8 listened, which is why these meetings are
9 important, because you find out something every
10 time you come and you hear the process over
11 several times.

12 The other thing was that it appears that
13 our own San Joaquin Valley Air Pollution Control
14 District really doesn't have as many up-to-date
15 assessments or does not assess the air quality
16 throughout the entire year, which makes
17 understanding what the overall all-year impacts
18 are to the air and what might ultimately be done
19 to try to improve them.

20 My preference is, if you're going to
21 make the air better at all, you have to mitigate
22 more than you're putting in, because in prior
23 years we've mitigated less than we've put in, and
24 so we ended up with this really bad air situation
25 over the whole Valley.

1 And certainly, as a taxpayer and the
2 people I talk to, I certainly don't think any
3 individual company ought to be burdened with this,
4 and certainly they have a right to make a profit
5 and whatever. But this is the source of revenue
6 for basically taxing ourselves, because we're
7 going to be buying the electricity from these
8 plants. If there was a component where they could
9 recover some of the money they gave us to do this,
10 we would have the best of all worlds.

11 Certainly the price of a plant goes up
12 because of these mitigations, but the goal is we
13 certainly don't dispute the fact that we'd love to
14 have the electricity but we're killing ourselves
15 with air quality. So we have to do something
16 about that.

17 Certainly Tracy is in an interesting
18 position, with three plants, one coming on line
19 quickly or is on line and two in the process, and
20 so we're kind of the nearest person and so I'm
21 here to kind of give a voice to the people that
22 can see the smokestacks from where they're at.
23 And not to say that we're the most heavily
24 impacted, because I think a lot of this will end
25 up further south of us, and so I don't think that

1 we necessarily should get everything.

2 But we're also the kind of community
3 that if they're allowed to and given some
4 consideration and given some resource, has been
5 fairly successful, at least in the GWF situation,
6 where the half million dollars that we got
7 directly to the City we've done quite a few
8 things, I think, that overmitigated the GWF plant
9 so that not only did our town benefit, but
10 certainly all the other communities in the Valley
11 would benefit.

12 So the goal, I think, when you're
13 processing this is to see how much you can
14 actually get, not how much you can balance, but
15 how much you can actually get and what's fair to
16 do at any particular time.

17 So I'm here to say I think that you
18 should consider Tracy as one of the resources for
19 air quality and to generate these ideas, and that
20 we're, as you're going to find out later, we're a
21 very aware community, as we should be, because
22 we're right here and we can see the smokestacks.
23 Where other people may not realize what's going
24 on, so they don't come and talk to you and share
25 what they might know, we have to be their voice as

1 well.

2 But even the people that own the plant
3 and even the people that turn on electricity,
4 we're all part of the same community and we all
5 want the same things. And so it's just, you're
6 stuck with a difficult decision to figure out how
7 to balance all that. So I don't envy you that.

8 But I would call your attention about,
9 I've heard about potential problems, if there is a
10 problem with the plant, I know our local fire
11 department is going to be the first responder.
12 We're not going to wait for somebody to come from
13 across the hill to do that, and so certainly you
14 should consider some direct support to protect the
15 plant and the people that are there, and the
16 people that are closest to the plant. And I think
17 that would be a reasonable thing.

18 I don't know if they talked about this
19 haz mat truck and water trailer, and I don't know
20 what those are myself, but it makes sense that
21 whatever fire station is close to you is going to
22 be the one that shows up first. And so you want
23 them to have the resource that they need to
24 protect the people. The people that work in the
25 plant are going to be the most affected, so I

1 would think the company would be very interested
2 in doing that.

3 And you talked about the money, and I
4 really am one of the people that's in favor of
5 having the money over a longer period of time,
6 because the technology changes and things improve.
7 The plant can become more efficient. The things
8 that we do to mitigate can become more powerful,
9 and so I think you leverage a lot rather than try
10 to pay in some big large lump sum and say this is
11 just the price of doing business and we just want
12 to get on with it.

13 I think it really works out better as
14 the process goes along if we say, you know, we're
15 going to have to work harder to clean the air, or
16 we're gaining on it and the air is getting better
17 and there are fewer of these bad air days. What a
18 wonderful situation to be able to report in the
19 future.

20 So I want to thank you very much for
21 this opportunity to speak, and I appreciate your
22 consideration.

23 PRESIDING COMMITTEE MEMBER GEESMAN: I
24 want to thank you for your comments. Let me say a
25 couple of things in response to them. I believe

1 at our last hearings last week that we made
2 substantial progress with the City's fire chief
3 and the Alameda County fire chief so that I think
4 we'll be able to resolve the fire question to,
5 I'm hopeful, to most people's satisfaction. And I
6 was impressed by the progress that we made.

7 As it relates to the San Joaquin Valley
8 Air Pollution Control District, I do want to just
9 register a slightly different view than what you
10 expressed. I happen to be quite taken with the
11 seasonal analysis, and I am inclined to think that
12 that is a preferable way to look at these
13 problems, but it doesn't imply a lack of
14 sophistication or an inferior approach on the part
15 of the District.

16 The District is driven by a particular
17 regulatory and statutory regime that is different
18 than ours, and it's one of those gulfs that
19 ultimately our decision has to bridge. We're
20 required to mitigate adverse impacts under CEQA,
21 and our staff tends to take a health-based
22 approach. The District has a more regulatory
23 focus under local laws, ordinances, regulations
24 and standards.

25 So we need to rectify that difference,

1 but I don't think that it should be interpreted as
2 reflecting a view that the District's approach is
3 less sophisticated. The Commission has placed a
4 lot of faith in the credibility of the District in
5 carrying out certain local air pollution control
6 programs, and I think you saw that in our decision
7 on East Altamonte.

8 I am a little frustrated that the Staff
9 numbers do not reflect the \$600,000 offer that the
10 Applicant has made to the City to establish such
11 programs, and I'm hopeful that before we actually
12 issue a decision we're able to merge both the
13 money that is embodied in the agreement with the
14 District along with that which has been offered to
15 the City in such a way that Staff is satisfied
16 that all of the adverse impacts on a seasonal
17 basis have, in fact, been mitigated.

18 I'm sitting here trying to add numbers,
19 and I don't think the difference in actual dollars
20 is all that significant. I'm hoping that the
21 parties will disabuse me of that in their briefs
22 if I'm wrong on it, and I'm sure they will if I am
23 wrong. But I really would not impute an inferior
24 sophistication to one party or a superior
25 sophistication to the other's. It's just

1 different.

2 MR. HOFFMAN: Thank you so much, and let
3 me clarify that. Certainly, if it sounded like I
4 was trying to discredit them in any way, I please
5 apologize. I was really more concerned with the
6 process that we've used historically to get us
7 here and based on some comments that I heard, that
8 they were only monitoring during a certain period
9 of time, and I thought -- and that they weren't
10 monitoring I think the PM 10 or 2 point, some of
11 those numbers.

12 And should they be able to do that, as
13 part of your Commission said, well, we want to
14 improve our mitigation efforts or we want to
15 improve our air quality efforts, you would want to
16 improve the reporting and the technology and
17 whatever it is you could learn about it to have
18 that as sophisticated as possible. That makes all
19 the other decisions that you make in the process
20 better.

21 And so that was really my goal in
22 bringing that up, so I apologize if that came
23 across as, well, they're not doing well. Because
24 when you do some of these things, you find out
25 sometimes you get two choices. One was lousy and

1 one was really lousy, so if you say you did a
2 lousy job that actually means you did the best you
3 could possibly do.

4 So I apologize about that.

5 PRESIDING COMMITTEE MEMBER GEESMAN:

6 Well, I thank you for your comments. I think
7 you're very helpful.

8 HEARING OFFICER GEFTER: Thank you.

9 Carole Dominguez, please.

10 MS. DOMINGUEZ: Good evening, everyone.

11 My name is Carole Dominguez, 2350 South MacArthur,
12 Tracy. I'd like to thank Councilman Hoffman
13 publicly for coming to the hearing.

14 I would like the Commission to please
15 help me understand whether public testimony is
16 taken seriously by the Commission, and whether or
17 not, as a result of public testimony, the
18 Commission should consider further study and
19 review of the issues at hand.

20 After you leave this building and our
21 city today, you will move forward with other
22 pursuits, but your decisions will continue to
23 impact the children and citizens of Tracy for many
24 years to come. I ask you to consider that this
25 community requires your protection at this moment

1 in time.

2 I'm deeply concerned that Mr. Greenberg,
3 the public health and safety expert for the Tesla
4 Power Plant Project, is testifying as a witness in
5 the hearings.

6 HEARING OFFICER GEFTER: I'm sorry,
7 Dr. Greenberg is a Staff witness for the Energy
8 Commission.

9 MS. DOMINGUEZ: Staff witness?

10 Last year, on March 8th, 2002, I went to
11 the evidentiary hearings for the GWF Tracy Peaker
12 Plant and testified during public comment. My
13 comments are recorded and certified in docket
14 number 01-AFC16 of the CEC hearings. My comments
15 are evidence that I notified you and Mr. Greenberg
16 at a prior hearing that the City of Tracy was
17 planning to develop a youth sports park adjacent
18 to the Tracy Peaker Plant, Owens Illinois Glass
19 Plant and GWF Biomass Plant.

20 After my testimony, Mr. Robert Klein
21 from one of the trade unions testified that he did
22 not believe that the City of Tracy would do
23 something so harmful to its children as locate
24 their playing fields next to the industrial
25 plants.

1 After Mr. Klein's testimony, Intervenor
2 Irene Sundberg testified that the City of Tracy
3 was indeed proceeding with the youth sports park,
4 and that she would be happy to supply information
5 to the Commission upon request.

6 To my knowledge, Mr. Greenberg has never
7 analyzed the cumulative impact or health risk to
8 the plants, of the plants to our children that
9 will be playing soccer and baseball in the near
10 vicinity. Now we have Mr. Greenberg testifying
11 about the health impacts of the Tesla Power Plant,
12 and I'm wondering how the Commission and the Tracy
13 community can have any faith in the testimony when
14 he has ignored the public health and safety issue
15 relative to the plants and the sports park.

16 Mr. Greenberg did not recommend any fire
17 protection or emergency services mitigation for
18 the Tracy Peaker Plant Project, and he knew our
19 children would be next to a potential disaster.
20 On July 18th, 2003 the peaker plant had a
21 malfunction of its pollution control equipment,
22 exceeded its permit conditions by 100 percent.
23 The Owens Illinois glass plant has had a furnace
24 explosion and fire in the past year.

25 Mr. Greenberg is asking us to believe

1 that this is a safe place for our children to
2 play. This sports facility will be nestled in the
3 axis of evil, comprised of the Tracy Peaker Plant,
4 East Altamonte, and Tesla Power Plant.

5 The pollution control experts I have
6 contacted from San Joaquin Valley Air Pollution
7 Control District have told me that, off the
8 record, it is not a safe location for the
9 children, and that they would not let their own
10 children play there.

11 Mr. Greenberg was fully aware that our
12 city had plans to place a youth sports park next
13 to the Tracy Peaker Plant, yet he remained silent
14 on the health and safety issues related to this
15 proposal and the siting of the peaker plant. He
16 even designed an ammonia transportation route next
17 to the soccer fields without providing any
18 mitigation for emergency services.

19 Florida Power and Light has already
20 demonstrated with their POSDEF facility in
21 Stockton that they cannot only -- that not only
22 can they not meet their permit conditions, they
23 cannot comply with Title V annual reporting
24 requirements.

25 Is the Commission asking the citizens of

1 Tracy to trust Florida Power and Light and
2 Mr. Greenberg with our children's health and
3 safety? This Applicant has already gone on record
4 at last week's hearings as supporting the
5 project's water supplies ahead of the health and
6 safety of the citizens of Tracy.

7 Again, I would like to remind the
8 Commission that our community needs your
9 protection. I have brought what I just read to
10 you, I brought my testimony from last year at the
11 GWF hearings, Mr. Klein's testimony and
12 Ms. Sundberg's testimony.

13 I also have maps of the three projects
14 and I don't know if you have a large map here
15 tonight, you did at the preliminary hearing, but I
16 think if you take the maps and look at where each
17 facility is located, you will understand what I
18 mean by "axis of evil." Tracy is overburdened
19 with these power plants, and we're going to have
20 our children on soccer and baseball fields right
21 there.

22 It's difficult to understand because
23 there is nothing on record that says that that
24 might be a danger to our children, and so our city
25 council is moving forward with this plan,

1 comfortable with the fact that it is not in the
2 public record that any cumulative study has been
3 done or any sort of analysis of what we need to
4 protect them. Thank you.

5 HEARING OFFICER GEFTER: And Celeste
6 Garamendi?

7 MS. GARAMENDI: Good evening, and thank
8 you to the Commission for this opportunity to
9 provide comments on the proposed Tesla Power
10 Plant.

11 My name is Celeste Garamendi. I live in
12 Tracy, and I'm a resident involved in growth and
13 development issues within the city and our region.
14 I am not an expert in air quality or on power
15 plants, but we certainly understand the impacts of
16 development on our community, having experienced
17 them firsthand to a degrading degree over the last
18 10 to 20 years.

19 I'm speaking on behalf of TRAQC, Tracy
20 Regional Alliance for a Quality Community, which
21 is a community-based volunteer alliance of Tracy-
22 area residents who are working together for our
23 community.

24 (Thereupon, the tapes were changed with
25 no interruption in the proceeding.)

1 MS. GARAMENDI: Last Thursday Carole
2 Dominguez presented comments regarding water and
3 mitigation to the Commission. I would like to
4 elaborate on those comments.

5 First, on the tertiary and potable water
6 transfer proposed by City of Tracy staff, we want
7 to reiterate that the Tracy City Council has not
8 had any public review or approval of the proposal
9 set forth by staff. We presented these concerns
10 to the Tracy City Council at its meeting this last
11 Tuesday, and there was no response and no action
12 taken by the council at that time.

13 I certainly am pleased to see that
14 Councilman Hoffman was here, but the fact remains
15 that the proposal has not been approved by the
16 County, or by the city council as presented by
17 staff.

18 Nearly a year ago, with little
19 information or details provided beyond a concept,
20 the city did approve pursuing a plan to provide
21 its tertiary water and four to six months of
22 potable water to the power plant, but the proposal
23 given by city staff to the Commission is far
24 different, as you know, as are the circumstances
25 in which we find our community.

1 As you may know, the availability of
2 potable water and water quality has been a serious
3 issue for our community, indeed for many areas of
4 the state for several years as residential sprawl
5 has overtaken our areas.

6 In our case, the problem has been
7 brewing for about ten years as our city approved
8 thousands of new homes without adequate water
9 supplies. Facing lawsuits from residential
10 developers, the city has had to scramble to find
11 water. To meet demands for an excessive and ill-
12 conceived residential growth, the city has raised
13 residential water fees, raised residential
14 wastewater fees, significantly drawn down on city
15 wells, depleting our water table, and is still in
16 litigation over the purchase of water from two
17 local irrigation districts.

18 In addition to the purchases of water
19 from irrigation districts to try to supplement the
20 depleting supply of water, the city has embarked
21 on a project to transfer water from the Stanislaus
22 water shed at a cost of over 50 million dollars.
23 The City of Tracy, as a result of one lawsuit, had
24 to produce a periodic water inventory report,
25 which in July showed that the city does not have

1 any excess potable water and, in fact, has a
2 shortage of water in drought years.

3 The city council has told the community
4 that any surplus in potable water will be used to
5 recharge the groundwater aquifer and establish a
6 groundwater banking system for drought years.

7 For the city staff to now say that the
8 city will supply potable water at no cost to the
9 power plant for a period of one year or more is
10 not correct, let alone a breach of its public
11 trust with the citizens who have bought and paid
12 for this valuable and scarce resource.

13 In addition to our local issues, it is
14 not sound public policy on a broader level for the
15 Commission to allow potable water to be used for
16 such power plant purposes, especially in a region
17 such as ours where we have intense competing needs
18 for our limited supplies of quality water.

19 You are aware of the battles for limited
20 water among agricultural, environmental needs and
21 urban users. There is no need and we should not
22 add power plants into that charged mix when there
23 are readily available alternative methods to
24 support power plant operations.

25 Second, there is the assumption based on

1 the proposal presented by a city staff that all
2 costs of the transfer of the tertiary and potable
3 water, including the indemnification to the power
4 plant for unmet water needs will be borne by the
5 City of Tracy. Again, while the city did approve
6 pursuing a plan to provide tertiary water in a
7 limited supply of potable water, there was little
8 discussion about the details of the plans, the
9 cost of the project, or how the deal would be
10 structured.

11 The provision of tertiary water to the
12 plant is a possible wastewater solution that
13 certainly is worth considering and we're aware
14 that it has been used in other areas. But in this
15 case, the city is in such a desperate situation to
16 get rid of its tertiary water that it is willing
17 to promise anything to the power plant. It is
18 simply not good public policy to do less than a
19 thorough review and assessment of this aspect of
20 the proposal in an effort to slide this through
21 unnoticed.

22 Third, the city staff have identified,
23 as part of their proposal, a significant increase
24 in tertiary water between now and 2007 that in
25 theory will eliminate the need for the temporary

1 potable water supply identified.

2 This increase in tertiary water,
3 however, appears to conflict with the actual
4 growth that will be allowed under Measure A, and
5 let me explain a bit about Measure A, as I suppose
6 you may have heard that term.

7 In November of 2000 the voters of Tracy
8 passed a voter initiative sponsored by TRAQC
9 called Measure A. Measure A cuts the residential
10 growth rate in half. This initiative was
11 sponsored by our group and was pursued because the
12 City Council ignored residents' concerns about the
13 negative impacts of excessively rapid residential
14 growth.

15 The election results have been certified
16 and accepted by the council, implementing
17 guidelines have been adopted by the council. The
18 courts have found Measure A to be legally valid,
19 and Measure A limits are set to go into effect
20 next year. Measure A is the law of the land in
21 Tracy, and if you should need any documentation
22 regarding the measure, its impacts or the courts'
23 rulings, I would be glad to give that to you.

24 Given Measure A and the city's history
25 of playing shell games with water supply numbers

1 in order to allow approval of more and more
2 projects, we would like and we have asked for
3 specific clarification on the tertiary water
4 proposed to be shipped to the plant relative to
5 current users and current production per user, and
6 the associated amount projected for 2007 and
7 beyond.

8 Clarification is important, not just for
9 the residents of Tracy, but it is also important
10 for the Commission and the power plant to confirm
11 the amount of tertiary water that will
12 legitimately be available.

13 Fourth, the City of Tracy to date has
14 unfortunately done little to identify or demand
15 adequate mitigation from Florida Power and Light
16 for the negative impacts of the plant. Again, I
17 certainly am glad to see that Council Hoffman was
18 here this evening, but there are many details and
19 certainly review and analysis that should have
20 been presented on behalf of the residents of this
21 community that was not.

22 There are real air quality fire
23 protection and health and safety issues on which
24 our city as our agent has been largely silent.
25 Just because the city is willing to trade

1 responsible action on mitigation for power plant
2 operation, in the hopes it can dump its sewage on
3 the plant and take care of its own wastewater
4 problems does not change the fact that there are
5 these negative impacts and that there should be
6 equitable mitigation. It's a betrayal of the
7 community by government at any level to require
8 anything less.

9 Tracy residents will ultimately pay. We
10 currently are paying with higher fees for the
11 development of wastewater, higher fees for the
12 construction of new water sources, and we will now
13 have additional costs to pay for the transfer of
14 our tertiary water, for the transfer of potable
15 water, for the indemnification of those waters,
16 and we get the pleasure of accepting the air
17 pollution, the health risks, and cover the fire
18 protection costs.

19 I don't think that's quite the deal that
20 we all had envisioned to be appropriate, and we're
21 certain that the Commission can see that such an
22 action would be wrong and inequitable.

23 Even if the city does not act in the
24 interests of its residents, which is indeed
25 unfortunate, the Commission must carefully

1 consider the direct request of Tracy residents.
2 The fact remains that many elements of the
3 proposal presented by the city staff had not been
4 publicly reviewed and approved. Some of them are
5 not good policy for the residents of Tracy or
6 sound policy for the state in general, even if
7 they have been approved.

8 Because the community has not been given
9 due process by our city council to examine and
10 comment on the transfer of potable water to the
11 project and the costs associated with that
12 transfer let alone mitigation that they are
13 requiring from the plant, we are coming to the
14 Commission.

15 We ask that the Commission not act
16 hastily upon premature proposals that have been
17 presented by the city. Therefore, on behalf of
18 TRAQC, residents that help residents, we are
19 calling on the Commission to help us and to take
20 three steps:

21 First, we ask the Commission to
22 recognize that the City of Tracy officials' sole
23 interest is to transfer its tertiary water to the
24 Tesla Power Plant to solve its sewage treatment
25 problem, and that the negative impacts of the

1 plant on Tracy residents are not being addressed
2 by city officials. We, therefore, have to rely
3 upon your sound study and your sound consideration
4 of our concerns to ensure that the issues that we
5 are raising are being addressed.

6 While we agree that that is a city
7 obligation, we also have to recognize that the
8 Commission has an independent obligation to serve
9 the public and address the negative impacts. And
10 we ask the Commission as the board of equity,
11 independent of the developer interests that
12 control our local government, to address our
13 concerns.

14 Secondly, we ask the Commission to not
15 approve any proposal that would use potable water
16 from Tracy for the power plant. The City Council
17 has not had the public review and approval for the
18 proposal presented by the city staff to the
19 Commission. Further, the use of scarce and
20 valuable potable water for such power plant uses
21 is not wise policy, in and of itself, especially
22 when alternatives are available.

23 Thirdly, we ask the Commission to
24 carefully consider the need for adequate air
25 quality and fire protection mitigation. What

1 occurred at the previous hearing with the City of
2 Tracy's apparent acceptance of a certain amount of
3 fire mitigation was not adequate, and we would
4 hope that that would be reconsidered as we
5 continue through this process.

6 In addition to the fire protection
7 mitigation, there obviously is the air quality
8 mitigation as well as questions raised about the
9 appropriateness of the wet cooling with tertiary
10 water versus dry cooling. Again, we recognize
11 that the use of tertiary water may be an
12 appropriate solution, but it needs to be carefully
13 considered and addressed and not simply adopted
14 because it appears that the local government is in
15 support of it. Again, we've explained the
16 motivation of the local government.

17 It must be remembered that this plant is
18 not and should not be evaluated in a vacuum. As
19 pointed out, this is now one of three power plants
20 directly in our community that will operate in
21 West Tracy, all of them upwind of the population
22 centers. The cumulative impacts must be
23 considered, especially given that our area now
24 regretfully has the second-worst air quality in
25 the state.

1 Again, there is a lot of discussion
2 about the technical details of the actual
3 pollution, whether it's seasonal, what components.
4 But we all know the simple fact is that the air
5 quality within this region is beyond poor, being
6 one of the worst within the nation. We certainly
7 don't want the Commission to get lost in those
8 details in assessing that and in ensuring that
9 there is adequate mitigation for our community.

10 Therefore, we ask the Commission not to
11 approve the tertiary water use for cooling until
12 there has been a thorough review and assessment of
13 the issues that have been raised, and that needs
14 to include the review of the actual supply of
15 tertiary water that is presently generated and is
16 projected to be generated within the city.

17 And finally, we reiterate the request
18 that the Commission form a citizens committee
19 comprised of Tracy residents who have previously
20 identified concerns over the negative impacts of
21 the power plant to work with the Commissioners,
22 the staff, and Florida Power and Light to
23 establish a viable and adequate mitigation plan
24 for our community. Thank you very much.

25 PRESIDING COMMITTEE MEMBER GEESMAN:

1 Thank you.

2 HEARING OFFICER GEFTER: Thank you.

3 I understand that Ann Mooney needs to
4 leave, so if you would like to come forward and
5 give us your comments.

6 MS. MOONEY: I would really appreciate
7 that. After a long day I have a 4-1/2-year-old
8 waiting for dinner.

9 HEARING OFFICER GEFTER: Identify
10 yourself for us, please.

11 MS. MOONEY: I'm Ann Mooney. I'm the
12 president of the Tracy Educators Association,
13 which is the teachers union here in town and I
14 represent 820 people. But I'm here tonight
15 speaking as a parent and as someone who has daily
16 interaction with Tracy's most valuable natural
17 resource, our children.

18 This project concerns me because it
19 seems that it will add yet another layer of
20 environmental hazard to our children's ecosystem
21 to the town that they live in. In addition, it
22 opens the spigot of precious drinking water to a
23 project that will not necessarily aid our
24 residents in the manner that I see that they need
25 to be aided.

1 Indeed, the greenbelt between Tracy --
2 We call it a greenbelt at this stage of the
3 year -- between Tracy and Livermore in Contra
4 Costa County is becoming a repository of risk to
5 our health here in Tracy. We already have bad air
6 here.

7 Site 300 is a concern to us. The lab's
8 new role in antiterrorism and ongoing role in
9 weapons research is a worry. We do not need yet
10 another power plant to add to our list of concerns
11 about daily life and the risks to it here in
12 Tracy.

13 Focus on conservation. Do not allow
14 this project. Do not compromise our health or our
15 water, and consider our children. Thank you.

16 HEARING OFFICER GEFTER: Thank you very
17 much.

18 Off the record.

19 (Brief recess.)

20 HEARING OFFICER GEFTER: I'm going to
21 ask, there are several members of labor
22 organizations here. Wayne Livingston, Doyle
23 Williams, and Debbie Libhart, why don't you all
24 three come forward and sit at the table here, and
25 introduce yourselves individually and tell us who

1 you represent.

2 MR. WILLIAMS: Good evening. My name is
3 Doyle Williams. I'm a Tracy resident for seven
4 years now. I represent IBEW, the International
5 Brotherhood of Electrical Workers, Local 595.

6 MR. LIVINGSTON: Wayne Livingston. I'm
7 a union representative for IBEW, Local 595. I'm
8 also a resident of Manteca and also involved with
9 these power plants when they are under
10 construction.

11 I want to point out also that Doyle was
12 on the peaker plant. He was actually our job
13 steward on the plant, and I'll let Debbie do her
14 own thing.

15 MS. LIBHART: Oh, go ahead.

16 HEARING OFFICER GEFTER: Introduce
17 yourself, please.

18 MS. LIBHART: I'm Debbie Libhart. I'm a
19 union ironworker. And I also worked at the Tracy
20 Peaker Power Plant. I live in Ripon and I'm in
21 favor.

22 HEARING OFFICER GEFTER: Okay. Who
23 wants to -- Do you want to make the comments?

24 MR. LIVINGSTON: Yes, just the comments,
25 that we are in favor, but our hats are off to the

1 intervenors for making it safe. You know, just
2 like Doyle was saying, this is his first and I've
3 been to all of them -- I mean, all except a few of
4 these Florida Power and Light -- but they want it
5 safe, our workers want it safe.

6 But yet, we feel that we've got to keep
7 building them, because where they're at is just
8 like our cars are getting more refined, where
9 you're putting less energy in and getting more
10 energy out. And the old power plants took a lot
11 of energy in to produce what they did.

12 So, you know, to stop the process, to
13 stop the thing, then we have antiquated equipment,
14 antiquated air quality, antiquated everything. So
15 actually, that's where basically labor is. They
16 spoke earlier today, actually my boss spoke
17 earlier today, but we've been doing -- I've been
18 in this thing for, like, 40 years and done these
19 plants for a long time, and each one is new.

20 And our hats are off again. These
21 people worked out there, this peaker. First time
22 in my life we ever had a paved road going in, so
23 now I understand from Mr. Sarvey what PM 10s were,
24 you know, and I thanked him for that, because
25 we've never had a paved road going in when the

1 thing is brand new.

2 Anyway, thanks very much in hearing from
3 us tonight.

4 Anything?

5 MR. WILLIAMS: I just want to say thank
6 you again to the Commission. I've lived here in
7 Tracy for about seven years. I've talked to
8 Mr. Sarvey about the peaker plant, which I was
9 employed there for a while, and I saw the quality
10 that went into these projects firsthand. You
11 know, something that people from the outside don't
12 really see, they just see a huge monstrosity of a
13 project and think, oh, it's a lot of this, a lot
14 of that.

15 But I saw the quality and the diligence
16 that went into building something like this. And,
17 yo know, I'm not an expert, but from what I'm
18 told, what goes in comes out cleaner, and that's
19 something that we strive for, like I said, with
20 our quality. And, of course, I want my family
21 safe. I have a 4-year-old and a 12-month-old, and
22 I want my family safe, whether or not we have a
23 plant or not, that's my number-one priority.

24 I came here tonight just hoping that
25 this would go through, I'd have work, we'd have

1 things, but leaving here now, something I'm going
2 to take more pride in is coming to these meetings
3 is that, you know, my family does come first and
4 their safety does come first.

5 So please, I plead to you, if we approve
6 this plant, please make sure that its safety is of
7 utmost importance. Thank you.

8 MS. LIBHART: Just thank you as well.

9 PRESIDING COMMITTEE MEMBER GEESMAN:
10 Thank you for your comments.

11 MR. WILLIAMS: Thank you.

12 PRESIDING COMMITTEE MEMBER GEESMAN: I
13 can assure you that it's not going to go forward
14 unless it's safe and unless it's clean. I'm
15 confident that we can make it both. And our
16 process is dedicated to developing a very
17 extensive evidentiary record. The Intervenors and
18 the community input are extremely important in
19 contributing to that.

20 And then we need to determine if we've
21 established compliance with all of the applicable
22 laws and regulatory standards. So we've got a
23 large task ahead of us, but I think that
24 ultimately the result will be satisfying to most
25 people.

1 MS. LIBHART: Thank you.

2 MR. WILLIAMS: Thank you.

3 MR. LIVINGSTON: Thank you.

4 HEARING OFFICER GEFTER: Thank you for
5 being here.

6 Paula Buenavista, I have a card from you
7 as well that you want to address us.

8 MS. BUENAVISTA: Yes. Thank you,
9 Commission. I will try to keep it brief. My name
10 is Paula Buenavista. I'm a resident of Tracy and
11 I also currently serve as the vice-chair of the
12 GWF Tracy Peaker Power Plant Oversight Committee.

13 And I just would like this evening to
14 express concern over the one-million-dollar
15 mitigation agreement with the San Joaquin Valley
16 Air Pollution Control District. I understand that
17 the one million dollars is to offset the 63.9 tons
18 of pollution.

19 The San Joaquin Valley Air Pollution
20 Control District will place their one million
21 dollars into incentive programs. This means that
22 whoever participates, whether it be farmers,
23 citizens, or local business owners, will have
24 to -- what we have learned now as I've been on the
25 committee -- will have to buy into their incentive

1 programs, meaning that the business owner, farmer
2 or citizen will have to match the funding of, say,
3 a particular incentive program. This scenario has
4 occurred with the GWF Power Oversight Committee
5 bus retrofit program as well as our local
6 lawnmower exchange program.

7 I did listen carefully today to the
8 calculation that was used to arrive at the one
9 million dollars for the I believe it's
10 approximately a 40-year project. The small dollar
11 amount of one million concerns me, due to the
12 committee that I'm actually currently
13 participating in.

14 In looking carefully at the experiences
15 that I've had, working on the GWF Oversight
16 Committee, we've spent almost an entire \$600,000
17 and our committee has only been working, it will
18 be a year this October. And I do have the budget
19 and expenditures with me, and there is a portion
20 of that that is pending certification or pending
21 applications are out there, and we could possibly
22 get grant funding for some of it, which would free
23 up maybe a portion of it.

24 The exact dollar figure at the moment
25 for expenses, some are actual and some are

1 pending, would be \$592,595.28. Now, of course, if
2 there is some of that that is pending that gets
3 matching funding, we could have maybe, say, an
4 extra 2-400,000 which we could spend.

5 However, I guess the point I'm trying to
6 make is that \$600,000 with a lot of due diligence
7 and people working very hard on projects can
8 actually be spent quite quickly.

9 Conservatively speaking, maybe one
10 million dollars might be stretched through, say,
11 for example, a seven-year period; however, I'm
12 concerned about the approximate other 33 years of
13 operation of this particular power plant. It
14 would seem to me that Florida Power and Light
15 would be required to contribute a larger sum of
16 mitigation for the other approximate 33 years of
17 their project.

18 The citizens, business owners and
19 farmers who would be potentially participating in
20 these programs would actually end up contributing
21 monetarily on behalf of FPL, considering the buy-
22 in to these programs. The one-million-dollar
23 mitigation realistically looks like it probably
24 should be more between five and six million. This
25 is actually a conservative number, considering

1 GWF's committee spending that I've just explained
2 here, as well as the 13.1 million dollars that the
3 CEC staff recommended during the East Altamonte
4 Energy Center hearings.

5 The additional funding could easily be
6 given to the San Joaquin Valley Air Pollution
7 Control District for implementing many other
8 beneficial programs without a great expense to the
9 participants in the programs of the Air District.

10 I just simply ask that the CEC staff and
11 Commissioners look closely at the current
12 mitigation in place, and evaluate the
13 opportunities for further mitigation that will
14 benefit the air quality in this region. Thank
15 you.

16 HEARING OFFICER GEFTER: Thank you for
17 coming this evening.

18 Eric Parfrey?

19 MR. PARFREY: Good evening,
20 Commissioners, Staff, and everyone else. My name
21 is Eric Parfrey. I'm a professional city planner.
22 I live in Stockton. I am also active in the
23 Sierra Club. I am actually chair of the
24 Motherlode chapter of the Sierra Club, which has
25 20,000 members in 24 counties in Northern

1 California.

2 As my written text indicates, I am not
3 here on behalf of the Sierra Club. The Sierra
4 Club has not taken a position on this individual
5 application. We have not asked to take a
6 position; however, I have been watching
7 developments in Tracy for some years and we are
8 concerned about the cumulative impacts of power
9 plants.

10 I am here to really support the previous
11 comments of Celeste Garamendi, who testified just
12 a couple of minutes ago, specifically regarding
13 the narrow issue of whether the City of Tracy has
14 potable water to send up the hill to this power
15 plant. And I think when we look at the evidence,
16 the answer is a resounding no.

17 I am not going to read this entire
18 testimony, but I wanted to enter it into the
19 record. Celeste did a very good job of indicating
20 how the City of Tracy has done a poor planning job
21 related to securing adequate surface water
22 supplies for the immense amount of suburban
23 development that is occurring here prior to
24 approving that development.

25 The concern here, obviously, is that the

1 city's commitment to send potable water up to this
2 power plant in the year 2004 and 2005 is a very,
3 very shaky proposition, and we would like the
4 Commission to be aware that the city may not be
5 believable when they make this commitment.

6 The most recent water inventory report
7 that Celeste did refer to is dated July 15th of
8 this year as adopted by the City Council, and it
9 really has all the numbers that you need to come
10 to your own separate independent conclusion as to
11 whether there is an adequate potable water supply
12 in the year 2004 and 2005 and an extra 5,000
13 acrefeet to send to this power plant.

14 Basically, the problem is that the city
15 has a maximum water supply during wet years of
16 19,000 acrefeet. Ten thousand acrefeet come from
17 the Bureau, from the Delta, surface water supply,
18 and 9,000 feet are pumped out of the ground, and
19 that is the maximum safe yield.

20 I'm reading now the fifth paragraph on
21 the first page of my testimony, as a direct quote
22 from the water inventory report, "The City has
23 already approved development which creates a
24 demand for approximately 22,756 acrefeet
25 annually." So the city has already approved

1 development 20 percent beyond what their existing
2 supplies are during a good year, during a wet-
3 weather year.

4 In my written testimony I provide tables
5 which are simply a summarization of the same
6 tables from the water inventory report. It shows
7 water supply, it shows the existing water demand
8 for existing users. But the key table I think
9 here is really table three in the testimony, which
10 shows the future water demand for those projects
11 that have already been approved by the City
12 Council and which could be built out in the short
13 term and which the city already has a legal
14 obligation to provide water for.

15 Table three indicates that so-called
16 ECUs or equivalent consumer units have been
17 awarded that amount to about 3322 acrefeet per
18 year. There is other "anticipated" development
19 which amounts to another 4234 acrefeet per year.
20 This is development that doesn't have so-called
21 ECUs, but which has some sort of an approval by
22 the city. So these are development projects,
23 whether housing units or commercial or industrial
24 square footage which will eventually get built.

25 And the total is, as I said, almost

1 23,000 acrefeet per year. The problem here is the
2 city is playing a gambling game. The city has two
3 sources of future water supply that they wish to
4 augment their existing supplies of 19,000 acrefeet
5 with. The main water supply is from the
6 Stanislaus River. It's the so-called South County
7 Surface Water Supply Project, and that is supposed
8 to get here, by the city's own admission, sometime
9 in the year 2005. That's 10,000 acrefeet of
10 reliable water. That's got good reliability.

11 The other 10,000 acrefeet the city is
12 negotiating to bring in are two separate water
13 transfers from the Banta-Carbona Irrigation
14 District and the Westside Irrigation District,
15 5,000 acrefeet each, Bureau water which would come
16 into the city but would come in with this "ag
17 reliability" restriction attached to it, and that
18 is the problem.

19 The ag reliability restriction means
20 that during drought years that water supply could
21 be cut back as much as 90 percent just as farmers
22 who receive CVP water from the Bureau are cut back
23 during drought years. There is no guarantee by
24 the Bureau for that 10,000 acrefeet that just
25 because it's being used for urban development, it

1 would not be cut back the same way it is for ag.

2 The 10,000 acrefeet from the two
3 irrigation districts the city claims could start
4 arriving in the city by the end of this year, that
5 is not a factual statement. In fact, Sierra Club
6 has sued over those environmental documents that
7 were certified by the irrigation districts under
8 the California Environmental Quality Act.

9 The U.S. Bureau attorneys have indicated
10 that they will probably wait until the appeal
11 process is over before that water transfer is
12 approved by the federal officials, so there is no
13 indication that that 10,000 acrefeet will appear
14 in Tracy when people turn their taps on by the end
15 of 2003.

16 So the bottom line here really is that
17 you should ask the City of Tracy very, very
18 careful questions as to their ability to commit up
19 to 5,000 acrefeet per year of potable water to
20 this Tesla Power Plant in the short term, in the
21 intervening years before the tertiary treatment
22 plant comes on line.

23 Steve Bayley, the assistant city public
24 works director, in his testimony I believe said
25 the city's tertiary treatment plan is supposed to

1 come on line best case January of 2005, so the
2 problem exists in the year 2004 and there is a
3 serious, serious issue here as to whether, if the
4 city makes this commitment to send 5,000 acrefeet
5 of potable water up the hill, whether they will be
6 starving existing residents and existing
7 businesses, especially if we enter into a drought
8 year next year, which no one knows if it will
9 occur or not.

10 So I gave you the numbers there and I
11 hope you can use them as you will. Thank you.

12 Yes, sir?

13 PRESIDING COMMITTEE MEMBER GEESMAN: Is
14 the problem lessened or perhaps even eliminated if
15 the plant is not on line in 2004?

16 MR. PARFREY: Perhaps; however --

17 PRESIDING COMMITTEE MEMBER GEESMAN:
18 There is not a cooling water need until the plant
19 is actually on line.

20 MR. PARFREY: The problem is that the
21 tertiary treatment plant upgrade is a very, very
22 large capital project. It may very well be
23 delayed a year.

24 PRESIDING COMMITTEE MEMBER GEESMAN:
25 Okay.

1 MR. PARFREY: So that may come on
2 January 2006.

3 PRESIDING COMMITTEE MEMBER GEESMAN:
4 Okay.

5 MR. PARFREY: The additional problem,
6 which I didn't indicate in my oral comments but is
7 in here in my written testimony, is that if the
8 SSJID water, if the Stanislaus River water, that
9 10,000 acrefeet of reliable water, surface water
10 supplies actually arrives in Tracy in 2005, it's
11 already been committed to projects that have
12 already been approved by the Tracy Council.

13 So any way you slice the pie up, there
14 isn't an extra 5,000 acrefeet of potable water.
15 And I agree entirely with Celeste's comments here
16 that it is really shocking and irresponsible that
17 the City Council is making this commitment that
18 they cannot keep, especially if we enter into a
19 drought year next year. The 5,000 acrefeet are
20 simply not there.

21 PRESIDING COMMITTEE MEMBER GEESMAN:
22 Thank you.

23 MR. PARFREY: Thanks.

24 HEARING OFFICER GEFTER: Thank you.

25 Mr. and Mrs. Sundberg, did you want to

1 comment?

2 MRS. SUNDBERG: Separately.

3 HEARING OFFICER GEFTER: If you both
4 could please come forward.

5 MR. SUNDBERG: Paul Sundberg, 451
6 Hickory Avenue. My comments and concerns have
7 basically already been covered.

8 With the lack of water, especially for
9 new housing starts, being a statewide issue, at a
10 deficit of over 100,000 units each year being
11 short, I think that we need to use our potable
12 water for those housing starts and use technology
13 that is available for power plants, such as dry
14 cooling. That's the length of my topic.

15 MRS. SUNDBERG: Irene Sundberg. I
16 appreciate being able to speak again, as I thought
17 I had child care problems today and those were
18 worked out, thank God.

19 I appreciate you being here so that we
20 can discuss this matter. As has been said before,
21 the water problem is a great issue to us. But I'd
22 like to touch on something that was talked about
23 earlier, and that was about the shrew at Buena
24 Vista.

25 I am concerned about that. I have

1 property in Kern County, and I know how important
2 it is to the Kern County residents that their
3 water stay within their county. They've worked
4 very, very hard to do their water, the different
5 projects they have going, from redepositing the
6 water into the ground and figuring out if that
7 works, and we here have been copying them to a
8 large degree. We have not been successful as of
9 yet with it, for various reasons.

10 I am really concerned since Fish and
11 Game said today that the terms and conditions of
12 the ESA, as far as she is concerned, were not
13 adequate at this point and they would be out of
14 compliance at this time.

15 So taking water from Kern County I feel
16 is a mistake also. Because I know that those
17 farmers need that water. When it's a drought
18 year, they're going to be begging for every drop
19 they can get, and that was the initial reason they
20 started their ponds.

21 My next thing I wanted to talk about was
22 health. There are -- We can't assume or make
23 assumptions that Florida Power and Light is going
24 to protect us. As was said earlier at the TPP
25 hearings, I discussed with Dr. Greenberg the fact

1 that our children would be going to the antennae
2 farm to play. He was well aware of what is going
3 on in Tracy and chose not to deliver that
4 information to the Commission. And I find that
5 that is totally appalling. Our health and welfare
6 of our children is number one. They're for all of
7 us.

8 I am very concerned about the fact that
9 our water has come to this point, that we're going
10 to have tertiary water that our City Council has
11 chosen to give away without having a public
12 hearing to discuss it with the public. How dare
13 they give our tertiary water away, and how dare
14 they think that our potable water isn't of value
15 to us? It's what makes us work. It makes each
16 one of us live every day, and we need to take that
17 into consideration.

18 For years, the City of Tracy has been on
19 a rationing system. It's not publicized very
20 well, but we're supposed to be rationing every
21 day. New clue to you? It wasn't to me.

22 Recently we just had to do some plumbing
23 repairs at our house, and because we think our
24 wells are pumping from the bottom of the ground,
25 we found rocks and glass in our cold-water pipes.

1 That was extremely scary to me, to think that in
2 somebody's bathwater could come out a huge chunk
3 of glass and they could have sat on it, stepped on
4 it, and who knows what would have happened. It
5 doesn't seem to be of concern to our City Council.
6 They do not seem to be representative of us as a
7 community, and we have great concerns with that.

8 I am thrilled that Mr. Hoffman came
9 today to represent us. He shows concern. He
10 shows compassion. He knows what it means to be a
11 citizen of Tracy. He's very representative of the
12 rest of us.

13 Although we have city staff that
14 believes that we can give our water away for free
15 for more than the four- to six-month period than
16 was discussed, it's not right and we shouldn't be
17 doing it.

18 Our fire department: These are men that
19 are of great value to us. They do their job
20 diligently and risk their lives every day for us.
21 For them to be first response to Alameda County
22 because that's the way it is is not fair for the
23 taxpayers of our city to pay that bill. I'm here
24 to ask today that there be a condition that we get
25 a haz mat truck and that we also have a water

1 tendering truck, and I know that those could be
2 made conditions and should be made conditions.

3 And I know that there are other people
4 that have asked for that, including Mr. Hoffman.
5 Please, as a Commission, consider that, something
6 that we urgently need. Our men have the training,
7 we have the tools. Give us the rest of the tools
8 to make it safe for our community.

9 Air quality credits: It's amazing, the
10 value as it multiplies through the years, they are
11 devalued. Good for approximately 7.7 years, I
12 think, if that was my understanding today. And
13 the life of our project is 40 year? Gee, a
14 million dollars sure doesn't seem like it's enough
15 when GWF appropriated 1.3 million dollars to our
16 community, and they were a peaker plant. Where is
17 the rhyme or reason for this? Do we have any?

18 I hope the Commission finds something
19 that will make this reasonable to the community,
20 because we live here every day, and we suck up the
21 air every day with the pollutants, the PM 2.5 and
22 PM 10 every day, and we're surely not getting any
23 less housing.

24 Although Measure A is in effect, it
25 actually will not go into effect until next year,

1 and there will be a water shortage if all the
2 things that are set in place for some reason don't
3 turn up at the right time.

4 We've already gone to LAFCO for
5 apartment complexes that have been turned down,
6 because we don't have the water. As a planning
7 commissioner I voted no on the project, because we
8 had no water for the project. The project failed.
9 That's a fact. It failed. It was turned down by
10 LAFCO because of no water.

11 At this point in time, I'd like to put
12 into the record from the EPA a compliance record
13 that shows that FPL has been out of compliance six
14 out of eight quarters here in California on one of
15 their plants.

16 At this time I'd like to say thank you
17 for your time, and thank you for being in Tracy
18 and listening to our concerns.

19 PRESIDING COMMITTEE MEMBER GEESMAN:
20 Thank you.

21 HEARING OFFICER GEFTER: Thank you.

22 Next is Bill Powers, who wants to make
23 public comment.

24 MR. POWERS: Thank you, Officer Gefter,
25 Commissioner Geesman, and I'm happy to report that

1 I have to catch a plane at about 9:30 and won't be
2 able to spend the entire evening with you. I
3 think that's my luck.

4 But I do appreciate this opportunity to
5 speak. I did go ahead and prepare the written
6 testimony. I was, due to my own fault, not able
7 to make it here a week ago and wasn't able to give
8 that testimony, but I would like to spend just a
9 couple of minutes to summarize it and then make a
10 few additional comments.

11 I think first I would like to commend
12 the Staff for including dry cooling as a real or a
13 viable option in this case. I have been involved
14 as an intervenor in another case where the
15 situation wasn't quite the same and I appreciate
16 that it is on the table as a viable option and
17 that the scale or the measure of judgment is
18 pragmatic. Is the water available for any other
19 purpose, the reclaimed water, and also, is the
20 cost of dry cooling competitive with the wet
21 options.

22 The FSA concludes that the relatively
23 high TDS, the salinity of the Tracy wastewater, as
24 it is now as a secondary treated wastewater, is at
25 such a level that it could actually cause some

1 damage to the Delta; therefore, it is preferred
2 not to send it to the Delta, making it attractive
3 to send to a power plant.

4 Number two conclusion is that the life
5 cycle cost of a dry-cooled system is significant
6 greater than a wet-cooled system using reclaimed
7 water, and for that reason it appears to be the
8 appropriate way to go.

9 My first comment is that we're actually
10 comparing an existing situation to a future
11 situation when it comes to the quality of the
12 water. Current condition of Tracy wastewater is
13 it's secondary treated. It is not available to
14 put on someone's lawn, it is not available to
15 irrigate a golf course or any of the other potable
16 water displacement projects that you could use it
17 for.

18 It will be when it's reclaimed, and so
19 the presumption in the FSA that currently it is
20 actually contaminating the Delta, it will not need
21 to go to the Delta once it is reclaimed. It could
22 be used for landscape irrigation, golf course, a
23 whole wide variety of things.

24 And following up on that, and I'll get
25 into this in a moment, but as kind of an intro,

1 the cost assessment that is in the FSA assumes
2 that 5100 acrefeet a year of reclaimed water will
3 be sent to this power plant for no charge, and I'm
4 based down or I live in San Diego County. We do
5 have a very active reclaimed water program there,
6 and people are quite willing to pay \$550 an
7 acrefoot for reclaimed water for purposes like
8 irrigation of golf courses, landscape, and a
9 variety of other uses, given the water is priced
10 at about 70-80 percent of potable water.

11 There will be a market for the reclaimed
12 water once it is available, assuming pipes are
13 built. People will pay for it.

14 I notice in the FSA that the City of
15 Livermore is planning to charge \$650 an acrefoot,
16 which contrasts starkly with a zero-dollar-per-
17 acrefoot charge for the City of Tracy. And I
18 think that the City of Livermore is much more
19 accurate in what they could actually get for that
20 water.

21 The effect of, in this context, looking
22 at dry cooling, Tesla is, and I commend Tesla for
23 doing this, proposing to use a zero-liquid-
24 discharge system that will take the solids down to
25 dryness. They will recycle their wastewater and

1 get it back in the cooling tower. Excellent idea.

2 You combine a dry-cooled power plant
3 with a zero-liquid-discharge system of this type,
4 and this is an 1100-plus megawatt plant. It will
5 have the water use of four to six residential
6 homes. It is no longer a factor in water. It's
7 not an issue anymore.

8 And I think that the choice of dry
9 cooling in this case, combined with the zero-
10 liquid-discharge system, would be a model for this
11 entire section of the state both for industries
12 and developers who come into the community that
13 need to be careful with water.

14 Next, I quickly want to take a look at
15 or cover the other critical issue, which is the
16 cost comparison that's in the FSA, and this has
17 already been submitted into evidence, but I do
18 want to underscore that there are a few items that
19 really make all the difference. We talked about
20 one, which is the fact that no charge is indicated
21 for the water, which, if they were paying \$550-600
22 an acrefoot, you're talking 35 or 40 million
23 dollars life cycle cost.

24 The first item, quickly, is -- and
25 this --

1 APPLICANT COUNSEL GALATI: Ms. Gefter,
2 at this time I'd like to object to this for this
3 reason. If he wants to summarize and make public
4 comment, that's correct. Mr. Powers has submitted
5 all of this testimony in writing. We had a water
6 hearing, and now basically he's giving us
7 testimony again, under the guise of public
8 comment.

9 If he has some other areas to comment on
10 in the public, which is what I've been waiting to
11 hear, I didn't think it would be appropriate for
12 him to go forward and read you his testimony. Any
13 of the witnesses could then go do that. I think
14 it's inappropriate.

15 PRESIDING COMMITTEE MEMBER GEESMAN: Let
16 me raise a couple of questions, Bill, to kind of
17 get to what I think is relevant from my standpoint
18 because, as Mr. Galati indicates, your testimony
19 is a part of our evidentiary record already,
20 despite the fact that you weren't able to be at
21 the last hearing, it is a part of our evidentiary
22 record.

23 I guess the question that I didn't hear
24 or actually see addressed in your written
25 testimony is should we attach any value as a state

1 to keeping whatever it is, 5,000, 8,000 acrefeet a
2 year of tertiary treated water out of the Delta?

3 MR. POWERS: Good question, and I have a
4 two-part answer. In the FSA they indicate that
5 currently the salinity content of the secondary
6 treated water that the Tracy Wastewater Treatment
7 Plant produces is significantly higher than the
8 Delta water; hence, it's viewed as a potential
9 detriment.

10 But, in the same sense, it's indicated
11 that the City of Tracy is now modifying their mix
12 of raw water sources such that they anticipate
13 that their TDS concentration will drop to some
14 degree in the near future. So the question that
15 is hanging, really, my first part of this answer
16 is we need numbers. What is your projected TDS?

17 Because if it turns out that your TDS is
18 essentially the same as the Delta or somewhat
19 less, the situation reverses itself in terms of
20 sending this to the Delta.

21 And two, once it's reclaimed, once it's
22 Title 22 water, it has viable saleable uses. It
23 can now be used for landscape irrigation, golf
24 courses, any variety of potable water displacement
25 uses. That isn't addressed at all in the FSA.

1 All that's looked at is we've got this secondary
2 treated sewage, our wastewater, that we have to
3 dump to the Delta.

4 And so I think that these are unanswered
5 questions that would be relatively easy to answer,
6 but I think you have really hit the substantive
7 issue there, is do we have viable alternatives?

8 And you are correct that this is in the
9 record. I won't go into this any further. I did
10 have one final comment that I'd like to make,
11 because it is a mirror image of an issue that we
12 dealt with a lot in the Palomar case, and that is
13 that we're really in the same -- in fact, my --
14 oh, they're -- Good. This is for Alvin, so I'm
15 glad to see that he's still in the room.

16 The public health, and this is my last
17 comment, public health, is it indicates that the
18 Applicant will be using sodium hypochlorite as the
19 biocide in the cooling tower and that we're using
20 reclaimed water. And the original FSA had
21 indicated that the table, which I was given an
22 update to, which just compares the cost of using
23 different sources of reclaimed water, the original
24 FSA indicated that there was a 5.5-million-dollar
25 charge for some additional equipment for the water

1 treatment.

2 The text indicates that CH2M Hill, in a
3 study a while back, indicated that the City of
4 Tracy will probably need to denitrify its
5 reclaimed water, get rid of the ammonia, for
6 unclear reasons. Title 22 doesn't require that
7 removal, so I'm not clear why they've stated that,
8 but I've presumed that that 5.5 million was for a
9 denitrification step. The nitrogen is gone. You
10 can use sodium hypochlorite at the very minimal
11 levels that they indicate in the FSA.

12 But that fee has been, it's specifically
13 excluded from the revision, but there is no
14 additional cost for that. And so we're really in
15 the same conundrum we were in with Palomar. We
16 have a facility that's planning to use reclaimed
17 water with a significant concentration of ammonia.
18 We know that sodium hypochlorite is completely
19 neutralized in the low levels that they would add
20 when there is ammonia present.

21 What you will have, if you attempt to do
22 what's in the FSA, is basically a Petri dish in
23 about two weeks. It won't work.

24 And so we have two sites in this state
25 that use reclaimed water now, Los Medanos, Delta

1 Energy. They get their water from the Delta-
2 Diablo Sanitation District. They have lots of
3 ammonia in their reclaimed water. They have no
4 denitrification step. They send it straight over
5 to the plants.

6 What do the plants do? They add bromine
7 chemistry. That's the alternative when you have
8 ammonia. The problem with it is it's very
9 expensive. They're spending several thousand
10 dollars a day at those plants, in combination, to
11 deal with this treatment issue.

12 They're currently trying to figure out
13 whether they should put a denitrification step in
14 there to deal with it, but they're definitely not
15 using sodium hypochlorite. It does not work in
16 this situation.

17 And so I'm really, again, pleading with
18 the CEC that if this stands, we again just have
19 this situation where it cannot work and the
20 application is potentially approved with this
21 hanging issue. It's not necessarily a big deal,
22 it just simply has to be addressed and we move on
23 from there.

24 And that's my only other comment. And I
25 really want to thank you for accommodating me and

1 letting me speak before having to leave.

2 PRESIDING COMMITTEE MEMBER GEESMAN:

3 Well, thank you for your comment. As usual, I
4 find it very helpful.

5 MR. POWERS: Thank you.

6 HEARING OFFICER GEFTER: Thank you.

7 Off the record.

8 (Brief recess.)

9 HEARING OFFICER GEFTER: Mrs. Sarvey has
10 a public comment at this time.

11 MRS. SARVEY: Susan Sarvey, Clean Air
12 for Citizens and Legal Equality. I've been
13 speaking with Seyed Sadredin at the Air Pollution
14 Control District, and we have come up with a
15 condition that we think would work and be fair for
16 us.

17 While not saying that the \$600,000 being
18 offered to Tracy is fair mitigation or enough, we
19 would like to request a condition that would state
20 that this money be used for the clean school bus
21 program that we're implementing right now with the
22 GWF Oversight Committee air mitigation money.

23 For the area encompassing the Tracy
24 Unified High School boundaries, we would recommend
25 two C&G buses for New Jerusalem School District, a

1 vehicle to transport meals, or a C&G bus for
2 Jefferson School District, a C&G bus for
3 Lamersville School District, and an electric
4 forklift to replace the 1964 forklift that we're
5 using right now at Tracy Unified. You can imagine
6 the diesel fumes.

7 Any extra funding that would be left
8 after these expenditures we would like to have
9 used to maintain the C&G fuel station that we are
10 building right now at Tracy Unified School
11 District. This would provide a 30-year air
12 benefit to the City of Tracy by significantly
13 lowering the mobile emissions and switching to a
14 clean fuel source for our bussing program, and it
15 would be easy to implement and it would have a
16 long-term benefit.

17 At many of our schools, i.e., eight I
18 can name off the top of my head, we have lines of
19 SUVs that are sitting there idling for 30 minutes
20 every morning and every afternoon, dropping off
21 one or two children. It's quite appalling.

22 So we are working very hard to expand
23 our school bus program and get out of old buses
24 that cause a lot of diesel emissions and trying to
25 get into C&G, and we are working with both the CEC

1 and the Pollution Control District for matching
2 funds so we can get the most for our buck, so
3 that's the first thing I'd like to talk about.

4 My other interest and concern is, I know
5 we're not done with air, but when I was in East
6 Altamonte, the Staff had done a CEQA analysis and
7 that CEQA analysis found that my community needed
8 13.9 million dollars in mitigation to offset the
9 air impacts.

10 I have heard endless testimony on PM
11 2.5, PM 10, the size, how fast it blows away, does
12 it blow away, fall to the ground, whatever. I
13 have not heard any discussion of we have done a
14 CEQA analysis and this is the impact we have found
15 to the City of Tracy.

16 If you had found no impact, I don't
17 understand how that could be when your same staff
18 from the same -- maybe not you personally, but
19 from your offices found 13.9 in a plant just a few
20 miles down the road that's very similar. So I'm
21 really concerned about did somebody do the CEQA
22 analysis? Are we looking at the cumulative impact
23 here?

24 PRESIDING COMMITTEE MEMBER GEESMAN: Let
25 me break in, if I may.

1 MRS. SARVEY: Yes.

2 PRESIDING COMMITTEE MEMBER GEESMAN:

3 This is the CEQA analysis. We are looking at the
4 cumulative impact. I wasn't on the East Altamonte
5 Committee.

6 MRS. SARVEY: Yes, okay.

7 PRESIDING COMMITTEE MEMBER GEESMAN: But
8 I can assure you, based on my knowledge, the Staff
9 proposal did not survive the Committee's scrutiny
10 in East Altamonte.

11 So, as a consequence, I don't think that
12 it's of a great deal of weight here as a predictor
13 of either what those two Commissioners or
14 ultimately all five Commissioners found to be
15 appropriate at East Altamonte. So it's probably
16 not a good indicator for what would be considered
17 credible in this case.

18 MRS. SARVEY: Well, what my concern is,
19 is that in East Altamonte, the only CEQA analysis
20 that was ever done was done by Staff. And it was
21 the analysis that was discussed on the record.

22 Why you chose to disagree with your
23 staff is beyond my comprehension. So I'm just,
24 I'm hoping that somebody did one before we got
25 here to try to do one while we're here. I guess

1 that's my thing.

2 And I was --

3 PRESIDING COMMITTEE MEMBER GEESMAN: I
4 meant to answer that question as yes, the Staff
5 has done that.

6 MRS. SARVEY: Okay. And so I would like
7 some sort of explanation as to what that analysis
8 found and why the values are different this time
9 than they were that time, if there is a large
10 margin of difference.

11 And I found it deeply disturbing that no
12 modeling was done if the plant is out of
13 compliance. We've had a peaker plant here for
14 just a couple of months and we're already out of
15 compliance. You are going to use the same
16 turbines at this plant that they are using at the
17 GWF peaker plant.

18 And what really concerns me is everybody
19 talks about all this great technology and we're
20 doing all this, doing all this. Well, technology
21 fails. It was proved at GWF. They have no idea
22 why on one day they had a flameout of their
23 pollution control technology on both turbines,
24 because they had to shut down the first one and so
25 they turned on the second one, and it flamed out

1 too. It was a big mess, and GE (sic) does not
2 know what happened. They're trying to figure it
3 out, but they don't know what happened.

4 So technology is only as good as the
5 person running it and the person who made it, and
6 it can fail. We need to look at how we are going
7 to deal with the technology failing and what kind
8 of impact it's going to have on us.

9 And the other concern is I'd like a
10 condition for somebody to oversee the recycled
11 water, if you choose to use recycled water, to
12 make sure that that is safe for us.

13 And, even more important, if we have a
14 problem at the plant where something is spilled
15 and it's a risk to us breathing or there is some
16 problem in the cooling, how in the heck are you
17 going to let all of us know? Who is going to call
18 every school, every hospital, every rest home, and
19 say, hey, guess what, we're having a problem, you
20 need to close your doors and windows?

21 We have no warning system here. We have
22 nothing. And now we're going to have three power
23 plants that could have an issue, and I am really
24 disturbed that it was -- I really felt like my
25 fire department was portrayed as inept in

1 providing response to my community.

2 I have worked with my fire department
3 closely for two years. I am very, very cognizant
4 of what they are doing. I personally prepared a
5 binder this thick that lists every single federal,
6 state and local grant program for haz mat
7 training. I am working with my chief and we are
8 sending our men to haz mat training whenever
9 possible. We have collected all of the haz mat
10 equipment to be able to do haz mat response, but
11 we do not have a vehicle to put it on.

12 And we have three power plants that are
13 going to be affecting our community now, and we
14 are expected to accept that haz mat response will
15 come to us from Castro Valley, where we have
16 traffic jams between us and them that are easily
17 45 minutes to an hour just sitting on the freeway.
18 And there is no way, no matter how much you argue
19 about it, you can take a huge haz mat vehicle on
20 the shoulder over the Altamonte in commute
21 traffic. It is impossible. We have gone over and
22 over again, it's not possible.

23 So in order to protect my community, I
24 need some kind of warning system if something goes
25 wrong. I need a haz mat vehicle to put my

1 hazardous material equipment on so that my men can
2 go and ascertain in the first five to ten minutes
3 that we have a serious health risk issue going on
4 and we need to let the community know.

5 I do not want to be in a situation where
6 Castro Valley shows up 45 minutes after the
7 incident started and goes, "Oh, shit," you know,
8 "We should have had everybody close their windows.
9 Now how are we going to call them all up and let
10 them know?"

11 That is not acceptable. That is
12 completely and totally unacceptable. So I'm
13 asking for a condition that gives them the water
14 tenderer truck and the haz mat trailer. They need
15 the water tenderer truck so that if they're having
16 one of those fire things, they can put it out and
17 keep it from spreading. We need the haz mat to
18 protect our community.

19 At some point in these proceedings -- I
20 know you're not responsible for the other two
21 sitings, you weren't involved in those cases, but
22 at some point you have to acknowledge that you are
23 literally making my town power-plant happy with
24 all the ill effects and problems that go with it.

25 And, quite frankly, it is not fair. You

1 need to take care of us. Because at no time has
2 anybody in any proceeding I've gone to said to me,
3 you know, Susan, this electricity is for you in
4 Tracy. It's not. We don't need it.

5 And I just talked to the PG&E, and in
6 the town of Tracy they are blown away, because
7 people like me and people I have talked to, I want
8 to know Ms. Dominguez who was here, I myself, we
9 all have a hundred solar panels on our house. We
10 provide our own power. We participate.

11 And if you go up and down the street I
12 live on, you'll see eight or nine houses that have
13 solar panels on them. My community gets involved.
14 They take care. They know how important air
15 quality is.

16 So this power is not for us. We're
17 sucking it up and we're getting nothing for it.
18 And somebody has to acknowledge that our kids are
19 suffering, our kids are the ones that are going to
20 get sick, and that we need to be able to respond
21 to that. And I hope to God you tell this man to
22 model those ballfields and tell my City Council
23 that they are nuts to put ballfields in the axis
24 of evil, the three power plants and the glass
25 plant. It's just appalling.

1 My council told me to my face that there
2 is no problem putting those ballfields between
3 those three power plants because if there was, the
4 CEC would have told them and you have never said
5 anything about it. You are talking about putting
6 thousands of 5-, 6- and 7-year-old kids on those
7 fields where there will be a release, and you'll
8 have a kid die. He won't have an asthma attack
9 and get hauled off to the hospital like I do,
10 he'll die. And how are we all supposed to live
11 with that? So they can make a buck.

12 It's not fair, it's not right, and I'm
13 tired of it being referred to that we need these
14 power plants because we had blackouts and we don't
15 have enough energy. The FERC has established that
16 was bull. Power plants ripped us off to make a
17 buck because they had no conscience.

18 We are getting ruined in this state
19 paying for all these new power plants, paying what
20 we had to pay to have power while they were
21 cutting us off, and it's just not right. At some
22 point you have to stand up and tell these people,
23 look, there is no power crisis, the FERC says so.
24 The FERC said you ripped us off. We don't need
25 all these power plants. We understand you want to

1 build a power plant and make tons of money. Well
2 enough, but that does not mean you get a free ride
3 at the community's expense. Thank you.

4 PRESIDING COMMITTEE MEMBER GEESMAN:

5 Thank you, Mrs. Sarvey.

6 HEARING OFFICER GEFTER: Thank you.

7 Off the record.

8 (Brief recess.)

9 HEARING OFFICER GEFTER: Right now
10 Ms. Mendonca, the Energy Commission's public
11 adviser has some written comments from members of
12 the public who were unable to stay this evening.
13 I'm going to ask you to read those into the
14 record.

15 PUBLIC ADVISER MENDONCA: Thank you very
16 much.

17 My first comment is from Anna Aguirre,
18 and her comment is on air quality, and she is a
19 Tracy property owner and resident of San Joaquin
20 County. And she is concerned about the San
21 Joaquin Air Quality Board involvement in decisions
22 as to Tracy and the northern part of San Joaquin
23 County. As far as she knows, they have never had
24 a board meeting in Tracy.

25 And she would like a condition of

1 approval for Tesla that would recommend that the
2 San Joaquin Air Quality District be required to
3 have a meeting in Tracy or Stockton at least once
4 a year to discuss Northern San Joaquin County air
5 problems and issues.

6 The next comment is from Maryanne and
7 Gordon Griffith, who are nearby property owners,
8 and she wanted very much to be here this evening
9 but they had a planned vacation so they went on
10 their vacation.

11 Her concerns were several and she has
12 sent a letter, but she is specifically concerned
13 about air quality, about dust control, and she had
14 some overall comments.

15 On air quality, she says, "Our property
16 is east of the plant and will be severely impacted
17 by the pollutants of this plant. The predominant
18 winds blow towards the property from the west.
19 When this plant goes on line, what damage will it
20 cause to the land, crops, water and cattle that
21 will continue to be there? Who will guarantee us
22 that there will be no health-related problems
23 because of pollutants caused by this plant?

24 "At our residence, while we live in a
25 little valley that at times even now is filled

1 with smog and smaze, we cough, our eyes burn and
2 it is hard to breathe. When the air is still, a
3 spare-the-air day, we have to stay inside just to
4 be able to breathe.

5 "When this new plant goes on line, who
6 is to say what will happen? Will we become
7 housebound? With the pollutants from all four of
8 these plants on line in the valley -- Calpine,
9 Peaker Plant, the Biomass, woodburning and
10 Tesla -- we don't stand a chance."

11 She has a specific issue about dust
12 control. "Once this Tesla plant is up and on
13 line, I hope that there won't be dust coming from
14 it, but while under construction there will be a
15 major dust problem. Depending on a little breeze
16 or a 10-, 15-, 25-or-more mile-an-hour wind, the
17 dust will be flying. Please have them" -- I
18 believe she means the Applicant -- "or any
19 subcontractor, while they are under construction
20 or at any other time there will be dust, have a
21 water tanker truck to settle the dust, etc. The
22 dust is bad enough when the peat dust blows in
23 from Stockton Islands, and that is mother nature.

24 "Although we've been told that because
25 we live a mile away we won't be affected by the

1 Tesla plant -- the noise, the smell, the
2 pollution, the water or dust coming from the
3 plant -- is FPL going to erect a nonporous sound
4 wall screen around and topping our home and
5 agricultural land? Pretty ridiculous, isn't it?
6 Even that won't keep us safe and enable us to live
7 our lives as we know it now.

8 "There are accidents and leaks at these
9 plants on a regular basis. The plants pay their
10 fines and continue. What about our lives?
11 Everyone is so concerned about the frogs, the kit
12 foxes, the salamanders, burrowing owl, and golden
13 eagle. What about the human life and the danger
14 to our existence? Are we not an endangered
15 species?

16 "I counted three residents who attended
17 the hearings at the meetings in Tracy. What a
18 shame, because after the Tesla plant is on line,
19 I'm sure that the citizens of Tracy and other
20 communities will be voicing their concerns then.
21 The overall pollution of all the power plants in
22 our area will definitely have a lasting effect on
23 the residents and their health in the future.

24 "A company comes into a neighborhood and
25 changes the whole history of the country with all

1 of the negative conditions that we will be facing.
2 Oh, by the way, do any of the people who are
3 creating this plant live here in this area? I
4 think not. I know not.

5 "How is the weather in Florida? Money
6 talks. Thank you for taking the time to consider
7 my comments."

8 And Eugene Sparks: "I am the first
9 house east of the proposed plant and about one
10 mile east of the Getty Oil Plant. They burn
11 natural gas and pollute. I've been here 25 years.
12 My wife has cancer for the second time, and now
13 terminal, according to the doctor. She is now
14 under chemo treatment. I've had two dogs who have
15 had cancerous tumors and have died in the last
16 three years.

17 "Between Getty Oil and the Tesla plant,
18 the air quality won't be fit to breathe. From
19 Getty Oil the air smells like burning oil. Also,
20 what will happen to our land values?"

21 And Leroy Ornellas was here this morning
22 and then left these comments on air: "I am
23 pleased that they, Tesla, are offering mitigation
24 for air quality, but I feel it needs to be greater
25 than what GWF gave, because the Tesla will be of

1 much greater impact.

2 "I urge you to keep the San Joaquin
3 County of Emergency Services abreast of all
4 workshops and training that need to be attended to
5 protect public health and safety from the siting
6 of these various plants with their cumulative
7 impacts on our county."

8 And he had a public health concern and a
9 fire concern and would like a condition that would
10 provide the Pierce haz mat vehicle and water
11 tenderer truck for the Tracy Fire Department so
12 they can protect our safety in a timely manner.

13 And that concludes the public comment.

14 Thank you very much.

15 HEARING OFFICER GEFTER: Thank you.

16 Off the record.

17 (Brief recess.)

18 STAFF COUNSEL HOUCK: Before I complete
19 the direct testimony, I would just like to note
20 that we've had some off-the-record discussions
21 with the Applicant, and I just asked Mr. Sarvey if
22 he would be willing to participate or object to
23 the parties potentially drafting an additional
24 condition to submit to the Committee that would
25 address this issue of seasonal or quarterly

1 offsets, and if that would be acceptable to the
2 Committee.

3 HEARING OFFICER GEFTER: We would like
4 to see that.

5 STAFF COUNSEL HOUCK: Okay, thank you.
6 And then I have a question for Mr. Ringer and then
7 just two or three brief questions for Mr. Birdsall
8 and I'll be done with my direct.

9 BY STAFF COUNSEL HOUCK:

10 Q Mr. Ringer, were you present in the room
11 earlier when the representative from the San
12 Joaquin Valley Air Pollution Control District
13 testified regarding his understanding of the
14 differences between PM 10 and PM 2.5?

15 A Yes, I was.

16 Q Did you agree with the statements made
17 by the Air District?

18 A No, not entirely.

19 Q Can you please explain your
20 understanding of the differences between PM 2.5
21 and PM 10 as well as what you disagreed about the
22 statements the Air District made.

23 A Very briefly, there are two different
24 aspects that I want to discuss, and that is first,
25 the different size fractions. The residence time

1 in the atmosphere, and that is the amount of time
2 that a particle stays aloft, is directly related
3 to the particle size. This is pretty commonly
4 discussed in both federal and state background
5 documents to the standard-setting procedures that
6 have just been undergone over the past few years.

7 And the other matter is going to be the
8 difference in exposure, and this was alluded to
9 earlier. The PM 2.5 particles tend to get inhaled
10 more deeply into the lung and, therefore, affect
11 the exposure so that people breathing in PM 2.5
12 will breathe it more deeply into the lung and
13 there are different aspects to that that are
14 important.

15 So Staff regards it important to try to
16 have the mitigation match the project impacts;
17 therefore, we try to have the mitigation be in the
18 same form, the 2.5 or smaller, submitted by the
19 project.

20 One other point about residence time,
21 and that is the landfill, as Mr. Birdsall had
22 testified, is in an ideal location, but the cost
23 of the different residence time, the PM that's
24 submitted by the combustion processes as part of
25 the Tesla project would have a wider geographic

1 range of dispersal, because of the fact that it
2 does have more residence time.

3 So to the extent that PM 10 or larger
4 than PM 2.5 fraction as part of the mitigation,
5 since that does tend to fall out more rapidly than
6 the geographic exposure or the geographic area
7 from the road paving wouldn't be quite as much.
8 It wouldn't overlap as much the PM 2.5 from the
9 plant on the impacts. So we do try to have the
10 mitigation match the impacts as much as possible.

11 Q Thank you.

12 Mr. Birdsall, when Staff conducts its
13 CEQA analysis, if it finds that there is going to
14 be potential environmental impacts in the area of
15 air quality, when it recommends mitigation, is
16 that mitigation recommended in a dollar amount or
17 an offset amount?

18 A We create our mitigation scheme to
19 respond to the amount of the impact in an
20 environmental term, and dollars are not an
21 environmental term in our eyes, while they can be
22 used to create reductions in tons. We craft our
23 mitigation in the context of tons first.

24 Q And Staff believes that the Tesla Power
25 Project would need to provide additional tons per

1 year, would need to provide tons per year in
2 addition to those set out in the final
3 determination of compliance; is that correct?

4 A That's correct.

5 Q And the additional amount of offsets is
6 set forth in the table on page four of four
7 regarding the attachment and the rebuttal
8 testimony; is that correct?

9 A That's correct.

10 Q And it's set out by pollutant and
11 quarter; is that also correct?

12 A Yes.

13 Q And are you aware that the Applicant in
14 this case has offered the City of Tracy \$600,000
15 to address additional air pollution mitigation?

16 A Yes, I'm aware of the letter as it was
17 referenced in Mr. Stein's testimony.

18 Q Do you have any objection to that
19 amount, any offsets that are purchased with that
20 amount of money applying towards the mitigation
21 Staff is recommending?

22 A No. I don't have -- I can't see why I
23 would have an objection to emission reductions
24 that are occurring, that are caused by an action
25 of the Applicant, meaning if the Applicant gives

1 money to the City of Tracy and the City of Tracy
2 creates emission reductions and the Valley Air
3 District can tell us that a reduction is
4 happening, then that reduction could apply to
5 mitigate this project.

6 I think that is exactly the purpose of
7 giving money to Tracy, and so that would be how we
8 would interpret it.

9 Q And would Staff have any objection to
10 that money being applied towards the clean school
11 bus program?

12 A No, we would not.

13 Q Okay, thank you.

14 STAFF COUNSEL HOUCK: All right, I have
15 no further questions at this time.

16 HEARING OFFICER GEFTER: Would you like
17 to move your exhibits?

18 STAFF COUNSEL HOUCK: Yes. Staff would
19 like to request that Exhibits 51, 52, 53 and 54
20 pertaining to air quality as well as Exhibit 56 be
21 entered into evidence, and Exhibit 123 I believe
22 was already entered into evidence, and that was
23 the modification to the construction conditions.

24 HEARING OFFICER GEFTER: Any objection?

25 APPLICANT COUNSEL GALATI: No objection.

1 INTERVENOR SARVEY: No objection.

2 HEARING OFFICER GEFTER: Okay. The
3 exhibits identified by Ms. Houck related to air
4 quality are received into the record.

5 (Thereupon Exhibits 51-54 & 56 were
6 received into evidence.)

7 HEARING OFFICER GEFTER: Are your
8 witnesses available for cross-examination?

9 STAFF COUNSEL HOUCK: Yes, they are.

10 HEARING OFFICER GEFTER: Applicant?

11 CROSS-EXAMINATION

12 BY APPLICANT COUNSEL GALATI:

13 Q Mr. Birdsall, could you please look at
14 your rebuttal testimony, page six, specifically
15 your response to the Applicant's claims on page
16 15. That's in the middle of page six of your
17 rebuttal testimony.

18 A Okay, yes, I see it here.

19 Q The second paragraph of your rebuttal
20 starts out, "If the Applicant proposes to include
21 language for interseasonal movement or reductions
22 regarding AQ-SC7 consistent with San Joaquin
23 Valley Air Pollution Control District rules, Staff
24 would not object to adding such flexibility to
25 AQ-SC7"?

1 A That's correct.

2 Q And the qualification would be if those
3 interpollutant -- excuse me, interseasonal
4 movements are consistent with San Joaquin rules?

5 A Correct. I believe it's San Joaquin
6 Valley Rule 2201, and I forget exactly what
7 paragraph, but there are two subparagraphs to that
8 rule that allow reductions that are obtained
9 during a nonattainment season to be applied to
10 project liabilities during seasons where the
11 reductions are not as valuable.

12 As an example, it would allow reductions
13 of VOC in the summertime to apply to a project
14 liability of VOC in the winter, because the
15 reduction in the summer of VOC is much more
16 valuable than it is in the winter.

17 Q Okay. And is your understanding of
18 AQ-SC7 as it currently exists in the final staff
19 assessment, it does not now allow such
20 flexibility?

21 A That's right, it doesn't.

22 Q Okay. I wanted to ask you, I think that
23 you testified that you use as your threshold of
24 significance for conducting a CEQA analysis
25 whether or not the project would cause or

1 contribute to violations of the air quality
2 standards; is that correct?

3 A Yes, that is correct.

4 Q And I believe you testified that you
5 agree when it comes to looking at emission from a
6 project, we ought to be looking at those times
7 when the project's emissions could actually cause
8 or contribute to violations; is that correct?

9 A That is correct, and I'm taking my lead
10 mainly from the Valley Air District and their
11 mitigation agreement by focusing on nonattainment
12 quarters.

13 Q Okay. So that would reflect in why,
14 when you calculated the emissions liability, there
15 were certain quarters you didn't calculate. Those
16 were the attainment quarters, correct?

17 A That's correct.

18 Q Would you agree that, and I want to
19 focus on nonattainment quarters, would you agree
20 that nonattainment quarters are not violations
21 every single day during those quarters to make
22 them nonattainment quarters?

23 A Sure. A violation doesn't necessarily
24 need to occur every day during the quarter, but
25 this is -- a nonattainment season is the season

1 when violations occur.

2 Q If offsets were provided equivalent to
3 the total tonnage emitted during those quarters,
4 wouldn't they really, from a CEQA perspective, be
5 mitigating as if there was a violation every
6 single day during those quarters?

7 A I believe they would. The mitigation
8 would occur every day, just as the project
9 emissions would occur every day.

10 Q But you would agree that there wouldn't
11 be a contribution to a violation or causing a
12 violation every day.

13 A Well, the project impacts cannot
14 possibly be examined every day of the future with
15 weather that is changing by the minute. We look
16 at seasons when a violation of the standard is
17 likely to occur, and when the project is likely to
18 cause or contribute to a violation.

19 Q Okay. Would it be fair to characterize,
20 then, that even just looking at the nonattainment
21 quarters, you're providing a conservative analysis
22 because you know violations don't occur every
23 single day?

24 A Staff's assessment has some level of
25 conservatism in it, but, like I say, the

1 likelihood of the project contributing to a
2 violation cannot be gauged every morning when one
3 wakes up.

4 Q Let me ask you, if a violation occurred
5 one day during the quarter, would that quarter be
6 listed as nonattainment?

7 A Well, nonattainment designation depends
8 on a number of things, and one violation during
9 one quarter or during one day can cause a
10 nonattainment designation. It can cause a
11 nonattainment designation for the entire year.

12 In our approach, we tried to break the
13 year into seasons when an impact was likely;
14 hence, yes, violations in one day during a certain
15 quarter may have caused us to focus on a certain
16 month. But the trend of particulate matter being
17 a problem in the winter and ozone being a problem
18 in the summer, I think it's very well established
19 that the Valley Air District has laid good
20 groundwork for that, and I did not focus on
21 specific dates.

22 Q Okay, thank you. I appreciate it. I'll
23 get off of the day in question, but thank you.

24 I would like you to turn, please, to
25 your air quality rebuttal, particularly the

1 attachment, page three of four. This is
2 specifically entitled San Joaquin Valley Air
3 Pollution Control District Method for Mitigation,
4 Updated by Staff September 2003.

5 Do you have that in front of you?

6 A Yes, I do.

7 Q Would you look at, in table one you
8 identified, I think, in your direct testimony that
9 you did add the column that says Fraction of
10 Seasonal Impact, that that's added by Staff,
11 correct?

12 A That column in this printout is added by
13 Staff, but the calculation is in the air quality
14 mitigation agreement that is reproduced in
15 Mr. Stein's testimony in table one on page nine of
16 Mr. Stein's testimony.

17 Q Right, exactly, and table one, and just
18 focusing on table one, what you've done here isn't
19 necessarily inconsistent with Mr. Stein's
20 testimony by identifying the number of months
21 you're looking at for the project impacts as
22 represented by those numbers in that column
23 Fraction of Seasonal Impact, correct?

24 A What I've presented here is exactly
25 consistent with table one of Mr. Stein's testimony

1 in the air quality mitigation agreement. It just
2 shows a number that is implicit in the Applicant's
3 version and the Valley's version.

4 Q And I think that, if I could just
5 specifically ask you let's take a look at NOx, for
6 example. The 0.667, that represents a number of
7 months out of the year in which there is
8 nonattainment for that pollutant in the District,
9 correct?

10 A Correct. That corresponds to the April-
11 through-November range from the Valley's
12 calculation.

13 (Thereupon, the tapes were changed with
14 no interruption in the proceeding.)

15 BY APPLICANT COUNSEL GALATI:

16 Q Okay. Now, in table two, the Fraction
17 of Seasonal Benefit column, that column is added
18 by Staff, correct?

19 A Correct. This is what makes this table,
20 quote, updated by Staff is that we've taken this
21 term, this fractional seasonal term, and applied
22 it now to the ERC.

23 Q Okay. Now, did you hear Mr. Sadredin
24 testify that the next column over, which is the
25 ERC effectiveness in San Joaquin County, do you

1 see that column?

2 A Yes, I do.

3 Q Did you hear his testimony relating to
4 why those numbers were chosen to be put in that
5 column?

6 A I believe that he referred to some
7 transport studies.

8 Q And did you hear Mr. Stein's testimony
9 that that number includes not only some portion of
10 transport but was the District's best estimate to
11 also consider the fractional seasonal benefit?

12 A I guess I didn't hear that as clearly as
13 you maybe are portraying it, but what I will do is
14 I will say that the 27 percent factor that is in
15 the table two is a factor that keeps coming up in
16 this proceeding. And very early on there was a
17 question, well, how does one estimate the
18 connection of Bay Area pollution to the Central
19 Valley, and really, the only number that anyone
20 could come up with was the 27 percent number.

21 And I do know that that number comes
22 from, and this is reflected in my final staff
23 assessment on page 4-1-9, the 27 percent number is
24 from a study of ozone impacts, and it correlates
25 to an ozone violation that is studied on an

1 analysis date in August of sometime in the early
2 '90s.

3 So the 27 percent number, although I
4 didn't understand exactly Mr. Stein's response
5 this afternoon, I do know that the 27 percent
6 number comes from a study that was reviewing Bay
7 Area influence on ozone concentrations in the
8 Valley during August summertime months.

9 Q Okay. All of this is relatively
10 complex, and I can see the Committee is interested
11 in it. Could I try, and please stop me if I'm
12 mischaracterizing, can I boil this down to should
13 the ERC effectiveness number used by San Joaquin
14 Valley also be reduced for seasonal fraction?

15 A I think that's an accurate portrayal.

16 Q And if the District has chosen a number
17 that they believe includes seasonal benefit, then
18 the disagreement is whether there should be a
19 separate seasonal benefit calculation, correct?

20 A Well, Staff's interpretation of the 27
21 percent SJV contribution factor, as it's called in
22 the mitigation agreement, our interpretation of
23 that has been that it applies during nonattainment
24 months.

25 And because that factor applies during

1 the ozone season, the benefit of the ERC that
2 occurs every 12 months needs to be equitably
3 valued to the benefit that it provides during the
4 summertime months, which is eight divided by 12,
5 or .667. And that's why I've added this term, the
6 .667, to the NOx, for example, in my table two of
7 page 3 of 4 in Exhibit 54.

8 Q But that's your calculation, that's not
9 necessarily the District's calculation, correct?

10 A That's right, that is our calculation,
11 but we believe it's reasonable.

12 Q Okay, and how do we resolve the issue if
13 the District believes they've already included
14 that seasonal impact into the ERC effectiveness?

15 A It's resulted in a CEQA process. By
16 Staff recommending mitigation measures, that
17 accounts for that difference.

18 Q I appreciate that response and it's
19 actually a nice segue into my other area of cross-
20 examination. What is a CEQA analysis of the Tesla
21 project, in your opinion? Let me be specific, for
22 air quality? What is your CEQA analysis?

23 STAFF COUNSEL HOUCK: Objection; I think
24 the question is vague and I would ask --

25 APPLICANT COUNSEL GALATI: I'll withdraw

1 and I'll do it a piece at a time.

2 BY APPLICANT COUNSEL GALATI:

3 Q Would you agree that a CEQA analysis
4 first establishes a threshold of significance?

5 A Yes, certainly.

6 Q And in this case, the threshold of
7 significance adopted for your analysis was whether
8 or not the project will cause or contribute to
9 existing air quality violations?

10 A Yes. This is the threshold of
11 significance that Staff applies uniformly.

12 Q The second part of the analysis is you
13 try to quantify the project's emissions, and then
14 determine whether or not they cause impacts above
15 that threshold, correct?

16 A Yes.

17 Q And then if you find any impacts above
18 that threshold, you propose mitigation to reduce
19 them below that threshold.

20 A Precisely. In many cases, the local
21 rules and regulations take care of this through
22 the process of having the Applicant and the
23 project proponent obtain offsets. We think that
24 very early on it was recognized by all parties, as
25 evidenced by the Valley entering into the

1 mitigation agreement, that the offsets provided in
2 the Bay Area District would not be sufficient to
3 fully mitigate the impacts caused by the project.

4 Q Wouldn't you agree that the District has
5 calculated what they believe to be the impacts
6 from this project on their district in the AQMA?

7 STAFF COUNSEL HOUCK: Objection; it
8 calls for speculation of what the District thinks.

9 APPLICANT COUNSEL GALATI: Well, I think
10 you heard what the District said --

11 HEARING OFFICER GEFTER: Rephrase the
12 question.

13 BY APPLICANT COUNSEL GALATI:

14 Q Would you look at the -- I'll use your
15 attachment to the rebuttal, but first will you
16 agree with me that your air quality attachment to
17 rebuttal, absent the addition of the fractional
18 seasonal impact column, reflects the air quality
19 management agreement?

20 A That is the intent of pages 2 and 3 of
21 my attachment to the rebuttal. Two shows the
22 District calculation as it was in May of 2002, and
23 page three shows our interpretation of that
24 calculation with the seasonal factor incorporated
25 on the ERCs, and then also the ERCs from Antioch

1 and the landfill broken out more accurately.

2 Q Wouldn't you agree that on page two of
3 your testimony there is a column on table one
4 identified as Seasonal Impact to San Joaquin
5 County?

6 A Yes.

7 Q Isn't that akin to a CEQA analysis in
8 determining impacts for each of these pollutants
9 in San Joaquin Valley?

10 A It may be, but the Valley District I
11 think has been fairly clear that they did not
12 conduct a CEQA analysis, and despite some of the
13 claims that we've heard earlier today, there was
14 never an opportunity for Staff or for the public
15 to review the Valley's assessment of the impact
16 that is shown there on table one.

17 Q Okay. I think I'm understanding the
18 difference and I'm going to try to clarify the
19 terminology. Would you agree that a CEQA process
20 that results in --

21 STAFF COUNSEL HOUCK: Objection; this is
22 really irrelevant. The District has indicated
23 they did not conduct a CEQA analysis.

24 APPLICANT COUNSEL GALATI: If I may, for
25 an offer of proof, I think it's relevant that the

1 District did conduct a CEQA analysis. They may
2 not have done a full CEQA process to comply with
3 the rigorous requirements of a draft EIR, which
4 I'll address in my brief because it's
5 categorically exempt, but they did do CEQA
6 analysis.

7 And for Staff to say there is no
8 analysis, I think is inappropriate.

9 HEARING OFFICER GEFTER: Okay.

10 STAFF COUNSEL HOUCK: I would object
11 that that mischaracterizes.

12 HEARING OFFICER GEFTER: Mr. Galati, I
13 think that's legal argument as to whether or not
14 they did CEQA analysis. If you could ask the
15 witness a bottom-line question so we could move on
16 from this line, that would be helpful.

17 So the objection is sustained.

18 BY APPLICANT COUNSEL GALATI:

19 Q Didn't the District determine in the
20 column entitled Residual Impact to San Joaquin
21 that there is no residual impact for PM 10?

22 A That is a conclusion in the District
23 analysis, and we don't agree with it.

24 APPLICANT COUNSEL GALATI: Thank you.

25 May I have just a moment?

1 (Pause.)

2 APPLICANT COUNSEL GALATI: I have no
3 further questions for Staff. Thank you.

4 HEARING OFFICER GEFTER: Do you have
5 redirect? Then we'll let Mr. Sarvey go to cross-
6 examination.

7 REDIRECT EXAMINATION

8 BY STAFF COUNSEL HOUCK:

9 Q Did Staff have any opportunity to
10 consult with the Applicant or the San Joaquin
11 Valley Air District regarding this mitigation
12 agreement prior to its adoption?

13 A No, we did not.

14 Q Did the Air District provide any
15 detailed explanation to Staff of any of the
16 numbers in the charts?

17 A No. The air quality mitigation
18 agreement was presented after it was adopted by
19 the Valley District.

20 Q Based on the limited information
21 provided to Staff, is it your understanding that
22 27 percent SJV contribution factor stated in the
23 various tables that have been discussed in
24 testimony today related to the distance of the
25 offset versus any sort of seasonal factor?

1 A The Valley District used the 27 percent
2 in the context of distance, yes.

3 STAFF COUNSEL HOUCK: Thank you. No
4 further questions.

5 HEARING OFFICER GEFTER: Mr. Sarvey, do
6 you have cross-examination?

7 INTERVENOR SARVEY: Yes, I do.

8 CROSS-EXAMINATION

9 BY INTERVENOR SARVEY:

10 Q If Staff's mitigation measures are not
11 adopted, will this project result in a significant
12 impact to the environment?

13 A It's our opinion that without the
14 mitigation recommended by Staff that the project
15 would have significant residual impacts to the San
16 Joaquin Valley and that those impacts would be
17 cumulative.

18 Q Do you consider the lack of SO2 ERCs for
19 this project a significant impact because of their
20 potential to form secondary particulate matter?

21 A Yes, I do.

22 Q Staff's condition AQ-SC7 requires that
23 emission reduction credits from years prior to
24 1990 shall only be allowed with concurrence of the
25 EPA. Has Staff consulted the EPA on the validity

1 of these credits?

2 A I've been conscious of the proceedings
3 on other cases where emission reduction credits
4 obtained in the San Joaquin Valley that are dated
5 before 1990 have been contested by the EPA, and in
6 crafting AQ-SC7, I wanted to provide the
7 opportunity to volunteer credits as a form of
8 mitigation and give that flexibility to the
9 Applicant, yet condition it in a way that we would
10 be able to consult the EPA should ERCs from the
11 Valley be offered that are of that vintage.

12 Q The Applicant proposes to use VOC
13 emission credits to substitute for NOx emission
14 reduction credits. Does this strategy effectively
15 mitigate the formation of secondary PM 10 from the
16 project's NOx emissions in the winter months?

17 A I think you're referring to the ERC
18 package that's obtained in the Bay Area District,
19 and VOC ERCs are obtained as well as the NOx ERCs
20 and there is an interpollutant trade.

21 I didn't specifically analyze that
22 interpollutant trade for its effectiveness to
23 mitigate a PM 10, but according to the Bay Area
24 final determination of compliance, PM 10 would be
25 offset fully in the Bay Area.

1 Now, in the San Joaquin Valley we have a
2 residual impact and Staff believes that some of
3 that impact is from the VOC emissions of the
4 plant. And there is also a residual NOx impact,
5 and Staff is requesting that NOx mitigation be
6 secured in the winter to address secondary
7 particulate formation from the NOx precursor.

8 I hope that answers your question.

9 Q Does Staff feel that the project's
10 impacts must be mitigated for the life of the
11 project to avoid significant impact to the
12 environment?

13 A Yes. It's our intent that mitigation be
14 permanent.

15 Q Did you receive any incentive program,
16 program information from the Applicant for
17 incentive programs that have an estimated life of
18 30 to 40 years?

19 A I'm not sure I understand the question.
20 Incentive programs refers to --

21 Q I'll strike it.

22 A Okay.

23 Q Thank you. Is there any requirement in
24 the programs you reviewed for the AQMA that
25 requires participants to continue to purchase the

1 more efficient equipment after the useful life of
2 the new equipment purchase under the agreement has
3 expired?

4 A My understanding of the AQMA is that it
5 would provide incentives or facilitate rather, is
6 a better word, emission reductions in the Valley
7 District that are coming from source sectors that
8 are not traditionally regulated, such as mobile
9 sources like buses. And the reductions that would
10 occur are early reductions and would essentially,
11 how do I want to say, the reductions would occur
12 and would enable the Valley District to reduce its
13 emissions burden and the quantity of emissions
14 that are being released into the Valley sooner
15 than planned.

16 Q But there is nothing in the, there are
17 no conditions in the AQMA or any programs that you
18 reviewed that once, let's say, for instance, the
19 farmer's tractor that he has replaced under the
20 heavy-duty engine program has reached its useful
21 life that that farmer can't go back and get the
22 old diesel tractor he had before and get out there
23 and start mowing? Is there any condition in there
24 that prevents that from happening?

25 A No, there's no language specific to any

1 source or specific to any farmer or applicant to
2 enter into the programs to reduce his emissions
3 that are being funded by the fee.

4 Q Earlier when I was cross-examining
5 Mr. Stein I provided some information that the
6 highest PM 10 level in the project area is 150
7 micrograms per cubic meter recorded on
8 October 21st, 1999; do you still have that exhibit
9 that I provided?

10 A Yes. I'm familiar with that data.

11 Q Okay, that's fine.

12 A Okay.

13 Q Well, the Applicant has committed the
14 project to no duct firing in the months of
15 November through February to avoid significant
16 impacts during the PM 10 season. Since the
17 project's highest PM 10 level was recorded in
18 October, shouldn't the Applicant also limit duct
19 firing in October?

20 HEARING OFFICER GEFTER: Referring to
21 Exhibit 106.

22 INTERVENOR SARVEY: Correct.

23 THE WITNESS: I think that the modeling
24 analysis that we've put forward in the FSA
25 accurately demonstrates what the maximum PM 10

1 impacts would be with these conditions for
2 limiting duct firing. And we, in fact, used the
3 150 micrograms per cubic meter as our baseline
4 background concentration in all of our modeling
5 assessment.

6 And the conditions that the applicant
7 worked out with the Bay Area District in order to
8 satisfy the Bay Area District LORS are adequate in
9 my mind, and I don't dispute them. And I'd
10 recommend that they all be incorporated, as they
11 were in the FDOC.

12 BY INTERVENOR SARVEY:

13 Q Since the background level for PM 10 in
14 this project area is 150 micrograms per cubic
15 meter, if the project owner does not mitigate all
16 PM 10 emissions from this project, does this
17 project have potential to establish a new
18 violation of the federal ambient air quality
19 standard for PM 10 of 150 micrograms per cubic
20 meter?

21 A The project's significance and our
22 determination that it does have potentially
23 significant air quality impacts is based on the
24 project contributing to ongoing violations. And
25 the background data being 150 on a very bad day in

1 October 1999 or being perhaps 90 micrograms per
2 cubic meter, in all these cases those
3 concentrations exceed the California ambient air
4 quality standard for PM 10, which is 50.

5 So the project itself may not cause an
6 impact of 50 micrograms per cubic meter; in fact,
7 it causes a much impact than that, but it
8 certainly can contribute to the existing
9 violations.

10 Q Essentially what I'm asking is the
11 project area does have a recorded level of 150
12 micrograms per cubic meter. If we do not fully
13 mitigate this project, does this project have the
14 potential to add PM 10 which would cause a new
15 violation of the federal ambient air quality
16 standard?

17 A I don't say that it would cause a new
18 violation of the ambient air quality standards.
19 It would rather contribute to existing violations.
20 And to mitigate that, we are recommending that all
21 of the particulate matter impacts, all of the
22 residual particulate matter impacts be mitigated
23 fully.

24 If the recommended mitigation measure is
25 not incorporated, it is our opinion that a

1 significant cumulative impact would occur to
2 particulate matter concentrations.

3 Q Calling your attention to Exhibit 100
4 that I passed out earlier and so far only studies
5 one and two have been verified, the studies by
6 Mr. Stein. And would you look for me at the
7 study, cumulative study number three and number
8 four, and tell me whether those were authored by
9 you.

10 A Yes, these appear to be photocopies of
11 the pages from Staff's PSA which I drafted in
12 September of 2002, and then revised in my final
13 staff assessment of April 2003.

14 Q Okay. And in the September 2002 study
15 you have predicted the maximum cumulative impact
16 would be 10 micrograms per cubic meter; is that
17 correct?

18 A That was the number that we had in the
19 PSA, yes.

20 Q And the cumulative study number four
21 submitted in 4-3, that was Staff's version of the
22 Applicant's information and resulted in a
23 cumulative impact of 6.1 micrograms per cubic
24 meter; is that correct?

25 A That's correct. I reviewed the

1 cumulative assessment conducted by the Applicant.
2 At the time of the PSA I drafted or I augmented
3 that analysis with an independent staff assessment
4 for cooling tower impacts.

5 Cooling tower TDS levels for the cooling
6 water in the original proposal at the time of the
7 PSA were allowed to range much higher than
8 ultimately they were limited, meaning in between
9 the PSA and the FSA, the Applicant accepted new
10 restrictions on TDS, total dissolved solids, in
11 the cooling water, and by accepting that new
12 limitation it enabled us to revise our cumulative
13 assessment and it reflects here in the FSA by
14 showing that the maximum impact of PM 10 came
15 down.

16 Q And study number five, that was authored
17 by CEC staff for the East Altamonte Energy Center
18 and I think perhaps Mr. Ringer could verify its
19 validity?

20 STAFF COUNSEL HOUCK: Ms. Gefter, I have
21 no objection to Mr. Sarvey referring to this
22 exhibit he presented, but I would ask that the
23 Committee take official notice of the actual FSA
24 that is in the public record for the East
25 Altamonte Energy Center when referring to any

1 document, as this witness was not assigned to that
2 project and did not work on East Altamonte.

3 HEARING OFFICER GEFTER: And we've
4 already taken administrative notice of the
5 Commission decision and the entire proceeding of
6 East Altamonte. So it's not necessary to go
7 forward, unless you have something specific for
8 this witness.

9 INTERVENOR SARVEY: I was just trying to
10 verify the validity of these studies, that they
11 were all -- that I didn't make them up, and I'm
12 not trying to pass something fast on everybody is
13 basically what I was trying to do.

14 Are you saying that I will not be
15 allowed to ask any questions on this?

16 HEARING OFFICER GEFTER: Only if the
17 witness has any personal knowledge.

18 INTERVENOR SARVEY: Okay. So is
19 Mr. Ringer not included in that, then, or -- I
20 thought they were testifying as a panel.

21 HEARING OFFICER GEFTER: If Mr. Ringer
22 has any personal knowledge.

23 Did you participate in writing this
24 memo?

25 THE WITNESS: I just have knowledge that

1 our staff did a cumulative modeling analysis but I
2 don't know the details.

3 HEARING OFFICER GEFTER: All right.

4 INTERVENOR SARVEY: Okay. So you
5 haven't reviewed this, then, Mr. Ringer?

6 THE WITNESS: Not in great detail.

7 BY INTERVENOR SARVEY:

8 Q Mr. Birdsall, have you reviewed this
9 analysis?

10 A I've looked it over in the context of
11 this proceeding, although as has been pointed out,
12 I was not the staff that prepared the isopleths.
13 I have looked at them and they appear to be
14 reflective of Staff's analysis in East Altamonte.

15 Q So you'd verify that this is a valid
16 presentation by the Energy Commission staff,
17 correct?

18 A I think so.

19 Q Okay. Of these five analyses that I
20 presented here, which one do you think most
21 accurately reflects the cumulative impact from
22 this project?

23 STAFF COUNSEL HOUCK: I would object;
24 I'm not sure what Mr. Sarvey is referring to.

25 INTERVENOR SARVEY: Basically, I'm just

1 trying to get his professional opinion on which
2 one of these PM 10 cumulative impact analyses we
3 should rely on.

4 STAFF COUNSEL HOUCK: When you say which
5 two --

6 INTERVENOR SARVEY: There are five of
7 them, actually.

8 STAFF COUNSEL HOUCK: Aren't they all
9 the same cumulative impact analysis for East
10 Altamonte?

11 INTERVENOR SARVEY: Well, they all come
12 up with different maximum PM 10 cumulative
13 impacts. That's basically what I was asking
14 Mr. Birdsall.

15 HEARING OFFICER GEFTER: I think some of
16 them are for Tracy Peaker, some of them are for
17 East Altamonte, and some of them are for this
18 project. So I think it's --

19 INTERVENOR SARVEY: Okay. I'll strike
20 that. We're probably going in the wrong direction
21 here.

22 BY INTERVENOR SARVEY:

23 Q Mr. Birdsall, earlier I handed out an
24 excerpt from the staff assessment that's
25 Exhibit 51, page 4.5-18, the reasonably

1 foreseeable development projects.

2 Can you tell me on that list which of
3 these reasonably foreseeable development projects
4 are not in your cumulative air analysis?

5 A Yes, I'm familiar with this table, and I
6 think that we discussed earlier with Mr. Stein
7 about which projects are and aren't included.

8 To clarify, though, and to try to
9 provide a little bit of context, a number of these
10 facilities are reasonably foreseeable development
11 projects that are identified in the land use table
12 of our FSA. Many of them do not include direct
13 sources of emissions and would thus not qualify
14 for analysis using the cumulative methodology that
15 we have routinely applied, meaning it looks like
16 the North Livermore Plant, for example, while it
17 would -- of course, it sounds like it must be in
18 Livermore and that's outside of our modeling
19 domain. So there is a reason why that would not
20 be included.

21 Tracy Gateway, for example, I believe
22 was included in our cumulative assessment and our
23 staff assessment should say so. Tracy Gateway, we
24 included a couple of development projects that
25 cause stationary source emissions from activities

1 like fuel-burning and residential water-heating in
2 those developments, like, for example,
3 Mountainhouse involves a number of new residences,
4 and the new residences cause emissions from firing
5 natural gas for their water heating.

6 So I think some of those are included.

7 Q Are you testifying that the Tracy
8 Gateway project is included in your cumulative
9 impact analysis?

10 A I want to be careful about that, because
11 we looked at -- Sorry, we looked at three land use
12 developments, and Tracy Gateway was not one of
13 them, I'm sorry.

14 Q To make this easier, I'll just read you
15 the ones that I don't think are included, and you
16 just tell me whether I'm right or wrong.

17 HEARING OFFICER GEFTER: Well, why don't
18 you ask him which ones are included?

19 INTERVENOR SARVEY: Okay.

20 BY INTERVENOR SARVEY:

21 Q Which ones of these reasonably
22 foreseeable development projects in land use table
23 one are included in your cumulative impact study?

24 A Well, the short answer is two of them,
25 the Tracy Peaker Project and East Altamonte.

1 Q That's fine.

2 A The longer answer is that the others
3 cause no stationary sources or cause sources of,
4 for example, VOCs, like the auto auction facility
5 I believe is a source of VOCs, and we don't model
6 VOCs because it's a reactive pollutant.

7 Q Would you review the Applicant's
8 Exhibit 1, volume two, page 4-4.

9 A Can you provide some context? I'm not
10 sure I'm with you.

11 HEARING OFFICER GEFTER: That's the AFC.

12 BY INTERVENOR SARVEY:

13 Q Yeah, the AFC, I'm sorry, application
14 for certification.

15 A AFC --

16 Q Exhibit 1, volume two, page 4-4.

17 HEARING OFFICER GEFTER: And what is
18 that, is that a table or is it --

19 INTERVENOR SARVEY: I'll just read it to
20 him and then I'll ask him whether he agrees or
21 disagrees with what the Applicant has provided.

22 BY INTERVENOR SARVEY:

23 Q "The project will not be considered to
24 cause or contribute to a national ambient air
25 quality standard or California ambient air quality

1 standard violation unless impacts from the project
2 itself, combined with the background
3 concentration, exceed the national ambient air
4 quality standard or the California ambient air
5 quality standard."

6 A That sounds accurate, because exceeding
7 the standard with the project impacts and the
8 background would cause a violation.

9 Q I believe earlier I asked you whether
10 this project -- Well, let me back up a little bit.
11 We all agree that the background PM 10
12 concentration for this project is 150 micrograms
13 per cubic meter, correct?

14 A That's correct.

15 Q Now, if there are any unmitigated PM 10
16 emissions from this project, will this project
17 create a new violation of the national ambient air
18 quality standard for PM 10, after I just read you
19 that statement and you agreed with it.

20 A It would contribute to an existing
21 violation.

22 Q It would --

23 HEARING OFFICER GEFTER: The witness has
24 already asked -- You've already asked that, and
25 he's answered that several times.

1 THE WITNESS: It would not cause --

2 HEARING OFFICER GEFTER: That's it.

3 INTERVENOR SARVEY: Okay.

4 HEARING OFFICER GEFTER: Let's move on.

5 INTERVENOR SARVEY: I think that's all I
6 have, thank you.

7 HEARING OFFICER GEFTER: Mr. Sarvey, do
8 you want to move your exhibits? You have several
9 outstanding exhibits. Would you like to offer
10 them and get the parties responses?

11 INTERVENOR SARVEY: Okay. Should we
12 start at 71A, or --

13 HEARING OFFICER GEFTER: Yes. Why don't
14 you go through all of your exhibits.

15 INTERVENOR SARVEY: 71A, letter from the
16 City of Tracy to the CEC.

17 HEARING OFFICER GEFTER: Okay. Does
18 anyone have objection to that one?

19 STAFF COUNSEL HOUCK: No objection.

20 APPLICANT COUNSEL GALATI: No objection.

21 HEARING OFFICER GEFTER: 71A is
22 received.

23 (Thereupon Exhibit 71A was received into
24 evidence.)

25 INTERVENOR SARVEY: 71B, letter from the

1 City of Tracy to the CEC.

2 HEARING OFFICER GEFTER: No objection?

3 STAFF COUNSEL HOUCK: No objection.

4 HEARING OFFICER GEFTER: 71B is received
5 into the record.

6 (Thereupon Exhibit 71E was received into
7 evidence.)

8 INTERVENOR SARVEY: 71C, letter from
9 Mountainhouse to the CEC requesting mitigation for
10 service impacts.

11 HEARING OFFICER GEFTER: Any objection,
12 Mr. Galati?

13 APPLICANT COUNSEL GALATI: I apologize,
14 just one moment.

15 (Pause.)

16 APPLICANT COUNSEL GALATI: Again, this
17 is East Altamonte. We've taken administrative
18 notice of it, but there is no objection.

19 HEARING OFFICER GEFTER: All right.
20 We'll just receive it, and this is in East
21 Altamonte. Then also 71D is in East Altamonte.

22 INTERVENOR SARVEY: That's actually all
23 the plants, it's not exactly East -- actually,
24 this one is for Tesla.

25 HEARING OFFICER GEFTER: For Tesla?

1 INTERVENOR SARVEY: It's dated
2 September 30th.

3 HEARING OFFICER GEFTER: Anyone have
4 objection to Exhibit 71D?

5 APPLICANT COUNSEL GALATI: No objection.

6 HEARING OFFICER GEFTER: All right. 71C
7 and 71D are received.

8 (Thereupon Exhibits 71C & D were
9 received into evidence.)

10 INTERVENOR SARVEY: And 71E, letter from
11 Tracy Fire Department to the CEC.

12 HEARING OFFICER GEFTER: Is that related
13 to the notices on the --

14 INTERVENOR SARVEY: The decision on the
15 East Altamonte Energy Center.

16 HEARING OFFICER GEFTER: Okay. I don't
17 see -- We don't need that. That's not necessary,
18 it's part of the administrative record. It's not
19 relevant to anything.

20 INTERVENOR SARVEY: Okay.

21 HEARING OFFICER GEFTER: So 71E is not
22 received.

23 (Thereupon Exhibit 71E was rejected.)

24 INTERVENOR SARVEY: 71F, newspaper
25 article, The Stockton Record, "Sleepy Roads Fall

1 Victim to Choking Traffic."

2 APPLICANT COUNSEL GALATI: Objection;
3 hearsay.

4 HEARING OFFICER GEFTER: Yes, that
5 objection is sustained on newspaper articles.

6 INTERVENOR SARVEY: So we can skip all
7 of the newspaper articles, basically.

8 HEARING OFFICER GEFTER: Well, then 71F,
9 72 -- we've already excluded 72A, 72B is excluded,
10 72C is excluded, 72D is excluded, 72E is excluded,
11 73A is excluded, 73B is excluded.

12 (Thereupon Exhibits 71F, 72B-E & 73A-B
13 were rejected.)

14 HEARING OFFICER GEFTER: Let's go on to
15 the next one.

16 INTERVENOR SARVEY: Okay.

17 HEARING OFFICER GEFTER: 74A. That was
18 already received.

19 INTERVENOR SARVEY: Right. How about
20 Exhibit 76, e-mail on reported conversation with
21 the Regional Air Quality Board, John Kessler?

22 HEARING OFFICER GEFTER: Okay.

23 INTERVENOR SARVEY: Seventy-six.

24 APPLICANT COUNSEL GALATI: No objection.

25 STAFF COUNSEL HOUCK: No objection.

1 HEARING OFFICER GEFTER: Okay. Seventy-
2 six is received.

3 (Thereupon Exhibit 76 was received into
4 evidence.)

5 INTERVENOR SARVEY: And then Exhibit 78,
6 letter from the Contra Costa Water District to
7 Jack Hazol.

8 APPLICANT COUNSEL GALATI: No objection.

9 STAFF COUNSEL HOUCK: No objection.

10 HEARING OFFICER GEFTER: Seventy-eight
11 is received.

12 (Thereupon Exhibit 78 was received into
13 evidence.)

14 INTERVENOR SARVEY: And then 79A, e-mail
15 from Janice Gam, Department of Fish and Game to
16 Audrey Harrison.

17 APPLICANT COUNSEL GALATI: No objection.

18 STAFF COUNSEL HOUCK: No objection.

19 HEARING OFFICER GEFTER: All right. 79A
20 is received.

21 (Thereupon Exhibit 79A was received into
22 evidence.)

23 INTERVENOR SARVEY: Exhibit 81, data
24 request by -- Oh, that's already Staff --

25 HEARING OFFICER GEFTER: You know,

1 Mr. Sarvey, we're going to accept yours since it's
2 your data request and Staff offered it as 57, but
3 we're going to use it as one of your exhibits
4 since it's your data request.

5 STAFF COUNSEL HOUCK: Seventy --

6 HEARING OFFICER GEFTER: Eighty-one is
7 the same as 57.

8 STAFF COUNSEL HOUCK: Okay, yes.

9 HEARING OFFICER GEFTER: So 81 is
10 received.

11 (Thereupon Exhibit 81 was received into
12 evidence.)

13 INTERVENOR SARVEY: Eighty-two we've
14 already accepted, 83 has been accepted. I imagine
15 84 nobody is going to have a good comment on that
16 one.

17 APPLICANT COUNSEL GALATI: Objection;
18 hearsay.

19 HEARING OFFICER GEFTER: Which one are
20 we talking about?

21 INTERVENOR SARVEY: Newspaper article,
22 Number 84.

23 HEARING OFFICER GEFTER: Eighty-four is
24 not received.

25 (Thereupon Exhibit 84 was rejected.)

1 INTERVENOR SARVEY: Okay. Eighty-five,
2 letter from the San Joaquin Valley Air Pollution
3 Control District, Tracy Hills Specific Plan
4 Environmental Impact.

5 HEARING OFFICER GEFTER: Eighty-five,
6 any objection?

7 APPLICANT COUNSEL GALATI: Just
8 objection; relevance.

9 HEARING OFFICER GEFTER: Yes, what is
10 the relevance on this?

11 INTERVENOR SARVEY: Tracy Hills is a
12 project that has been accepted by the Pollution
13 Control District with override considerations and
14 no mitigation.

15 HEARING OFFICER GEFTER: But this is
16 dated in 1997. What is the relevance to this
17 project, the Tesla project?

18 INTERVENOR SARVEY: This project is soon
19 to break ground. It's relevant to the cumulative
20 impact of the unmitigated residential developments
21 that are being approved by the City Council.

22 STAFF COUNSEL HOUCK: I'd also note it's
23 an excerpt from that document. It's not a
24 complete document when we're referring to the
25 Tracy Hills Specific Plan Environmental Impact.

1 HEARING OFFICER GEFTER: Mr. Galati?

2 INTERVENOR SARVEY: I could provide the
3 whole thing if you want.

4 APPLICANT COUNSEL GALATI: But I still
5 would -- Even though I haven't announced any
6 objection, I still don't see how it's relevant.

7 HEARING OFFICER GEFTER: So we're going
8 to exclude this document.

9 INTERVENOR SARVEY: Okay. Eighty-six,
10 San Joaquin Valley to the City of Tracy.

11 APPLICANT COUNSEL GALATI: Again,
12 relevance, the Gateway Project.

13 HEARING OFFICER GEFTER: Is it 86? Is
14 that what it's referring to, the Gateway Project?

15 INTERVENOR SARVEY: Yes, that's the
16 Gateway Project.

17 HEARING OFFICER GEFTER: All right.
18 Again, the relevance on that isn't clear.

19 APPLICANT COUNSEL GALATI: In addition,
20 I'd raised this objection earlier is that it
21 appears to be a compilation of several documents.

22 HEARING OFFICER GEFTER: Well, that
23 would be the case. You objected to 86, 87, 88.
24 You were questioning the isopleths and where they
25 came from and how they were relevant. And if

1 these isopleths exist in other documents from
2 Staff, then we don't need to receive them in these
3 documents.

4 INTERVENOR SARVEY: Okay.

5 HEARING OFFICER GEFTER: So these are
6 excluded, 86, 87, 88 are excluded.

7 (Thereupon Exhibits 86-88 were
8 rejected.)

9 INTERVENOR SARVEY: Let's see,
10 Exhibit 89, Staff analysis for the East Altamonte
11 Energy Center.

12 HEARING OFFICER GEFTER: Okay, and that,
13 again, is East Altamonte. We can take
14 administrative notice of East Altamonte. It's not
15 necessary for us to have that.

16 (Thereupon Exhibit 89 was rejected.)

17 INTERVENOR SARVEY: Okay. Exhibit 90, I
18 think I showed Mr. Galati where that was in the --

19 APPLICANT COUNSEL GALATI: Yes, I'm
20 comfortable as authenticated. We have no
21 objection to 90.

22 INTERVENOR SARVEY: And 91 is the same.

23 HEARING OFFICER GEFTER: Okay, so you
24 don't object --

25 INTERVENOR SARVEY: And 92 also.

1 HEARING OFFICER GEFTER: Ninety, 91 and
2 92, no objection?

3 APPLICANT COUNSEL GALATI: No objection.

4 HEARING OFFICER GEFTER: Okay. So 90,
5 91 and 92 are received.

6 (Thereupon Exhibits 90-92 were received
7 into evidence.)

8 INTERVENOR SARVEY: Then Exhibit 93,
9 letter from Dave Stein to Bay Area.

10 HEARING OFFICER GEFTER: Any objection
11 to 93?

12 APPLICANT COUNSEL GALATI: I notice that
13 it's not complete, but I know that this is
14 somewhere in the record, so I would agree to the
15 full document being in and being able to refer to
16 it and not just this one page.

17 HEARING OFFICER GEFTER: Okay. Could
18 someone provide that? Would you provide that
19 letter or, Mr. Sarvey, do you have the entire
20 document?

21 INTERVENOR SARVEY: I don't have it
22 right with me. It's located somewhere in these
23 boxes.

24 HEARING OFFICER GEFTER: Okay. All
25 right, so 93 is received pending filing of the

1 entire document.

2 INTERVENOR SARVEY: Okay.

3 (Thereupon Exhibit 93 was received into
4 evidence.)

5 APPLICANT COUNSEL GALATI: And actually,
6 we have it and I can file it.

7 HEARING OFFICER GEFTER: All right.

8 INTERVENOR SARVEY: And then 94, Dave
9 Stein to Bay Area.

10 APPLICANT COUNSEL GALATI: No objection;
11 that appears to be the whole document.

12 HEARING OFFICER GEFTER: Okay, 94 is
13 received.

14 (Thereupon Exhibit 94 was received into
15 evidence.)

16 INTERVENOR SARVEY: And then 95, memo
17 from John Seitz to Dave Halcam.

18 HEARING OFFICER GEFTER: Relevance?
19 It's 1994.

20 INTERVENOR SARVEY: It's related to the
21 PA's position on pre-1990 ERCs that Mr. Birdsall
22 discussed earlier in the testimony.

23 HEARING OFFICER GEFTER: Any objection?

24 APPLICANT COUNSEL GALATI: No, there is
25 no objection.

1 HEARING OFFICER GEFTER: All right, 95
2 is received.

3 (Thereupon Exhibit 95 was received into
4 evidence.)

5 INTERVENOR SARVEY: And then Exhibit 96,
6 that's already contained in Exhibit 51 by Staff,
7 so I don't know if you want to duplicate that or
8 not.

9 HEARING OFFICER GEFTER: Okay. We'll
10 just say it's the same as Exhibit 51.

11 INTERVENOR SARVEY: And then Exhibit 98,
12 that's an article, so I doubt anyone is going to
13 want that in.

14 HEARING OFFICER GEFTER: Yes, that's
15 already been excluded, 98 and 99 have been
16 excluded.

17 INTERVENOR SARVEY: Okay.

18 HEARING OFFICER GEFTER: One hundred,
19 that's your --

20 INTERVENOR SARVEY: That's this stuff
21 right here --

22 HEARING OFFICER GEFTER: -- binder that
23 contains cumulative air quality studies that you
24 questioned the parties on.

25 INTERVENOR SARVEY: Correct.

1 HEARING OFFICER GEFTER: Any objection
2 to receiving that binder?

3 APPLICANT COUNSEL GALATI: I know that
4 Mr. Stein verified in that binder the portion of
5 the documents he was cross-examined and we have no
6 objection to that. Did Staff verify the portion
7 of those documents that were actually theirs?

8 STAFF COUNSEL HOUCK: We have no
9 objection to three and four. As to number five of
10 that exhibit, we would just ask that
11 administrative notice of East Altamonte be
12 acknowledged and that those be the documents
13 considered.

14 HEARING OFFICER GEFTER: Yes. As we
15 indicated earlier, we are taking administrative
16 notice of the entire East Altamonte record. So
17 Exhibit 100 is received.

18 (Thereupon Exhibit 100 was received into
19 evidence.)

20 HEARING OFFICER GEFTER: Exhibit 105,
21 Mr. Sarvey, that was the draft 2003 PM 10 plan
22 that was San Joaquin Valley APCD. You offered
23 that.

24 Any objection to receipt in the record?

25 APPLICANT COUNSEL GALATI: No objection.

1 HEARING OFFICER GEFTER: No objection,
2 105 is received.

3 (Thereupon Exhibit 105 was received into
4 evidence.)

5 HEARING OFFICER GEFTER: We've already
6 received 106. I think that concludes
7 Mr. Sarvey's -- Oh, no, Mr. Sarvey, you also had
8 Exhibit 107 which is the San Joaquin Valley APCD
9 indication of a violation for the POSDEF Power
10 Company, notice to comply.

11 APPLICANT COUNSEL GALATI: I object to
12 the --

13 HEARING OFFICER GEFTER: Any objection
14 to 107?

15 APPLICANT COUNSEL GALATI: Yes, I object
16 to relevance. Again, due to timing.

17 HEARING OFFICER GEFTER: Okay.

18 INTERVENOR SARVEY: I think I thoroughly
19 explained that exhibit in my cross-examination. I
20 don't see why it should be excluded.

21 HEARING OFFICER GEFTER: Well, I agree
22 that there is a relevance question here to this
23 particular project. We can include it in the
24 record and give it whatever weight it's worth in
25 terms of its relevance.

1 So it's received, Exhibit 107 is
2 received.

3 (Thereupon Exhibit 107 was received into
4 evidence.)

5 HEARING OFFICER GEFTER: Now, do you
6 have redirect of your witness?

7 STAFF COUNSEL HOUCK: Just very briefly.

8 REDIRECT EXAMINATION

9 BY STAFF COUNSEL HOUCK:

10 Q Mr. Birdsall, is Staff recommending that
11 the Applicant fully mitigate for any emissions
12 that the Tesla Power Project would be responsible
13 for?

14 A Yes, that's our recommendation, and
15 without that recommendation the project would have
16 significant cumulative impacts.

17 Q If Staff's recommendations are required
18 of the Applicant and they fully mitigate burning
19 emissions of the power project, do you believe
20 there would be any cumulative air quality impacts
21 resulting from the project? Let me re --

22 A I'm sorry, could you just repeat that?

23 Q Yes. If Staff's recommended conditions
24 are adopted, do you believe the project will be
25 fully mitigated?

1 A Yes, I do.

2 Q If the project is fully mitigated, when
3 you say that do you also mean that it will
4 mitigate any potential cumulative impacts?

5 A Yes.

6 Q And this is your opinion, even taking
7 into consideration potential new housing
8 development in the area?

9 A Yes, it is.

10 STAFF COUNSEL HOUCK: Okay, thank you.

11 HEARING OFFICER GEFTER: Any recross?

12 APPLICANT COUNSEL GALATI: No.

13 INTERVENOR SARVEY: I have some.

14 HEARING OFFICER GEFTER: Okay --

15 INTERVENOR SARVEY: Just one question.

16 HEARING OFFICER GEFTER: All right, and
17 it has to be limited to what the witness just
18 testified to.

19 INTERVENOR SARVEY: Correct.

20 RECCROSS-EXAMINATION

21 BY INTERVENOR SARVEY:

22 Q Earlier you testified that you had
23 included the Tracy Gateway project in your
24 analysis and you --

25 STAFF COUNSEL HOUCK: The witness did

1 not testify about that in the last round.

2 INTERVENOR SARVEY: I'm getting to that,
3 I'm just setting a foundation for the question.

4 BY INTERVENOR SARVEY:

5 Q -- and you rescinded that, and then you
6 stated that the Tracy Gateway project had no ROG
7 or NOx emissions that were worthy of evaluating.
8 Do you still believe that to be true?

9 A I don't recall and I don't think I would
10 have said that Tracy Gateway has no NOx and ROG
11 emissions.

12 INTERVENOR SARVEY: Thank you.

13 HEARING OFFICER GEFTER: All right.
14 That completes the testimony on Air Quality and
15 the topic of Air Quality will be closed pending
16 receipt of a draft condition between Staff and the
17 Applicant and Mr. Sarvey who will participate on
18 discussions on a condition related to the
19 agreement. And also, any other changes that the
20 parties have with respect to the conditions, the
21 construction conditions.

22 I understand the Applicant agrees to
23 those construction conditions.

24 APPLICANT COUNSEL GALATI: That's
25 correct, we agree to those construction conditions

1 as they are outlined in Exhibit --

2 HEARING OFFICER GEFTER: Exhibit 123.

3 APPLICANT COUNSEL GALATI: -- 123.

4 STAFF COUNSEL HOUCK: Yes, Exhibit 123 I
5 believe addresses any outstanding issues regarding
6 construction conditions.

7 HEARING OFFICER GEFTER: Right, I
8 remember the Applicant did agree.

9 STAFF COUNSEL HOUCK: Okay.

10 HEARING OFFICER GEFTER: So what is
11 outstanding is a condition on this, on mitigation
12 in San Joaquin Valley based on the agreement
13 that's been discussed so much this evening, and
14 also since AQ-SC7 is part of that discussion, any
15 modifications to that condition as well.

16 Other than that, the topic of Air
17 Quality is closed.

18 INTERVENOR SARVEY: And I'd like to ask
19 a question about Air Quality. Earlier
20 Mr. Sadredin was providing some comment at the end
21 of, just before we took a break, and my first
22 question is was it on the record?

23 HEARING OFFICER GEFTER: Yes, what he
24 talked about was on the record.

25 INTERVENOR SARVEY: And my second

1 question, is it going to be considered as public
2 comment? Since he's an intervenor, I don't feel
3 he should be testifying, which he wasn't
4 responding to any question, he was basically
5 testifying. As an intervenor, I'm not allowed to
6 do that, so I would ask that his testimony be
7 accepted as public comment, not as testimony on
8 the record.

9 HEARING OFFICER GEFTER: Yes, we'll
10 consider it public comment.

11 INTERVENOR SARVEY: Thank you.

12 HEARING OFFICER GEFTER: Okay. The next
13 topic is Public Health. Mr. Galati?

14 APPLICANT COUNSEL GALATI: Mr. Stein has
15 previously been sworn.
16 Whereupon,

17 DAVID STEIN
18 Was recalled as a witness herein and, having been
19 previously sworn, was examined and testified
20 further as follows:

21 DIRECT EXAMINATION

22 BY APPLICANT COUNSEL GALATI:

23 Q Mr. Stein, are you familiar with
24 Exhibit 48, which is the testimony of David Stein
25 on Public Health?

1 A Yes.

2 Q Do you have any changes or modifications
3 to that testimony at this time?

4 A No.

5 APPLICANT COUNSEL GALATI: Ms. Gefter,
6 in addition to Exhibit 48, Mr. Stein's testimony
7 also sponsors a portion of Exhibit 1, specifically
8 section 5.1-5 and Appendices K-12 through K-13. I
9 would ask, since we're testifying on declaration,
10 that Exhibit 48 and that portion of Exhibit 1 be
11 entered into the record at this time.

12 HEARING OFFICER GEFTER: Any objection?

13 STAFF COUNSEL HOUCK: No objection.

14 INTERVENOR SARVEY: No objection.

15 HEARING OFFICER GEFTER: Exhibit 48 and
16 the other portion of Exhibit 1 related, referred
17 to by Mr. Galati related to Public Health is
18 received into the record, and any other exhibits
19 that he identifies relating to Public Health.

20 (Thereupon Exhibit 48 and portions of
21 Exhibit 1 were received into evidence.)

22 APPLICANT COUNSEL GALATI: I have
23 nothing further on Public Health.

24 HEARING OFFICER GEFTER: All right.

25 Any cross-examination, Staff?

1 STAFF COUNSEL HOUCK: Staff has no
2 questions for Mr. Stein.

3 HEARING OFFICER GEFTER: If you're ready
4 to begin with your direct testimony?

5 STAFF COUNSEL HOUCK: Oh, yes.
6 Dr. Greenberg was previously sworn.
7 Whereupon,

8 ALVIN GREENBERG
9 Was recalled as a witness herein and, having been
10 previously sworn, was examined and testified
11 further as follows:

12 DIRECT EXAMINATION

13 BY STAFF COUNSEL HOUCK:

14 Q Can you please state your name for the
15 record.

16 A Alvin J. Greenberg.

17 Q And was your statement of qualifications
18 attached to your testimony?

19 A Yes, it was.

20 STAFF COUNSEL HOUCK: Are the parties
21 willing to stipulate to Dr. Greenberg's
22 credentials?

23 APPLICANT COUNSEL GALATI: Yes.

24 INTERVENOR SARVEY: Yes.

25 APPLICANT COUNSEL GALATI: Stipulated.

1 INTERVENOR SARVEY: Stipulated.

2 STAFF COUNSEL HOUCK: Thank you.

3 HEARING OFFICER GEFTER: Thank you.

4 BY STAFF COUNSEL HOUCK:

5 Q Did you prepare the testimony entitled
6 Public Health in the final staff assessment,
7 Exhibit 51?

8 A Yes, I did.

9 Q And did you also prepare the public
10 health assessment in Exhibit 52?

11 A Yes, I did.

12 Q And Exhibit 53 and 54, did you also
13 prepare?

14 A Yes.

15 Q Okay. Do you have any changes to your
16 written testimony at this time?

17 A Yes, I do.

18 Q Can you please state those changes.

19 A Yes. If we go to Proposed Conditions of
20 Certification, Public Health One --

21 Q And is this in Exhibit 51?

22 A Yes, it is.

23 Q Thank you.

24 A It would be page 4.7-19. I'd like to
25 make a minor modification to our proposed

1 condition of certification to reflect the latest
2 and the greatest thinking on this issue. The
3 first sentence would read, "The project owner
4 shall develop and implement and cooling water
5 management plan to ensure the potential for
6 bacterial growth in cooling water is kept to," and
7 then I would strike the words "an absolute" and
8 substitute the words "a minimum."

9 And the next sentence, "The plan shall
10 include" -- I'm sorry, the words "The plan shall"
11 should be kept, and the words "include weekly
12 monitoring" all the way to the end of the sentence
13 should be struck and instead replaced with fewer
14 words that are more clear such that that sentence
15 reads, "The plan shall be consistent with either
16 Staff guidelines for the control of bacteria in
17 cooling water or with the Cooling Technology
18 Institute guidelines."

19 HEARING OFFICER GEFTER: Let me ask you,
20 Dr. Greenberg, in Exhibit 54, which is Staff's
21 supplemental testimony and rebuttal testimony,
22 there is a proposed revised public health
23 condition, and it doesn't reflect the language
24 that you just indicated. It's at page eight of
25 Exhibit 54, following your rebuttal testimony.

1 THE WITNESS: I am proposing the current
2 language that I just proposed because it is more
3 current, and it does reference the CEC guidelines
4 which recently have been developed. We've gone to
5 public workshop, we've received a number of public
6 comments, and they are about to be finalized.

7 HEARING OFFICER GEFTER: Okay. Would
8 you provide that language to us, then, the new
9 proposed language?

10 THE WITNESS: I'd be happy to.

11 HEARING OFFICER GEFTER: That you just
12 gave us. Okay. So are you suggesting, then, that
13 I disregard the revised public health condition
14 that's contained in Exhibit 54?

15 THE WITNESS: Correct.

16 HEARING OFFICER GEFTER: All right.

17 APPLICANT COUNSEL GALATI: Just for the
18 record, we agree to the language modification as
19 Dr. Greenberg just described it.

20 HEARING OFFICER GEFTER: Thank you.

21 BY STAFF COUNSEL HOUCK:

22 Q Do the opinions contained in your
23 testimony represent your best professional
24 judgment?

25 A Yes, they do.

1 Q Does the proposed TPP comply with all
2 laws, ordinances, regulations and standards?

3 A Yes.

4 Q And in your professional opinion, does
5 the project pose any significant adverse impact to
6 the environment?

7 A No.

8 STAFF COUNSEL HOUCK: And the witness is
9 available for cross-examination.

10 EXAMINATION BY HEARING OFFICER

11 BY HEARING OFFICER GEFTER:

12 Q Dr. Greenberg, do you want to expound on
13 the concerns raised by the public regarding
14 Legionella and also prions?

15 A Yes. I'd also like to throw in two
16 cents on the athletic field, just to clarify the
17 record, because there seems to be a great deal of
18 concern on that.

19 Legionella bacteria is ubiquitous in the
20 environment. Staff has conducted a very thorough
21 evaluation of the possibility and probability that
22 a power plant cooling tower could indeed have
23 Legionella bacteria growing in it sufficient to
24 present a risk to either workers on the site or
25 the public off site.

1 We are very satisfied that the
2 implementation of a proper microbial growth
3 control program to reduce this risk to a level of
4 insignificance. Legionella bacteria can be found
5 in just about any water source at almost any given
6 time, so the mere fact that you might be able to
7 find a Legionella bacteria does not in and of
8 itself mean that there is a risk presented.

9 Federal OSHA has even developed some
10 guidelines and a certain most probable number
11 count that would indicate whether risk is
12 considered to be significant or of a concern. We
13 think that this program will keep all levels of
14 Legionella bacteria below that level of concern.

15 As far as prions are concerned, let me
16 first preface my comments by saying I first
17 learned that there was an interest or a concern
18 about prions at about 10:45 this morning. So I
19 did not have an opportunity to bring with me from
20 the office nor refresh my memory of the research
21 that I had conducted on that about a year ago for
22 another project. So I'm going strictly by memory,
23 and I would like permission, if necessary, to
24 supplement the record with more definitive
25 statements.

1 But clearly, as I researched it last
2 year and in discussions with two officials with
3 the California Department of Health Services,
4 Dr. Rick Kreutzer, chief of the Environmental
5 Surveillance Branch of the California Department
6 of Health Services and Dr. David Spath, chief of
7 the Sanitary Engineering Branch of the California
8 Department of Health Services, as well as my
9 review of the medical and scientific literature
10 shows that prions would only be a risk if
11 ingested.

12 They are not expected to be found in
13 wastewater or in sludge, but rather in certain
14 animal products, mostly containing high levels of
15 bone marrow or blood. So there is really no
16 scientific basis for concern of prions in any type
17 of water source or recycled water.

18 As far as the athletic field in question
19 is concerned, the City of Tracy called me this
20 past summer and asked for my advice and guidance
21 in setting up an RFP, request for proposal, for
22 them to conduct a health-risk assessment to assess
23 the risks of placing an athletic field to the west
24 of the Tracy Peaker Project and actually not at
25 the fenceline, but a couple of blocks away, and

1 what's called the Old Antennae farm. It's an
2 abandoned federal extremely low-frequency radio
3 transmitter.

4 I believe that this is the proper way to
5 go, that there are numerous sources much closer to
6 this proposed athletic field than any of the power
7 plants under the California Energy Commission's
8 jurisdiction or siting jurisdiction, and that it
9 is really the responsibility of the City of Tracy
10 to decide where they want to locate an athletic
11 field.

12 I wish that there would be members of
13 the public here who are concerned about this, that
14 they would be present here to hear that the City
15 of Tracy is taking it very seriously, and that
16 they are going to, if they do site any athletic
17 field, it will be done only after a proper health-
18 risk assessment and evaluation has been conducted.

19 Q I have another question with respect to
20 the point of maximum impact, as described in the
21 Public Health testimony.

22 A Yes.

23 Q When you calculate the location, is it
24 from the facility footprint boundary, or is it
25 from the 60-acre parcel on which the footprint, on

1 which the project is located, or the fenceline
2 around the 25-acre parcel? How do you calculate
3 where the point of maximum impact is?

4 A Actually, Staff does not calculate that
5 particular point of maximum impact. It is the
6 modeling and the location determined by the
7 Applicant. And my understanding is that it is the
8 entire parcel fenceline rather than any other
9 facility fenceline, but I think we should defer to
10 the Applicant on that.

11 I believe that Staff makes sure that the
12 calculations are correct and that the air
13 dispersion modeling is correct.

14 Q All right.

15 A The Applicant knows, much more
16 precisely, the locations.

17 HEARING OFFICER GEFTER: That's fine, we
18 can ask the Applicant.

19 Mr. Stein, could you answer that
20 question, please?

21 WITNESS STEIN: The health-risk
22 assessment modeling is done by locating the
23 sources of emissions within a geo-referenced grid,
24 and then receptors are placed around the sources.
25 The receptors are also geo-referenced and the

1 receptors represent both the fenceline and then
2 prescribed distances beyond the fenceline.

3 So the distances should represent the
4 distance from the source itself, the source of the
5 emissions.

6 HEARING OFFICER GEFTER: Okay, from the
7 actual footprint of the project.

8 THE WITNESS: I think so, yes.

9 HEARING OFFICER GEFTER: All right.

10 THE WITNESS: Yes, the stack.

11 HEARING OFFICER GEFTER: Thank you.

12 Any cross-examination of Dr. Greenberg?

13 INTERVENOR SARVEY: I've got a couple of
14 questions.

15 CROSS-EXAMINATION

16 BY INTERVENOR SARVEY:

17 Q Would you agree that PM 2.5 is a form of
18 PM 10 that lodges in the body and may take many
19 years, sometimes months to leave the body?

20 A Yes.

21 Q Since the power plant's emissions
22 contain toxic air contaminants, what analysis have
23 you done to address the cumulative impact of these
24 toxic air contaminants which will enter the body
25 and take a long time to leave?

1 A If you're referring to cumulative impact
2 from three power plants in the area, please
3 explain to me what you mean by cumulative impact.

4 Q When I mean cumulative impact, you agree
5 with the statement that the PM 2.5 enters the body
6 and, unlike PM 10, it stays deep in the chest
7 cavity. And I'm asking you had you performed any
8 analysis which quantifies or analyzes the effects
9 of the PM 2.5 with the toxic air contaminants that
10 lodge in the body and do not come out?

11 A You're asking the question of have I
12 analyzed a cumulative or perhaps additive effect
13 of a toxic air contaminant plus exposure to PM
14 2.5? See, I don't understand your question.

15 Q I'm sorry, Dr. Greenberg. What I was
16 asking is, if you just skip the last part, the
17 additive part, that's what I was asking, or the
18 additive part is what I am asking, I'm sorry.

19 A Okay. The human health risk assessment
20 prepared by the Applicant and independently
21 reviewed by me is prepared according to Cal EPA
22 and, incidentally U.S. EPA, but Cal EPA guidelines
23 that does indeed require additivity be addressed.
24 So the cumulative impact of all of the toxic air
25 contaminants are individually assessed, both the

1 cancer risk for the carcinogens, and then the
2 noncancer hazard for both carcinogens and the
3 noncarcinogens.

4 Once they're independently assessed,
5 they're added up. And so the bottom line of the
6 total cancer rate, I'm sorry, total cancer risk
7 and the total hazard index is a sum of all the
8 individual contributions from each individual
9 toxic air contaminant.

10 So that's the long answer. The short
11 answer is yes, cumulative, additive is indeed
12 considered.

13 Q And you said you did some sort of EPA
14 protocol. Could you describe that real quick --
15 not describe the protocol, just describe what you
16 said, because I missed exactly what you said.

17 A Cal EPA methodology is described by the
18 California Office of Environmental Health Hazard
19 Assessment, which also utilizes what we call the
20 CAPCOA methodology, CAPCOA being the California
21 Air Pollution Control Officers Association.

22 The Cal EPA methodology uses Cal EPA
23 cancer potency values, it uses Cal EPA reference
24 exposure levels. These are airborne
25 concentrations below which there would be no

1 hazard of a noncancer effect above which there
2 would be a hazard and adverse impact of a
3 noncancer health effect.

4 The exposure pathways, the exposure
5 duration, the amount of air that's breathed by a
6 child, by an adult. All of those exposure
7 assumptions are standardized by Cal EPA. One has
8 to use those standard exposure assumptions.

9 Q Since PM 2.5 impacts are not well
10 understood, do you feel that the Cal EPA protocol
11 is adequate?

12 A Well, first of all, let me make clear
13 that the PM 2.5 is not a toxic air contaminant.
14 It is a criteria air pollutant and, as such, it is
15 regulated differently and is addressed in the air
16 quality section and not in the public health.

17 Q That's what I'm getting at.

18 A Do I feel, then, that the standards
19 recently passed by Cal EPA -- in other words, the
20 level that would be permissible, the ambient air
21 quality standard for 2.5 is adequate to protect
22 public health? Yes, I do.

23 Q Is the point of maximum impact variable
24 with the different meteorological conditions?

25 A On any given day, it will be. But

1 actually, the point of maximum impact takes into
2 account all of those variable meteorological
3 conditions, such that that is the point where if
4 somebody stood there literally for every minute of
5 every hour of every day of every week of every
6 year for 70 years, they would receive that
7 particular dose.

8 Any other location over that 70-year
9 period would receive a smaller dose. That's why
10 it's called the point of maximum impact.

11 INTERVENOR SARVEY: That's all I have,
12 thanks.

13 HEARING OFFICER GEFTER: Any redirect?

14 STAFF COUNSEL HOUCK: With the Committee
15 and parties' permission, I would just ask if it
16 would be acceptable for Mr. Ringer to expound
17 briefly on Dr. Greenberg's last answer to
18 Mr. Sarvey's question?

19 WITNESS GREENBERG: Sure, we're a panel.

20 HEARING OFFICER GEFTER: Go ahead.

21 Whereupon,

22 MIKE RINGER

23 Was recalled as a witness herein and, having been
24 previously sworn, was examined and testified
25 further as follows:

1 REDIRECT TESTIMONY

2 WITNESS RINGER: I think Mr. Sarvey was
3 getting to the question of whether or not, for
4 lack of a better term, a true cumulative impact
5 analysis was done, which sort of melds together
6 the air quality and public health sections.

7 The CAPCOA guidelines suggest that if
8 the hazard index exceeds 0.5 for the chronic or
9 the acute, then you would add in background,
10 including the criteria of pollutants. But in this
11 case, the hazard index was less than 0.5 for
12 either measure, so that's one reason why it wasn't
13 done.

14 Another reason is that typically nobody
15 really does that anyway, but we have both reasons
16 why we didn't do it.

17 HEARING OFFICER GEFTER: Ms. Houck, do
18 you want to -- Do you have a question?

19 INTERVENOR SARVEY: Yeah, I have a
20 question about that.

21 RECROSS-EXAMINATION

22 BY INTERVENOR SARVEY:

23 Q Did you state that the CAPCOA guidelines
24 do not contain a -- if it's beyond the .05 I
25 believe you said it was?

1 A If the hazard index exceeds .5, then you
2 would consider that additional step.

3 Q All right. So the CAPCOA guidelines in
4 this instance would not necessitate that analysis.

5 A Correct.

6 INTERVENOR SARVEY: Okay, thank you.

7 HEARING OFFICER GEFTER: Do you want to
8 move your exhibits?

9 STAFF COUNSEL HOUCK: Yes. I would
10 request that the portions of Exhibit 51, 52 and 53
11 dealing with Public Health be admitted into the
12 record and you can withdraw the portion of Staff's
13 Exhibit 54 as Dr. Greenberg has indicated on the
14 record a replacement condition.

15 HEARING OFFICER GEFTER: At this point
16 do you want to remove the entire Exhibit 54? I
17 don't believe there were any more topics that were
18 covered.

19 STAFF COUNSEL HOUCK: Yes.

20 HEARING OFFICER GEFTER: Any objection?

21 APPLICANT COUNSEL GALATI: No objection.

22 INTERVENOR SARVEY: No objection.

23 HEARING OFFICER GEFTER: Okay. The
24 exhibits identified by Ms. Houck related to Public
25 Health are received into the record.

1 (Thereupon Exhibits 51-53 were received
2 into evidence and Exhibit 54 was removed.)

3 HEARING OFFICER GEFTER: Mr. Sarvey, do
4 you have any testimony on Public Health?

5 INTERVENOR SARVEY: No.

6 HEARING OFFICER GEFTER: Okay. We're
7 going to close Public Health with the exception of
8 receiving the language on the new proposed
9 condition of Public Health 1.

10 We're going to take Socioeconomics now.

11 STAFF COUNSEL HOUCK: Correct me, but
12 it's my understanding that Socioeconomics is
13 actually a public health issue related to
14 environmental justice, and Dr. Greenberg would be
15 Staff's witness available.

16 HEARING OFFICER GEFTER: That would be
17 fine. The rest of Socioeconomics we'll take by
18 declaration.

19 Mr. Galati?

20 APPLICANT COUNSEL GALATI: Mr. Busa has
21 previously been sworn in this proceeding on
22 another day, and I would just remind him he's
23 still under oath.

24 THE WITNESS: Yes.

25 HEARING OFFICER GEFTER: All right.

1 Whereupon,

2 SCOTT BUSA

3 Was recalled as a witness herein and, having been
4 previously sworn, was examined and testified
5 further as follows:

6 THE WITNESS: I understand.

7 DIRECT EXAMINATION

8 BY APPLICANT COUNSEL GALATI:

9 Q Mr. Busa, are you familiar with
10 Exhibit 49, which is the testimony of Dwight Mudry
11 and yourself on Socioeconomics dated August 29th,
12 2003?

13 A Yes, I am.

14 Q Do you have any changes or modifications
15 to that testimony at this time?

16 A No, I do not.

17 Q Okay.

18 APPLICANT COUNSEL GALATI: Ms. Gefter,
19 in addition to Exhibit 49, Mr. Busa is also
20 sponsoring a portion of Exhibit 1, specifically
21 the AFC section 5.8 and section 6.5.8 of table
22 6.1-1. In addition, a portion of Exhibit 2,
23 specifically responses to CEC data adequacy
24 requests Socio 1 through Socio 4.

25 I would ask that those exhibits along

1 with Exhibit 49 be entered into the evidentiary
2 record at this time.

3 HEARING OFFICER GEFTER: All right.

4 Hearing no objection, Exhibit 49 and the
5 other exhibits identified by Mr. Galati related to
6 Socioeconomics are received into the record.

7 (Thereupon Exhibit 49 and portions of
8 Exhibits 1 & 2 were received into evidence.)

9 APPLICANT COUNSEL GALATI: I also
10 understand that Mr. Stein would answer any
11 questions on Socioeconomics that were posed
12 relating to Air Quality, but other than that,
13 Mr. Busa has basically submitted his declaration.
14 He is unable to be cross-examined.

15 HEARING OFFICER GEFTER: I'm going to
16 ask Staff to move your testimony on Socioeconomics
17 into the record and then Mr. Sarvey may cross-
18 examine.

19 STAFF COUNSEL HOUCK: And just, again,
20 for clarification, the cross-examination would
21 actually be on Public Health, not Socioeconomics.

22 And Mr. Caswell, who was previously
23 sworn in, is here to sponsor the Socioeconomic
24 testimony by declaration.

25 HEARING OFFICER GEFTER: All right.

1 Whereupon,

2 JACK CASWELL

3 Was recalled as a witness herein and, having been
4 previously sworn, was examined and testified
5 further as follows:

6 DIRECT EXAMINATION

7 BY STAFF COUNSEL HOUCK:

8 Q Mr. Caswell, are you familiar with
9 Staff's final staff assessment, Exhibits 51 and
10 52?

11 A Yes, I am.

12 Q Are you familiar with the Socioeconomic
13 sections?

14 A Yes, I am.

15 Q Do you have or are you aware of any
16 changes to Staff's written testimony?

17 A No, I'm not.

18 Q And is the declaration and
19 qualifications of the person who prepared that
20 testimony submitted in Staff's Exhibit 51?

21 A Yes, it is.

22 STAFF COUNSEL HOUCK: Staff would at
23 this time move to enter Exhibit 51 and 52 as to
24 Socioeconomics into the record.

25 APPLICANT COUNSEL GALATI: No objection.

1 HEARING OFFICER GEFTER: Okay.
2 Exhibits 51 and 52 related to Socioeconomics are
3 now received into the record.

4 (Thereupon Exhibits 51-52 were received
5 into evidence.)

6 HEARING OFFICER GEFTER: The witnesses
7 are now available for cross-examination on
8 Socioeconomics related to Public Health and Air
9 Quality.

10 INTERVENOR SARVEY: Yeah, I just have
11 one question.

12 HEARING OFFICER GEFTER: You may ask
13 either Applicant or Staff.

14 CROSS-EXAMINATION

15 BY INTERVENOR SARVEY:

16 Q Is it true that 57 percent of the
17 population in Alameda County within a six-mile
18 radius of this project is minority?

19 HEARING OFFICER GEFTER: Who are you
20 asking that?

21 INTERVENOR SARVEY: Staff.

22 THE WITNESS: Would you please restate
23 that?

24 INTERVENOR SARVEY: Sorry, Jack.

25 BY INTERVENOR SARVEY:

1 Q Is it true that 57 percent of the
2 population within a six-mile radius of this
3 project in Alameda County is minority?

4 A I believe it's 59 percent.

5 INTERVENOR SARVEY: Thank you, Jack.
6 That's all I have.

7 HEARING OFFICER GEFTER: Do you have any
8 more questions, Mr. Sarvey?

9 INTERVENOR SARVEY: No, I'm done.

10 HEARING OFFICER GEFTER: We can close
11 the topic of Socioeconomics.

12 STAFF COUNSEL HOUCK: I do have
13 redirect.

14 HEARING OFFICER GEFTER: Okay.

15 REDIRECT EXAMINATION

16 BY STAFF COUNSEL HOUCK:

17 Q Mr. Caswell, is it your understanding
18 that the population within the six-mile radius is
19 greater than or less than 50 percent for minority
20 low-income?

21 A Less than.

22 Q And the figure that Mr. Sarvey was
23 referring to, was that related to individual
24 census blocks within that radius?

25 A Correct.

1 STAFF COUNSEL HOUCK: Okay, I have no
2 further questions.

3 HEARING OFFICER GEFTER: Do you have
4 something on that?

5 INTERVENOR SARVEY: Yes.

6 RE-CROSS-EXAMINATION

7 BY INTERVENOR SARVEY:

8 Q My understanding of the figure provided
9 by Staff is that 59 percent of the population in
10 Alameda County is minority, and I would ask you to
11 verify that.

12 HEARING OFFICER GEFTER: That
13 mischaracterizes the testimony. I believe he said
14 59 percent within the six-mile radius.

15 THE WITNESS: Correct. In that six-mile
16 radius it's 41 percent.

17 BY INTERVENOR SARVEY:

18 Q No, I'm talking about in Alameda County,
19 not --

20 STAFF COUNSEL HOUCK: Can you reference
21 what figure you're referring to?

22 INTERVENOR SARVEY: Yeah, I'll do that
23 here.

24 HEARING OFFICER GEFTER: Do you know,
25 I'm very confused by the last answers, and I'm

1 going to strike all of that testimony. It doesn't
2 make any sense to me. I'm going to strike
3 testimony from the first question that Mr. Sarvey
4 asked Mr. Caswell. That is all stricken, and
5 maybe Mr. Caswell can then explain what he is
6 referring to.

7 STAFF COUNSEL HOUCK: Could I also just
8 state for the record that I'll apologize to the
9 Committee. It was my understanding from previous
10 hearings and the prehearing conference that
11 Mr. Sarvey had a question related to Public
12 Health, not to how the environmental justice
13 analysis was conducted. And we would have had
14 someone available to go over that in detail if
15 that had been clearer.

16 We do have Dr. Greenberg here to address
17 environmental issues associated with Public
18 Health. But Staff's witness that --

19 HEARING OFFICER GEFTER: Off the record.

20 (Brief recess.)

21 HEARING OFFICER GEFTER: Okay,
22 Mr. Caswell?

23 THE WITNESS: Yes. The question has
24 been asked about the six-mile radius and
25 populations greater than 50 percent within that

1 six-mile radius. As a whole, that six-mile radius
2 reflects only a 41-percent population of clusters
3 and of minority populations or populations of
4 color.

5 And what we have here in Socioeconomics
6 Figure 1, it has a table as well as a map showing
7 that there are clusters of populations within that
8 six-mile radius which encompasses both Alameda and
9 San Joaquin Counties. And in Alameda County there
10 is a cluster population group within that Alameda
11 County six-mile radius that is greater than 50
12 percent.

13 HEARING OFFICER GEFTER: Thank you.

14 Mr. Sarvey, do you have a question now?

15 INTERVENOR SARVEY: Yes.

16 BY INTERVENOR SARVEY:

17 Q On Exhibit 51, 4.8-8, the testimony
18 states that "Although data in Socioeconomics
19 Table 1 show the people of color population in
20 Alameda County as being 59 percent, the people of
21 color population within the six-mile radius of the
22 project is 41 percent."

23 Now, is the population of Alameda County
24 that is included in this six-mile radius 59
25 percent people of color?

1 STAFF COUNSEL HOUCK: I would object; I
2 think Mr. Sarvey has mischaracterized the
3 testimony.

4 INTERVENOR SARVEY: I don't think I
5 understand it.

6 STAFF COUNSEL HOUCK: Okay.

7 HEARING OFFICER GEFTER: Perhaps you can
8 explain.

9 THE WITNESS: The entire population in
10 that Alameda County does not exceed a cluster
11 group targeted within that Alameda County group
12 within the six-mile radius, as indicated in
13 Socioeconomics Figure 1, and it is -- there is a
14 legend that indicates where that population
15 targeted group is, exceeds 59 percent. It's a
16 community within that area.

17 But the overall Alameda and six-mile
18 radius to encompass San Joaquin County is less
19 than 50 percent and is reflected at 41 percent.

20 HEARING OFFICER GEFTER: Thank you.

21 Do you have anything else, Mr. Sarvey?

22 INTERVENOR SARVEY: No, I don't have
23 anything else, but I think that that's really
24 unclear.

25 STAFF COUNSEL HOUCK: Can I ask this

1 question on redirect?

2 REDIRECT EXAMINATION

3 BY STAFF COUNSEL HOUCK:

4 Q Looking at Socioeconomics Figure 1, the
5 circle in that chart, does that reflect the six-
6 mile radius that Staff referred to?

7 A Yes.

8 Q And does that six-mile radius encompass
9 all of Alameda County?

10 A No.

11 Q So would the 59 percent number
12 referenced by Mr. Sarvey on page 4.8-8, is that
13 referring to the total population of Alameda
14 County?

15 A No. I think it's only that portion of
16 Alameda County that's encompassed in that six-mile
17 radius.

18 Q Okay, but that would -- but looking at
19 the six-mile radius overall, it does not encompass
20 a population of more than 50 percent minority or
21 low-income.

22 A Correct.

23 STAFF COUNSEL HOUCK: Okay, thank you.

24 HEARING OFFICER GEFTER: Thank you.

25 We're going to close Socioeconomics, and

1 I'm going to ask Staff to move all of your
2 exhibits into the record that we've covered, and
3 that would include Exhibits 51, 52, 53.

4 STAFF COUNSEL HOUCK: Do you want me to
5 individually list each --

6 HEARING OFFICER GEFTER: You could just
7 go through the list. I can say 51, 52, 53, there
8 has been no objections to any of the portions.
9 We're now going to receive the entire documents
10 into the record.

11 (Thereupon Exhibits 51-53 were received
12 in their entirety into evidence.)

13 HEARING OFFICER GEFTER: Let's see, what
14 else do you have?

15 That completes all of Staff's exhibits.

16 And I'm going to ask the Applicant the
17 same thing. Do you want to go through your
18 exhibits and move the entire portions of
19 Exhibits 1, 2, 3, 4, 5, 6 into the record?

20 APPLICANT COUNSEL GALATI: Yes, I would
21 ask that those Exhibits 1 through 6 be moved into
22 the record.

23 HEARING OFFICER GEFTER: Okay. As there
24 were no objections to the portions of those
25 exhibits, the entire documents are received into

1 the record.

2 (Thereupon Exhibits 1-6 were received in
3 their entirety into evidence.)

4 HEARING OFFICER GEFTER: I believe you
5 have some additional exhibits, Mr. Galati, that
6 are still pending.

7 Exhibits 10, 11, if there are any
8 objections? We've already closed Transmission
9 System Engineering, but I don't have those
10 exhibits moved into the record.

11 APPLICANT COUNSEL GALATI: I would ask
12 that those be moved into the record as well,
13 Exhibits 10 and 11.

14 HEARING OFFICER GEFTER: They are
15 received into the record.

16 (Thereupon Exhibits 10 & 11 were
17 received into evidence.)

18 APPLICANT COUNSEL GALATI: I don't
19 believe I have any other outstanding exhibits.

20 HEARING OFFICER GEFTER: Okay. I'm
21 going to check some of the later exhibits that we
22 discussed.

23 The draft agreements, one between
24 Alameda County and Zone Seven, I have that marked
25 as Exhibit 160, and the draft agreement between

1 Rosedale-Rio Bravo and Midway Power, I have that
2 marked as Exhibit 161. Do you want to move those
3 into the record?

4 APPLICANT COUNSEL GALATI: Yes, please,
5 Exhibit 160 and 161.

6 HEARING OFFICER GEFTER: Okay. Those
7 are received into the record.

8 (Thereupon Exhibits 160 & 161 were
9 received into evidence.)

10 HEARING OFFICER GEFTER: I think that is
11 it for exhibits.

12 We've gone over the information that was
13 still pending and the other topics we concluded
14 last week on the 12th as well as the conditions
15 that we're waiting for here on Air Quality and
16 Public Health. Other than that, the record is
17 closed.

18 Opening briefs will be due ten days
19 after receipt of the transcripts.

20 With that, the hearing is adjourned.

21 (Whereupon, at 9:45 p.m., the hearing
22 was adjourned.)

23 --o0o--

24

25

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of September, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345