

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
Application for Certification )  
Victorville 2 Hybrid Power ) Docket No.  
Project ) 07-AFC-1  
\_\_\_\_\_ )

SOUTHERN CALIFORNIA LOGISTICS AIRPORT  
ADMINISTRATIVE OFFICE BUILDING  
18374 PHANTOM STREET  
VICTORVILLE, CALIFORNIA

THURSDAY, APRIL 3, 2008

10:17 A.M.

Reported by:  
Peter Petty  
Contract Number: 170-07-001

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

Jackalyne Pfannenstiel, Associate Member

HEARING OFFICER AND ADVISORS

Raoul Renaud, Hearing Officer

Timothy Tutt

Susan Brown

STAFF AND CONSULTANTS PRESENT

Caryn J. Holmes, Staff Counsel

John Kessler, Project Manager

Rick York

Tuan Ngo

Matthew Layton

APPLICANT

Michael J. Carroll, Attorney  
Latham and Watkins, LLP

Jon B. Roberts, City Manager  
City of Victorville

Thomas M. Barnett, Executive Vice President  
Inland Energy, Inc.

INTERVENOR

Gloria D. Smith, Attorney  
Adams, Broadwell, Joseph & Cardozo  
California Unions for Reliable Energy

ALSO PRESENT

Bruce Kinney, Deputy Regional Manager  
Tonya Moore, Environmental Scientist  
Denyse Racine, Environmental Scientist  
California Department of Fish and Game

Alan J. De Salvio, Supervising Air Quality  
Engineer  
Karen Nowak, District Counsel  
Mojave Desert Air Quality Management District

Mike Skuja (via teleconference)  
Defenders of Wildlife

Jackie Lynn Nutting, Director, Government Affairs  
Southern California Chapter  
Associated Builders and Contractors, Inc.

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1,2
Background and Overview	9
Uncontested Topics	13
Identified	13
Received in Evidence	17
Soils and Water	18
Applicant	18
CEC Staff	19
In Evidence	22
Contested Topics	24
Biological Resources	24
CEC Staff	24
Applicant	25
Intervenor CURE	27
CEC witness R. York	28
Direct Examination by Ms. Holmes	29
CDFA witnesses B. Kinney, D. Racine and T. Moore	37
Direct Examination by Ms. Holmes	38
Applicant exhibits	48
CEC Staff exhibits	48
Public Comment	49
M. Skuja, Defenders of Wildlife	49
Air Quality	58
CEC Staff	58
Applicant	60
Intervenor CURE	61

## I N D E X

	Page
Contested Topics - continued	
Air Quality - continued	
CEC Staff witnesses T. Ngo, M. Layton	63
Direct Examination by Ms. Holmes	63
Exhibits	69
MDAQMD witness A. De Salvio	64
Direct Examination by Ms. Holmes	64
Cross-Examination by Mr. Carroll	67
Cross-Examination by Ms. Smith	67
Applicant exhibits	69
CURE exhibits	70
CEC Staff Exhibits	73,76
Public Comment	74
Jackie Lynn Nutting, Associated Builders and Contractors, Inc.	74
Closing Remarks	76
Presiding Member Boyd	76
Associate Member Pfannenstiel	78
Briefing Topics/Schedule	79
Adjournment	87
Reporter's Certificate	88

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

10:17 a.m.

PRESIDING MEMBER BOYD: Welcome. Sorry for the slight delay. It is easy for some of us to get lost here, and I'm not implying that somebody did, but --

(Laughter.)

PRESIDING MEMBER BOYD: -- but my party just happened to catch an earlier plane and still got lost, but still made it here. So we're all assembled and ready to go.

My name's Jim Boyd; I'm Vice Chair of the Energy Commission and Presiding Member of this siting case. Two chairs to my right is Commission Chairman Jackie Pfannenstiel, who is the Associate Member of the Siting Committee. We operate by siting committees of two Commissioners.

And we are guided always by a Hearing Officer, so the three of us constitute the Siting Committee for all siting cases.

So I want to welcome you to this evidentiary hearing on the Victorville 2 Hybrid Power Project. And as our custom, I'm going to turn the rest of the proceedings over to the Hearing Officer. And we can finish the

1 introductions at the table here, and of all the  
2 rest of the parties to this.

3 So, if you would.

4 HEARING OFFICER RENAUD: Thank you,  
5 Commissioner Boyd. My name's Raoul Renaud. As  
6 Commissioner Boyd said, I'm the Hearing Officer  
7 assigned to this matter. And today we're here for  
8 the evidentiary hearing in the Victorville 2  
9 Hybrid Power Project application for  
10 certification.

11 Commissioner Boyd introduced  
12 Commissioner Pfannenstiel. To her right is Tim  
13 Tutt, who is with the Energy Commission and is  
14 Commissioner Pfannenstiel's Advisor. To  
15 Commissioner Boyd's left is Susan Brown, who is  
16 his Advisor.

17 And I would like to ask the  
18 representatives here from the applicant, City of  
19 Victorville, to introduce themselves, please.

20 MR. CARROLL: Good morning. My name is  
21 Mike Carroll with Latham and Watkins. We are  
22 counsel to the applicant. To my far left is Jon  
23 Roberts, City Manager for the City of Victorville,  
24 the applicant in this matter. To my immediate  
25 left is Tom Barnett, Vice President with Inland

1 Energy, the City's developer of the project.

2 Sitting here in the front row are Sara  
3 Head and Arrie Bachrach with ENSR, the applicant's  
4 environmental consultants. And we have various  
5 other members of our team present, as well.

6 And at some appropriate time before we  
7 get fully underway Mr. Roberts and Mr. Barnett  
8 would like to make some brief welcoming remarks.

9 HEARING OFFICER RENAUD: Fine, thank  
10 you. And we'll do that once we complete the  
11 introductions.

12 MR. CARROLL: Okay.

13 HEARING OFFICER RENAUD: Now, the next  
14 table over are representatives of the Energy  
15 Commission Staff. And I would ask that you  
16 introduce yourselves, please.

17 MS. HOLMES: My name is Caryn Holmes;  
18 I'm the Staff Counsel assigned to this project.  
19 To my right is John Kessler, who is the CEC  
20 Project Manager for this project. We also have  
21 technical staff members in the audience who will  
22 speak when it's appropriate.

23 HEARING OFFICER RENAUD: Okay. And in  
24 this case we also have two parties who have  
25 intervened. This is a procedure whereby members

1 of the public can become participants. And a  
2 representative of one of our intervenors is here  
3 today, California Unions for Reliable Energy. And  
4 would you introduce yourself, please.

5 MS. SMITH: Gloria Smith from Adams,  
6 Broadwell, Joseph and Cardozo for CURE.

7 HEARING OFFICER RENAUD: Thank you. And  
8 we have some government agency representatives  
9 here today, I believe, from the California State  
10 Department of Fish and Game, correct?

11 MR. KINNEY: Correct.

12 HEARING OFFICER RENAUD: Would you care  
13 to introduce yourselves, please.

14 MR. KINNEY: Sure, I'm Bruce Kinney,  
15 Deputy Regional Manager for the Inland Desert  
16 Region of Southern California, Department of Fish  
17 and Game.

18 To my right is Denyse Racine and Tonya  
19 Moore, both Senior Environmental Scientists for  
20 the Department working in the desert area.

21 HEARING OFFICER RENAUD: All right,  
22 thank you. Do we have any elected officials  
23 present? Government agency representatives?  
24 Okay.

25 MR. DE SALVIO: The Mojave Desert AQMD

1 is present, Alan De Salvio and Karen Nowak.

2 HEARING OFFICER RENAUD: Very good. And  
3 AQMD is Air Quality Management District for those  
4 of you who didn't know that. Thank you. Welcome.

5 And do we have a representative from the  
6 Public Adviser's Office here today? No. All  
7 right.

8 Now, on the phone, we have an open phone  
9 line which is available for the members of the  
10 public who wish to listen in and participate. And  
11 I know we have at least one person on board who is  
12 going to speak at some point. Would you care to  
13 introduce yourselves, please, Mike.

14 MR. SKUJA: Hi, Raoul. Yes, this is  
15 Mike Skuja; I'm a California representative on the  
16 biologists board, Defenders of Wildlife. We're  
17 calling in from Sacramento.

18 And I was wondering if you guys could  
19 move the mike closer to the speakers; it's a bit  
20 hard for me to hear some of the people who are  
21 speaking.

22 HEARING OFFICER RENAUD: Okay, we'll  
23 bear that in mind. You're on a speakerphone and  
24 it's kind of a large room, but we'll try to make  
25 sure you can hear. We'll do the best we can.

1                   MR. SKUJA: All right, okay. Thanks,  
2 Raoul.

3                   HEARING OFFICER RENAUD: Thank you. All  
4 right, good. And others may phone in at some  
5 point. There's that capability for anybody to  
6 phone in and listen.

7                   You had some introductory remarks here  
8 on behalf of the applicant. Why don't you go  
9 ahead with those at this point.

10                  MR. ROBERTS: Thank you.

11                  HEARING OFFICER RENAUD: That'd be  
12 great, thank you.

13                  MR. ROBERTS: On behalf of the  
14 applicant, the City of Victorville, my name is Jon  
15 Roberts. I'm the City Manager, and I want to  
16 welcome everyone to our fine city, Commissioners  
17 Boyd and Pfannenstiel.

18                  This is a historic moment in what will  
19 be a long and prosperous history in our City. We  
20 understand every day the magnitude of the project  
21 that the City of Victorville has undertaken to  
22 finance and construct a 550 megawatt power  
23 generating plant.

24                  But it is because of the confidence that  
25 we have developed in the California Energy

1 Commission, the fine work of your staff, all of  
2 the governmental agencies, both on High Desert  
3 Power Plant, and now through this permitting  
4 process, that has given us the confidence to be  
5 able to go forward with this project.

6 In fact, High Desert Power Plant was  
7 awarded the 2003 Power Plant of the Year award.  
8 And the basis for that award was because of all of  
9 the cooperation between the various interested  
10 parties and governmental agencies in that project.

11 And to our great pleasure that  
12 cooperative spirit has really enhanced now in the  
13 permitting process of Victorville 2. So, we are  
14 very pleased by this. We are excited about what  
15 will be the first project in the United States  
16 combining solar with combined cycle natural gas.

17 The City of Victorville is absolutely  
18 committed to renewable energy. We see this  
19 project as the first step in what is going to be a  
20 very broad and large effort where we can play a  
21 substantial role in bringing renewable energy to  
22 the State of California.

23 So on behalf of Victorville, we welcome  
24 you all for being here. Thank you all very much  
25 for your efforts and support.

1                   PRESIDING MEMBER BOYD: Thank you.  
2           We'll take those comments, deserved or not,  
3           because, as you know, working in government you  
4           don't get too many, so --

5                   (Laughter.)

6                   PRESIDING MEMBER BOYD: -- thank you.  
7           Appreciate being here. Last time I was here it  
8           was an Air Force Base.

9                   MR. BARNETT: My name is Tom Barnett,  
10          Executive Vice President of Inland Energy. I've  
11          been the Project Manager for Inland. And Inland's  
12          been retained by the City of Victorville to manage  
13          the development effort.

14                   And I just want to add my welcome to  
15          Victorville to all of you. And particularly to  
16          add my appreciation for the hard work of the CEC  
17          and all of the staff. In particular I'd like to  
18          mention John Kessler and Caryn Holmes. They've  
19          done a great job; the spirit of cooperation has  
20          been excellent from the beginning. And I think  
21          that's reflected in how quickly we've been able to  
22          move through the issues and resolve things.

23                   So, it's greatly appreciated. And as  
24          Jon said, I really think it speaks well for the  
25          future of energy development in the State of

1 California. Thanks, again.

2 PRESIDING MEMBER BOYD: Thank you. And  
3 thanks for the compliments to the staff. As you  
4 know, as you probably learned at the beginning of  
5 this process, the staff, under California law, is  
6 deemed intervenors, so we can't talk to them and  
7 give them too many compliments except in public  
8 forums when you're dealing with a siting case.

9 So the three of us and our Advisors have  
10 to tough this out. So, anyway, it's good hearing  
11 that because it's true of their expertise, as  
12 well.

13 HEARING OFFICER RENAUD: Thank you,  
14 everyone. We'll continue with the hearing, and a  
15 few comments I need to make.

16 First of all, this proceeding is a  
17 public proceeding and it is being recorded, and a  
18 written transcript of it will be prepared and made  
19 available to the public on the internet and  
20 various other forums.

21 These microphones, in fact, are here for  
22 that purpose, to record everything that's said in  
23 the room, and it will then be transcribed into a  
24 written format.

25 The evidentiary hearing is a formal

1 adjudicatory proceeding to receive evidence from  
2 the parties. And by parties we mean the  
3 applicant, the staff and intervenors.

4 We generally follow the technical legal  
5 rules of evidence. But relevance evidence of any  
6 kind can be admitted if it's the sort of evidence  
7 upon which responsible persons are accustomed to  
8 rely in the conduct of serious affairs.

9 Testimony offered by the parties shall  
10 be under oath administered by the reporter, who is  
11 back there with the headset on.

12 Each party has the right to present and  
13 cross-examine witnesses, introduce exhibits and to  
14 rebut evidence presented by other parties. The  
15 Committee will decide any questions of relevance.  
16 Hearsay evidence will be admitted to supplement or  
17 explain other evidence, but it's not sufficient in  
18 and of itself to support findings.

19 The Committee will also rule today on  
20 motions and objections should any be made. Once  
21 the ruling has been made there will be no further  
22 time for argument. The parties may assert a  
23 continuing objection; that will be addressed in  
24 the Committee's written decision.

25 The Committee may also take

1 administrative notice of matters within the  
2 Commission's field of competence, and of any fact  
3 that may be judicially noticed by the California  
4 courts.

5 The official record of this proceeding  
6 will include the testimony of the witnesses, the  
7 reporter's transcript of the evidentiary hearing,  
8 the exhibits received into evidence, briefs,  
9 pleadings, orders, notices and oral and written  
10 comments submitted by members of the public. All  
11 of that is posted on the Commission website under  
12 the Victorville heading.

13 The decision of the Committee will be  
14 based solely on the record of competent evidence  
15 in order to determine whether the project complies  
16 with applicable law.

17 Any member of the public, that is  
18 anybody who's not a party, who wishes to speak  
19 today will have the opportunity to do so later on  
20 in the proceedings when we have the public comment  
21 period.

22 Now, we have some housekeeping to do in  
23 terms of just getting organized. There's a huge  
24 amount of paper, as you can imagine. These  
25 volumes behind me are some of the exhibits.

1           Two days ago on Tuesday we held a  
2           prehearing conference in this matter. And at that  
3           time we assessed the parties' readiness for  
4           hearing. We determined they were ready for  
5           hearing, but there were a number of issues at that  
6           time that were unresolved. That is, the staff  
7           views of particular matters were different from  
8           those of the applicant.

9           In the intervening brief 48-hour period  
10          they've come to resolution on a number of those  
11          matters. And as a result we really have two major  
12          topics of concern today. Those are air quality  
13          and biological resources.

14          And I think the best way for us to  
15          proceed today is if we take care of the details of  
16          admitting evidence with respect to the uncontested  
17          topics first. And then we'll proceed with the air  
18          quality and biological resources.

19          In the interest of keeping things  
20          somewhat briefer than they could otherwise be, and  
21          also perhaps more interesting, on all the exhibits  
22          that are not in contested areas I'm going to  
23          suggest that we introduce those as a group. Is  
24          that acceptable to counsel?

25          That's fine. All right, good. I'm

1 going to attach as exhibit A to the transcript,  
2 not as a piece of evidence, but as an exhibit to  
3 the transcript, an exhibit list prepared by Mr.  
4 Carroll's lawfirm, which lists all of the exhibits  
5 for the various topics in 22 categories.

6 And just to make sure we're all on the  
7 same page about the topics, the topics which no  
8 longer have any dispute and which are going to be  
9 submitted by written evidence and written  
10 testimony are the following:

11 Project ownership; project description;  
12 efficiency; cultural resources; land use;  
13 alternatives; noise and vibration; public health;  
14 visual resources; hazardous materials; worker  
15 safety and fire protection; traffic and  
16 transportation; socioeconomic resources; soil and  
17 water resources; reliability; geology and  
18 paleontology -- and let me back up and take soil  
19 and water off that list, because we actually do  
20 have one little question on that -- reliability;  
21 geology paleontology; transmission line safety and  
22 nuisance; transmission system engineering;  
23 facility design and waste.

24 Do the parties agree that those are the  
25 topics that will be submitted by declaration and

1 written testimony and written evidence?

2 MS. HOLMES: Yes, we do.

3 HEARING OFFICER RENAUD: Thank you.

4 CURE?

5 MS. SMITH: Yes.

6 HEARING OFFICER RENAUD: Okay.

7 Applicant?

8 MR. CARROLL: Yes. And we also  
9 understood that alternatives would be handled by  
10 declaration.

11 HEARING OFFICER RENAUD: Okay, and I  
12 intended to include that. If I didn't say it, --

13 MR. CARROLL: Perhaps you did and I  
14 missed it.

15 HEARING OFFICER RENAUD: -- it's on my  
16 list. All right.

17 So, applicant, with respect to those  
18 topics and referring to your list, Exhibit A to  
19 the transcript, do you wish to move into evidence  
20 the exhibits listed on that document?

21 MR. CARROLL: Yes, we do.

22 HEARING OFFICER RENAUD: All right. Do  
23 you have anything to add to those topics?

24 MR. CARROLL: No, we do not.

25 HEARING OFFICER RENAUD: All right, very

1 good.

2 And now, turning to the staff. Your  
3 exhibit list is shown in the evidentiary hearing  
4 order; it starts with 200 and my version goes  
5 through 208. Do you have any to add on the  
6 uncontested topics?

7 MS. HOLMES: Yes. There was an exhibit  
8 that we had originally identified, exhibit 209,  
9 alternatives, sponsored by John Kessler that was  
10 filed on the 28th.

11 In addition we filed testimony yesterday  
12 and I don't know whether you'd rather have me --  
13 do you want me to give you the list of additional  
14 exhibits? And some of them are contested and some  
15 of them are not. So I don't know whether you want  
16 me just to give you the numbers of the uncontested  
17 ones, or to go through them numerically. Which  
18 would you prefer?

19 HEARING OFFICER RENAUD: I thing --  
20 let's just try and get the uncontested ones done  
21 first.

22 MS. HOLMES: All right, --

23 HEARING OFFICER RENAUD: Is that  
24 possible?

25 MS. HOLMES: That's fine.

1 HEARING OFFICER RENAUD: Okay.

2 MS. HOLMES: I have exhibit 212 which  
3 was yesterday's testimony filed with respect to  
4 hazardous materials. Exhibit 214 which was  
5 yesterday's testimony filed with respect to  
6 traffic and transportation.

7 HEARING OFFICER RENAUD: And that's it?

8 MS. HOLMES: I believe so.

9 HEARING OFFICER RENAUD: Okay.

10 MS. HOLMES: So is it the Committee's  
11 intention that exhibit 200, which covers all  
12 technical areas, be included? Or would you rather  
13 wait until the contested areas are covered, as  
14 well?

15 HEARING OFFICER RENAUD: I think we can  
16 include it now. I think that's fine. So, with  
17 respect to then exhibits 200 through 209, 212 and  
18 214?

19 MS. HOLMES: No. I don't believe so,  
20 Hearing Officer Renaud. I believe it's 200, 205  
21 because --

22 HEARING OFFICER RENAUD: Okay, on the  
23 uncontested --

24 MS. HOLMES: -- the others are -- right.  
25 So, it would be exhibit 200, exhibit 205, --

1 HEARING OFFICER RENAUD: All right.

2 MS. HOLMES: -- exhibit 206, exhibit  
3 207, exhibit 208, exhibit 209, exhibit 212,  
4 exhibit 214.

5 HEARING OFFICER RENAUD: All right.  
6 Good. Thank you for that clarification. In  
7 respect to those exhibits, then, do you wish to  
8 move those into evidence?

9 MS. HOLMES: I do.

10 HEARING OFFICER RENAUD: All right,  
11 thank you.

12 CURE, do you have any exhibits to move  
13 into evidence at this time?

14 MS. SMITH: Not on uncontested matters.  
15 We just have two exhibits with respect to air  
16 quality --

17 HEARING OFFICER RENAUD: Right.

18 MS. SMITH: -- attached to our  
19 prehearing conference statement.

20 HEARING OFFICER RENAUD: Yes. Those are  
21 exhibits 300 and 301.

22 MS. SMITH: Okay.

23 HEARING OFFICER RENAUD: And we'll get  
24 to those.

25 All right, very good. That takes care

1 of the uncontested areas.

2 Now, we have, as I said, the two  
3 remaining contested areas, air quality and  
4 biological resources. I heard at some point that  
5 there was perhaps some delay in air quality  
6 witnesses getting here. Is that --

7 MS. HOLMES: Our air quality witnesses  
8 are not present. One option, of course, would be  
9 to move, at this point, since I believe the  
10 witnesses are present, to the additional  
11 discussion on the soils and water topic having to  
12 do with dry cooling.

13 HEARING OFFICER RENAUD: I think that's  
14 a great idea. Let's do that. Okay, on the soils  
15 and water issue, the only question that came up at  
16 the prehearing conference was that the Committee  
17 wanted to have some discussion in the record of  
18 consideration of the dry cooling alternative.

19 And the applicant has submitted written  
20 testimony on that. And if you wish to add to  
21 that, fine, but otherwise we'll take it on the  
22 submitted written testimony.

23 MR. CARROLL: No, we have nothing to  
24 add, other than the declaration of Mr. Barnett  
25 that was submitted yesterday. And I believe that

1 would be applicant's exhibit 106.

2 HEARING OFFICER RENAUD: Right, okay,  
3 106. Okay.

4 And turning now to the staff, do you  
5 have written testimony you wish to add?

6 MS. HOLMES: Yes. Yesterday we filed  
7 additional testimony on dry cooling sponsored by  
8 John Kessler. And I've identified that as exhibit  
9 213.

10 HEARING OFFICER RENAUD: All right. And  
11 do you wish to add any oral testimony to that?

12 MS. HOLMES: Staff is available to  
13 answer any questions that the Committee may have,  
14 but otherwise does not have additional testimony.

15 HEARING OFFICER RENAUD: All right. Has  
16 the applicant had an opportunity to review that?

17 MR. CARROLL: Yes, we have.

18 HEARING OFFICER RENAUD: And do you wish  
19 to cross-examine?

20 MR. CARROLL: No, we do not.

21 HEARING OFFICER RENAUD: All right,  
22 thank you. CURE, anything on alternatives with  
23 respect to the water?

24 MS. SMITH: Nothing.

25 HEARING OFFICER RENAUD: All right,

1 good. Thank you.

2 PRESIDING MEMBER BOYD: Mr. Chairman, I  
3 might just comment. I read both the staff and the  
4 applicant's materials on the water discussion. I  
5 want to compliment Mr. Kessler and the staff on  
6 their writeup on the water issue.

7 It really did help me remember rather  
8 than clarify the issue, since it goes all the way  
9 back to the 2003 CEC Integrated Energy Policy  
10 Report, which I happen to have chaired at that  
11 time and when we set some of this water policy.

12 So, it was a good discussion and I  
13 think, I, for one, understand the circumstances as  
14 they relate to this particular application, even  
15 though as an agency, we're really interested in  
16 the maximum preservation of water.

17 Water is gold in California and I think  
18 this is fine. I think in the future use of  
19 reclaimed water will become even more contentious  
20 and difficult. But in terms of where we are at  
21 this point in time, this was a good explanation.  
22 So, thank you, to both.

23 HEARING OFFICER RENAUD: Thank you.  
24 Well, it occurs to me that we could start with  
25 biological resources, since all the AQ witnesses

1 aren't here yet. How does that sound?

2 MR. CARROLL: Just a point of order. I  
3 don't think we moved the soil and water exhibits  
4 into evidence.

5 HEARING OFFICER RENAUD: Thank you, Mr.  
6 Carroll. Would you care to do that at this time?

7 MR. CARROLL: Yes. At this time  
8 applicant would move exhibits 7, 22, 36, 37, 44,  
9 79, 92 and 106.

10 HEARING OFFICER RENAUD: All right.  
11 And, staff?

12 MS. HOLMES: Staff moves exhibits 200,  
13 205, 206, 207, 208, 209, 212, 213 and 214. And I  
14 would note that we have a declaration that I would  
15 like to have admitted as an exhibit later on that  
16 is Mr. Kessler's foundation for some of those  
17 exhibits in the uncontested areas. But since it  
18 also covers some of the contested areas, I will  
19 hold that until later.

20 HEARING OFFICER RENAUD: Very well,  
21 okay. All right.

22 Staff, do you have any objection to the  
23 admission of any of the exhibits of the applicant  
24 so far?

25 MS. HOLMES: I do not.

1 HEARING OFFICER RENAUD: All right.

2 Applicant, any objection to staff's exhibits?

3 MR. CARROLL: No, we do not.

4 HEARING OFFICER RENAUD: All right, very  
5 good.

6 MR. KESSLER: Hearing Officer Renaud, --

7 HEARING OFFICER RENAUD: Yes.

8 MR. KESSLER: -- this is our air quality  
9 staff.

10 MS. HOLMES: Yes.

11 HEARING OFFICER RENAUD: All right.

12 MS. LEVINE: -- change your mind, you  
13 have the opportunity.

14 HEARING OFFICER RENAUD: Well, I'm just  
15 thinking we might go ahead with biological  
16 resources anyway because I know we have someone on  
17 the phone for that. Is there --

18 MS. HOLMES: We also have the District  
19 present, and they have requested an early time  
20 available for the hearing.

21 HEARING OFFICER RENAUD: Well, --

22 MR. DE SALVIO: It's your meeting, go  
23 ahead.

24 HEARING OFFICER RENAUD: Well, air  
25 quality comes first in alphabetical order.

1 (Laughter.)

2 HEARING OFFICER RENAUD: That will be  
3 the ruling.

4 (Laughter.)

5 HEARING OFFICER RENAUD: All right, --

6 PRESIDING MEMBER BOYD: Although we lost  
7 some of the witnesses; we just lost Matt.

8 (Laughter.)

9 HEARING OFFICER RENAUD: We'll get him  
10 back.

11 PRESIDING MEMBER BOYD: He heard that  
12 and decided he had a chance to catch his breath  
13 apparently.

14 (Pause.)

15 PRESIDING MEMBER BOYD: So shall we  
16 reverse the alphabet, again? Or wait?

17 HEARING OFFICER RENAUD: Does counsel  
18 have any preference about which order we proceed  
19 in, air or biological?

20 MR. CARROLL: No.

21 MS. HOLMES: No.

22 HEARING OFFICER RENAUD: All right. I'm  
23 hearing the Committee's preference for biological  
24 first.

25 Let me ask the staff to proceed on

1 biological resources then, and summarize where we  
2 stand.

3 MS. HOLMES: We filed the final staff  
4 assessment on March 19th. At that time there was  
5 an outstanding issue as between the applicant and  
6 the staff with respect to biological resources.  
7 Staff filed additional testimony on biological  
8 resources on March 28th, and again yesterday on  
9 April 2nd.

10 All of the staff testimony on biological  
11 resources is sponsored by Rick York, who, when he  
12 testifies, will obviously need to be sworn.

13 Staff has coordinated closely with the  
14 California Department of Fish and Game which  
15 indicated in a letter that was filed on March 28,  
16 2008, its concurrence with the Energy Commission  
17 Staff's approach and conclusions. I think it  
18 would be helpful when we are prepared to testify  
19 to have them testify as a panel.

20 It's my understanding at this point that  
21 there is no longer a dispute about the appropriate  
22 habitat compensation ratio that would be applied  
23 to this project. The staff has recommended a  
24 three-to-one ratio.

25 There are some minor unsettled issues

1 with respect to two conditions of certification.  
2 One of them having to do with the desert tortoise  
3 translocation plan, that's bio-12. And the other  
4 having to do with the requirements that arise out  
5 of the streambed alteration agreement process.  
6 That's bio-18.

7 At this point I'd like to make a motion  
8 that the record not be closed on those topics so  
9 that the parties and the public have a chance to  
10 conduct a telephonic conference and try to refine  
11 those conditions and reach agreement.

12 HEARING OFFICER RENAUD: All right.  
13 Thank you. And, Mr. Carroll, would you care to  
14 summarize the positions of the parties as you see  
15 them before we proceed with any testimony?

16 MR. CARROLL: Yes. With the filing of  
17 the additional testimony yesterday, which resolved  
18 a number of issues in biological resources, there  
19 really were only two issues remaining.

20 One is the timing issue related to bio-  
21 18 and bio-12. We support staff's proposal to  
22 keep the record open to allow the parties an  
23 opportunity to wordsmith those two conditions. So  
24 that would take that issue off the table.

25 The only remaining issue then was the

1 compensation ratio. As indicated in our response  
2 to staff's additional testimony, which was filed  
3 yesterday, in the interest of moving this project  
4 forward, and in the interest of keeping Fish and  
5 Game and the CEC together at the table, we are  
6 prepared to accept the three-to-one compensation  
7 ratio that's been proposed by the staff.

8 That eliminates all of the disputed  
9 issues in the area of biological resources. The  
10 one caveat that we indicated with respect to the  
11 compensation ratio in our filing last evening is  
12 that we do understand that there are some  
13 discussions taking place at a statewide level  
14 about whether or not there might be a uniform  
15 ratio applied to projects of this type to provide  
16 some certainty, and to encourage the development  
17 of renewable resources.

18 So we are reserving our rights should  
19 something of general applicability be adopted at  
20 the state level to revisit that issue by reopening  
21 the evidentiary record or if it should occur post-  
22 decision through a post-certification amendment.

23 But for purposes of proceeding with the  
24 project at this point, we are going to accept the  
25 staff proposal with respect to the compensation

1 ratio.

2 Also attached to our filing yesterday  
3 was a declaration of Thomas Egan. Today I  
4 distributed a revised declaration of Thomas Egan  
5 regarding biological resources. With the  
6 acceptance of this declaration into the record,  
7 all applicant's biological resources exhibits  
8 would be moved into -- all those identified in Mr.  
9 Egan's declaration would be moved into evidence.  
10 And that would preclude the need for any live  
11 testimony from Mr. Egan.

12 HEARING OFFICER RENAUD: All right, very  
13 good. The motion to keep the record open is  
14 granted. That's fine; we do that as a matter of  
15 routine, particularly where staff and applicant  
16 both want to do that. The record is frequently  
17 reopened for new evidence.

18 CURE, do you wish to speak on biological  
19 resources, and by way of an opening or summary,  
20 before we proceed with evidence?

21 MS. SMITH: Mostly just a point of  
22 clarification. We do have a concern about bio-18.  
23 We just got this yesterday, I believe. Our  
24 concern is purely legal, but we would, I guess  
25 we'll be involved in keeping the record open and

1 the further discussion, so we don't need to raise  
2 our issues here. Thank you.

3 HEARING OFFICER RENAUD: So, turning  
4 back to staff, Ms. Holmes, do you wish to call any  
5 witnesses?

6 MS. HOLMES: I think I would because of  
7 the fact that this is the first case at the  
8 Commission where the staff and the Fish and Game  
9 have essentially co-sponsored testimony, or the  
10 Department of Fish and Game has accepted the  
11 Energy Commission Staff's testimony as being  
12 equivalent to the type of process that they would  
13 go through for permits that they have issued in  
14 the past.

15 I think it would be appropriate for the  
16 staff to give a brief summary and for the  
17 Department to offer a few comments.

18 So, if we could proceed with that, Mr.  
19 York needs to be sworn and can proceed.

20 HEARING OFFICER RENAUD: Please proceed.  
21 And, Mr. Reporter, would you please swear the  
22 witness.

23 Whereupon,

24 RICK YORK

25 was called as a witness herein, and after first

1       having been duly sworn, was examined and testified  
2       as follows:

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

5                   MR. YORK:   Rick York, last name  
6       Y-o-r-k.   I work for the Energy Commission.

7                   DIRECT EXAMINATION

8       BY MS. HOLMES:

9                   Q    Mr. York, did you prepare the biological  
10       resources sections of the FSA, exhibit 204 and  
11       exhibit 211 prepared by you or under your  
12       direction?

13                  A    Yes, I did.

14                  Q    And was a statement of your  
15       qualifications included in one of those exhibits?

16                  A    Yes, it was.

17                  Q    And of --

18                       PRESIDING MEMBER BOYD:   Rick, you're  
19       going to have to project.   We have no amplified  
20       sound system.

21       BY MS. HOLMES:

22                  Q    Are the facts contained in that  
23       testimony true and correct to the best of your  
24       knowledge?

25                  A    Yes, they are.

1           Q     And do the opinions contained in that  
2 testimony represent your best professional  
3 judgment?

4           A     Yes, they do.

5           Q     And did the staff testimony, the FSA,  
6 exhibit 200 -- excuse me, did the staff prehearing  
7 conference statement also include a declaration of  
8 Dr. Philip Leitner dated March 18, 2008?

9           A     Yes, it did.

10          Q     Are you familiar with that declaration?

11          A     Yes, I am.

12          Q     Thank you. Why don't you provide a  
13 brief summary of the process that the staff went  
14 through with Fish and Game to arrive at the final  
15 staff assessment.

16          A     Well, compiling our final staff  
17 assessment, staff concluded that the proposed  
18 project will impact desert tortoise, which is a  
19 state and federally listed species; Mojave ground  
20 squirrel, which is a state-listed species;  
21 burrowing owl, which is a state and federal  
22 species of concern.

23                   The project site also has creosote rings  
24 on it which are a special botanical feature. It  
25 also contains Joshua trees. And these last two

1 special elements are covered under the San  
2 Bernardino County development code, so they will  
3 have to be dealt with during compliance. And  
4 there may be some transplantation necessary.

5 The site is also adjacent to an area  
6 where the bald eagle, which is a state-listed  
7 endangered species, and the Swainson's Hawk, which  
8 is a state-listed threatened species, were found  
9 during the applicant's field surveys.

10 The project site is also located next to  
11 the Mojave River, or nearby.

12 One of the outstanding issues for this  
13 project right now is that the plant surveys are  
14 incomplete at this time. And I understand the  
15 applicant will be completing those surveys this  
16 month. Last year's surveys were inconclusive  
17 because it was a very dry year.

18 So the applicant agreed and we are  
19 supporting them going out and redoing those  
20 surveys in 2008.

21 We've added a condition of  
22 certification, bio-16, to guide the applicant and  
23 the Committee on if rare plants are found, how to  
24 deal with those issues during the spring surveys  
25 and beyond.

1                   Staff visited the project site on April  
2                   19, 2007, June 8, 2007 and also last week, March  
3                   25, 2008. As our counsel mentioned, we worked on  
4                   this analysis in close coordination with the  
5                   Department of Fish and Game. And we acknowledge  
6                   that Fish and Game has jurisdiction over the  
7                   conservation, protection and management of fish  
8                   and wildlife, native plants and the habitats  
9                   necessary for biologically sustainable populations  
10                  of those species.

11                  Fish and Game is also the trustee agency  
12                  for fish and wildlife under the California  
13                  Environmental Quality Act.

14                  Staff's analysis includes all mitigation  
15                  details that would be contained in an incidental  
16                  take permit, and also in a streambed alteration  
17                  agreement were either one of these to be issued by  
18                  the Department of Fish and Game.

19                  These details are found in staff's  
20                  conditions of certification and in our analysis so  
21                  that they can be considered by the Commission and  
22                  included in the Commission decision.

23                  The project will permanently impact  
24                  438.5 acres of sensitive species habitat. Fish  
25                  and Game and staff have recommended that the

1 compensation ratio be at three-to-one. Staff and  
2 Fish and Game have recommended that at least  
3 1315.5 acres be purchased in an area that is known  
4 to contain the desert tortoise, the Mojave ground  
5 squirrel and burrowing owls, and also to establish  
6 a suitable endowment to provide for the habitats'  
7 care in perpetuity.

8 Staff has included bio-11, which is our  
9 condition of certification, recommended for  
10 consideration, which allows for up to one year  
11 following the Commission decision for the  
12 applicant to find suitable habitat, work closely  
13 with the wildlife agencies and staff; and also to  
14 calculate and establish the suitable endowment.

15 Briefly, the rationale for the three-to-  
16 one compensation. Staff and Fish and Game  
17 consider this a large project, 438.5 acres in  
18 sensitive species habitat is not a small impact.

19 Currently the project site is excellent  
20 habitat quality, and is not adjacent to  
21 development. But we do know that there are plans  
22 for the future for the area to be developed. But  
23 it is also near the Mojave River which is  
24 sensitive habitat.

25 The desert tortoise, Mojave ground

1 squirrel, burrowing owls and creosote rings will  
2 be impacted by the project's construction. Staff  
3 believes that the project will also have  
4 cumulative impacts, when considered with the loss  
5 of habitat, from past and current projects and  
6 probable future projects.

7 As mentioned earlier, the desert  
8 tortoise translocation plan is still being  
9 developed. And we've requested additional time to  
10 work with the applicant and the wildlife agencies  
11 to come to a good resolution on how that plan  
12 should be implemented and developed.

13 We're also concerned about the  
14 transmission line construction near the Arroyo  
15 Grande Wash. Fish and Game and staff have  
16 questions as to how the applicant's going to avoid  
17 certain impacts. We'll be working closely with  
18 them as part of the development of the streambed  
19 alteration agreement details in bio-11.

20 Staff also discovered rather late,  
21 unfortunately, that the applicant intends to use  
22 horizontal directional drilling to avoid a large  
23 dry wash near the wastewater treatment facility.  
24 Under normal circumstances, sorry we missed this,  
25 but we would like to include discussions with the

1 Army Corps of Engineers, Regional Water Quality  
2 Control Board, and also Fish and Game to make sure  
3 that work in that area does not impact the waters  
4 of the U.S. or waters of the state. And we've  
5 added a condition, bio-19, that helps guide the  
6 applicant and the process for waste to minimize  
7 impacts in that area.

8 The applicant plans to start  
9 construction in July of 2008, which puts a lot of  
10 pressure on everybody. We recognize that. Staff  
11 and the applicant know that rare plant surveys  
12 need to be completed, agency coordination needs to  
13 occur with regard to the direction of drilling,  
14 streambed alteration agreement, and the desert  
15 tortoise translocation plan.

16 We also need to work with the applicant  
17 on approving their designated biologist, all the  
18 other biologists that would be involved. That  
19 needs to be coordinated with the agencies, as  
20 well. We need to also come to some agreement as  
21 to what would be contained in -- for this project  
22 the mitigation and monitoring plan for the entire  
23 project for biological resources.

24 These are all big tasks. And we look  
25 forward to working with the applicant to review,

1 comment and ultimately approve all those important  
2 things that have to be in place before  
3 construction begins.

4 And that's the end of my summary. Did I  
5 project enough?

6 (Laughter.)

7 HEARING OFFICER RENAUD: Just a point of  
8 clarification. Mr. York, did you reference a bio-  
9 19 condition?

10 MR. YORK: Bio-19 is a new condition.

11 HEARING OFFICER RENAUD: All right.

12 MR. YORK: And I believe we filed that  
13 late -- not late, but near the end. There's a  
14 difference.

15 MS. HOLMES: Not late in the punitive  
16 sense. I believe that was filed on the 28th.

17 HEARING OFFICER RENAUD: Okay. Any  
18 cross-examination, further questions?

19 MR. CARROLL: No questions.

20 HEARING OFFICER RENAUD: All right.

21 CURE, any questions?

22 MS. SMITH: No questions, thank you.

23 HEARING OFFICER RENAUD: All right.

24 MS. HOLMES: Hearing Officer Renaud.

25 HEARING OFFICER RENAUD: Yes.

1 MS. HOLMES: Since I was planning to  
2 have the staff and the Fish and Game testify as a  
3 panel, could I ask them a couple of questions, as  
4 well? Would this be an appropriate time for that?

5 HEARING OFFICER RENAUD: Absolutely.  
6 Please go ahead and just make sure they get sworn  
7 first. May the witnesses be sworn, please.  
8 Whereupon,

9 BRUCE KINNEY, DENYSE RACINE and TONYA MOORE  
10 were called as witnesses herein, and after first  
11 having been duly sworn, were examined and  
12 testified as follows:

13 THE REPORTER: Please state and spell  
14 your names for the record, please.

15 MR. KINNEY: Bruce Kinney, California  
16 Department of Fish and Game.

17 B-r-u-c-e K-i-n-n-e-y.

18 MS. RACINE: Denyse Racine, California  
19 Department of Fish and Game.

20 D-e-n-y-s-e R-a-c-i-n-e.

21 MS. MOORE: Tonya Moore, California  
22 Department of Fish and Game.

23 T-o-n-y-a M-o-o-r-e.

24 MS. HOLMES: Thank you. I think I will  
25 try to keep this brief. And I'll start at least

1 by directing my questions to Mr. Kinney.

2 DIRECT EXAMINATION

3 BY MS. HOLMES:

4 Q Mr. Kinney, you heard Mr. York's summary  
5 of the coordination that occurred between the  
6 Department and the Energy Commission Staff. Do  
7 you agree that the type of analysis that's in the  
8 staff assessment is the same type of analysis that  
9 you guys -- you people would have prepared for  
10 purposes of an incidental take permit and a  
11 streambed alteration agreement?

12 MR. KINNEY: You guys, you people,  
13 that's the nicest thing we've been called in a  
14 long time, so --

15 (Laughter.)

16 MR. KINNEY: -- I'll gladly accept that  
17 reference. Not only are we in concurrence with  
18 the staff, I'd just like to share with the  
19 Commissioners that this has truly been a unique  
20 opportunity to work with not only folks that are  
21 trying in a most cooperative fashion to move a  
22 project forward, but also from a technical  
23 perspective to bring their experience and skills  
24 to work in cooperation with the Department  
25 regarding biological resources, when we clearly

1 understand there is a huge level of permitting and  
2 other impacts that are occurring besides just the  
3 biological resources.

4 I can't tell you how much we appreciate  
5 having the opportunity to work with folks as  
6 educated and as dedicated as your staff have been  
7 for us.

8 But we also want to express our  
9 appreciation to the applicant that has tried to  
10 keep an open door with the Department; discuss  
11 concerns from a fair basis; and openly converse  
12 with our staff. And just keep a communication  
13 open so we can discuss whether we agree on all  
14 topics or not.

15 As is in our letter from the Department,  
16 as an agency, dated March 28th, we are in  
17 concurrence with the full findings of the staff in  
18 the FSA, the supplementary findings that have been  
19 placed. And are truly looking forward to  
20 completing addressing the translocation concerns,  
21 the timing concerns that are coming up rapidly  
22 with the start time period for beginning of  
23 construction, and also in clarifying exactly what  
24 potential impacts may occur from a streambed  
25 alteration permitting process; of bringing that to

1 resolution.

2 And we've had similar successes we've  
3 been through in the process so far. I'm sure we  
4 can work cooperatively to meet the timeline.

5 Thank you.

6 MS. HOLMES: Thank you. Before I put my  
7 foot in my mouth again, I think I'll just stop and  
8 let the Committee know that they are available for  
9 questions, technical questions with respect to the  
10 details of the project, can be addressed to the  
11 Senior Biologist who worked on the project.

12 And Mr. Kinney is also obviously  
13 available for questions about the process in  
14 general, particularly with coordination with the  
15 Energy Commission Staff.

16 HEARING OFFICER RENAUD: Commissioner  
17 Pfannenstiel, please.

18 ASSOCIATE MEMBER PFANNENSTIEL: Mr.  
19 York, it's not at all a technical question, but  
20 this is one of the first siting of this kind of  
21 plant in terms of the solar portion of this.

22 Do you feel that the work that was done  
23 for this plant and the work with Fish and Game  
24 will serve as a model? Are there lessons that  
25 you've learned in how to examine this kind of site

1 for this rather unusual technology?

2 MR. YORK: I think the site assessment  
3 is not going to change. How we coordinate with  
4 Fish and Game and the other wildlife agencies, I  
5 think we've matured while working on this one.

6 If you look at our analysis it's a lot  
7 longer, which may not be necessary in all cases,  
8 but it has a lot more details. We coordinated in  
9 not only writing the analysis, but the conditions.  
10 And we tried to put things in all the right  
11 places.

12 And it does make it longer, but far more  
13 complete. We're not directing the applicant to go  
14 get a take permit and not say any more about it.  
15 We've concluded all those details.

16 We're still going to do a site-by-site  
17 project-by-project analysis and mitigation ratios  
18 may go higher or lower, depends on the project.

19 But I think that we are going to apply  
20 what we've learned here, and the relationships  
21 that we've developed, to future cases. And this  
22 has been a very good exercise.

23 ASSOCIATE MEMBER PFANNENSTIEL: And from  
24 the Fish and Game standpoint, do you find that,  
25 you know, this is obviously newer exercise for

1       you. Are there processes that the Commission  
2       should learn from having gone through the exercise  
3       this time?

4               MR. KINNEY: Well, I think we're always  
5       challenged as an agency, especially when we  
6       recognize we're addressing many of the same  
7       resources. We're challenged to try and provide a  
8       unified and direct answer to a project applicant  
9       that is always dealing on a timeline that many of  
10      us don't have maybe the freedom to allow.

11              And so I think one of the greatest  
12      lessons that comes out of this is that being able  
13      to coordinate with the staff of the Commission.  
14      And with the expertise that they bring and the  
15      experience, it simplified our ability to make sure  
16      all of the issues for biological impacts are  
17      addressed in a consistent and in an environment of  
18      agreement between the agencies.

19              And for the applicant, although there  
20      still may be some question as to how specific  
21      things to answer, for the applicant they're  
22      getting the same answer from both of our agencies.  
23      And so the resources that they have to address as  
24      potential impacts, they don't have to come back  
25      later to the Department and start at a new point.

1                   And so, clearly, from our perspective,  
2                   it keeps us from having to re-articulate to an  
3                   applicant over and over again after they feel  
4                   they've already completed one process. It  
5                   provides for an applicant an ability to get a  
6                   consistent answer and know where they stand in  
7                   trying to move and proceed forward.

8                   And those timelines are, in my  
9                   estimation from what we've accomplished here, I  
10                  think those timelines will be easier to meet than  
11                  they've been in the past because of getting  
12                  through the regulatory process in a unified arena.

13                  ASSOCIATE MEMBER PFANNENSTIEL: Thank  
14                  you.

15                  HEARING OFFICER RENAUD: Yes, question?

16                  PRESIDING MEMBER BOYD: First, Mr.

17                  Kinney, I want to thank you for your statement  
18                  about cooperation. As a long-time public servant  
19                  it's really good to hear that -- and for the  
20                  public to hear that state agencies are cooperating  
21                  and working together. I think the taxpaying  
22                  public always expected that we were.

23                  And as a alumni of the Department of  
24                  Fish and Game, albeit a short stint there, I  
25                  appreciate the work you've done on this, and the

1 work with our staff. And I was very much swayed  
2 by the work that you did in your letter.

3 So, I guess I would just ask you, based  
4 on your statement I'm interpreting that you,  
5 indeed, endorse and accept the three-to-one ratio  
6 so that the conditions of the applicant's offer  
7 are satisfied for the record.

8 I'd just like you to indicate that  
9 you've not changed from your desire for a three-  
10 to-one ratio.

11 MR. KINNEY: No, we remain consistent  
12 with the Energy Commission Staff that this is the  
13 minimum requirement to meet state standards. And  
14 appreciate the acceptance of the applicant to move  
15 forward in that regard.

16 PRESIDING MEMBER BOYD: All right, and  
17 just building on Commissioner Pfannenstiel's  
18 question and comment about the amount of traffic  
19 we're beginning to see in the Mojave Desert with  
20 regard to electric generating plants particularly,  
21 almost not exclusively, solar, although it's not  
22 relevant to this case, our agency put a lot of  
23 effort into entering into a MOU with the Bureau of  
24 Land Management with regard to lands that they  
25 manage.

1           I'm just a little bit curious, taking  
2           advantage of your being here, as to the interface  
3           between BLM and yourselves as we move throughout  
4           the Mojave Desert. Is your involvement going to  
5           be limited -- is going to be involved when we're  
6           on BLM land exclusively, as well?

7           MR. KINNEY: Our involvement on federal  
8           land comes into play depending on the applicant  
9           and whether or not it's actually a federal project  
10          being completed, or it's a private project that's  
11          occurring on federal land.

12          And so we will continue to be engaged  
13          and involved where that private party applicant  
14          still is going to have impact to state resources  
15          even on federal property our jurisdiction will  
16          remain.

17          If it were an energy project such as  
18          this, or a solar project, my understanding is the  
19          Commission and the Commission Staff would also  
20          maintain jurisdiction on those federal lands.

21          And so I would anticipate we'd be  
22          working in the same cooperative fashion.

23          PRESIDING MEMBER BOYD: Thank you. No  
24          more questions.

25          HEARING OFFICER RENAUD: All right,

1       thank you. Any other questions for any of the  
2       witnesses by parties? All right, --

3               MR. CARROLL: I would just state that on  
4       behalf of the applicant we do appreciate the  
5       participation of Fish and Game. As Mr. Kinney  
6       said, we haven't always agreed on the substance of  
7       the issues, but we've had a candid and open  
8       discussion, which we appreciate.

9               And we also appreciate the commitment to  
10       completing those tasks that remain in order for us  
11       to get under construction.

12              HEARING OFFICER RENAUD: Thank you.

13       CURE, any --

14              MS. SMITH: None from CURE.

15              HEARING OFFICER RENAUD: All right,  
16       good. Before we move to public comment on this  
17       topic, I do have a clarification question for Mr.  
18       Carroll.

19              You submitted a revised declaration of  
20       Thomas Egan to be exhibit 105.

21              MR. CARROLL: Correct.

22              HEARING OFFICER RENAUD: There was a  
23       previous version of that. And I take it you're  
24       withdrawing that one?

25              MR. CARROLL: We are withdrawing that

1 one.

2 HEARING OFFICER RENAUD: Okay. Now, the  
3 previous version referred to some exhibits that  
4 are no longer referred to.

5 MR. CARROLL: That is correct.

6 HEARING OFFICER RENAUD: Are you  
7 withdrawing those exhibits?

8 MR. CARROLL: Yes, we are.

9 HEARING OFFICER RENAUD: All right.

10 MR. CARROLL: Well, not all of them, but  
11 some of them.

12 HEARING OFFICER RENAUD: Well, the three  
13 particular ones are 77, 78 and 83.

14 MR. CARROLL: 77, 78 and 89 are being  
15 withdrawn.

16 HEARING OFFICER RENAUD: Those are  
17 withdrawn?

18 MR. CARROLL: Yes. And those are not  
19 included in the revised declaration.

20 HEARING OFFICER RENAUD: All right,  
21 thank you.

22 MR. CARROLL: Just so I understand, are  
23 we marking the revised declaration as exhibit 105?

24 HEARING OFFICER RENAUD: Yes.

25 MR. CARROLL: Okay.

1 HEARING OFFICER RENAUD: And in case we  
2 haven't done so, let's move the biological  
3 exhibits in from applicant.

4 MR. CARROLL: Applicant would move  
5 exhibits 9, 31, 46, 74, 83, 86, 87, 88, 103, 104  
6 and 105.

7 HEARING OFFICER RENAUD: Very good. Any  
8 objections?

9 MS. HOLMES: No objection.

10 HEARING OFFICER RENAUD: All right.  
11 Thank you.

12 And staff, do you move the exhibits that  
13 you previously designated?

14 MS. HOLMES: Exhibit 201, exhibit 204,  
15 and exhibit 211.

16 HEARING OFFICER RENAUD: All right. Any  
17 objection to those?

18 MR. CARROLL: I'm sorry, I missed  
19 exhibit 211 is?

20 MS. HOLMES: That's the additional  
21 biological resources testimony filed yesterday.

22 MR. CARROLL: No, we have no objection.

23 HEARING OFFICER RENAUD: No objection,  
24 all right.

25 Defenders of Wildlife, are you still

1       there?

2                   MR. SKUJA:  Yes, I am.

3                   HEARING OFFICER RENAUD:  All right.

4       We'll take public comment on biological resources  
5       at this time.  Would you care to speak?

6                   MR. SKUJA:  Yes, please.

7                   (Pause.)

8                   MR. SKUJA:  -- if you can't hear me,  
9       there's something going on with the line and at  
10       certain times I could barely even hear half of the  
11       conversation; it was being chopped up.

12                   So, in particular I couldn't hear what  
13       the applicant said that they are -- they're in  
14       agreement with the three-to-one mitigation ratio,  
15       or they're still contesting that --

16                   HEARING OFFICER RENAUD:  The applicant  
17       is in agreement with the three-to-one ratio.

18                   MR. SKUJA:  They are in agreement, okay.

19                   HEARING OFFICER RENAUD:  For purposes of  
20       being cooperative and getting things going.  But  
21       they reserve the right --

22                   MR. SKUJA:  Right, okay.

23                   HEARING OFFICER RENAUD:  -- in the  
24       future, should there be changes in the laws or  
25       regulations, to possibly move to amend.

1 MR. CARROLL: That is correct.

2 MR. SKUJA: Okay.

3 HEARING OFFICER RENAUD: If I'm  
4 summarizing it correctly.

5 MR. SKUJA: Well, as I said before, my  
6 name is Mike Skuja and I work for the Defenders of  
7 Wildlife. We have more than half-a-million  
8 members and supporters in the U.S. --

9 HEARING OFFICER RENAUD: Mike, could you  
10 speak really loud and really clear, because we  
11 have this thing turned all the way up and it's  
12 about the best we can do.

13 MR. SKUJA: Okay. So, my name is Mike  
14 Skuja. I work for Defenders of Wildlife.

15 HEARING OFFICER RENAUD: And your last  
16 name is spelled S-k-u-j-a for the record.

17 MR. SKUJA: S-k-u-j-a. And we have more  
18 than a half-a-million members in the U.S., 100,000  
19 of which are in California.

20 Before we get into our concerns, we do  
21 want to say that we are supportive of renewable  
22 energy. We just want to make sure that it's done  
23 in the best way possible, which avoids sensitive  
24 wildlife habitat and migration corridors. So we  
25 do support the renewable energy portfolio goals in

1 AB-32.

2           However, we do look at solar and all  
3 renewable energy on a case-by-case basis. And  
4 realize that different solar technologies have  
5 different environmental impacts.

6           And what we had noticed from Victorville  
7 is that the majority of this is coming from  
8 natural gas, not solar. Moreover, the life of the  
9 project is only 30 years. And one thing with  
10 sensitive desert habitat is once it's disturbed,  
11 it's disturbed. And it's very hard to regenerate.

12           So, obviously I'm not going to go over a  
13 lot of the biological concerns because most of  
14 them were covered with some of the statement  
15 earlier. But our concerns do revolve around the  
16 desert tortoise and the Mojave ground squirrel.

17           This is a large area of good quality  
18 habitat which will be permanently destroyed if the  
19 project is built. The habitat possesses desert  
20 scrub, desert saltbush scrub, Mojave -- woodland  
21 and scrub.

22           And basically one of the things I wanted  
23 to stress is we would actually like to see a five-  
24 to-one mitigation ratio because of the good  
25 quality habitat and the fact that it's going to

1 impact the Mojave ground squirrel. This is the  
2 only area in the country where the Mojave ground  
3 squirrel is found. So we pay very close attention  
4 to anything that's going to disturb Mojave ground  
5 squirrel habitat.

6 And so some additional things I did want  
7 to stress for why we'd like to see such a ratio is  
8 that the -- Kramer Desert Wildlife Management Area  
9 is located just three miles north of the project.  
10 And is co-located with desert tortoise critical  
11 habitat.

12 Moreover, as mentioned, it's going to  
13 disturb creosote bush scrub, which is the most  
14 widespread type used by the Mojave ground  
15 squirrel.

16 In general, too, we also see that brown-  
17 tail ground squirrel tend to thrive in disturbed  
18 habitat, and these has the potential to interbreed  
19 and cause genetic problems for the Mojave ground  
20 squirrel.

21 Furthermore, we note that critical  
22 habitat for the southwestern willow flycatcher is  
23 located within approximately 150 feet of portions  
24 of segment 1 transmission line routes. And  
25 critical habitat for the desert tortoise is

1 located approximately three miles north of the  
2 power plant site.

3 And lastly, critical habitat for the  
4 arroyo toad is located 3.5 miles southeast of the  
5 end of segment 3 of the transmission line.

6 So we're looking at direct habitat  
7 impacts, also indirect impacts that occur near the  
8 project site, as well. We look at wildlife from a  
9 landscape ecosystem perspective, and so we're not  
10 looking at -- in addition to the area covered,  
11 we're looking at adjacent areas, as well, and how  
12 that's going to affect wildlife in the long term.

13 And we have docketed our comments, too,  
14 so you can see my written testimony; and also our  
15 comments on the FSA, which are much more in depth.  
16 They're seven pages, I believe.

17 HEARING OFFICER RENAUD: Thank you. And  
18 we do have your written comments. And it has been  
19 placed in the record and it's been docketed. It's  
20 a public record. We did have some difficulty  
21 hearing you, but I believe we are going to get --  
22 we'll be able to get a transcript fairly clearly.  
23 I'm seeing a nod about that.

24 MR. SKUJA: Okay.

25 HEARING OFFICER RENAUD: Did you --

1 MR. SKUJA: Right.

2 HEARING OFFICER RENAUD: Was there  
3 anything you said that really isn't contained in  
4 your written statement?

5 MR. SKUJA: No, that's not contained --  
6 yeah, I based this off my written statement, so  
7 again, if something was cutting out with the line,  
8 you can always go back to my written statement  
9 which I submitted to John Kessler and dockets.

10 HEARING OFFICER RENAUD: We have it;  
11 we're looking at it.

12 MR. SKUJA: Okay.

13 HEARING OFFICER RENAUD: Thank you for  
14 your comments.

15 MR. SKUJA: Great. Yeah, and again, I  
16 did want to stress the location near the Desert  
17 Wildlife Management Area, which I don't think I  
18 heard unless I missed something.

19 HEARING OFFICER RENAUD: Okay, thank  
20 you.

21 MR. SKUJA: Thanks, Raoul.

22 HEARING OFFICER RENAUD: Thank you. Do  
23 you want to remain on the line, or shall we --

24 MR. SKUJA: Yeah, I'll stay on the line.  
25 I'll get off if I need to.

1 HEARING OFFICER RENAUD: All right,  
2 good, thanks.

3 MR. SKUJA: Thank you.

4 HEARING OFFICER RENAUD: All right. Is  
5 there any other public comment on the biological  
6 resources topic?

7 MS. HOLMES: Hearing Officer Renaud, I  
8 think before we move off of biological resources  
9 and on to air quality, I want to raise just very  
10 briefly a concern about the concept of revisiting  
11 ratios. That's not something we're familiar with.

12 And I don't want to argue that issue  
13 here, but I think that if it's of concern to the  
14 Committee it might be appropriate to ask for  
15 briefing on the issue. I think there may be legal  
16 constraints with respect to finality of permits.  
17 I don't know that for a fact, but it strikes me as  
18 an area of concern on the part of staff.

19 And I would point out that it's a two-  
20 way street from the staff perspective if the ratio  
21 that were adopted on some statewide level were to  
22 be higher, staff would not be expecting applicants  
23 to have to retroactively be subject to a higher  
24 ratio.

25 So I think we just have some concerns

1       there that have to do with equity and fairness, as  
2       well as perhaps administrative finality at  
3       decisions. And if there is some concern about  
4       that on the part of the Committee it might be an  
5       appropriate topic for briefing.

6                   HEARING OFFICER RENAUD: Thank you, yes.  
7       And I think it's safe to say that the  
8       understanding today is that the applicant is  
9       agreeing to the three-to-one ratio that's been  
10      recommended by staff.

11                   There is, however, a process that can be  
12      made available for applicants to move to amend.  
13      And should there be some opportunity for them to  
14      make use of that process, they could try.

15                   That's making no comment whatsoever, or  
16      prejudging whether such an amendment might ever be  
17      filed. And if so, what the outcome of it might  
18      be.

19                   I do agree that asking for briefing from  
20      the parties on that might be an interesting thing  
21      to do. So when we get to that point of deciding  
22      about what to have briefs about, let's -- we have  
23      that on the list.

24                   All right.

25                   PRESIDING MEMBER BOYD: Could I ask a

1 question, though, of the applicant on this point.  
2 It, too, was a mild concern of mine. I'm kind of  
3 used to, you know, you play the ballgame under the  
4 rules that existed when you played the ballgame.  
5 And if the rules change in the future, so be it.

6 And the statement you just made with  
7 regard to there already being administrative  
8 mechanisms that people can utilize in the future  
9 relative to any permitting process, is that really  
10 what you had in mind? Or were you seeking an  
11 exceptional comment in the record that kept this  
12 issue a little -- made this issue exceptional, as  
13 related to the typical approach to amendments to  
14 project applications in the future?

15 MR. CARROLL: It's the former. We're  
16 simply putting all the parties on notice that we  
17 might avail ourselves of existing mechanisms,  
18 should there be further developments in this area  
19 in the future.

20 HEARING OFFICER RENAUD: Does that help  
21 the staff?

22 MS. HOLMES: It does. As I said, we  
23 have some concerns about the fact that we, under  
24 the California Environmental Quality Act, do a  
25 case-by-case project-by-project approach. And

1 we're also concerned about the finality of the  
2 Commission decisions.

3 But I think that you're right, we're  
4 going to have to wait and see how it plays out. I  
5 just wanted to put that issue on the table for the  
6 Committee's consideration.

7 PRESIDING MEMBER BOYD: I think that was  
8 a good point.

9 HEARING OFFICER RENAUD: All right,  
10 anything else on biological resources? If not,  
11 we'll move on to air quality.

12 Again, let's start with staff counsel  
13 and ask for just a summary of where we stand,  
14 perhaps by nature of an opening statement.

15 MS. HOLMES: Staff has completed  
16 obviously its air quality analysis. And we have  
17 incorporated in the final staff assessment those  
18 conditions that the Mojave Desert Air Quality  
19 Management District identified in its final  
20 determination of compliance.

21 It's our understanding that with respect  
22 to issues between the applicant and the Commission  
23 Staff there is only one relatively minor issue  
24 remaining.

25 That issue concerns the allowable period

1 of time for construction. And we have agreed that  
2 we would simply submit that issue based on the  
3 written testimony. And that there is no need to  
4 address it further today.

5 Staff, in response to information that  
6 was provided by the applicant to us and to all  
7 parties, as well as docketed, revisited the PM2.5  
8 data and took a second look at, or a third look at  
9 the trend of the ambient air quality monitoring  
10 data for that pollutant.

11 And in taking a look at that additional  
12 information, decided that it is not appropriate to  
13 require emission reduction credits for particulate  
14 matter 2.5 microns of less in size. And as a  
15 result, we provided revised testimony yesterday  
16 that reflects that.

17 As a result, that issue is no longer in  
18 dispute between staff and the applicant. I  
19 imagine there are still issues between the staff  
20 position and that of CURE, which they can speak  
21 to.

22 HEARING OFFICER RENAUD: Okay, thank  
23 you. Now, the issue that's remaining that you  
24 referred to as timing, I think, is this about  
25 whether to stop construction 30 minutes before

1 sunset or 60 minutes?

2 MS. HOLMES: Yes.

3 HEARING OFFICER RENAUD: All right. Why  
4 don't we ask the Air District representatives to  
5 take those pre-warmed seats at the table.

6 (Pause.)

7 HEARING OFFICER RENAUD: All right,  
8 thank you. And would you mind introducing  
9 yourselves for the record, again, please.

10 MR. DE SALVIO: Alan De Salvio,  
11 Supervising Air Quality Engineer for the Mojave  
12 Desert Air Quality Management District.

13 HEARING OFFICER RENAUD: Thank you. All  
14 right, good. Could we hear from counsel for the  
15 applicant, just a brief synopsis of where we stand  
16 on air quality at this point.

17 MR. CARROLL: Yes. I think the synopsis  
18 provided by Ms. Holmes is accurate with the filing  
19 of the additional testimony from staff.

20 The only issue that remains in dispute  
21 between the applicant and the staff is the  
22 question of whether construction must stop 30  
23 minutes or 60 minutes prior to sunset, with the  
24 applicant believing that they can continue until  
25 30 minutes prior to sunset, and staff position

1 being 60 minutes.

2 We believe that the modeling that the  
3 applicant has provided and the analysis that we  
4 provided on this issue supports our position. We  
5 don't have any additional testimony to provide, so  
6 we are willing to submit the matter to the  
7 Committee.

8 We would ask that that be one of the  
9 issues identified for briefing.

10 HEARING OFFICER RENAUD: All right,  
11 thank you. CURE, would you like to make a  
12 statement regarding your position at this point on  
13 air quality.

14 MS. SMITH: CURE just has a purely legal  
15 concern about the PM10 credits being issued under  
16 rule 1406 of the Air District. We believe that  
17 those do not meet federal requirements at this  
18 time. And in that way, the Air District -- the  
19 PM10 offsets pursuant to rule 1406 are not legal.  
20 As a matter of law they do not comply with the  
21 Federal Clean Air Act at this time, just as I  
22 outlined in my prehearing conference statement.

23 Would you like a little more on that?

24 HEARING OFFICER RENAUD: Committee?

25 MS. SMITH: I think everyone's --

1                   PRESIDING MEMBER BOYD: I've got a  
2 question of the District. It's been a long time  
3 since I was in the air quality business. In  
4 submitting the subject rule to USEPA was it  
5 submitted through the California Air Resources  
6 Board?

7                   MR. DE SALVIO: It was.

8                   PRESIDING MEMBER BOYD: And they  
9 reviewed, approved and sent it on to the USEPA?

10                  MR. DE SALVIO: As a SIPS emission, I  
11 believe so. We're not certain on that, but I  
12 believe so.

13                  It was a formal -- it was a locally  
14 adopted rule; gone through the standard adoption  
15 and submission process, which includes the SIPS  
16 emission element.

17                  PRESIDING MEMBER BOYD: Okay, thank you.

18                  HEARING OFFICER RENAUD: Do you wish to  
19 call any witnesses, Ms. Holmes?

20                  MS. HOLMES: Well, I think we should get  
21 the air quality exhibits into the record.

22                  HEARING OFFICER RENAUD: Okay, let's do  
23 that.

24                  MS. HOLMES: So I would like to call  
25 Tuan Ngo and Matthew Layton.

1 HEARING OFFICER RENAUD: All right.

2 Whereupon,

3 TUAN NGO and MATTHEW LAYTON  
4 were called as witnesses herein, and after first  
5 having been duly sworn, were examined and  
6 testified as follows:

7 THE REPORTER: Please state your names  
8 for the record.

9 MR. NGO: My name is Tuan Ngo, spelled  
10 N-g-o.

11 MR. LAYTON: My name is Matthew Layton,  
12 L-a-y-t-o-n.

13 MS. HOLMES: Should we do the staff  
14 exhibits first and then the DOC, Hearing Officer  
15 Renaud?

16 HEARING OFFICER RENAUD: Yes, please.

17 MS. HOLMES: Thank you.

18 DIRECT EXAMINATION

19 BY MS. HOLMES:

20 Q Mr. Ngo and Mr. Layton, was the air  
21 quality portion of exhibit 200, the final staff  
22 assessment, exhibit 203, air quality testimony  
23 dated March 28, 2008, and exhibit 210, air quality  
24 testimony filed April 2, 2008, prepared by you or  
25 under your direction?

1 MR. NGO: Yes.

2 MS. HOLMES: Are the facts contained in  
3 that testimony true and correct?

4 MR. NGO: Yes.

5 MS. HOLMES: Do the opinions represented  
6 in that testimony represent your best professional  
7 judgment?

8 MR. NGO: Yes.

9 MS. HOLMES: Was a statement of your  
10 qualifications included in the final staff  
11 assessment?

12 MR. NGO: I think so.

13 MS. HOLMES: Yes?

14 MR. NGO: Yes.

15 MS. HOLMES: Thank you. Those are  
16 staff's exhibits with respect to air quality.  
17 Would you like us to identify and lay a foundation  
18 for the final determination of compliance at this  
19 time?

20 HEARING OFFICER RENAUD: Yes, I would,  
21 please.

22 DIRECT EXAMINATION

23 BY MS. HOLMES:

24 Q Mr. De Salvio, the final determination  
25 of compliance for this project has been identified

1 as exhibit 202. Was that document prepared by you  
2 or under your direction?

3 MR. DE SALVIO: It was.

4 MS. HOLMES: And are the facts contained  
5 in it true and correct?

6 MR. DE SALVIO: They are.

7 MS. HOLMES: And do the opinions  
8 contained in it represent your best professional  
9 judgment?

10 MR. DE SALVIO: I don't think you'll  
11 find many opinions in there, but if there are any,  
12 they do.

13 MS. HOLMES: Thank you. Those are all  
14 of the air quality exhibits. We can have cross-  
15 examination of the witnesses and then move them  
16 into the record.

17 HEARING OFFICER RENAUD: All right, very  
18 good. Do you wish to cross-examine?

19 MR. CARROLL: Point of order, I don't  
20 think Mr. De Salvio was sworn.

21 HEARING OFFICER RENAUD: That's right;  
22 you identified yourself but you weren't sworn.

23 Better do that. Thank you.

24 //

25 //

1 Whereupon,

2 ALAN DE SALVIO

3 was recalled as a witness herein, and upon being  
4 duly sworn, affirmed his previous testimony.

5 (Laughter.)

6 PRESIDING MEMBER BOYD: That's very  
7 novel.

8 MR. DE SALVIO: D-e S-a-l-v-i-o.

9 HEARING OFFICER RENAUD: All right.  
10 There's a great Latin phrase that you learn in law  
11 school and then you forget. It's called, it's  
12 nunc pro tunc, which means now for then. So  
13 that's what we just did. Okay.

14 PRESIDING MEMBER BOYD: Today only,  
15 actually.

16 HEARING OFFICER RENAUD: Okay. Do you  
17 wish to move these exhibits, the air quality  
18 exhibits, into evidence?

19 MS. HOLMES: If there is no cross-  
20 examination I do.

21 HEARING OFFICER RENAUD: All right. Is  
22 there any cross-examination?

23 MR. CARROLL: We have no cross-  
24 examination of the CEC Staff witnesses. I did  
25 want to ask Mr. De Salvio one question.

1 HEARING OFFICER RENAUD: Please go  
2 ahead.

3 CROSS-EXAMINATION

4 BY MR. CARROLL:

5 Q Mr. De Salvio, have you reviewed the air  
6 quality testimony that was filed yesterday with  
7 respect to the CEC Staff's finding that the area  
8 in which the project is located does not currently  
9 experience a PM2.5 problem, and that the project  
10 is not expected to contribute to a PM2.5 problem  
11 in the area?

12 A I have. And we concur with the finding  
13 made. It's also the finding we made in the FDOC.

14 Q Okay, thank you.

15 MR. CARROLL: No further questions.

16 HEARING OFFICER RENAUD: No further  
17 questions, all right. Anything else?

18 MS. SMITH: We have a couple of  
19 questions for Mr. De Salvio.

20 HEARING OFFICER RENAUD: Please.

21 CROSS-EXAMINATION

22 BY MS. SMITH:

23 Q Mr. De Salvio, has the District's  
24 Governing Board adopted a PM10 maintenance plan?

25 A You mean one that's currently in place?

1 Q Yes.

2 A No.

3 Q Once it does adopt a maintenance plan  
4 does that plan have to go to the California Air  
5 Resources Board?

6 A It goes through the California Air  
7 Resources Board, yes.

8 Q And then will CARB transmit that  
9 maintenance plan to EPA for EPA approval?

10 A We will request that, yes.

11 Q And is this PM10 maintenance plan  
12 required by EPA before EPA can add rule 1406 into  
13 the SIP?

14 A I don't believe so, no.

15 MS. SMITH: Nothing further.

16 HEARING OFFICER RENAUD: Okay. Any  
17 other questions?

18 MR. CARROLL: I have no further  
19 questions. I did want to address the legal point  
20 that Ms. Smith has raised before we move off from  
21 air quality. So whenever that's appropriate.

22 HEARING OFFICER RENAUD: All right.  
23 Okay, good. Let's just do the exhibits first.  
24 You move those into evidence?

25 MS. HOLMES: I would like to, yes.

1 HEARING OFFICER RENAUD: All right, they  
2 are moved. Any objection?

3 MR. CARROLL: No.

4 HEARING OFFICER RENAUD: All right. Go  
5 ahead.

6 MS. SMITH: Do I move my exhibits into  
7 evidence now?

8 HEARING OFFICER RENAUD: After Mr.  
9 Carroll, then I'll get to you. Okay?

10 MS. SMITH: Sorry.

11 HEARING OFFICER RENAUD: Mr. Carroll,  
12 would you just list off your exhibits and we can  
13 move them.

14 MR. CARROLL: Yes. Our air exhibits are  
15 sponsored by Sara Head. Her declaration is  
16 exhibit 98. The additional air exhibits are  
17 exhibit 8, 30, 42, 43, 45, 48, 51, 54, 58, 63, 73,  
18 75 and 85.

19 HEARING OFFICER RENAUD: All right.

20 MR. CARROLL: And we would ask that  
21 those be moved.

22 HEARING OFFICER RENAUD: All right. Any  
23 objection?

24 MS. HOLMES: No objection.

25 MS. SMITH: None.

1 HEARING OFFICER RENAUD: Very good,  
2 thank you.

3 And now, CURE, your exhibits for air.

4 MS. SMITH: CURE would like to move  
5 exhibits 300 and 301 into evidence.

6 HEARING OFFICER RENAUD: Okay, very  
7 good. Any objection, counsel?

8 MS. HOLMES: No.

9 MR. CARROLL: No.

10 HEARING OFFICER RENAUD: All right. All  
11 of those air exhibits are admitted.

12 And, Mr. Carroll, you had a statement  
13 you wished to make?

14 MR. CARROLL: Yes. I would recommend  
15 that the issue that's been raised by CURE be one  
16 that the parties brief. But I did want to make  
17 one quick statement.

18 If one looks at Clean Air Act section  
19 173, it's 42US.7503, it makes it very clear that  
20 from the federal perspective, offsets do not need  
21 to be enforceable and in place until the project  
22 commences operation.

23 The specific language states that by the  
24 time the source is to commence operation  
25 sufficient offsetting emission reductions have

1       been obtained.

2                   So we do not believe that there is any  
3       inconsistency with federal law at this time.  And,  
4       in fact, we have roughly two years in which to  
5       obtain final approval of a PM10 plan, and with  
6       1406 by EPA.

7                   And as I said, we'll brief that issue in  
8       our written briefs.

9                   HEARING OFFICER RENAUD:  Just to make  
10      sure I heard it right, your cite was 42US.7503?

11                   MR. CARROLL:  That is correct,  
12      7503(a)(1)(A).

13                   HEARING OFFICER RENAUD:  Okay.  Good.  
14      Well, we may be --

15                   MS. HOLMES:  Hearing Officer Renaud, I  
16      also have a brief statement on the legal issue.

17                   HEARING OFFICER RENAUD:  Please proceed.

18                   MS. HOLMES:  And that is simply to refer  
19      the Committee's attention to the approved ARB/CEC  
20      joint policy statement of compliance with air  
21      quality laws by new power plants.  It's been in  
22      existence since 1979, and staff relies on that, as  
23      can the Commission, in relying on the districts to  
24      determine compliance with federal air quality law.  
25      Under that MOU that is the districts'

1 responsibility.

2 HEARING OFFICER RENAUD: All right,  
3 thank you.

4 Does anyone have anything further on air  
5 quality, the parties, that is, any of the parties?

6 MS. HOLMES: No.

7 MR. CARROLL: No.

8 HEARING OFFICER RENAUD: All right.

9 MS. SMITH: Nothing.

10 HEARING OFFICER RENAUD: Let's ask at  
11 this time, then, for public comment in the area of  
12 air quality. Does anybody wish to speak? Okay.

13 Does anyone wish to speak about  
14 anything?

15 (Laughter.)

16 HEARING OFFICER RENAUD: All right. Ms.  
17 Holmes, and then I see we have somebody in the  
18 back.

19 MS. HOLMES: I would like to move what I  
20 have identified as exhibit 215 into evidence,  
21 that's a declaration of John Kessler, rather than  
22 have him go through the usual song-and-dance about  
23 having had testimony prepared under his  
24 supervision.

25 It provides the foundation for exhibits

1 205, 206, 207, 208, 209, 212, 213 and 214.

2 HEARING OFFICER RENAUD: Okay. And what  
3 is the topic of those exhibits?

4 MS. HOLMES: 205 was cultural resources  
5 testimony of Beverly Bastian, but there were no  
6 declarations with some of those. And so Mr.  
7 Kessler, as the supervisor, prepared a declaration  
8 sponsoring them.

9 So it lays the foundation for 205,  
10 cultural resources; 206, noise; 207, traffic and  
11 transportation; 208, visual resources; 209,  
12 alternatives; 212, hazardous materials; 213,  
13 additional testimony on dry cooling; and 214,  
14 traffic and transportation.

15 HEARING OFFICER RENAUD: All right. Is  
16 there any objection to those exhibits?

17 MR. CARROLL: No.

18 HEARING OFFICER RENAUD: All right.  
19 CURE, any objection to those exhibits?

20 MS. SMITH: None.

21 HEARING OFFICER RENAUD: All right,  
22 they're admitted. Okay, now --

23 MS. HOLMES: Excuse me, it was a single  
24 exhibit 215. The --

25 HEARING OFFICER RENAUD: I'm sorry, 215

1 is a single exhibit --

2 MS. HOLMES: -- others -- thank you.

3 HEARING OFFICER RENAUD: -- encompassing  
4 those others, or validating those others, right.  
5 All right, good.

6 Now, we had comment from the lady here,  
7 yes. Please identify yourself for the record.

8 MS. NUTTING: Hello, Distinguished Board  
9 Members and welcome to my world here in southern  
10 California. My name is Jackie Nutting and I am  
11 the Government Affairs Director for the Associated  
12 Builders and Contractors, Southern California  
13 Chapter. And I represent over 350 merit shop or  
14 nonunion contractors here in this region.

15 The power plant being developed here in  
16 Victorville is of great interest to our members.  
17 They are excited about the opportunities it will  
18 present and the jobs that will be brought to this  
19 region as the Governor's infrastructure plans come  
20 to fruition here.

21 Many of our contractor companies are  
22 located here in the High Desert, and the families  
23 who work for them depend on the services provided  
24 by the local power companies.

25 Victorville and the surrounding

1 communities are growing rapidly. Power supply is  
2 fast becoming a predominant issue, not only for  
3 the families, but for our contractor companies, as  
4 well. Power should be affordable for the citizens  
5 to run businesses and homes.

6 We, the Associated Builders and  
7 Contractors, are strongly behind the City of  
8 Victorville in its quest to meet future power  
9 needs. We ask that you grant the needed permits  
10 to the City as quickly as possible.

11 Thank you.

12 HEARING OFFICER RENAUD: All right,  
13 thank you for your comment. Any other public  
14 comment? Anyone else wishing to speak?

15 Ms. Holmes, one more question for you.  
16 The additional testimony on soil and water  
17 resources with respect to the dry cooling  
18 alternative, I just want to make sure we moved and  
19 admitted that. That's 213?

20 MS. HOLMES: Yes, let's move 213; and if  
21 it hasn't been admitted already, it needs to be  
22 moved at this time.

23 HEARING OFFICER RENAUD: Very good. Any  
24 objection?

25 MR. CARROLL: No.

1 HEARING OFFICER RENAUD: Objection?

2 MS. SMITH: No.

3 HEARING OFFICER RENAUD: It's admitted,  
4 okay.

5 I think we have one last task and that  
6 is to determine the topics for briefing, unless,  
7 Members of the Committee, do you wish to ask any  
8 questions or say anything before we move into that  
9 area?

10 PRESIDING MEMBER BOYD: Well, I'd like  
11 to make a statement while it's still fresh. And  
12 just a statement, not with respect to this  
13 project, but based on the comments of the building  
14 industry representative.

15 I would just like to encourage the City  
16 of Victorville, which is obviously quite a growing  
17 area, to look real hard at its building efficiency  
18 standards.

19 Coming fresh off an action at the  
20 business meeting of the Commission yesterday where  
21 yet another city in California sought and obtained  
22 our permission to have local building codes that  
23 exceeded the state standard go into effect in  
24 their community in order to address the issue of  
25 adequate supply, demand versus supply, and

1 efficiency, which is job one in California. And  
2 climate change, which is a huge driver now.

3 More and more communities are, on their  
4 own, seeking to have regulations that exceed the  
5 floor, let's just say, that's established by the  
6 Energy Commission.

7 And I would encourage the City to take a  
8 look at the opportunities presented to it to  
9 address that, since you are such a growing  
10 community and you will have so much new  
11 construction. It might afford an opportunity to  
12 gain an even greater advantage in your electricity  
13 supply versus demand discussions and debates in  
14 the future.

15 So, just a comment.

16 MR. ROBERTS: May I respond?

17 PRESIDING MEMBER BOYD: Please.

18 MR. ROBERTS: Thank you, Commissioner  
19 Boyd. Your comments are very well taken. The  
20 City of Victorville, not only because of the  
21 expected rapid and large growth, but also because  
22 of our location in an area that does have very  
23 high peak energy demands in air conditioning  
24 needs.

25 We think we are a wonderful opportunity

1 to demonstrate the types of advancements that you  
2 were referring to.

3 We have begun taking steps, all of our  
4 government buildings have been retrofitted with  
5 energy-saving photovoltaic and also a product  
6 called ICE Bear, which generates cooling at  
7 nighttime and provides it during the peak energy.

8 But we would be very much interested in  
9 pursuing additional steps that the City could take  
10 to help California with its energy resources. And  
11 thank you for your comments.

12 PRESIDING MEMBER BOYD: We'll see that  
13 the staff follows up with the City. Thank you.

14 ASSOCIATE MEMBER PFANNENSTIEL: And in  
15 following up on that I'd offer that the Energy  
16 Commission makes available to public agencies,  
17 municipalities and others, loans of low interest,  
18 high-efficiency loans for these purposes.

19 I'd just like to comment that on a  
20 project like this, which is partly conventional,  
21 partly nonconventional with the solar, I'm really  
22 gratified that the applicant and the staff and the  
23 intervenors were able to work as closely as they  
24 have to resolve this many of the issues.

25 I think that this is the -- we, at the

1 Energy Commission, are going to have an increasing  
2 number of the sort of nontraditional siting cases  
3 in front of us. And there were a lot of issues  
4 going into this one. And I know from whenever we  
5 came down here for our site visit many months ago,  
6 we could recognize that there were many many ways  
7 in looking at licensing power plants that we had  
8 not done before.

9 And I think that everybody took that  
10 task very seriously and worked diligently so that  
11 we arrived here today with really just a very few  
12 issues that we need to keep peeling back.

13 So I think it's, you know, commendable  
14 of both staff, applicant and intervenor, that  
15 we've worked this hard and gotten where we have  
16 today.

17 HEARING OFFICER RENAUD: Okay, thank  
18 you. Anyone else before we discuss briefing?

19 Okay. Let's see, a couple of topics for  
20 briefing have been mentioned. And, Mr. Carroll,  
21 why don't you summarize the topics you'd like to  
22 have suggest be briefed, and then I'll ask for  
23 that from intervenor and staff.

24 MR. CARROLL: Yes. We would recommend  
25 that the legal issue that's been raised by CURE

1 with respect to federal enforceability of the  
2 emissions offsets be briefed.

3 And we would also recommend that the  
4 issue regarding stopping construction 30 minutes  
5 versus 60 minutes prior to sunset be briefed.

6 HEARING OFFICER RENAUD: All right.  
7 Were there any suggested topics in the biological  
8 area? I don't think so.

9 MR. CARROLL: No.

10 HEARING OFFICER RENAUD: Okay, good.  
11 All right. And, CURE, any --

12 MS. SMITH: I concur with Mr. Carroll's  
13 list.

14 HEARING OFFICER RENAUD: All right,  
15 good. Ms. Holmes?

16 MS. HOLMES: I concur with the list with  
17 the caveat that if the Commission is interested in  
18 visiting in this decision, as opposed to some  
19 subsequent proceeding, the advisability of  
20 retroactively changing, in this case it would be  
21 the ratio, that we be asked to address that issue  
22 in briefs.

23 If the Committee is not interested in  
24 addressing that issue in the decision, then  
25 there's no point in us going through the exercise

1 of addressing it in briefs.

2 HEARING OFFICER RENAUD: You know, it  
3 just seems to me that it might be kind of  
4 speculative to try to do that now, --

5 MS. HOLMES: Correct.

6 HEARING OFFICER RENAUD: -- because we  
7 don't really know whether it's even going to come  
8 up. Or if it does, in what context.

9 MS. HOLMES: That's correct. My request  
10 is simply that if the Committee wants to address  
11 it in its decision, we'd want the opportunity to  
12 brief it.

13 HEARING OFFICER RENAUD: Right.

14 MS. HOLMES: If the Committee does not  
15 want to address it in its decision, then there is  
16 no need for us to brief it.

17 HEARING OFFICER RENAUD: I think, should  
18 it come up further down the road, we may --  
19 certainly would want it briefed. But at this  
20 point it's not really an issue yet.

21 MR. CARROLL: I'm inclined to concur  
22 with that. I think it would be very difficult to  
23 brief, not knowing what the nature of the fix,  
24 should there be a fix, would be.

25 PRESIDING MEMBER BOYD: I would

1 certainly agree with that based on the discussion  
2 we had a little earlier.

3 HEARING OFFICER RENAUD: All right.

4 Good. So we have those two topics.

5 MS. SMITH: Excuse me, I'm sorry.

6 HEARING OFFICER RENAUD: Yes.

7 MS. SMITH: I'm still a little concerned  
8 and confused about bio-18. Now, we won't engage  
9 in any briefing on that now because the matter has  
10 not been resolved?

11 The reason I raise that now is because  
12 we have legal concerns about bio-18, much less the  
13 logistics.

14 HEARING OFFICER RENAUD: Can you state  
15 your concern a little more specifically?

16 MS. SMITH: Well, just the way bio-18 is  
17 currently written, we're worried about an  
18 abdication of the Commission's duty, because any  
19 final decision on whether or not a streambed  
20 alteration agreement is necessary will be worked  
21 out between CDF&G and the CPM. And the way it's  
22 written here, no Commission involvement.

23 And we have a concern that there's an  
24 impermissible delegation of duty under Public  
25 Resources Code 25523, and then under CEQA. And

1 I'd point you to the Sundstrom v. Mendocino County  
2 case, saying that that sort of activity is  
3 impermissible.

4 HEARING OFFICER RENAUD: Commissioner  
5 Boyd is raising the same question that crossed my  
6 mind, which is I think that the CPM is part of the  
7 Commission really.

8 MS. SMITH: So the CPM is not staff;  
9 it's part of the Commission, itself?

10 HEARING OFFICER RENAUD: Well, it's the  
11 compliance project manager, it is staff, but  
12 subject to Commission oversight.

13 But, Ms. Holmes, perhaps you'd like to  
14 address this?

15 MS. HOLMES: Well, I think that if  
16 there's a concern about a CPM decision with  
17 respect to whether or not a streambed alteration  
18 agreement is required or not. And presumably you  
19 would be concerned that one was not required when  
20 you thought one is.

21 There is a complaint process that allows  
22 you to bring the matter back to the Commission.  
23 And that's the remedy that I would recommend that  
24 you follow.

25 Let me point out that we do plan to have

1 an additional -- I'm hoping that we have an  
2 additional filing with respect to bio-18, as well  
3 as bio-12, subsequent to this hearing here.  
4 Because I'm hoping that we are able to refine and  
5 simplify the language that's applicable.

6 HEARING OFFICER RENAUD: Yes, and that  
7 might alleviate your concerns, Ms. Smith, is that  
8 we are going to keep the record open with respect  
9 to bio-12 and bio-18 for purposes of receiving  
10 additional filings.

11 And by virtue of that process you would  
12 have the opportunity to see those filings, comment  
13 on them, and have additional hearing, if desired.

14 MS. HOLMES: And you'll have the  
15 opportunity to participate in the discussions.  
16 They will be noticed.

17 MS. SMITH: Fair enough.

18 HEARING OFFICER RENAUD: All right, so I  
19 think we're okay there.

20 MR. CARROLL: I would just add, since  
21 this so rarely happens, I'll take the opportunity  
22 to concur with what is said, what Ms. Smith has  
23 said, because I think --

24 (Laughter.)

25 MR. CARROLL: -- as indicated in our

1 prehearing conference statement, the open-ended  
2 nature of bio-18, which I think is what Ms. Smith  
3 is going to, was a concern of ours, as well.

4 And I think that part of the discussions  
5 about refining that language are to make it less  
6 open-ended. At least that's my hope that that's  
7 what the discussions are intended to do, amongst  
8 other things.

9 So, the issue raised, hopefully will be  
10 address through modified language of the  
11 condition.

12 MS. SMITH: All parties are in  
13 concurrence.

14 PRESIDING MEMBER BOYD: Is there an urge  
15 to break out into song?

16 (Laughter.)

17 MS. HOLMES: After you.

18 HEARING OFFICER RENAUD: All right.

19 PRESIDING MEMBER BOYD: Cumbaya is what  
20 I had in mind.

21 HEARING OFFICER RENAUD: All right. So  
22 on the two topics for briefing, do the parties  
23 feel that they have a sufficient understanding of  
24 what is to be briefed? Or do we need to state it  
25 more clearly? Do you think you've --

1 MS. HOLMES: I believe I understand what  
2 needs to be briefed.

3 MR. CARROLL: As does applicant.

4 MS. SMITH: Yes.

5 HEARING OFFICER RENAUD: All right,  
6 good. Typically we would ask for opening brief on  
7 these topics ten days after the reporter's  
8 transcript is posted on the CEC website. Does  
9 that sound acceptable?

10 MR. CARROLL: Yes.

11 MS. HOLMES: Yes.

12 HEARING OFFICER RENAUD: All right, now  
13 how about reply briefs? Do you want the  
14 opportunity to do reply briefs?

15 MR. CARROLL: Yes.

16 HEARING OFFICER RENAUD: All right. So  
17 five days after the opening briefs?

18 MS. HOLMES: That's acceptable.

19 MS. SMITH: Yes.

20 HEARING OFFICER RENAUD: Okay, that will  
21 be the order.

22 The opening briefs will be ten days  
23 after the reporter's transcript is posted on the  
24 CEC website. Reply briefs five days thereafter.

25 Okay, on those two topics that we've

1 previously mentioned.

2 Anything further from anybody else? Any  
3 further public comment? We're going to adjourn  
4 the hearing shortly, if not.

5 MS. HOLMES: Are you going to close the  
6 evidentiary record with respect to all items  
7 except bio-12 and -18? I would move that.

8 HEARING OFFICER RENAUD: All right.  
9 It's been moved that the evidentiary record be  
10 closed with respect to the topics -- with respect  
11 to all topics except those we're keeping open,  
12 which is bio-12 and bio-18. Any objection?

13 MR. CARROLL: No.

14 MS. SMITH: No.

15 HEARING OFFICER RENAUD: All right,  
16 good. That motion is granted.

17 And this hearing is adjourned.

18 (Whereupon, at 11:45 a.m, the  
19 evidentiary hearing was adjourned.)

20 --o0o--

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing 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 9th day of April, 2008.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

**TOPIC AREAS\***  
(In FSA Topic Order)  
**VICTORVILLE 2 HYBRID POWER PROJECT**  
Docket No. 07-AFC-01  
(as of 3/29/08)

No.	Topic Area	Exhibits
1	<b>Project Description</b>	<b>1, 2, 3, 24, 25, 97</b>
2	<b>Air Quality</b>	<b>8, 30, 42, 43, 45, 48, 51, 54, 58, 63, 73, 75, 85, 98</b>
3	<b>Biological Resource</b>	<b>9, 31, 46, 74, 77, 78, 83, 86, 87, 88, 89, 103, 104,</b>
4	<b>Cultural Resources</b>	<b>10, 32, 38, 39, 40, 53, 60, 62, 67, (Response 37), 69, 72, 82, 99</b>
5	<b>Hazardous Materials</b>	<b>12, 65, 100</b>
6	<b>Land Use</b>	<b>13, 90</b>
7	<b>Noise and Vibration</b>	<b>14, 101</b>
8	<b>Public Health</b>	<b>16, 34, 91</b>
9	<b>Socioeconomic Resources</b>	<b>17, 55</b>
10	<b>Soil and Water Resources</b>	<b>7, 22, 36, 37, 44, 79, 92</b>
11	<b>Traffic and Transportation</b>	<b>18, 35, 61, 64, 66, 67, (Response 85) 68, 76, 102</b>
12	<b>Trans. Line Safety and Nuisance</b>	<b>19</b>
13	<b>Visual Resources</b>	<b>20, 94</b>
14	<b>Waste Management</b>	<b>21</b>
15	<b>Worker Safety</b>	<b>23</b>
16	<b>Facility Design</b>	<b>27, 28, 29</b>
17	<b>Geology and Paleontology</b>	<b>11, 15, 26, 33, 96</b>
18	<b>Power Plant Efficiency</b>	
19	<b>Power Plant Reliability</b>	
20	<b>Trans. System Engineering</b>	<b>93</b>
21	<b>Alternatives</b>	<b>5, 95</b>
22	<b>Various</b>	<b>4, 6, 41, 47, 50, 52, 57, 59, 70, 71</b>

\*Exhibit "A" bound into and made a part of the transcript of the Victorville Evidentiary Hearing, April 3, 2008.