EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)
	)
Application for Certification for the Watson Cogeneration Steam and Electricity Reliability Project	) Docket No.: 09-AFC-1
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	)
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CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 1, 2011

1:05 P.M.

Reported by:
Peter Petty

APPEARANCES

HEARING OFFICER

Raoul Renaud

COMMITTEE MEMBERS

Carla Peterman, Presiding Member

Karen Douglas, Chair and Associate Member

James Bartridge, Advisor to Commissioner Peterman

Galen Lamei, Advisor to Commissioner Douglas

Lynn Sadler, Public Advisor

STAFF

Alan H. Solomon, Project Manager

Jeff Ogata, Staff Counsel

Matthew Layton

Mark Lindley

APPLICANT

Christopher T. Ellison, Attorney at Law, Ellison, Schneider & Harris

Ross Metersky, Director Business Development, BP Products North America, Inc.

Cynthia H. Kyle-Fischer, URS

Robert Collacott, URS

Greg Darvin

APPEARANCES (Continued)

ALSO PRESENT

Interested Agencies/Entities/Persons

Mohsen Nazemi, SCAQMD

Jay Chen, SCAQMD

Barbara Baird, SCAQMD

PUBLIC COMMENT

Mia McNulty, NAACP

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PROCEEDINGS

PRESIDING MEMBER PETERMAN: We are going to get started. Welcome. I'm Commissioner Carla Peterman. And we have here on the dais Commissioner Karen Douglas and my advisor Jim Bartridge and our hearing officer, Hearing Officer Renaud.

And with that, I'll turn the show over to him.

HEARING OFFICER RENAUD: Thank you very much, Commissioner Peterman.

This is the evidentiary hearing for the Watson Cogeneration Steam and Electric Reliability Project. At 12:30 we convened a workshop for the staff and the applicant to continue discussions of the water supply issue.

And let me ask first, have you concluded that workshop? Or do you need additional time is really what I'm getting at.

MR. OGATA: Thank you, Hearing Officer. This is Jeff Ogata, counsel for staff.

We think we have concluded the workshop with respect to everything but one condition, which is an emergency condition, and that was a topic that we sort of started to talk about just in recent weeks, frankly.

HEARING OFFICER RENAUD: All right.

MR. OGATA: So I think we're pretty close to it.

So you want us to take a few minutes to try to resolve it, we're happy to do that if you want to proceed so that we can basically finish off all the things that we know we are in agreement and then maybe take a brief recess at the end of that. What do you think?

HEARING OFFICER RENAUD: I think I like that idea. Let's get done what we can get done, and then we'll take a recess and call that a workshop when you can discuss that further.

All right. Let's take care of a little housekeeping here.

Commissioner Peterman introduced those of us up here.

Commissioner Douglas's advisor Galen Lamei is now present. And I would like to ask the parties to introduce themselves starting with the applicant, please.

MR. ELLISON: Thank you. Good afternoon. Christopher Ellison, Ellison, Schneider & Harris on behalf of the applicant.

And I will ask my team to introduce themselves.

MR. METERSKY: Good afternoon. I'm Ross Metersky with BP here on behalf of Watson Cogen.

MS. KYLE-FISCHER: Good afternoon. I'm Cindy Kyle-Fischer.

MR. COLLACOTT: I'm Bob Collacott. I'm the water

resources expert.

HEARING OFFICER RENAUD: Thank you.

And from staff, introductions, please.

MR. OGATA: Again, I'm Jeff Ogata, staff counsel.

And I'll have everyone else introduce themselves.

MR. SOLOMON: Alan Solomon, project manager with the STEP division.

MR. MARSHALL: Paul Marshall, water resources staff.

MR. LINDLEY: Mark Lindley with water resources.

HEARING OFFICER RENAUD: All right. I see Matt Layton there.

Shall I introduce you? Introduce yourself.

MR. LAYTON: Matt Layton, office manager of the engineering office.

HEARING OFFICER RENAUD: Thank you very much.

All right. Do we have anyone representing intervenor CURE here today or on the phone?

All right. Do we have any government officials, elected officials present who wish to introduce themselves?

All right. Oh, yes, I'm sorry, excuse me.

MR. NAZEMI: I'm Mohsen Nazemi, deputy executive officer with South Coast Air Quality Management District.

HEARING OFFICER RENAUD: Thank you for coming.

And we'll hear from you a little later on.

All right. Now, we do have some people participating by telephone and computer on our Webex system.

Do any of you wish to introduce yourselves? If you do, just go ahead and speak.

MR. DARVIN: Sure. Greg Darvin, air quality consultant for the applicant.

HEARING OFFICER RENAUD: Thank you.

Anyone else?

MR. CHEN: Jay Chen with South Coast AQMD.

HEARING OFFICER RENAUD: And could we get your name again, please? It was cut off.

MR. CHEN: Jay Chen.

HEARING OFFICER RENAUD: All right. Thank you.

MR. CHEN: With South Coast AQMD.

HEARING OFFICER RENAUD: Got it.

Anyone else?

MS. BAIRD: I'm Barbara Baird, also with South Coast AQMD.

HEARING OFFICER RENAUD: All right. Thank you. Anyone else on the phone who wishes to introduce themselves?

All right. Thank you.

Little bit about the evidentiary hearing. This

is a formal adjudicatory proceeding during which we'll receive evidence from the parties to create the evidentiary record upon which the presiding member's proposed decision will be based. The evidence will come into the record today by sworn testimony and declarations from the parties. If necessary, we will also take live testimony from witnesses, and there would be cross-examination if necessary.

After the conclusion of the evidentiary hearings, the committee will begin preparation of the presiding member's proposed decision, which will likely issue several weeks after the conclusion of the evidentiary hearings. That PMPD would then be available for public review and comment and eventually will go to the full commission for a vote on whether or not to adopt the decision and approve or deny the project.

This hearing is, as are all hearings at the Energy Commission, open to the public, and we will provide a public comment period at the end of the hearing. If you are a member of the public and wish to comment and you're here in person, please fill out one of these blue cards, and we'll make sure and call you when it's the appropriate time.

I should also introduce our public advisor, Lynn Sadler, who is present and helping to operate the Webex

system. She'll be there at that podium.

Now, on October 17th the Committee conducted a prehearing conference in this matter in which we determined the parties' readiness for hearing. And the parties at that time indicated that they were ready proceed to hearing on all topics with the possible exception of water quality -- I'm sorry, water supply and air quality.

The parties agreed that testimony and evidence on all topics except those two would be submitted by declaration and that there would be no need for live testimony or witnesses and those topics. You at that time also indicated the need for further discussion in the water supply area and hence the workshop, which we convened at 12:30 today.

Are there -- let me ask the parties starting with the applicant first, are there any other issues which may need to be adjudicated besides the water supply issue?

MR. ELLISON: No, we do not believe there are.

HEARING OFFICER RENAUD: All right. And how about staff; same question.

MR. OGATA: Jeff Ogata.

We do not believe there's anything else.

HEARING OFFICER RENAUD: All right. Thank you. Okay. Good.

Now, we placed on the table out front an exhibit list. And I don't know if you either picked up copies or brought one with you. I just wanted to ask if anybody has any changes or modifications they want to make to that exhibit list.

The applicant's proposed exhibits are 1 through 23. This is exactly what you gave us. Staff's exhibits are 200, which is the final staff assessment; 201, which is revised general condition 15. And at the prehearing conference we indicated that you might want to make 202 the final determination of compliance.

And are there any others that you're aware of at this time?

MR. SOLOMON: Yes, there are two other items.

HEARING OFFICER RENAUD: All right.

MR. SOLOMON: Item number 203, which we're going to be giving you a copy of shortly is a letter from the South Coast AQMD to myself. And item number 4 will be the revised water section.

HEARING OFFICER RENAUD: All right. And is that a complete water -- revised water section or just the conditions?

MR. SOLOMON: It's the conditions and some narrative.

HEARING OFFICER RENAUD: All right. Very good.

Is there a date on that letter from the district?

MR. SOLOMON: Yes, there is.

HEARING OFFICER RENAUD: What is the date?

MR. SOLOMON: I apologize; I don't have the letter with me right now.

HEARING OFFICER RENAUD: It's not the one we already had --

MR. SOLOMON: September 28th.

HEARING OFFICER RENAUD: It is that one, okay. September 28th. All right.

MR. SOLOMON: It was docketed, but the air district asked that it be entered into the record.

HEARING OFFICER RENAUD: Very good. All right. And the revised water section, you don't have that yet or --

MR. SOLOMON: It's right here; it's dated November 1st.

HEARING OFFICER RENAUD: Okay. All right November 1st, 2011. Okay.

Well, I think before we proceed to discussion of the water supply and air quality issues, we may as well proceed with the formality of entering the evidence into the record with respect to the other topics. So we'll proceed with applicant.

Would you care to make a motion to enter your

testimony and exhibits on the topics other than soil and water and air quality into the record?

MR. ELLISON: Well, actually, Hearing Officer, what I would propose, because it's difficult to separate our soil and water exhibits from the rest of them, there are several exhibits that touch upon that issue, we're prepared to stipulate to all the staff's exhibits. I believe that they're prepared to stipulate to ours. That doesn't mean we have full agreement, but in terms of the submission of evidence, I don't think there are any evidentiary objections.

HEARING OFFICER RENAUD: All right.

MR. ELLISON: So with that preface, I would prefer to move all 23 of the applicant's exhibits at this time.

HEARING OFFICER RENAUD: Okay. We'll take that motion. And let me ask staff if there's any objection to that motion.

MR. OGATA: No, I agree with Mr. Ellison, there's no objection.

HEARING OFFICER RENAUD: All right. Thank you. Then that motion will be accepted -- or granted, and the Applicant's Exhibits 1 through 23 admitted into the record.

(Applicant's Exhibits 1 through 23 were

received into evidence.)

HEARING OFFICER RENAUD: Staff, would you care to make a similar motion?

MR. OGATA: Thank you. Staff would move into the record the final staff assessment, Exhibit 200; general condition 15, Exhibit 201; the FDOC, Exhibit 202; the September 28th letter from South Coast Air Quality Management District, Exhibit 203; and I guess we will hold onto Exhibit 204 until we have had a chance to discuss it since we still have to get some testimony on that.

HEARING OFFICER RENAUD: All right. Thank you. So then it's Exhibits 200 through 203.

Is there any objection from applicant?

MR. ELLISON: No objection.

HEARING OFFICER RENAUD: All right. Those will be admitted into the record then. Thank you.

(Staff's Exhibits 200 through 203 were received into evidence.)

HEARING OFFICER RENAUD: Okay. So now we proceed to the nitty-gritty here with the -- shall we start with water supply or air quality? Do you -- anybody have a preference?

MR. SOLOMON: Air quality.

MR. OGATA: Air quality.

HEARING OFFICER RENAUD: Air quality. All right.

Very good.

Applicant, did you have a witness to call on air quality?

MR. ELLISON: We do have a witness on the phone who's available to answer any questions that the committee might have, Greg Darvin. We had not intended, although we can certainly offer direct testimony beyond the exhibits that we have already submitted on the air quality issue, but we are, I believe, in agreement with both the district and the staff with respect to the air quality issues. So in the interest of time, we would reserve the right to call Mr. Darvin as perhaps a rebuttal witness, but we would not offer any additional direct testimony from him at this time.

HEARING OFFICER RENAUD: All right. Very good.

Let me ask on behalf of the committee the status of the application for the PSD permit at this point.

MR. METERSKY: It's being prepared.

HEARING OFFICER RENAUD: All right. Very good.

All right. Staff. Did you wish to call any witnesses?

MR. OGATA: No, we don't have any witnesses with respect to air quality; just to note for the committee that Mr. Mohsen Nazemi from the South Coast Air Quality Management District is here. And I believe he has some

comments he'd like to make, but I don't think from the last time we met status has changed.

HEARING OFFICER RENAUD: All right. And is Mr. Nazemi also prepared to sponsor the FDOC?

MR. OGATA: With your permission, maybe we could just have Mr. Nazemi speak for himself.

HEARING OFFICER RENAUD: All right. Are you calling him as a witness, in which case we should have him sworn?

MR. OGATA: Yes, let's have him sworn.

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

(Witness sworn.)

THE REPORTER: State and spell your name for the record, please.

MR. NAZEMI: Mohsen Nazemi, M-o-h-s-e-n N-a-z-e-m-i.

HEARING OFFICER RENAUD: All right. Go ahead. And you can maybe pull that down towards you. There, that's good.

MR. NAZEMI: Thank you. Good afternoon, Commissioners, Chairman Douglas. My name is Mohsen Nazemi. I'm deputy executive officer with South Coast Air Quality Management District. And I'm here to testify on behalf of the district relative to the air quality aspects

of the BP Watson Cogeneration Project.

Just as a quick background, the district issued a preliminary determination of compliance on October 12th, 2010, and the final determination of compliance subsequently on March 16, 2011. At the time of the analysis conducted by the district, we had been informed that the applicant is intending to complete the licensing process and issuance of our final Title V permit to the -- permit to construct for the project and initiate construction prior to July 1st of 2011. The reason July 1, 2011 was a critical date was that EPA, federal EPA has adopted a greenhouse gas tailoring rule that would have been triggered for projects that may emit greenhouse gas emissions above a certain threshold to also apply and receive prevention of significant deterioration or PSD permit for greenhouse gases if they have not been permitted and initiated construction prior to July 1st.

Due to some delays in the licensing process unrelated to air issues, I understand, the license obviously was not granted, and we didn't issue our final permit, and the applicant did not initiate construction prior to July 1st; and therefore, at this point the project is subject to a PSD permit for greenhouse gases.

And at this point, as you heard from the applicant, neither USEPA nor our agency has received a PSD

application for this project, and that was the reason that we issued the September 28th letter, which I would like to introduce into evidence at this point. And I have copies here for the commissioners as well as their advisors.

And the gist of our comment --

HEARING OFFICER RENAUD: I'll just note for the record that that is Exhibit 203.

MR. NAZEMI: As the letter is being distributed, just to let you know, the gist of our comment is that upon promulgation of the greenhouse gas tailoring rule, EPA requested the state and local agencies to either adopt the federal regulations by reference, adopt their own regulations, or seek delegation from USEPA to be able to implement the PSD program for greenhouse gases.

Our district chose to adopt a rule for greenhouse gas implementation, which we call Rule 1714, and that rule was adopted by our board on November 5th, 2010, and submitted by air resources board to federal EPA on December 10, 2010.

At this point EPA has not yet proposed approval of that regulation into the state implementation plan, and until EPA acts and makes a final approval of that regulation, we have no -- we do not have the authority to issue the PSD permit. So at this point the PSD permit needs to be filed with the USEPA and ultimately issued by

USEPA unless one of the three things happen.

First would be if EPA approves our Rule 1714 into the state implementation plan, in which case then we become the permitting for issuance of that PSD permit. My latest conversation with USEPA as of this morning was that they intend to propose approval into this sometime towards December of 2011, and depending on what type of comments they receive and what that process takes, probably in the first quarter of 2012 they could approve that rule into the SIP.

Option two is if EPA signs a new delegation agreement with the district to provide authority under a delegation for the district to issue a PSD permit for greenhouse gases. There is no -- presently there is no plan of doing that between the two agencies, mainly because we adopted our rule and we're hoping to get that approved into the SIP.

And the third option is we presently operate under the partial delegation for PSD permits with USEPA that deals with non-greenhouse gas criteria pollutants. If EPA finds that our partial delegation is sufficient for the district to act as the permitting agency for PSD for greenhouse gases, they could also notify us accordingly, and we can proceed; however, I would not count on that, because the whole reason we adopted our Rule 1714 was that

our present partial delegation wasn't deemed to be adequate to cover greenhouse gases.

So that's a quick background.

And then going forward, assuming we would get the delegation, assuming that applicant files their applications for PSD, then we intend to process that application, and upon completion of our evaluation go to public notice and deem comments in the public and from USEPA on the PSD portion of the Title V permit. However, I want to highlight that because our agency's one of the few or maybe the only district in California that has a integrated Title V program. By that, what I mean is that our Title V permit is both permit to construct and a permit to operate.

So when we go to public notice, we will renotice the whole permit, the whole Title V permit, which part of it includes the PSD portion for greenhouse gases; the other part of it is the permit that we have already gone through public notice, and at that time we may receive comments on any portion of the permit. And based on the comments we receive and any applicable requirements at that time, including requirements for non-greenhouse gases, then we may make changes to our final determination of compliance that was issued earlier this year, and those changes need to be incorporated into the license as well.

And finally, as the applicant knows, unless your agency issues a license, we cannot issue our final Title V permit, because your process is a CEQA equivalent process, and we can't grant our permit to construct unless CEQA is satisfied, and the applicant will not be able to initiate construction until both your license from your agency and the Title V permit from the district is granted.

I'll be happy to answer any questions.

HEARING OFFICER RENAUD: I guess it's more almost a kind of procedural question then, is since it seems inevitable that there be changes to the FDOC, from what you're saying, should we keep the evidentiary record open for the purpose of receiving those changes when they come out or make a condition of certification dependent on the issuance of the changes? I'm just not -- I'd like to hear from the parties on that.

Applicant, please.

MR. ELLISON: Thank you.

First of all, let me say that we agree with the summary that Mr. Nazemi has just given of the circumstance. We think that's a very accurate statement. We strongly prefer that the Commission close the evidentiary record and attach a condition of certification that addresses this problem. As we addressed earlier in the prehearing conference, the Commission has done that

previously in similar situations.

There is some uncertainty actually as to whether the FDOC will or will not change. We have to allow for the possibility that it might, but it's certainly not -- I wouldn't characterize it as a certainty that it will, and I can describe circumstances where it wouldn't, but it might. And because it might, we need to, I think, have a condition of certification that appropriately allows for the incorporation of any changes that might occur, and we are certainly prepared to stipulate to that.

HEARING OFFICER RENAUD: And, staff, any comment on that?

MR. OGATA: Jeff Ogata.

No, we agree with Mr. Ellison on that. We think this proceeding should go forward since it is sort of a question of timing, and that's really unclear; so I think we would all prefer that we go forward as far as we can. If something should occur before this proceeding is complete, then we may have to revisit that issue, but assuming that we do get final decision and there are changes made afterwards, then that's certainly something that we would take an amendment on. We do that fairly regularly for other cases where air districts change the conditions after a project is certified here. So we can handle it that way, or we can handle it in a different way

if the committee decides a different condition is warranted.

MR. ELLISON: And actually, Commissioners, if I could supplement my comments with one other piece of background.

In some degree the reason that we have this problem is because of the time that this AFC has taken. It was filed in 2009. I think we're in -- something like two and a half years in, something like that. And one of the reasons for that, frankly, is the patience of the applicant.

Last year at this time the Commission was processing a tidal wave of ARRA renewable applications, and Watson understood that, was willing to stipulate to additional time for the processing of this application in recognition of the Commission's workload and staff workload. So there's an element here of the applicant's patience having caused it to slip into this regime. And I want that background to be on the record.

Thank you.

HEARING OFFICER RENAUD: Well, we appreciate your comment, but it appears also that a lot of the issue, the things that held this up had to do with the water supply issue.

MR. ELLISON: Well, I actually would respectfully

not agree to that. And I'm not -- this is not about blame, believe me, it's not about that at all. There are a lot of issues that contributed to the timing of this case. But I think the water issue is really not one of them. We joined the water issue when staff was finally able to present its case fairly recently, and we've come extremely close in a relatively short time to resolving that issue. And hopefully we'll get all the way there before we're done.

HEARING OFFICER RENAUD: All right. Well, let's proceed with today's business and see if we can wind this up.

Is there anything further on air quality from either party?

MR. NAZEMI: Mr. Renaud, can I just make a clarification also in terms of the changes?

I think staff is absolutely correct that in the past there has been changes made to FDOCs and submitted through this process. I just want to also put it on the record that from our perspective we have really not completed the FDOC at this point also because the PSD analysis hasn't been done. That may be a little different scenario than completing an FDOC process and then having it changed down later on, but I just want to put that on the record.

HEARING OFFICER RENAUD: All right. Good. Thank you.

We should also, I think, go through the formality of having Mr. Nazemi sponsor the FDOC such as it is, subject to change; but typically you'd ask -- put a couple of questions on the record to identify and have the district sponsor it.

Mr. -- yeah.

MR. OGATA: Jeff Ogata.

Mr. Nazemi, you're familiar with the final determination of compliance in this matter?

MR. NAZEMI: Yes, I am.

MR. OGATA: And it was prepared under your supervision?

MR. NAZEMI: That is right.

MR. OGATA: And you believe that everything in it is true and correct as of this moment in time?

MR. NAZEMI: Everything minus PSD analysis for greenhouse gases.

MR. OGATA: With that, I guess I would ask that the committee accept Mr. Nazemi's sponsorship of Exhibit 202.

HEARING OFFICER RENAUD: Okay. Thank you very much. I think that's what we need to have on the record to comply with regulation. Appreciate that.

Is there currently a condition of certification in the air quality area that would cover the issue of changing the FDOC or requiring that it be complete in the -- or can we just do that under LORS, LORS compliance issue?

MR. LAYTON: Matt Layton.

I do not think there is one in the air quality section, but there is a general condition in the air quality section that says if you do make a change to the permits, whatever they are, then you have to file an amendment or at least bring those changes to the CPM. I do not know which number that is though.

HEARING OFFICER RENAUD: Okay. I think that should cover this circumstance.

MR. LAYTON: Yeah, I don't -- I think what we have in there is adequate because I agree with Mr. Nazemi as well that I don't foresee any changes to the FDOC permit levels and things like that, but obviously they will expand the FDOC to include greenhouse gases.

HEARING OFFICER RENAUD: Thank you very much.

Okay. Are we done with air quality then?

MR. OGATA: I believe so.

HEARING OFFICER RENAUD: Okay. So let's move on to the water supply question.

Applicant, did you have a witness to call on

water supply, or do you have a stipulation to present to us, parties?

MR. ELLISON: Maybe a little of both.

We have -- let me sort of set the stage, if you will, and then we can discuss how best to proceed.

Staff's Exhibit 204, which is the revised soil and water section, has been the subject of our workshops and interaction that we have been having. We are prepared to stipulate to everything in Exhibit 204 other than the final condition Soil and Water Number 10, and we are prepared to accept the admission of the entire exhibit into evidence; but we would propose to first explain in a statement of counsel what our concern is with Soil and Water 10 and then potentially offer a witness or perhaps even a panel of witnesses to flesh out the facts underlying that concern. If that's an acceptable way to proceed, that's what I would appropriate.

HEARING OFFICER RENAUD: All right. Thank you.

Now, we have just been handed a document, which I believe -- is this the revised soil and water section?

MR. SOLOMON: Yes, it is.

HEARING OFFICER RENAUD: Or part of it?

MR. OGATA: It's not the whole section. This is the description of the compliance with LORS and the conditions; basically it's the conditions.

HEARING OFFICER RENAUD: Should we -- I think we should probably mark this for identification.

MR. OGATA: This is 204.

HEARING OFFICER RENAUD: I thought 204 would be the entire section.

MR. OGATA: No. I think we misspoke earlier. 204 is this document, which is clearly not the entire water section.

HEARING OFFICER RENAUD: All right.

MR. OGATA: It's the section -- basically mostly it's conditions, changes to the conditions.

HEARING OFFICER RENAUD: All right. Okay. We'll mark this 204 then, all right.

(Staff's Exhibit 204 was
marked for identification.)

HEARING OFFICER RENAUD: So statement of counsel then with respect to the issues on Soil and Water 10, I believe that's what you wanted to do, Mr. Ellison?

MR. ELLISON: Yes, although we are prepared to stipulate to the admission of Exhibit 204 if you want to proceed in that fashion.

HEARING OFFICER RENAUD: Okay. Is there any -- do you agree with that stipulation, staff?

MR. OGATA: Well, I'd appreciate that, actually.

(Staff's Exhibit 204 was

received into evidence.)

MR. OGATA: I did want to make one comment in terms of process. Because the changes to the condition are not reflected in the current final staff assessment, I would like to ask our witness, Mr. Mark Lindley, to briefly testify with respect to the changes in his testimony that support these changes in the conditions.

HEARING OFFICER RENAUD: Okay. Let's call Mr. Lindley then, please.

Please be sworn.

(Witness sworn.)

THE REPORTER: State and spell your name for the record.

MR. LINDLEY: Mark Lindley, M-a-r-k L-i-n-d-l-e-y.

DIRECT EXAMINATION

BY MR. OGATA:

Q Mr. Lindley, you are the author of the soil and water resource section for this project?

A Yes, I am.

Q And you previously wrote the final staff assessment; it's dated August 2011; is that correct?

A Yes, sir; yes, it is.

Q So since that time have there be any changes you would like to bring to the committee's attention?

A Yes, in Exhibit 204, what this exhibit does is it walks through the compliance with LORS section and revises the conclusions and the conditions of certification. The primary changes that you'll see reflected in this exhibit are that the fresh water baseline was increased from 4,219 acre feet per year to 4,425 acre feet per year.

The reason being is following the final staff assessment, we had a workshop following the final staff assessment, at that point in time the applicant provided a more extensive record of water use at the Watson project. And the 4,425 acre feet basically reflects a four-year average for the most recent four years, and it also is very close to the full 20-year average for the life of the Watson project. So the commission staff felt that the 4,425 was a more appropriate all-inclusive number for fresh water baseline.

The other significant change is at the final staff assessment workshop, we had a representative from the West Basin Municipal Water District come in and chat with us a little bit about the availability of reclaimed water and increasing the reclaimed water supply that they already provide to the BP refinery in Watson. Well, they only supply water currently to the BP refinery. And what we found out was that under the existing 6,000 acre foot per year contract that West Basin has with the BP

refinery, West Basin has only been delivering about 4,735 acre feet over the last couple of years.

And so what we wanted to do in soil and water condition of certification 5 is identify that 4,735 acre feet per year as the current reclaimed water that's being supplied to BP refinery, to use that as a benchmark to measure increases in reclaimed water in the future once the fifth train comes online.

And then the final significant change that we're trying to work through with the applicant right now was to add a condition, Soil and Water 10, which would provide for the ability to waive the fresh water cap for a temporary period in the event that the reclaimed water supply -- in the event that there's some kind of an issue with the reclaimed water supply that prevents West Basin from meeting their full commitments to BP and the Watson project specifically. And I'm sure we'll talk more about the condition in Soil and Water 10.

MR. OGATA: Thank you very much, very succinct description of the changes. I appreciate that.

So I believe that's all the questions I have. And I guess we just need to check with Watson to ensure that they're in agreement with those changes.

HEARING OFFICER RENAUD: Thank you.

Mr. Ellison, did you have any cross-examination?

MR. ELLISON: No, we do not have cross-examination for Mr. Lindley.

We are prepared to stipulate to the admission of this exhibit and we are prepared to stipulate that we agree with all of the proposed changes with the exception of Soil and Water 10. And we'll offer witnesses in a moment as well as a statement of counsel to explain what our concern is with respect to Soil and Water 10.

HEARING OFFICER RENAUD: All right. Thank you.

Let me ask the Committee if you have any questions for Mr. Lindley.

Maybe I'll ask one while you're looking.

Oh, Commissioner Douglas? No, all right. Okay.

Okay. When we last met, the fresh water baseline was 4,219 based on three years, right? Okay. And now it's 4,425 based on four years. I just want to make sure I got you right.

MR. LINDLEY: It's -- I think the specific 4,425 is based on four years, but that number is also very similar within a couple of acre feet to the 20-year average as well.

HEARING OFFICER RENAUD: Okay. And then the number 4,735, that's what the West Basin folks supply to BP.

MR. LINDLEY: As reclaimed water.

HEARING OFFICER RENAUD: As reclaimed water.

And then does BP supply some of that to Watson? Is that how --

MR. LINDLEY: Not at this moment in time.

HEARING OFFICER RENAUD: Okay. All right. Thank you.

PRESIDING MEMBER PETERMAN: Just following up on that, I was a bit confused about the 4,735. So what's the relevance of it then?

MR. LINDLEY: Well, what we're asking for is -- the premise of this is that if fresh water use at Watson after they build the fifth train stays below or at the baseline for the existing four trains in Watson, then that wouldn't trigger any CEQA-level impacts. So the concept is that if they wanted to use the water beyond the agreed-upon baseline, any water used beyond that baseline would be reclaimed water.

But what staff was concerned about is that the BP refinery -- Watson's a small square within a much larger industrial facility, which is the BP refinery. The BP refinery already takes in 4,735 acre feet per year of reclaimed water. They use, I think, on the order of about 12,000 acre feet of total water. And what we were concerned about is that the cap could be circumvented if BP was just to steer some of their existing reclaimed

water supply to Watson so Watson could say to the energy commission we now are using reclaimed water and our fresh water use is still below the cap, whereas the BP refinery could just increase fresh water use to make up for steering more reclaimed water towards Watson.

So that's why we wanted to identify this existing -- you know, the current deliveries of reclaimed water to the BP refinery so that in the future if Watson needs to use additional water, they would have to get reclaimed water over and above what's already being delivered to the BP refinery.

PRESIDING MEMBER PETERMAN: Also, do you happen to know what the five-year average of water usage was?

MR. LINDLEY: That's in my staff assessment, actually. That was one of the two numbers that I was looking at as a -- it's in the 4,340 or so -- about 4,340, I think I have it in a table in my staff assessment here. The five-year average was 4,364 acre feet. So the water use at Watson kind of fluctuates from year to year.

PRESIDING MEMBER PETERMAN: You may have already mentioned this, but I appreciate you commenting on it again.

I believe that staff had an interest in using a shorter time period to reflect some changes in policy or regulation. Could you elaborate on that?

MR. LINDLEY: Yes, we did.

We all know from the news that the Delta has been experiencing some significant difficulties over the last few years. In 2007 the state passed some new laws and primarily related to looking at the Delta, trying to figure out a better way to allocate water supplies within the Delta and how to address the ongoing impacts to the Delta. So one of the conditions of the law is that urban water supplies are supposed to decrease by about 20 percent by 2020. And that's post 2007.

So when staff was originally looking at the record of water supply that we had from Watson, we were trying to figure out what was the appropriate baseline. And the reason we originally chose the most recent three years was because that was in line with the beginnings of this reevaluation of water supply in the Delta.

You know, the state board has produced some reports regarding allocations and diversions from the Delta, but they haven't come to the point where they have actually changed water rights or -- you know, they don't have adjudicatory effect yet, but the beginnings of the new paradigm are starting to -- are starting to come -- you know, starting to come to the forefront.

HEARING OFFICER RENAUD: Okay. Thank you.

Any further questions for Mr. Lindley from

anybody?

All right. Thank you.

Anything else from staff on this?

MR. OGATA: Nothing further except for the discussion on Condition 10 that Mr. Ellison has been referring to.

HEARING OFFICER RENAUD: Okay. And I understand that applicant intends to offer some testimony on that topic?

MR. ELLISON: We're certainly prepared to do that. Let me offer the Committee a couple of alternative procedures. You can decide how you want to approach this problem.

One is we could take a break right now and continue our workshop with the staff. We were making progress towards resolving our differences on Soil and Water 10. I can't promise that we'll succeed, but there's a chance.

The alternative is that we can address those concerns now in hearing; and I would propose to do that first by a kind of an overview statement from myself and then to offer testimony with respect to that specific condition as well as I do think that it's important that we offer some preliminary kind of overview testimony on the issue generally.

So whichever you prefer, we're happy to address the problem either way.

HEARING OFFICER RENAUD: Okay. I think we'd like you to go ahead with your presentation, help the Committee understand really what the sticking points are, and see how that sounds.

MR. ELLISON: Okay. Then by way of overview, first of all, I want to thank the staff for some very hard work on this case overall and specifically the water staff on some very difficult work on these water issues.

We have reached agreement with respect to everything except Soil and Water 10, including the baselines that were just discussed, both the baseline for fresh water use as well as the baseline for measuring incremental reclaimed water use.

If the Committee has any concerns whatsoever that those are the appropriate baselines, we certainly would want to respond to those concerns; and I invite the Committee to address any questions that you might have about those to -- also to our witnesses, because we do feel very strongly that those are agreements that we have worked with the staff and evidence that we've presented back and forth that involve a lot of considerations, and we think that those are numbers that make sense both in terms of the law and the facts.

Having said that, Soil and Water 10 is a condition which addresses the circumstance that hopefully will never arise where reclaimed water for reasons beyond the control of the applicant becomes unavailable to the project. And in that circumstance, as we mentioned to you at the prehearing conference, we felt that it was appropriate that there be some temporary relief in the conditions to allow the project to operate in that circumstance for at least long enough to file an amendment with the Commission to address the concern on a longer-term basis, assuming that the concern was not going to resolve quickly. Staff and applicant have agreed to that in concept, and that's what Soil and Water 10 attempts to do.

The concerns that we have with it come down basically to two things. The first is that the condition as it states now says, "If after the project receives reclaimed water, the water purveyor is unable to provide reclaimed water for the project's operation," and then it goes on. We think it's appropriate that there be the word "reasonable" or to provided it under reasonable terms and conditions to make clear that this condition can operate where reclaimed water is technically available but not under any terms and conditions that the Energy Commission would think are reasonable; and I would emphasize it would

be the Energy Commission's judgment about what's reasonable.

But we did want to address the situation where reclaimed water becomes unavailable from West Basin but available from some other source at an exorbitant cost or perhaps, you know, you could bring it in on camels or something, you know, something that where technically it's available but it's not really reasonably available. So we had that concern. That's the lesser of our two concerns.

The greater of our two concerns is that the condition contains the following language: It says -- and again, what we're doing here is we've agreed to a 90-day -- that we can request up to 90 days of exceeding the fresh water cap, no more than 90 days, for the purpose of preparing and filing an amendment to the license with the Commission, or alternatively for the purpose of fixing the problem with the reclaimed water. But anyway, it's limited to 90 days, and it's at the discretion of the compliance project manager whether to give us that relief or not.

The language currently says, quote, "The request to the CPM must include a plan to mitigate the amount of water used in excess of the cap," parens, "calculated on a 12-month rolling average," close parens. We object to that language, and we object to it on two bases.

The first is that the amount of water that we're talking about, and I'm prepared to offer witnesses to testify to this, is minuscule compared to any possible environmental impact even potentially, let alone a significant adverse environmental impact, which is what CEQA requires. We're talking about slightly over 500 acre feet of water total, not per year, not per month, total, 500 acre feet of water in an aquifer that has a safe yield of 1.5 million acre feet of water per year. We think that is obviously not a significant adverse environmental impact for a limited duration of 90 days. So we believe that the Commission would be well within both the facts and the law to simply say there's no need to mitigate this 90-day exceedance of the cap.

But the other concern that we have is that whether as we file an amendment with the Commission for a longer, potentially longer-term change in the cap, it's in that proceeding that the Commission will do the analysis to determine whether the increase in fresh water does or does not cause a significant adverse environmental impact.

This statement here, by agreeing to this statement, it puts the applicant in the position of having to give up, if you will, its position, which it may or may not have, that there is no significant impact even on a long-term basis; and so it prejudices in a way -- it sort

of puts the cart before the horse, it prejudices the Commission's determination about whether there's a significant impact or not that will be conducted in the amendment proceeding.

In the discussions with the staff, we have tossed out a couple of ways of addressing this. One of them would be to make clear that the plan that we submit can include, at the applicant's discretion, a position that no mitigation is required, and that the Commission can decide whether that's appropriate or not at the time; but just to make clear that -- the way the language is written right now, we think it presumes that you have to mitigate this what we consider to be almost immeasurably small amount of water.

So something that would say you shall submit a plan, but the plan may include the position that there is no mitigation required. And again, this is all subject to the Commission's discretion as to whether or not to grant this or not grant this.

The alternative would be, the next way of addressing this would be to put in a cap, if you will, on the increase. And here again, we would propose that that cap be roughly 550 acre feet of water total. That would ensure that it really is de minimis.

Our preferred solution is the third one, however,

and that is simply to strike this reference entirely, recognizing that the Commission will address whether there's any significant impact from any longer-term increase in the cap in an amendment proceeding should one become necessary.

So with that, let me call a panel, and we will present our witnesses, unless the Committee wants to proceed otherwise.

HEARING OFFICER RENAUD: Maybe before you do that we'll address the question to the staff.

First of all, just generally offer the opportunity to respond to Mr. Ellison's remarks, but maybe also answer a question, which is -- or respond to this request: That you specifically address the issue of whether or not it's necessary to have that language that is not -- would not having that language preclude the staff from in the future requiring mitigation should it be determined that there was an impact?

I hope that was clear enough.

MR. OGATA: Yes, it was. Thank you, Mr. Renaud.

Jeff Ogata for staff.

So I'm going to back up even a little bit further than Mr. Ellison to start with.

Staff and all of the cases that we look at typically want to ensure that every project has a reliable

water supply, because obviously if there's no reliable water supply, the project really isn't going to work. So in this case Watson has proposed a fresh water cap for the entire project, which the amount of water that they're using is what they use at four trains, and they offered that they would take a cap for all five trains. So we appreciated that. But there is no contract that we are aware of that will supply the Watson fifth train.

Let's say that all the other four trains are using the fresh water, that will supply the fifth train with recycled water, with reclaimed water. Watson has asserted that that's what they're going to do. And again, we think that's appropriate, we think that's required, we think that's necessary, and so that's fine.

But sitting here, I don't think we can actually say that there is a supply we can point to; I mean, we are aware of supplies, but we can't really point to it. But they can operate the project within the cap. That's why we've put in this condition about reusing recycled water above the amount that the refinery is getting, because we want to ensure that, in fact, additional reclaimed water, a new supply of reclaimed water is being used, we want to encourage the use of reclaimed water.

So having said all that, we do understand that there will be situations where for no fault of the project

owner, the water supply may be interrupted or something might happen and they can't -- and they can no longer use that supply. So in this case, assuming that the reclaimed water supply for some reason is interrupted, then it stands to reason that they should be allowed to use fresh water.

So we have no issue with the concept. The problem here is that we're trying to ensure that even during this temporary period of time that there is some sort of clear direction to the project owner and to the staff who will be looking at this when many of us will no longer be around so that they understand sort of what it is that we were thinking at the time. So our typical preference, of course, would be to put in as much criteria as possible so that it was as clear as possible to everyone what a plan or what this request or what an amendment should look like when we get it.

But we also understand that this is an emergency condition, and sort of by definition, we don't know what's going to happen; if we knew it was going to happen, it wouldn't really be an unforeseeable emergency, we could dictate what would go in here, but we don't know. So we are trying to provide as much flexibility to the project owner when they have this, you know, hopefully it will never happen, as Mr. Ellison said, but they do have it --

if it does happen, we want to provide some flexibility so that they can tell and get approval from the Commission for this extra use.

Again, right now today, we haven't done the analysis as to whether or not 550 acre feet of water is an impact or not, we don't know if ten years from now if there is the world's most horrendous drought that maybe that would be a significant impact 10 or 20 years from now, we don't know, and that's the whole point; it's an emergency. And so what we're pointing out here is we would like to see a plan that identifies some type of mitigation. We thought about specifying what that would be, but again, that didn't seem reasonable to us. We could specify one to one, we could specify conservation plans, or we could say that the project owner can put into its request, make the assertion that there is no significant impact. That would all be fine.

So if the language sort of included that full range of options so as not to bias anybody one way or the other, that's maybe language we can agree to. And that's something we haven't fully explored with the applicant frankly, so, you know, maybe a break would be reasonable at this point. But that's kind of where we're coming from with respect to this language. We are trying to ensure that there is a message that we do think if there's an

impact it should be mitigated.

Another option is that when we talk about the amendment request, we could put something in there that would say, again, sort of a message to the people, to the compliance folks, it's not really directly relevant to a Commission decision, but it would be a signal to the compliance folks by saying something like if an amendment request is filed pursuant to this emergency, then one of the considerations would be whether or not the Commission would require the applicant to go back and do some kind of mitigation, because if there was a finding that temporary use of water was, in fact, a significant impact.

So there's sort of different ways we can go to handle this. Certainly we're open to the Committee's direction as to what they think might be the most reasonable way; but again, you know those ideas that we've been throwing around, and we haven't quite completed our discussion on those options.

HEARING OFFICER RENAUD: Okay. Thank you.

Maybe we should chat for a moment here and determine whether or not a break would be appropriate or we continue.

PRESIDING MEMBER PETERMAN: Staff, when your huddle is done, we can resume. Ours is finished as well.

Thanks. Well, I think we want to take a break

here because it sounds like the real issue is with these two lines regarding requiring a plan to mitigate the amount of water, and we'd like you to get together and see if you can come to some language that you feel comfortable with that addresses both the unforeseen circumstances going forward while also acknowledging the points raised perhaps around whether there's a necessity for such a plan.

How long would you like to have to do that?

MR. ELLISON: Thirty minutes.

PRESIDING MEMBER PETERMAN: You said three or thirty?

MR. ELLISON: Thirty I'd like to say three.

MR. OGATA: Hopefully three will work, but maybe we better take a little bit more time than that.

PRESIDING MEMBER PETERMAN: Thirty will be fine. So can we recess until 2:40?

HEARING OFFICER RENAUD: Yes.

The evidentiary hearing will be in recess until 2:40, and this will mark the resumption of your Committee-sponsored workshop. Until that time, that will remain open to the public, but the Committee will absent itself. Thank you.

(Recess.)

HEARING OFFICER RENAUD: You've had your workshop

session, and the Committee is now back in the room.

Were you able to discuss the issue regarding the portion of Soil and Water 10, and were you able to come to a resolution you'd like to tell us about?

MR. ELLISON: I'm pleased to report that, yes, we were able to discuss it, and, yes, we were able to come to a resolution. I'll leave it to staff to discuss the mechanics of putting that resolution into the record.

I would still propose to call some witnesses to provide a little bit of background to the record on how we got there, but that shouldn't take a long time.

HEARING OFFICER RENAUD: Sounds good. All right.

MR. OGATA: Staff, as you see, are not in the room right now because they are retyping Condition 10 so they can bring it back to you clean and neat.

HEARING OFFICER RENAUD: All right.

MR. OGATA: So the propose is to resubmit 204 in a new version that will be -- with Condition 10 basically being the only thing that's different from what we've already submitted, but they still wanted to attach it to 204. So they should be back like pretty soon.

HEARING OFFICER RENAUD: Well, we could go ahead with the background testimony while we're waiting. How's that sound? Why don't we do that.

MR. ELLISON: Okay. Thank you.

HEARING OFFICER RENAUD: That's a good point. Is it okay if we do that without your staff people here?

MR. OGATA: I believe so. I think -- again, we're in agreement, so I don't think there's a reason that they need to hear the testimony. I'm happy to go forward.

HEARING OFFICER RENAUD: Good.

MR. ELLISON: Thank you. And thank you to the Committee for your indulgence procedurally that allowed us to resolve the last issue.

With that, what I propose to do in the interest of efficiency is to call a panel of three people: Mr. Metersky, Mr. Collacott and Ms. Kyle-Fischer. So if I could have these witnesses sworn. And actually, Cindy, why don't you sit here and I'll just --

(Witnesses sworn.)

THE REPORTER: Please individually state your names for the record.

MR. COLLACOTT: Robert Collacott.

MR. METERSKY: Ross Metersky.

MS. KYLE-FISCHER: Cynthia Kyle-Fischer.

THE REPORTER: Thank you.

DIRECT EXAMINATION

MR. ELLISON: Okay. Let me begin by asking each of you to very briefly identify your position with respect to the project and summarize very quickly your

qualifications. So let me begin with you, Mr. Metersky.

MR. METERSKY: Again, I'm Ross Metersky. I'm a developer for the project. I've developed projects around the country, been in the cogen industry for over 20 years.

MR. COLLACOTT: I'm Robert Collacott, and I've worked in water resources in different aspects for about 34 years, and I've worked on power plant permitting for close to 15 years now, and I'm the -- I wrote the water section of this AFC.

MS. KYLE-FISCHER: I'm Cynthia Kyle-Fischer, and I have over 20 years of experience in environmental engineering and approximately five years of experience with power plant permitting, and I was the project manager for the --

THE REPORTER: Get closer to the microphone, please.

MS. KYLE-FISCHER: -- I was the project manager for the permitting of this project.

MR. ELLISON: Mr. Metersky, let me begin by addressing a couple of questions to you.

Have you had the opportunity to review the Exhibit 204 which sets forth the revised staff-proposed conditions for Soil and Water?

MR. METERSKY: Except for the currently under-modification Condition 10, yes.

MR. ELLISON: And with the exception of the currently-under modification Condition 10, on behalf of the applicant do you agree with the changes set forth in Exhibit 204?

MR. METERSKY: Yes, I do.

MR. ELLISON: Okay. Could you, Mr. Metersky -- and feel free to hand this question off, but could you briefly summarize the water-use situation for the Watson project that we are seeking to license here, and specifically where does the project get their water from; and then I'll have some follow-up questions.

MR. METERSKY: Okay. Well, I'll start with an overview and then ask Bob Collacott to address some.

The water currently comes from fresh water sources, a well on the BP site and also from the local water purveyor, California Water Services Company, and that's used to produce steam for its customer, the BP refinery. Steam is a primary use, and there are some cooling towers on site which is a -- a small amount of water is used for cooling purposes.

MR. ELLISON: And this is a cogeneration project, correct?

MR. METERSKY: Yes.

MR. ELLISON: So a significant amount of the water that is used in this project is for the purpose of

providing steam to your steam host the refinery, correct?

MR. METERSKY: Correct.

MR. ELLISON: Do you or any other member of the panel know how much of the water use by the project goes for power plant cooling versus the provision of steam to the refinery?

MR. COLLACOTT: This is an unusual project. Only about one-sixth of the water supplied to the project actually goes to power plant cooling. The primary use of the steam that's produced from the project will be used to manufacture -- the project is to manufacture steam to provide to the BP refinery. And this is an energy-conserving way of manufacturing steam. The BP refinery also has a dedicated steam generators, but this is a more-efficient way to generate steam for the use of the power plant -- or use of the refinery.

MR. ELLISON: Mr. Metersky, this project has been labeled both a reliability and steam-supply project, correct?

MR. METERSKY: Correct.

MR. ELLISON: Could you explain what the difference is between those two things; what the reliability purpose of the project is and what the steam-supply purpose is?

MR. METERSKY: Yes. When the existing Watson

cogeneration facility was licensed back in 1986 and began operation in 1988, it was four units. This project is looking to add a fifth turbine or a fifth unit. And when the original project was licensed, it was designed to provide 7-, 800,000 pounds of steam per hour. Through the '90s as the refinery's needs grew primarily due to environmental compliance with gasoline, they quickly started consuming over a million pounds of steam an hour.

So as the customer demand increased the design basis for the original plant, it no longer met the reliability it had in mind back in the '80s. The addition of this unit would bring the reliability back to where it was in the mid '80s and avoid refinery upsets in the case of an outage or a system outage out on the power grid. So that's the reliability component.

Another primary objective is increasing the ability to provide steam to the refinery and by adding essentially a fifth identical unit with additional generation; it gives us more operational flexibility and will allow us to, one, provide the backup at a higher level, but two, to increase deliveries if our customer requires additional deliveries of steam.

MR. ELLISON: Okay. Now, given the fresh water cap that is being proposed and agreed to here, is it fair to say that in order to provide the additional reliability

that the project can do that within the fresh water cap, but that in order to provide the additional steam supply the project needs to go above that cap and use reclaimed water?

MR. METERSKY: That's correct.

MR. ELLISON: So one of the two major purposes of this project depends upon the use of reclaimed water.

MR. METERSKY: That's correct. The primary purpose of reliability depends -- or, I'm sorry, the secondary purpose of increasing steam supply depends on recycled water.

MR. ELLISON: And the reclaimed water provides other benefits as well. Could you summarize those?

MR. COLLACOTT: Well, the reclaimed water that would be received by the project would be single-pass reverse osmosis water supply and a nitrified supply. Basically the -- particularly the reverse osmosis supply would be very high quality water which would require just one more pass of RO treatment before it could be used in the steam generating process. So it's -- it requires less money and effort for the project to use reclaimed water versus using fresh water.

MR. ELLISON: So is it fair to say that regardless of any regulatory requirement from this Commission that Watson and its independent steam host, BP,

have a strong incentive to use reclaimed water?

MR. COLLACOTT: Well, actually, before the -- this project got off the ground, or it got started, the refinery was in the process of using reclaimed water for reliability purposes I believe. We do recognize that there's a water supply situation in southern California, and reclaimed water is viewed as it diversifies the supply, and it's maybe a more reliable supply if there are problems with water -- imported water supplies.

MR. ELLISON: With that background -- well, let me ask this question: The -- Watson is not the owner of the refinery, correct?

MR. METERSKY: Correct.

MR. ELLISON: The owner of the refinery is essentially a customer of Watson; is that correct?

MR. METERSKY: That's correct.

MR. ELLISON: And you have a contractual relationship with the refinery in which you provide steam, they provide water to you.

MR. METERSKY: Yes.

MR. ELLISON: Okay. So has it been an important objective of Watson in licensing this project to avoid imposing regulation on its independent customer at the refinery?

MR. METERSKY: Yes, it has.

MR. ELLISON: And is that one of the main reasons for having the fresh water cap and the ability to operate if for some reason the reclaimed water is not available or the contract doesn't come through in the way that you anticipate?

MR. METERSKY: Yes.

MR. ELLISON: All right. With that background, I want to conclude just by establishing through actual real witnesses some of the numbers that I rather loosely threw out earlier, and then I think we'll be done. And I'll address these to you, Mr. Collacott.

Have you performed any calculation of what you believe the amount of water that would be used above the cap during the 90-day emergency condition might be?

MR. COLLACOTT: Yes.

MR. ELLISON: What is that number?

MR. COLLACOTT: Let's see. I'll have to -- let me just make one quick calculation here, excuse me.

About 475 acre feet.

MR. ELLISON: Okay. Now, is that acre feet per unit of time, or just total acre feet over the life of the project?

MR. COLLACOTT: That would be acre feet for a 90-day period, assuming that there's a 90-day interruption in the water supply, in the reclaimed water supply.

MR. ELLISON: Okay. So it's essentially all that would be allowed under Condition 10 would be a total of that number.

MR. COLLACOTT: Correct.

MR. ELLISON: Okay. The groundwater basin from which some of the fresh water that we're talking about would be supplied, can you describe that groundwater basin?

MR. COLLACOTT: It's a very large groundwater basin. And according to the state Department of Water Resources it has an estimated storage capacity of six and a half million acre feet. An acre foot is an area -- equivalent to an area a million feet high and an acre in area. Very large volume of water.

MR. ELLISON: And what would be the yield of that aquifer?

MR. COLLACOTT: Again, according to the state Department of Water Resources, the yield is about 26 percent, and that equates to about 1,609,000 acre feet of specific yield.

MR. ELLISON: And is that specific yield number a unit per -- a measure of time, or is it --

MR. COLLACOTT: That's total.

MR. ELLISON: Total.

MR. COLLACOTT: The groundwater basin, of course,

is -- although there are demands on that aquifer, there is also replenishment of the basin through groundwater recharge.

MR. ELLISON: Okay. That's all I have. Thank you.

MR. COLLACOTT: Do you --

MR. ELLISON: I'm sorry?

MR. COLLACOTT: Do you want to equate that to the 475 acre feet to the total specific yield?

MR. ELLISON: Sure.

MR. COLLACOTT: Okay. Just to put in perspective the amount of water that's 475 acre feet that we're talking about over the life of the project would equate to .03 percent of the total specific yield of the groundwater basin in this area.

MR. ELLISON: So that would be three one-hundredths of one percent?

MR. COLLACOTT: Yes.

MR. ELLISON: Thank you very much.

PRESIDING MEMBER PETERMAN: Panelists, I have a question.

Welcome back, staff.

Would you take a second just to explain the reasons for the fluctuation in water use by the facility over the record that we have?

MR. METERSKY: That's a very complicated answer which I can only give in part. We've looked at that. The fluctuations vary by water chemistry, the supply, the amount of snow, temperature, humidity, the level of production within the refinery, their outage schedules and, you know, numerous other -- the quality of the recycled water, the quality of the Cal water, and the quality of the well water, which has fluctuated over the years.

PRESIDING MEMBER PETERMAN: What you're saying is it's mostly driven then by conditions related to the water and the steam needed versus attributes particular to the facility such as the cooling requirements or temperature needs of the facility?

MR. METERSKY: Yeah, I would say the -- if you're talking about the Watson cogen facility.

PRESIDING MEMBER PETERMAN: Right. I'm just trying to get a sense of how much the fluctuation is due to the demand of the refinery versus practices at the cogen facility, what's in your control versus not.

MR. COLLACOTT: As I mentioned earlier, the total water use for cooling by the existing Watson facility is only one-sixth, so I would think most of the fluctuations would be from external factors, both water quality, temperature, as well as refinery demands.

PRESIDING MEMBER PETERMAN: That's it for me.

HEARING OFFICER RENAUD: Okay. Any questions? No, right.

Okay. Anything else, Mr. Ellison?

MR. ELLISON: No.

HEARING OFFICER RENAUD: All right.

Questions by staff?

PRESIDING MEMBER PETERMAN: By the way I found that very informative; thank you for taking the time to present the information.

MR. OGATA: We've no questions. Thank you.

HEARING OFFICER RENAUD: All right. Now, I see staff has returned, I presume, with the promised revised document. You wanted to substitute that for the existing 204, or how did you want to work that?

MR. OGATA: Yes, that's correct. We have a brand new document which I think we better pass out now. And we'd like to substitute this for the previous 204.

HEARING OFFICER RENAUD: Are there any changes to this other than to Soil and Water 10?

MR. SOLOMON: None.

HEARING OFFICER RENAUD: Those are the only differences.

All right. Would you summarize for the Committee what you've done here?

MR. LINDLEY: So what we've done here is we've added a bit of clarification to the portion where we talked about mitigation previously. What we've asked for is that the request of the CPM must include an analysis of the excess water use of the fresh water cap calculated on a 12-month rolling average, identifies whether there were any significant adverse impacts and proposed methods of mitigation if needed. Significant adverse impacts that are identified shall be mitigated in accordance with the CPM-approved plan.

So I guess that provides the option that if the project owner can demonstrate that there's no significant adverse impacts to their 500 acre feet of water, the CPM has the option to approve that.

HEARING OFFICER RENAUD: All right. And, applicants, you're in agreement with that language?

MR. ELLISON: We are. I would propose one literally editorial suggestion.

In that new paragraph after the parentheses, "calculated on a 12-month rolling average," comma, I think we need the word "that," "that identifies whether"; but otherwise we're good.

HEARING OFFICER RENAUD: Yeah, that looks like a good edit.

MR. LAYTON: We agree to that. We also made some

minor changes in the verification to number 3, which follows up on changing it from a mitigation plan to an analysis. And again, the language is already self-evident.

HEARING OFFICER RENAUD: Good. All right. All right.

In the discussion earlier, applicant, you suggested somehow tempering the unable requirement in the second line with something along the lines of reasonably. What became of that discussion?

MR. ELLISON: We gave up on that.

We talked about it, yes, we did, briefly. Frankly, we think that it's a clarification rather than a change, and it's already implied is our view.

HEARING OFFICER RENAUD: I think reasonableness should be implied into all contractual provisions and that's the way it should be seen.

HEARING OFFICER RENAUD: All right. Anything else on that?

MR. LINDLEY: You know, I'd like to clarify one quick point.

Mr. Ellison mentioned that the safe yield of the basin was on the record of -- was that 1.2 or 1.5 million acre feet per year?

MR. ELLISON: I believe that according to

Mr. Collacott was that it was 1.69.

Is that correct?

MR. COLLACOTT: Yes, assume that it's 26, the yield is 26 percent.

MR. LINDLEY: Okay. I'm just not clear on that in that the West Coast Basin under the water master plan under the adjudication the parties are only allowed to extract up to 75,347 acre feet per year, so it just seemed like that was a pretty --

MR. COLLACOTT: That's probably the annual safe yield. We're talking about the specific yield, the total yield --

MR. LAYTON: Storage.

MR. COLLACOTT: Of the six and a half million acre feet of water that's potentially stored, you can only get 26 percent of it out.

MR. LINDLEY: Okay. But you couldn't get 26 percent out of it year after year after year?

MR. COLLACOTT: You can't drain the basin totally dry is what they're saying.

MR. LINDLEY: Okay. I just wanted to point that out because it's a -- those are widely different numbers, and --

MR. COLLACOTT: Yeah, they are, and for good reason.

MR. LINDLEY: So legally you can only 75,000 acre feet a year.

MR. COLLACOTT: Right.

MR. LAYTON: We just thought the 500 should be compared against the -- the 500 should be compared against the 75,000, not the 1.5 or the 1.6 million. That was just a clarification we were trying --

MR. ELLISON: That's fine. We're happy to have that clarification.

Well, I would make one slight caveat to that. If we're going to make that comparison, we should remember that it's 75,000 per year compared to 500 once.

MR. LAYTON: For three months. Understand.

MR. LINDLEY: So could Soil and Water 10 only be invoked one time?

MR. ELLISON: Assuming that there's an amendment. I mean, I don't know what the circumstances are. No, it's not on its face limited to one time, so potentially more than once.

PRESIDING MEMBER PETERMAN: Mr. Ellison, could you say your last point again? I missed that.

MR. ELLISON: The question was whether if -- whether Soil and Water 10 could be invoked more than once if you had multiple emergencies, and I think by its terms, yes, it could be. We think that it's unlikely that it

will be invoked at all, let alone more than once.

PRESIDING MEMBER PETERMAN: Staff, any thoughts about that?

MR. OGATA: This is Jeff Ogata.

It's an emergency condition. Again, we expect and hope that it will never be used, but obviously we can't foresee what's going to happen in the future; and then if something happens and they file an amendment and the Commission changes the condition, and yet again something happens and they need to go through this again, it seems reasonable to consider it at the time. And the CPM, as we've discussed, has the authority to not approve this request pursuant to this condition.

So again, you know, we can't really tell what's going to happen, and so we don't want to limit it to just one time.

PRESIDING MEMBER PETERMAN: Thank you. I'm just anticipating all these unforeseen things based on your initial comments, so I just wanted to check to make sure we're okay with it.

HEARING OFFICER RENAUD: All right. And just for double clarity of the record, it was already stipulated, I believe that Exhibit 204 was moved into the record and admitted. And the stipulation now is that the new 204 will take the place of the old 204.

MR. ELLISON: We agree.

HEARING OFFICER RENAUD: All right. I think that concludes the evidentiary portion of the hearing.

Does anybody have anything they wish to add before we move into public comment?

Mr. Ogata?

MR. OGATA: Yes. Mr. Renaud, there is one more thing about air quality that we need to bring back.

HEARING OFFICER RENAUD: All right.

MR. OGATA: Mr. Nazemi, if we could call you back up here.

Why don't you go ahead and describe your concern, and then we'll ask the applicant to respond to your concern about the PSD permit.

MR. NAZEMI: I'm back, sorry.

Just wanted to make sure that the commissioners understand that our FDOC as issued back in March was complete but as we stand today is not complete because of the greenhouse gas PSD. And given that we still don't have any applications filed for that portion of the permit, we were concerned how long this process may take. And I want to ensure you that the process is moving expeditiously so we can wrap this up.

There were some statements made that there may not be any change to the FDOC, and I think that may be

correct, but if -- if there's too much delay between the time we issued the previous FDOC and the next public notice for this permit and things change, I think there is a good chance there will be changes. So we wanted to ensure that the process isn't going to die off here after the license is issued and we hold the permits open for a period of time.

So with that, I wanted to ask if the applicants can put into the record when they intend to file these PSD applications so that we can be certain that the process is moving forward.

HEARING OFFICER RENAUD: Good. I think that's a fair question. Can the applicant address that, please?

MR. ELLISON: Mr. Metersky?

MR. METERSKY: Yes. We expect to file -- we hope to file by the end of November, but we certainly expect to have everything filed by the end of this year.

HEARING OFFICER RENAUD: And as it stands now, you'd be filing with EPA.

MR. METERSKY: Yes.

HEARING OFFICER RENAUD: All right.

MR. METERSKY: File with the EPA and provide a copy to the air district.

HEARING OFFICER RENAUD: Is the applicant -- what is your expectations in terms of the license? Assuming --

let's assume just for the sake of discussion that this decision is adopted by the full Commission and so on but you don't have the PSD permit as of that time. What are your thoughts in terms of how that would be handled? Would you be allowed to commence construction?

MR. METERSKY: No. We would have to get the PSD permit and the Title V permit and the permit to construct from the air district before we could start construction.

HEARING OFFICER RENAUD: Okay. And again, I'll turn to staff. I think you said there's not a condition of certification specifically addressing that circumstance. Am I right? I mean, the Committee can add one, but I just wanted to see if you had any thoughts on that.

MR. LAYTON: There is not a condition that requires that the PSD -- the timing of the PSD application, but there is a general condition in air quality that says if you do make changes to conditions or you get revised permits from air districts or EPA, you submit a copy to us. Again, this is kind of assuming -- well, for the PSD permit, that's from the federal government, it's just information for staff on that PSD issue that's not our jurisdiction; but again, in other instances air districts have modified their permit conditions and haven't noticed us, and so we've now put

the condition in all of the permits that we recommended to the Committee that these changes get submitted to us. So in this case, there is that condition but it's not specifically tied to PSD.

HEARING OFFICER RENAUD: All right. And is that general condition found in the general conditions or in the air quality conditions?

MR. LAYTON: In the air quality.

HEARING OFFICER RENAUD: It is.

MR. LAYTON: And it's under staff conditions SC -- and I do not know the number.

HEARING OFFICER RENAUD: All right. I was looking for it, but I didn't see that, but it must be there if you say so.

MR. LAYTON: I certainly hope so at this point in time.

HEARING OFFICER RENAUD: Okay. Well, if it's not, we'll have to draft something that accomplishes that purpose.

MR. NAZEMI: I think, if I may add, in addition to the applicant not intending to start construction, I just want to make sure they understand that they will be in violation of our rules if they begin construction, and we define it by even excavating and pouring foundation as start of construction.

HEARING OFFICER RENAUD: Good. All right. Well, that should cover it as well. Thank you.

Anything further from any party in connection with the evidentiary hearing portion of this?

MR. ELLISON: No.

HEARING OFFICER RENAUD: Closing arguments?

No.

Anybody want to brief anything? The Committee does not feel the need for any briefs, but if anybody feels they want to write briefs --

MR. ELLISON: We're happy to forego briefing.

HEARING OFFICER RENAUD: All right. Good.

Okay. Good. Anything from commissioners before we move to public comment?

Okay. I understand we have a public commenter on the phone.

Ms. Sadler, what's the name of the person?

MS. SADLER: Ms. McNulty.

HEARING OFFICER RENAUD: Okay. Please go ahead, we're listening.

MS. McNULTY: My name is Mia McNulty, and I'm representing the community as well as the NAACP Carson Torrance branch. And we're just concerned about the high levels of asthma recently in our area, the fact that we have a lot of elderly, and there are a lot of small

children missing a lot of days of school and emergency visits. So we wanted to make sure that's noted on the record.

HEARING OFFICER RENAUD: All right. Thank you for your comment, we appreciate that.

Is there anyone else who wishes to make a public comment? If you do, just speak up.

MR. OGATA: Jeff Ogata for staff.

Mr. Renaud, we've Dr. Alvin Greenberg here if you would like a response to that comment. He previously had written a response, but if you'd like something now, he's available.

HEARING OFFICER RENAUD: Sure. Thank you.

Mr. Greenberg you heard the concerns voiced in the public comment. Perhaps you'd like to respond to that. Thank you.

DR. GREENBERG: Hearing Officer Renaud and Commissioners, Alvin Greenberg, contractor staff to the Energy Commission. I am the author of the public health assessment of the FSA as well as the response to comments.

Staff always shares a concern about existing public health impacts in the area, and I believe that my response to the comment earlier, which is now in the record, it has been docketed, covers the issue of asthma in the immediate vicinity of the proposed project.

The findings were actually very clear and elucidating in that the incidence of asthma, although very high in the United States and in California, were not any different in the particular neighborhoods surrounding the facility than they were in the greater Los Angeles area or in the State of California.

Also, given the offsets that are required for SOx and NOx, oxides of nitrogen and oxides of sulfur, which can form particulates, and also offsets for VOCs, which can induce ozone formation, two substances, ozone and particulate matter, can either cause or exacerbate asthma.

It is my view that this particular project will not cause an increase in asthma in the community surrounding the facility.

HEARING OFFICER RENAUD: All right. Thank you, Dr. Greenberg. Appreciate that.

All right. I think we've concluded our business here today. Does anybody have anything further they wish to add in conclusion?

Any final remarks from commissioners?

MR. ELLISON: I just wanted to thank the commissioners and the hearing officer and the advisors and the staff for all of their hard work on this project.

PRESIDING MEMBER PETERMAN: Hi. This is Commissioner Peterman, and I'll just add, thanks once

again to staff and applicants and the public for participating in this process. And also I appreciate how productively you used your workshop time during the prehearing conference and evidentiary hearing today. Thanks.

HEARING OFFICER RENAUD: All right. Thank you very much. The committee's presiding member's proposed decision should issue in the next several weeks. And this hearing is adjourned.

(Thereupon the California Energy Commission, Watson Cogeneration Steam and Electricity Reliability Project Evidentiary Hearing adjourned at 3:21 p.m.)

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 Evidentiary 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 7th day of November 2011.

_____
PETER PETTY