

RENEWABLES COMMITTEE PUBLIC WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
) Docket No.
California Guidelines for) 06-OII-1
Reducing Impacts to Birds)
and Bats from Wind Energy)
Development)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, APRIL 16, 2007

9:06 A.M.

Reported by:
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Contract Number: 150-04-002

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P R O C E E D I N G S

9:06 a.m.

PRESIDING MEMBER GEESMAN: Here we are again. This is a workshop of the California Energy Commission's Renewables Committee on our staff draft guidelines for reducing impacts to birds and bats associated with wind energy development.

I'm John Geesman, the Presiding Member of the Commission's Renewables Committee. To my right, Commissioner Jackalyne Pfannenstiel, the Commission's Chair and the Associate Member of the Renewables Committee.

To my left, Melissa Jones, my Staff Advisor; and to the far right, Tim Tutt, Chair Pfannenstiel's Staff Advisor.

I think the best thing to do today is simply walk through the staff proposal; invite comments from the various members of the audience that may care to share their thoughts with us; and determine where we are at the end of the workshop process.

So, with that, Rick, did you want to lead off?

MR. YORK: Thank you, Commissioner.

1 Just want to bring people up to date here as far
2 as some of the things about the Energy Commission
3 here. If there is need to use the bathroom, the
4 bathrooms are outside here near the southeastern
5 door of the Energy Commission.

6 If there is a fire alarm that goes off
7 we are to quietly and calmly leave the building
8 out those doors, out the southeast corner of the
9 building. And we are to meet across the street at
10 the park over here.

11 Please turn your cellphones off. If you
12 need to go to the snack bar up on the second floor
13 we have a place for coffee or water or lunch. We
14 ask that you not bring anything more than, I
15 believe, water or coffee into the room here. No
16 other types of food items.

17 As you entered the back door here to
18 Hearing Room A, you'll notice there were copies of
19 the guidelines available. I hope everybody got a
20 copy. There's also an agenda, a short agenda.
21 There's also a copy of the notice that was filed
22 for this workshop. So pick up one or all of
23 those.

24 And I believe that's it, Commissioner.
25 Anybody have any questions?

1 PRESIDING MEMBER GEESMAN: Okay, then,
2 Susan, you and I think Scott Flint from DFG were
3 going to make presentations.

4 MS. SANDERS: I'm Susan Sanders with the
5 Energy Commission. I'm one of the four primary
6 authors of the guidelines. And we would all like
7 to thank you for your many contributions to this
8 document. Your letters and your comments at
9 workshops continue to be very useful and
10 constructive.

11 And here's what we did with all your
12 comments. We sent letters and the transcript from
13 the last workshop, and a summary of all the
14 comments, both by issue and by author, to
15 everybody that needed to see it. And that was the
16 science advisory committee, legal staff and our
17 colleagues at Fish and Game, and the Energy
18 Commission.

19 We discussed all those comments and we
20 had meetings, conference calls, -- a one-on-one
21 discussion with experts, as appropriate. And then
22 we started revising. And the document you have
23 today represents several rounds of revision and
24 review by all those parties.

25 So, over the next ten minutes or so what

1 I want to do is briefly go over the major changes
2 from this draft compared to the one you saw that
3 came out in December.

4 At the beginning we have a new
5 acknowledgement section. If anybody wrote
6 comments, participated in a workshop, or made
7 other contributions to the guidelines their name
8 should be in there. And please help us correcting
9 it, especially if we left somebody out.

10 We added an introduction and eliminated
11 the preface. So a lot of what was in the preface
12 is now in the introduction. We also extracted
13 some information from the executive summary that's
14 now in the introduction. And we've revised it to
15 better explain the purpose of the document.

16 The introduction also includes a brief
17 discussion of research and revisions, and that
18 used to be appendix G, which now is in the
19 introduction.

20 You'll notice that we moved the step-by-
21 step guide, step-by-step approach to implementing
22 the guidelines that used to be chapter 8 at the
23 end. Some of you suggested it would be better in
24 the front, and we thought so, too.

25 It now also has better linkage. A lot

1 of you also said it doesn't connect that well to
2 the rest of the document. So it does a better job
3 now describing what's in the rest of the chapters.

4 The remainder of the document is now
5 five chapters and appendices. And those offer
6 expanded detail and rationale, what we've provided
7 in the step-by-step guide.

8 We made some minor revisions to chapter
9 1, not really very much in terms of changes to
10 organization or content, except for table 1. You
11 remember table 1 was a checklist that had yes, no,
12 or unknown answer. And a lot of you said well,
13 everything always comes out yes, which was true,
14 it did. So we revised the questions to be a
15 little more discriminating and gave a little
16 guidance as to what to do with affirmative
17 answers.

18 Chapter 2, which was the section
19 describing the science advisory committee, we've
20 eliminated that. And replaced it with a brief
21 discussion in chapter 3. And a proposal by the
22 Energy Commission, in consultation with Fish and
23 Game, to establish a statewide advisory committee.
24 And that would be a resource that lead agencies
25 could use at their discretion if they wanted more

1 scientific advice at any point in the project.
2 And we welcome your suggestions on how to go about
3 doing that.

4 The recommendations to consult with the
5 advisory committee, science advisory committee,
6 were eliminated throughout the document. But we
7 did retain our suggestion to consult early and
8 often with Fish and Game, Fish and Wildlife, and
9 other scientists, as well as appropriate
10 stakeholders like conservation organizations.

11 The new chapter 2 is titled, CEQA,
12 Wildlife Protection Laws and the Permitting
13 Process. It incorporates parts of the old chapter
14 6. You mentioned that chapter didn't really
15 deserve its status as its own chapter, and we
16 agreed. And most of the old chapter 4, the impact
17 section. And Scott's going to talk about that
18 soon.

19 Chapter 3 is still prepermitting
20 assessment, but we've really reorganized and
21 revised that quite a bit. We've not changed the
22 recommendation for one year of prepermitting
23 surveys, but we've clarified when more or less
24 study might be appropriate.

25 We've also provided better context and

1 we think certainty as to what level of study
2 effort and kinds of methods are needed to
3 adequately evaluate risk at a site.

4 This chapter now emphasizes bird use
5 counts as the primary tool for assessing diurnal
6 bird use. And it recommends also raptor nest
7 searches as a component of most wind energy
8 projects.

9 We provided the table in chapter 3 which
10 summarizes some of the other study techniques,
11 such as small bird count, area searches, migration
12 counts, and described when it might be useful to
13 use them. But not given the impression that you
14 need to use them for every project.

15 And we've also acknowledged some of the
16 difficulties and unknowns that are associated with
17 bat acoustic monitoring.

18 Okay, the new chapter 4 is titled,
19 Assessing Impacts and Selecting Measures for
20 Mitigation. It retains much of the old chapter 4,
21 and that discussion of CEQA impacts. And now it
22 incorporates avoidance, minimization and
23 compensation measures, and that used to be in
24 chapter 5. So we've merged those two. And
25 Scott's going to talk about that, too.

1 Chapter 5, Operations Monitoring. It's
2 very similar in content and organization to the
3 old chapter 7. But it includes quite a few of
4 your suggestions for improvements.

5 We've clarified the objectives for
6 operations monitoring; provided some context for
7 when more or less monitoring might be appropriate.
8 We've added some new information about submitting
9 monitoring reports to bios, and also what to do
10 with tissue samples, if you want to share them for
11 research.

12 There's an entirely new item, appendix
13 H, estimating impacts to raptors using bird use
14 count and fatality data from existing projects.
15 We added this in response to your request to
16 provide more specificity, context and examples.
17 Dick did this, he crunched numbers for about a
18 week and he used data on raptors from projects all
19 across the country. We used raptors because
20 there's lots of data on raptors, and raptors are
21 important in California.

22 The information in this appendix gives
23 the reader a basis for assessing risk to raptors
24 based on the use data that you collect during
25 prepermitting study. It also includes some

1 cautions in using this simple assessment approach
2 to extrapolate fatalities and to make impact
3 assessments.

4 And finally I think you'll see that we
5 accepted many, but not all, of your suggestions
6 for changing the guidelines. In some cases we
7 agreed in principle with the suggestion, but
8 determined it was beyond the scope of what this
9 document should include.

10 In other cases we didn't make the
11 changes because after consulting with the science
12 advisory committee and our other colleagues at the
13 Energy Commission, Fish and Game, we didn't
14 necessarily agree with the suggestion.

15 A companion document will accompany the
16 next version of the guidelines and we'll discuss
17 there why we did or didn't accept the recommended
18 changes.

19 And I'm done. Scott.

20 MR. FLINT: Good morning. I just
21 briefly wanted to add to what Susan -- to Susan's
22 presentation, talking a little bit more about
23 changes to chapter 2 and the new chapter 4.

24 As Susan said, the new chapter 2 is CEQA
25 Wildlife Protection Laws and Permitting Process,

1 which combined old chapter 6 and old chapter 4.

2 Based on the comments we received from
3 all the folks commenting, we wanted to clarify how
4 the CEQA process applies to siting wind energy
5 projects in California, and also clarify the
6 Department's role in that. So the new chapter 2
7 has more detail about that, and clarifies the role
8 of Fish and Game and the lead agencies.

9 It also helps to condense the energy
10 chapters and to make that a more coherent
11 presentation in chapter 2. Also added a section
12 in there, some initial discussion of some ways to
13 consider giving project proponents permit coverage
14 and assurances through natural community
15 conservation planning; CESA 2081 permits, along
16 with federal HCPs; and for sites that don't need
17 either of those, pursuing site-specific mitigation
18 agreements with project developers.

19 In chapter 4, Assessing Impacts and
20 Selecting Measures for Mitigation, combines the
21 old chapter 4 and the old chapter 5 into one
22 chapter. There's not -- it's been rewritten to be
23 much clearer, and reads a lot better based on the
24 language changes made. However, there's not a
25 whole lot of new information in that section.

1 It's just been rearranged.

2 We did add and clarify, clarify by
3 adding some examples of feasible mitigation
4 measures, that project proponents and/or lead
5 agencies can pick from to apply to sites as
6 compensation that would work for birds, primarily
7 birds; but also some of those would work for bat
8 species, as well.

9 So, that's, in a nutshell, the changes
10 to those two chapters.

11 PRESIDING MEMBER GEESMAN: Thank you,
12 Scott. Why don't we open it up then for comments
13 from members of the audience.

14 And I'd invite you to pose direct
15 questions. I'll try to get Susan and Scott,
16 anybody else from the staff, to be prepared to
17 respond where they can.

18 Nancy, I saw you raise a blue card,
19 so --

20 MS. RADER: Well, do you want -- I don't
21 know if anybody's collected the blue cards.

22 PRESIDING MEMBER GEESMAN: Nobody's
23 given me any, and there's so few of us that it
24 doesn't really matter. I'll just take a show of
25 hands. Why don't you come up, Nancy, as the first

1 one. Julia, it sounds like you're next. You were
2 the second hand I saw go up.

3 MS. RADER: Okay. Good morning; Nancy
4 Rader, California Wind Energy Association. I
5 don't think I have any questions to pose, but I
6 have quite a few comments.

7 PRESIDING MEMBER GEESMAN: Okay.

8 MS. RADER: I first want to caveat my
9 remarks by saying that neither I nor our
10 consultants nor the dozen CalWEA members who have
11 been engaged in this process have really been able
12 to review the document as fully as we would have
13 liked. It's 159 pages; it's largely been
14 rewritten since the last time.

15 We also haven't had a chance, although
16 we've had a lot of emails, to get on the phone
17 together and to talk about it. So what I'm going
18 to say today are preliminary comments and are
19 subject to change in our written comments.

20 PRESIDING MEMBER GEESMAN: And do you
21 envision being able to have completed a full
22 review by the deadline that the staff has set of
23 April 23rd?

24 MS. RADER: Absolutely not. That was my
25 next request, is that you extend that deadline by

1 at least three weeks to May 14th to allow us
2 sufficient time to really go through the document
3 and to redline it, as we would like to do.

4 It's just not enough time. I mean,
5 we've got so much going on, not only at your
6 Commission, but the ISO, the PUC and just in
7 general, that, you know, -- of course, our members
8 are busy developing projects, and, you know, have
9 to squeeze this stuff in, you know, late at night
10 and on the weekend. So we really would appreciate
11 a couple of extra weeks of time to comment.

12 I'd also like to note some of our
13 members aren't here today because there is an ISO
14 meeting on wind issues today that was previously
15 scheduled.

16 Okay, so with that said, here are our
17 initial comments. On the positive side we're
18 pleased to see that the document has been
19 substantially improved in a number of ways,
20 including the organization has substantially
21 improved.

22 And one of the most problematic aspects
23 of the first draft, the project-specific
24 scientific advisory committee concept has mostly
25 been removed. There's less infringement on the

1 authority of the local lead agency.

2 There are fewer rigid statements about
3 what studies and what data are appropriate for
4 use, which is very important since the
5 circumstances at each site and the information
6 about each site vary considerably.

7 And similarly, there is some recognition
8 compared to the last draft that there are other
9 ways other than intensive field sampling, for
10 example, scientifically valid correlations, to
11 characterize and estimate impacts.

12 Overall, unlike the first document, the
13 unjustified harm done to wind energy development,
14 this draft can probably be addressed with
15 significant editing. And it may be that some of
16 the shortcomings that I'm about to talk about that
17 we perceive were not intended, but are -- and
18 somehow unintentional.

19 Nevertheless, many of the concerns that
20 we identified in the previous draft remain in this
21 draft. And I'd like to talk about eight of them.

22 First, the document implies that
23 compliance with wildlife laws is possible, and
24 that lots of studies and mitigation can bring a
25 project into compliance despite the fact that

1 compliance is not possible with many of these
2 laws. Because one bird kill is an inexcusable
3 violation.

4 In conflating CEQA and the rigid
5 wildlife laws this draft, like the last one, tries
6 to turn the permitting process into an exercise of
7 very extensive and expensive information gathering
8 that will not be necessary or justified for every
9 project. Nor is it likely to significantly reduce
10 avian mortality for most projects.

11 Instead of guiding local agencies to the
12 appropriate level of review for each project, the
13 draft sets a high bar for most every project. In
14 exchange for imposing unnecessary levels of
15 review, the document contains one sentence that
16 suggests that developers might be shielded from
17 state and federal prosecution if a wildlife law is
18 inadvertently violated at some point over the
19 project's lifetime. But a statement falls far
20 short of a guarantee. And in any case, the state
21 cannot give guarantees about federal enforcement.

22 Secondly, there remains insufficient
23 recognition of the variety of ways that sufficient
24 credible evidence about impacts can be gathered.
25 The step-by-step approach, for example, recommends

1 that particular methods be used to determine
2 abundance, bird use counts and acoustical
3 monitoring even though there are other methods
4 that may be as or more appropriate at a given
5 site. Which is recognized, in fact, in chapter 3.

6 In addition, there is no explicit
7 recognition that scientifically valid correlations
8 can be made for sites that are not nearby. Even
9 though way back in appendix 8 data is presented
10 that shows that using correlated use of mortality
11 data from sites across the country is indeed valid
12 for raptors.

13 Likewise, there's no recognition that
14 scientifically valid correlations can be made from
15 seasonal data, which has also been shown to be
16 possible and statistically valid. And yet the
17 document suggests that the particular methods
18 recommended in the step-by-step approach must be
19 followed in order to demonstrate a, quote, "good
20 faith effort" to develop projects consistent with
21 the intent of local, state and federal laws.

22 If the particular methods are not
23 followed, even if they are not necessary or
24 appropriate in a given situation, it could open up
25 lead agencies and project proponents to

1 litigation. This is because a project proponent
2 will be presumed not to have made a good faith
3 effort to comply with state and federal laws if he
4 does not use the particular study methods
5 recommended.

6 As we have noted before, the fact that
7 these guidelines are stamped voluntary is not
8 meaningful because they carry the authoritative
9 weight of the state.

10 The document's still two rigid
11 prescriptions are a critical flaw in the document.
12 They turn what could be helpful guidelines into a
13 litigation opportunity for project opponents who
14 are more likely to be NIMBYs and real estate
15 developers than avian advocates.

16 At the root of the problems I've just
17 discussed is that the guidelines still put the
18 cart before the horse. That is, methods are
19 recommended, absent any discussion of what
20 information might be needed in a given situation
21 to understand the risk, to the degree of
22 specificity that is required to make siting
23 decisions.

24 The guidelines largely dictate a one-
25 size-fits-all course of study, type, frequency and

1 duration without regard to what is already known
2 about the site, and what additional information is
3 needed to assess whether there is a significant
4 risk to bird or bat species.

5 This will only become a greater problem
6 as more and more projects are developed and more
7 information is gained that can be applied to a
8 particular siting decision. If this document were
9 based on principles and appropriate steps we would
10 not have that problem. But because the document
11 is prescriptive, it's very likely to impose costs
12 with little benefit gained.

13 Fifthly, the guidelines do not
14 accurately describe CEQA. In describing how CEQA
15 defines a significant biological impact, the
16 guidelines purport to quote the CEQA guidelines,
17 but omit an important provision to finding a
18 significant impact as one which substantially
19 reduces the number or restricts the range of an
20 endangered species.

21 The fact is CEQA does not necessarily
22 consider the loss of a single individual of an
23 endangered species to constitute a significant
24 environmental impact. To be significant under
25 CEQA, the impact must substantially reduce the

1 number of species.

2 The guidelines also do not discuss the
3 fact that CEQA allows lead agencies to approve
4 projects with significant impacts if feasible
5 mitigation is imposed. Even if mitigation cannot
6 reduce impacts to the level of less than
7 significance, projects may still be approved if
8 it's determined that the project has overriding
9 benefits.

10 Six. The post-construction monitoring
11 requirements are excessive. In addition to the
12 two years of post-construction mortality
13 monitoring, that is carcass searches, the draft
14 calls for two years of point counts and acoustical
15 monitoring, which adds huge additional costs with
16 very little benefit.

17 These and other excessive study
18 requirements are aimed in part to collecting data
19 that will further the understanding of wind
20 impacts on bird and bats. Of course, this is a
21 laudable objective. But imposing costly study
22 requirements on every project is not the
23 appropriate way to obtain this information, nor is
24 it necessary. And it will interfere with the
25 achievement of California's clean energy goals.

1 Instead the Energy Commission should fund research
2 to obtain this information.

3 Seventh. The draft creates the
4 possibility of open-ended mitigation and the risk
5 of having to conduct monitoring over the lifetime
6 of a project. Again, this gets to the conflation
7 of CEQA with wildlife laws, and it ignores good
8 science which allows for valid predictions and
9 correlations to be made.

10 The draft also proposes that there be
11 automatic responses for unexpected events which
12 trigger prescribed remedies. These kinds of
13 triggers could prevent recognition of one-time
14 freak occurrences or prevent other means of
15 effective remediation besides the prescribed
16 remedy.

17 Again, if the prescription is not
18 followed, it becomes fuel for litigants. And in
19 addition, these kinds of open-ended and inflexible
20 provisions create risks that will raise project
21 financing costs, or make financing untenable.

22 And finally, perhaps needless to say the
23 document provides no suggestion to lead agencies
24 that they should streamline the permitting process
25 for low-income projects such as repowers outside

1 the Altamont as we proposed, treatment that the
2 fossil fuel repower projects now enjoy.

3 So, in summary, while we appreciate that
4 significant improvements have indeed been made, we
5 must conclude again that the document will
6 increase study requirements without resulting in
7 lower impacts to wildlife. In so doing, the
8 document is at odds with the state's interest in
9 promoting clean energy to help avert the
10 devastating environmental and human health impacts
11 that we can expect from climate change.

12 Assuming you extend the deadline for
13 written comments, we'll be providing very specific
14 comments about the changes that are needed to the
15 text, and why.

16 PRESIDING MEMBER GEESMAN: I think it
17 was probably around your fifth point you were
18 speaking of impacts on species. I believe you
19 meant to say impacts on members of species, as
20 opposed to impacts on the overall species,
21 themselves. Did I mis-hear that?

22 MS. RADER: Well, in terms of quoting
23 what CEQA actually says?

24 PRESIDING MEMBER GEESMAN: No. It was
25 your paraphrasing.

1 MS. RADER: I said the fact is that CEQA
2 does not necessarily consider the loss of a single
3 individual of an endangered species --

4 PRESIDING MEMBER GEESMAN: Okay. I did
5 not hear the individual.

6 MS. RADER: Yeah.

7 PRESIDING MEMBER GEESMAN: Thank you.

8 MS. RADER: Yeah. Thank you very much.

9 PRESIDING MEMBER GEESMAN: Thanks,
10 Nancy. Julia.

11 MS. LEVIN: Good morning and thank you
12 for another, I'm sure, very productive workshop.
13 I did want to thank you and your staff and
14 consultants again. I think this has turned out to
15 be -- we knew it would be complex, it's turned out
16 to be much more so, I think, even than any of us
17 imagined. And I think everyone in this room has
18 been very productive and I think really worked
19 very hard to this point. I think we do still have
20 a lot of work ahead of us.

21 And I wanted to say that I agree with a
22 number of points that Nancy made. I draw
23 different conclusions from them, but I do agree
24 with some of her comments.

25 First and foremost that we need more

1 time to do written comments.

2 PRESIDING MEMBER GEESMAN: Do you have a
3 date in mind?

4 MS. LEVIN: I was going to request two
5 weeks. I would certainly support three weeks. We
6 certainly won't be able to give the thoughtful
7 comments we would like in writing by next week.

8 PRESIDING MEMBER GEESMAN: Okay.

9 MS. LEVIN: This is a very complicated
10 document, and trying to compare it to the previous
11 equally complicated document just isn't feasible.
12 I know I would like to run this by other Audubon
13 experts around the country, because I think this
14 will have ramifications nationwide.

15 So, it's too important to rush it. Much
16 as I'm the one in the past who's tried to push to
17 go more quickly, I think Nancy's right in this
18 regard.

19 I do also agree with Nancy's sort of
20 over-arching comment that while I think that there
21 are a lot of improvements in this document, it is
22 easier to read; I think it's better organized;
23 it's much clearer in some regards. I share her
24 concern that while I think it provides a lot of
25 helpful information, particularly to lead agencies

1 that don't have as much knowledge, even as many of
2 the developers, that I'm a little concerned about
3 how much it really is going to reduce impacts on
4 birds and bats.

5 And I probably say that for somewhat
6 different reasons than Nancy, but I share her
7 concern in that regard. And I think it is going
8 to take some more work. I don't think we're quite
9 there. I think it's moving in the right direction
10 in a number of areas, and I'll spell those out in
11 just a second. But I think it's also not clear
12 enough in a number of areas, and maybe not --
13 still doesn't have quite the right emphasis.

14 I wish this were ready to be the final
15 document. I could say go ahead and approve it and
16 let's get going. But I don't think we're quite
17 there yet.

18 So, some of the specific areas that
19 Audubon has concern about, we did agree that the
20 way the first draft presented the scientific
21 advisory committee, it looked overly burdensome
22 and it did appear to tread on local jurisdiction
23 in a number of places.

24 I think it's gone too far to the other
25 extreme, though. While we support a statewide

1 scientific advisory committee, it's not clear who
2 will be on it; what the qualifications are.
3 There's no language about lack of conflict of
4 interest or unimpeachable credentials. There was
5 a phrase, I don't remember precisely what it was,
6 in the previous document that I think is
7 important.

8 But even more than that is there's no
9 sense of how much that committee will be
10 available; whether it will have any local
11 expertise for particular areas; what its mandate
12 will be. I mean, given the staffing shortages and
13 funding shortages of Fish and Game, I'm concerned
14 that a committee that might meet quarterly, at
15 best; be able to review one or two projects; won't
16 be sufficient for what we need.

17 And so I do think that regional
18 scientific advisory committees or some more
19 concrete statement of the availability and amount
20 of support that a statewide committee could
21 provide are really important. Because otherwise
22 we miss what I think was the primary purpose of
23 the scientific advisory committees on a more local
24 or regional level was basically to assist the
25 wildlife agencies that don't have the resources to

1 review every project. Particularly not very early
2 in the project development process, which I think
3 is the critical issue here is the siting.

4 I mean, first and foremost, the macro
5 siting decisions and a close second are the micro
6 siting decisions. And many of those decisions get
7 made very very early. And by the time developers
8 go to apply for permits they've already conducted
9 a year or two of studies. If they haven't done
10 the right ones or in the right way, it's really
11 late to make changes. And not very often is it
12 desirable from anyone's standpoint to force them
13 to go back and do another year or two, or do it
14 differently.

15 So, I think we do need to rebuild or put
16 back in a stronger emphasis on very early
17 consultation, and with whom. And if it's not some
18 sort of formal scientific advisory committee, then
19 I think it does need to be clarified how important
20 that very early consultation is.

21 Particularly where developers want to do
22 something different than what's recommended in the
23 guidelines. And I do agree with Nancy; I think in
24 an effort to simplify things, and I appreciate
25 that that's the recommendation that we all made in

1 the last round, I think it's been over-simplified
2 to the point where it does look like a cookie-
3 cutter approach that maybe too much in some
4 places, and not enough in others. And needs more
5 clarity about when it's going to be which.

6 And in that regard my concern is --
7 well, it's on both sides. I don't want to make
8 developers jump through hoops that are
9 unnecessary. Rather they be able to concentrate
10 their time and efforts where it really matters.

11 And that, I think this version, this
12 second draft is an improvement over the first one;
13 it lists particular bird species; it, I think,
14 talks about fully protected species more. But I
15 think it still needs to do more.

16 An example I use is the California
17 condor. We all know there are only a couple
18 hundred left, fewer than 200 in California. I
19 think most of us would agree you just shouldn't
20 put a windfarm in condor country. It's not that
21 much of the state. It's a species that's so close
22 to extinction, you just can't risk even a single
23 take from a windfarm.

24 But there are a lot of other species
25 where it might not be quite so clear, but they're

1 still listed as endangered, or they're fully
2 protected. And I agree with Nancy, the fully
3 protected species and some of the federally listed
4 species, those are strict liability statutes.

5 And I think that the guidelines need to
6 be much more clear about that fact, both in terms
7 of assurances that they provide, which I think are
8 inappropriate. I don't think that either Fish and
9 Game or the Energy Commission have the authority
10 to waive fully protected species provisions, or
11 federal laws with strict liability.

12 And I think that there are statements, I
13 just wrote down pages 27 and 23, and I think there
14 are several other places where they actually do
15 imply that following the guidelines means
16 compliance with those laws. And I don't think
17 that's possible.

18 But even more importantly, I think it's
19 really important to spell out more clearly that
20 there will be places where new windfarms are
21 inappropriate. And I mentioned condor country. I
22 think there are other places. And the more this
23 document can say there are certain places that
24 should be taken off the map.

25 There are other places where it should

1 be made easier for wind developers. We want to
2 see new wind development go up quickly and
3 efficiently. And I think the more these
4 guidelines can help clarify what the criteria are,
5 and sort of a slow track, a fast track and a no
6 track, it would really help all of us, you know,
7 to put our resources where they're going to make
8 the most difference.

9 I'm sorry, I'm skipping around just a
10 little bit. I also didn't have much time to go
11 over these. Sort of related to the scientific
12 advisory committee, one of my other concerns is in
13 the section, I don't, you know, remember which
14 section it exactly was, the first or second
15 chapter, but it talks about the importance of
16 consulting biologists.

17 And the way it is described is a
18 biologist with knowledge of natural history.
19 Which I don't think is quite the point here. I
20 think it's a biologist with knowledge of local
21 biological resources, and their habitat needs and
22 their migratory patterns and seasonal patterns,
23 things like that. Natural history is not really
24 the issue here. So I think that that's important
25 to clarify, as well.

1 Two last points. On post-construction,
2 again I think in part I sympathize with Nancy's
3 comment. I think there are times when it may not
4 be necessary to do two years. I think there are
5 other times when it will be necessary to do more.
6 And I think the higher the level of impact, and
7 higher the classification of protection, you know,
8 if you're talking about likely impacts to fully
9 protected species, or highly endangered species, I
10 think it's important to do at least two years, and
11 probably more.

12 But where there aren't many, if any,
13 sensitive species, and particularly not the most
14 sensitive, which are the endangered and fully
15 protected species, it may be sufficient to do
16 less. And I think those sort of links need to be
17 spelled out more clearly.

18 I did --

19 PRESIDING MEMBER GEESMAN: Do you think
20 the guidelines can create a tiered structure?

21 MS. LEVIN: I think that would be really
22 helpful. And I think a number of us recommended
23 that last time around. And I know there were a
24 lot of recommendations. I don't mean this as
25 criticism of the draft; I think they've done a lot

1 to improve it. But I think that would be sort of
2 the next really helpful improvement, is sort of
3 setting up different tracks, and would make it
4 even more clear.

5 I think I made this comment last time
6 around, and I would like to repeat it. I really
7 do think it would be helpful for the guidelines to
8 encourage developers and landowners to allow
9 access to researchers for the longer term
10 monitoring. We are still learning a lot, and
11 we're not going to know it all in two years, or
12 even five years. And I think while you may not be
13 able to require it; to encourage it would go a
14 long way, sort of in the vein of good faith.

15 And I know from the Audubon standpoint
16 we would be more comfortable with a shorter
17 requirement if landowners and developers were
18 really encouraged to allow longer term access to
19 researchers. And there could be criteria -- I
20 mean obviously they don't want to allow someone
21 hostile on their property. And there may be
22 confidentiality issues. I'm sure there are a lot
23 of things developers would like in return.

24 But I think making that statement that,
25 you know, the more this can be an open process

1 where the data is accessible, where researchers
2 are allowed to go onto sites beyond the two-year
3 timeframe, would certainly put our minds at much
4 more ease for the post-construction monitoring.

5 PRESIDING MEMBER GEESMAN: What's the
6 effectiveness of that sort of statement? I mean
7 we can, let's assume, make such a statement in the
8 guidelines. How does it end up having tangible
9 effect?

10 MS. LEVIN: Well, I think that would
11 depend on the specific circumstances. But I could
12 see in some cases where if there's some
13 uncertainty about the impacts, or the need for
14 adaptive management or not. But species are
15 changing, and habitat is changing and we're
16 learning more all the time.

17 If five years after a project is
18 permitted a researcher, say UC Santa Cruz, --
19 that's too long to even remember, or the Pt. Reyes
20 Bird Observatory, think that there may be more
21 impacts or fewer impacts going on, or they just
22 want to learn more about what's going on, that
23 access to sites should not be unreasonably
24 withheld.

25 And that could be written into permits

1 or not. But I think if it's a statement in these
2 guidelines, that it should be encouraged, it
3 should not be unreasonably withheld, that would
4 make those of us -- with the longer term impacts
5 and changes that we know are going to occur over
6 the next several decades, much more comfortable.

7 You know, that the developer doesn't
8 have to do the monitoring in perpetuity. But they
9 should allow others to, under certain
10 circumstances, or maybe just leave it more
11 general. Does that clarify it?

12 PRESIDING MEMBER GEESMAN: Yeah, do you
13 see that avenue, though, primarily being a
14 condition attached to a permit? Or is there some
15 alternative avenue, as well?

16 MS. LEVIN: I think attaching it to a
17 permit is one way to do it. I think just having
18 it in the guidelines as a general sentiment sends
19 a message to developers that we are all trying to
20 work together; we're not trying to put unnecessary
21 burdens on you. But things may change in the
22 future. And, you know, it's an encouragement.
23 And it may not be binding; it may not go in a
24 permit. But I think it would still be helpful.

25 So my last comment is, in this I think I

1 have the opposite concern of Nancy, I think that
2 the guidelines do need more definition about when
3 data from adjoining sites or nearby sites is
4 appropriate, I'm very nervous about that.

5 You know, many of these issues relate
6 back to the scientific advisory committee. A lead
7 agency is not going to be able to judge when a
8 neighboring site is comparable from a biological
9 standpoint, especially where many of the species
10 that are at risk are migratory species.

11 And the difference between top of the
12 hillside and the bottom of a hillside, a few
13 hundred yards away, can be enormous in terms of
14 the impacts.

15 So I think that when data is going to be
16 used from an adjoining site or a nearby site, it
17 is really critical to bring in an expert
18 biologist. Whether it's the wildlife agency or a
19 consultant who is not paid for by industry, but
20 someone to consult with the lead agency; to advise
21 the lead agency on whether use of data from the
22 adjoining site is appropriate. I think that that's
23 very important.

24 We, too, as I said many times, we would
25 like to make this process as efficient as

1 possible, but it still needs to have scientific
2 integrity. And these are not easy decisions when
3 adjoining data is going to be appropriate and when
4 not. They're judgment calls, and they're better
5 made by objective biologists who really have
6 knowledge. And unfortunately most lead agencies
7 don't have that on staff.

8 PRESIDING MEMBER GEESMAN: You see that
9 as a logical duty of the scientific advisory
10 committee?

11 MS. LEVIN: That's one of the things
12 that I thought the scientific advisory committee
13 could be very helpful on. It won't always be
14 necessary, and I don't think the scientific
15 advisory committee, as described in the first
16 draft, was the right --

17 PRESIDING MEMBER GEESMAN: Right.

18 MS. LEVIN: It was too much; it was too
19 burdensome. But I think this draft has gone too
20 far the other way.

21 So, again, I thank you. I think we're
22 moving in the right direction, but I think we have
23 a ways to go.

24 ASSOCIATE MEMBER PFANNENSTIEL: Excuse
25 me, I have a question before you go away. Just

1 some -- if you can provide some more thoughts on
2 your tiers, or your tracks, I think you called
3 them, the fast track, the slow track and the no
4 track at all.

5 How would you suggest that we think
6 about that in advance just based on some look at
7 the bird species geographically throughout the
8 state? How would you set something like that up?

9 MS. LEVIN: I'm not sure I can answer
10 that right now, to be honest. It's something that
11 a number of us have talked about, but haven't
12 really sat down in detail. I think a lot of us in
13 the room would be happy to sit down and really try
14 to flesh that out more. I can't really do it on
15 the spot so much.

16 ASSOCIATE MEMBER PFANNENSTIEL: Okay.
17 Thanks.

18 MS. LEVIN: I think it's worth working
19 toward.

20 PRESIDING MEMBER GEESMAN: Who wants to
21 go next? Carl?

22 MR. ZICHELLA: Sure. Good morning, Mr.
23 Geesman; good morning, Ms. Pfannenstiel. Hope I
24 said that right.

25 ASSOCIATE MEMBER PFANNENSTIEL:

1 Perfectly.

2 MR. ZICHELLA: First of all, I wanted to
3 thank the Commission and the staff for the work
4 that's been done on this. It's very impressive.
5 It's been a long process. There's been a lot of
6 tugging, as you can tell from the first couple of
7 comments on this thing.

8 And I think, by and large, it's a good
9 document. It's a better document than the one that
10 we had before. I thought the first document was a
11 valiant stab consensus, given what we've all gone
12 through.

13 I also need some more time to review
14 this. I have not had a chance to go through it as
15 carefully as I would like.

16 It was very helpful to have sort of the
17 major changes delineated for us. I would say that
18 the scientific advisory committee statewide is a
19 very good idea. Tiering it to some sort of a
20 local connection for permitting agencies is, I
21 think, as Julia just mentioned, also a good idea,
22 to get some local input into that.

23 But I think it gives us consistency,
24 especially because the guidelines are voluntary we
25 can't always expect that they would be empaneled

1 local scientific advisory committees, or that the
2 guidelines would be adhered to. But having a
3 statewide scientific advisory committee gives us
4 some stability, gives us some continuity, gives us
5 some ability to advise some of the permitting
6 agencies proactively.

7 I think there are ways that I can see
8 the scientific advisory committee on the state
9 level reaching out to the permitting agencies
10 about what's being discovered, what's being
11 learned from the various projects that are out
12 there.

13 And also from the work of PIER and other
14 agencies in the state government that are looking
15 at climate change, and the effect that climate
16 change is having on migratory behavior of birds.
17 So I think it's an excellent idea.

18 I'd like to not be very prescriptive
19 right now about how it might connect back to
20 locals. I think we need to think about that some
21 more and talk to some other folks about it, too.

22 I do think that it's a good thing to
23 provide some, as I mentioned in my comments, it
24 seemed to be adopted in the document, that
25 compliance with the guidelines connotes some sort

1 of attempt at good faith effort on the part of
2 permittees. I think that that's a very important
3 benefit the good actors can take advantage of; and
4 it prevents people who are going to ignore the
5 guidelines from having a competitive advantage
6 over those who are doing the right thing. So I
7 disagree with Nancy about that. And I do feel
8 that that part of it is good.

9 I do think that there's always a threat
10 that local organizations for nonenvironmental
11 reasons may bring suit about any project. That's
12 going to be a problem for them no matter what.
13 But I think on the substantive issues that we're
14 concerned about, this is an important step for
15 groups like mine which have a legitimate concern
16 about wildlife conservation and land use.

17 So, I do think that it is not
18 necessarily likely to bring more suits, comply
19 with the guidelines; and, in fact, will be a
20 benefit to bring less suits from people who are
21 paying attention to what's actually being done.

22 Will other people bring suits for local
23 reasons? Of course, they're going to do that
24 anyway. So I don't think that that's even an
25 issue for this.

1 With that I think I'd just like to
2 conclude, and thank you again for this; and
3 reserve the rest of my comments for my written
4 comments. Give myself a chance to communicate
5 with some of our lead volunteers, who have been
6 interested in this issue, around the state. And
7 also to more adequately review everything that's
8 been done here.

9 And very -- congratulations to the staff
10 for the work on this. It's just been great.
11 Thank you.

12 PRESIDING MEMBER GEESMAN: Thank you,
13 Carl. Who's next? Yeah.

14 MR. VERCRUYSEN: Good morning,
15 Commissioner Geesman, Commissioner Pfannenstiel.
16 Staff, again I want to echo everyone's comments
17 that's preceded me, that --

18 PRESIDING MEMBER GEESMAN: You should
19 identify yourself, Paul, for the transcript.

20 MR. VERCRUYSEN: I'm sorry, Paul
21 Vercruyssen from the Center for Energy Efficiency
22 and Renewable Technologies.

23 Thank you to the staff for the great
24 work they've done on revising the document. I
25 know it's a very difficult task. And there was a

1 lot of comments provided in the last round, and
2 throughout the process.

3 And I think that to echo the comments
4 before me, the document is greatly improved.
5 Especially in terms of, I think, ease of use,
6 clarity, things of that nature.

7 I would also like to echo the concerns
8 of time constraints to review the document. One
9 thing that I think is really a great story for
10 everybody in this room is the amount of progress
11 that's been made in the State of California and
12 around the world on the issue of the climate
13 change. But I think at the same time it's also
14 created a huge amount of work for probably
15 everyone in this room that wasn't there even a
16 year ago when we were starting this process. I
17 know that's definitely true for me.

18 So, in the past we've had some
19 additional time to perhaps, you know, coordinate
20 with some of the stakeholders in this process
21 before coming before you and actually having, I
22 think, a little bit more constructive comments to
23 provide. In this case that really hasn't been
24 possible.

25 So, time to do that after this workshop

1 here, to provide the written comments, would be
2 very appreciated. I think three weeks is
3 reasonable. I would leave it up to you in terms
4 of what you decide, but I think we are close on
5 this document. And so, you know, the more time
6 you can allow us to provide additional comments
7 would be very helpful.

8 I would like to propose -- everyone
9 that's come up so far, and I was also going to
10 speak about it a little bit, has risen some
11 questions about the statewide scientific advisory
12 committee, the removal of it, et cetera.

13 I'd like to maybe after the initial
14 public comments, maybe allow some time for staff
15 to clarify their vision for the statewide
16 scientific advisory committee, and how in the
17 interim the voluntary input or the encouraged
18 early action input would work.

19 Because I think that it's an incredibly
20 important part for all stakeholders involved, but
21 could use a little bit more clarity still at this
22 point.

23 But I think that it is important to
24 recognize that, you know, there are, as both Julia
25 and Nancy pointed out, areas where the amount of

1 scientific input and the amount of study can be
2 fast-tracked in some cases. And there's obviously
3 going to be cases where there's additional input
4 needed and additional study needed.

5 One specific example within the
6 guidelines that I'd like to point out is
7 repowering. And there was a workshop here a
8 couple weeks ago at the Energy Commission on the
9 issue of wind repowering.

10 And in the guidelines it doesn't, to me,
11 really clarify the value of what repowering can do
12 for wildlife impacts. I know that there's still
13 some questions, scientifically, that have been
14 raised about the value of repowering, but overall
15 there's a very good scientific foundation to
16 believe that repowering projects will be greatly
17 beneficial to wildlife. And that hasn't really
18 been brought out in the current version of the
19 guidelines.

20 And it's also, I think, a major hurdle
21 in the repowering approving process. And that was
22 an issue that I raised at the workshop a couple
23 weeks ago. And I know that the Commission here is
24 working very diligently to find, you know,
25 financial incentives, otherwise to encourage that

1 type of activity. I think the permitting process
2 is another important way to try and do that.

3 The reason -- all legal protections
4 aside, the goal of CEERT within this process is to
5 spend the both public and private resources
6 available to wind development in the most
7 effective way possible to protect and prevent
8 impacts to avian and bat species.

9 And it concerns me in certain places
10 that that goal isn't really reflected in the
11 guidelines. And there's a couple specific points
12 that I'd like to make on that issue.

13 The effectiveness of preconstruction
14 monitoring for bats of any kind has not really
15 been shown to correlate very well to prediction of
16 impacts in any way.

17 I would really encourage the Commission
18 to go back, take a look at that section, and
19 consider that research funding from both the state
20 and from the wind energy community could be much
21 more helpful in protecting bat species in the
22 future.

23 And the requirement of bat monitoring
24 for preconstruction on every project throughout
25 the state might not be the best way to spend the

1 money. It amounts more to data gathering, rather
2 than focused research, answering focused research
3 questions and providing benefits that can help
4 protect bat species in the future.

5 Similarly post-construction, the
6 guidelines reference that the similar use studies
7 and monitoring done preconstruction should also be
8 done post-construction, in addition to mortality
9 monitoring. While I think that may be helpful in
10 some cases, I don't think it necessarily is
11 particularly beneficial to protecting avian or bat
12 species. And it is more closely related to a
13 research project.

14 And so I would encourage in the staff
15 revision of the next draft to try and keep that in
16 mind with all of the considerations that they're
17 making in the revision, is what constitutes
18 research versus what is going to be required in
19 the permitting process to actually provide
20 benefits to avian and bat species.

21 In terms of the tiered structure, if I
22 can go back to that for a second, I think that
23 some additional context could be given for that
24 type of structure to the guidelines. I realize
25 that an effort was made by the staff for that.

1 And it's appreciated, but I think, again, the
2 fast-tracking idea that is available to the
3 repowering of natural gas plants here in
4 California could be more closely related to what's
5 happening for wind projects. And would, again,
6 encourage that.

7 And in terms of the permitting
8 requirements in terms that are outlined by the
9 draft here, in terms of what wind developers are
10 going to be asked to enumerate in their contracts,
11 and their permits, I think it's a little dangerous
12 to get into outlining mitigation and adaptive
13 management strategies for sort of outlier type of
14 impacts to projects.

15 Because if you have a project that has
16 really gone way outside the bounds of what was
17 anticipated in the project permit terms, you're
18 basically asking the lead agency and the developer
19 and whoever you're engaging in the advisory
20 process to imagine how you would address these
21 outlier situations.

22 When, in fact, if that does occur, which
23 I don't really see happening very much, if at all,
24 in the future, it's going to end up being
25 revisited, and it's going to be an issue at that

1 time. And I don't think it really is helpful in
2 trying to address it before the project's steel is
3 even going into the ground. And could actually
4 impede the permitting process by trying to come to
5 the sort of outlier types of project terms that
6 are not going to apply in most cases.

7 And as Nancy and Julia and Carl
8 mentioned, a lot of our additional comments and
9 notes that I've made on the draft are going to be
10 very specific. I do feel that with this draft we
11 are close enough that a lot of specific edits will
12 be able to make it a workable document. And that
13 we don't need any massive reworking.

14 But there's going to be a lot of, you
15 know, specific word recommendations, and a little
16 bit of reorganization here and there.

17 And, again, I would encourage, after the
18 public comment period, the staff would again go
19 over in a little bit more depth what they see as
20 far as the scientific advisory committee.

21 And, thank you very much.

22 PRESIDING MEMBER GEESMAN: Thanks, Paul.

23 Anne.

24 MS. MUDGE: Good morning. Anne Mudge on
25 behalf of the California Wind Energy Association.

1 I wanted to take a moment to comment on this
2 tiered approach, because I think it's a really
3 fruitful area that the guidelines could continue
4 to explore, because there really isn't much there
5 yet on that point.

6 And it seems to be an area that there's
7 general agreement; could be very useful to
8 developers and lead agencies, alike.

9 And we had, early on, made a suggestion
10 at one of the Bakersfield workshops of an approach
11 that would have sort of a high, medium and low
12 impact categorization of particular projects, red,
13 yellow, green. Kind of along the lines that Julia
14 suggested.

15 And in terms of really getting sort of
16 the most bang for our buck here, in terms of
17 really both encouraging wind, which is, I think
18 what we all want to do, but also minimizing
19 impacts.

20 And the CEQA guidelines and CEQA,
21 itself, provides a framework for doing just this.
22 It provides certain categories of projects that
23 have sort of a presumption of lower impact. And
24 you have to demonstrate that they do, in fact,
25 have a lower impact, on a case-by-case basis.

1 This is not a free pass.

2 But there's categories of projects that
3 are presumed to have lower impacts. And they are
4 actually categorically exempted from CEQA. And
5 examples in CEQA are cogen projects of certain
6 megawatts; pipelines less than a certain length;
7 and other projects that on a sort of policy basis
8 we, as a state, want to encourage.

9 And we had suggested in the Bakersfield
10 workshop that there are four categories of
11 projects that we could consider for sort of fast-
12 tracking in certain circumstances. And, again,
13 these have to be vetted on a case-by-case basis.
14 We're not saying that in every instance they would
15 be lower impact.

16 But those four categories are repowers,
17 small projects, infill projects and projects in
18 known low bird and bat use areas.

19 So, I think it would be helpful if the
20 guidelines could provide a certain framework for
21 thinking about certain projects as against other
22 projects. And that there would be sort of an
23 official recognition that there are certain
24 projects that perhaps should be fast-tracked.

25 So, I --

1 PRESIDING MEMBER GEESMAN: Were your
2 comments in the Bakersfield workshop written or
3 followed up by --

4 MS. MUDGE: They were. In fact, I gave
5 a PowerPoint presentation. And I'd be happy to
6 resubmit that, but I --

7 PRESIDING MEMBER GEESMAN: No, we --

8 MS. MUDGE: -- think staff already has
9 it.

10 So, we would certainly welcome something
11 like that. And, you know, given how complicated
12 the permitting process is and how time consuming
13 it is, to require the same level of effort for
14 every single project is perhaps not the best use
15 of everybody's resources.

16 I wanted to just follow up really
17 quickly on a comment that Nancy made on quoting of
18 CEQA in the guidelines. If we're going to quote
19 CEQA, I think we should quote it accurately. And
20 there were some important words omitted from the
21 section 15065 of the guidelines that defines a
22 significant biological impact.

23 And under CEQA you do need to have a
24 substantial reduction in the number or restriction
25 of the range of an endangered species to be

1 considered a significant environmental impact.

2 And that's directly out of the guidelines.

3 Finally, I want to just support Nancy's
4 concern over, you know, how this document gets
5 perceived and used in possible future litigation.
6 Carl's absolutely right. There's going to be
7 people who are going to sue for all sorts of
8 reasons, and there's nothing we can do about that.

9 But I do think these guidelines are
10 going to get cited in the courts. I think we'd be
11 crazy to think that they're not going to. And
12 that's why it's so very important that we get it
13 right.

14 And I think we all want to reduce
15 impacts to avian species. But we want to do it in
16 a way that is reasonable and that really does the
17 job. So it is really essential, these are
18 voluntary, yes, but they're going to get cited as
19 the standard.

20 So, thank you very much.

21 PRESIDING MEMBER GEESMAN: Thank you.

22 Who's next? Yes.

23 MS. CONWAY: Good morning. Michelle
24 Conway, Oak Creek Energy Systems. We're a
25 developer.

1 We won't have any questions for staff
2 today. We do want to note that the document is
3 much improved. We agree with the others that have
4 come up today.

5 We will be submitting written comments,
6 but I did want to highlight some of our issues and
7 red flags that we're seeing today.

8 The first is that we will also request
9 that the deadline for submission of written
10 comments be extended and that we possibly have
11 another workshop like this. They've been very
12 helpful.

13 The first concern we have is the
14 addition of the new language in lines 340 to 342
15 about the good faith effort. The question that we
16 have is if we don't follow the guidelines to the
17 letter, does that mean that we're acting in bad
18 faith? If anything other than strict adherence to
19 these guidelines means that the developer's not
20 acting in good faith, then the guidelines will be
21 more fodder for litigants.

22 The good faith language is more evidence
23 that the guidelines are not going to be voluntary.
24 We want to make sure that developers are not
25 following these guidelines solely so that they do

1 not get sued. Versus what we want to do is
2 develop the guidelines, develop the studies in
3 conjunction with the county, under CEQA, and
4 conduct studies that are right for the ecosystem
5 in question.

6 The best way to protect bird and bat
7 populations is to give the counties and the local
8 biologists the tools that they need to choose from
9 under the guidelines to implement CEQA; and to
10 promote compliance with other relevant standards
11 and laws, rather than force-feeding them specific
12 procedures that may not be prudent to the site
13 that we're developing in question.

14 We're also concerned about the acoustic
15 surveys to bats. This has been mentioned. Our
16 understanding from our biologists, we've been
17 doing bat studies, is that one year of acoustic
18 monitoring is not needed in every situation. So
19 we are asking for flexibility.

20 To give you an example of why we're so
21 concerned about this, in the Tehachapi area, the
22 Mojave, the west Mojave plan calls for Mojave
23 ground squirrel surveys. And in the four years
24 that we've been trapping the squirrel in the area
25 west of the Mojave, we've trapped zero squirrels.

1 And this costs us \$20,000 per mile to trap. And
2 the question that we have is couldn't this money
3 be better spent on species that are at issue in
4 the area.

5 We don't want to find ourselves ten
6 years from now where the GAO finds a desert
7 tortoise preservation effort. Millions have been
8 spent and no benefit to the species has been
9 documented. This was in their December 2002
10 report.

11 We, as developers, want to be good
12 stewards of the environment. But the point we're
13 trying to make is that we want to spend money
14 wisely.

15 We're also concerned that the
16 prepermitting bird surveys are still too specific
17 and cookie-cutter. For example, in our projects
18 in the Tehachapi area right now we are conducting
19 point counts. And we're doing this in conjunction
20 with a local biologist and the local Audubon
21 people.

22 But the study that they've set up is
23 different from what the guidelines requires. So
24 we're concerned that we're going to be in
25 violation of the guidelines, and it's going to

1 demonstrate a bad faith effort.

2 The biologists, in coordination with the
3 county and Audubon, should have the discretion to
4 determine what is credible for the site in
5 question.

6 So we're going to propose in our written
7 comments that reasonable differences in approach
8 acceptable to the county under CEQA should be
9 allowed.

10 We're also concerned that there's no
11 streamlining for low-impact projects. This has
12 been mentioned, especially repower projects. For
13 example, the repowering section still states that
14 the prepermitting study should be the same as for
15 new power projects. This could actually kill some
16 of our repower projects, which is why we keep
17 bringing it up.

18 We're also concerned with the adaptive
19 management provisions. Still some of them could
20 make it very difficult for us to obtain financing.

21 And just to reemphasize why we're so
22 focused on spending money wisely on the right
23 species, and that we don't want a cookie-cutter
24 approach, is that in California, for example, we
25 have to pay sales tax on our projects, full sales

1 tax, which is 7 to 8 percent, depending on the
2 county.

3 Most everywhere else in the country
4 there's no sales tax, or very low sales tax. To
5 give you an example, on a 100 megawatt project,
6 this could be between \$10- to \$15-million. And
7 this is in addition to what we're spending on
8 permitting.

9 We don't want to make it more viable to
10 import dirty coal into California, and spending
11 unnecessary money on the wrong species and on the
12 wrong studies makes the wind less competitive when
13 compared with brown power.

14 Thank you.

15 PRESIDING MEMBER GEESMAN: Michelle,
16 could you go back and elaborate a bit, if you
17 will, on your concerns about the adaptive
18 management provisions and the impact on financing?

19 MS. CONWAY: Sure. When we go for
20 financing on projects, and that's not my
21 particular area, but I do know that they review
22 our permitting requirements. And when they see
23 open-ended monitoring where the cost cannot be
24 known, and could be very high, the banks are
25 reluctant to lend money for the projects. So

1 that's why I made the statement.

2 PRESIDING MEMBER GEESMAN: Thank you.

3 MS. CONWAY: Thank you.

4 PRESIDING MEMBER GEESMAN: Anybody else?
5 Brenda.

6 MS. LeMAY: Good morning, Commissioners;
7 good morning, Mr. Tutt, Ms. Jones, Commissioner
8 Geesman and Commissioner Pfannenstiel and staff.
9 I haven't seen you all in awhile. Guess you've
10 been working on the draft.

11 I have a question about the process
12 going forward, because although a week is short,
13 I'm supportive of staying on schedule to the
14 extent it's going to extend our estimate of
15 adoption in August.

16 And so my first question is to staff, is
17 what is the process between now -- or the proposed
18 process between now and August to adopt the
19 guidelines before I comment on schedule? Do we
20 have one?

21 MS. WARD: Yeah, did you want me to
22 answer that now? I have --

23 MS. LeMAY: Sure.

24 PRESIDING MEMBER GEESMAN: Yeah, go
25 ahead, Misa.

1 MS. WARD: Okay, sure.

2 PRESIDING MEMBER GEESMAN: We've got a
3 brief description of it in the notice of
4 availability.

5 MS. WARD: Right, that's essentially
6 what I was going to go over. So if we stick to
7 the April 23rd comment deadline, that would put us
8 at a Committee draft? And the companion document
9 explaining the changes made in mid-June?

10 MS. LeMAY: Okay.

11 MS. WARD: A Committee hearing to follow
12 in mid-July. Final document for adoption in
13 August. And the final business meeting where the
14 guidelines will be considered for adoption in mid-
15 August.

16 MS. LeMAY: Thank you.

17 MS. WARD: Sure.

18 MS. LeMAY: I would propose then keeping
19 not to this schedule; I think if we push it back
20 to April 30th, to give us an extra week, that that
21 would be able to -- I believe you'd be able to
22 stick to your schedule.

23 I think going three, four or more weeks
24 would push us back on the overall schedule a lot
25 further. And I appreciate and understand

1 everybody's concerns. I just think we also need
2 to be aware of what that does to the overall
3 schedule.

4 I actually, I think you hear a lot of
5 agreement here today. This is an amazing draft.
6 It was easy to read. It was very straightforward,
7 concise, clear, consistent. A lot of the areas
8 that I had concerns with were addressed.

9 And I wouldn't say, you know, it doesn't
10 mean that I agree with everything, but at least it
11 is a document that we can now, and this is one
12 example, we can now cite a line and make a
13 specific comment, as opposed to a sweeping
14 generalization of an entire chapter. So that is
15 helpful for everybody.

16 The one area that I'm concerned with,
17 and Paul mentioned this in a lot more detail, is
18 the area of bats. I believe the area of bats,
19 it's clear to me that this is an area that needs
20 more research in that having one year of acoustic
21 monitoring and two years -- on a preconstruction
22 basis, and two years on a post-construction basis
23 is additional research.

24 And it may not be deployed in the best
25 areas. Especially if you consider that your one

1 year of acoustic monitoring on a preconstruction
2 basis may have, in an extreme example, let's say,
3 turned up absolutely nothing.

4 And so to me, that's the one area that
5 I'm going to call out -- it's better called out by
6 scientists, but I will mention it from a
7 practicality standpoint.

8 Let's see, I wanted to give you some
9 other examples, but I think it's just better at
10 this point to put it in writing.

11 Thank you, all. It's a great document.

12 PRESIDING MEMBER GEESMAN: Thanks,
13 Brenda. Other comments?

14 Does the staff want to address the
15 question raised by Paul as to the thought behind
16 the reconfigured scientific advisory committee in
17 the draft?

18 MS. SANDERS: Well, I guess we'd like to
19 hear what suggestions everybody has on that.

20 PRESIDING MEMBER GEESMAN: I'm not
21 certain your mike's on, Susan.

22 MS. SANDERS: There, how's that? We'd
23 like to hear what suggestions everybody has, what
24 suggestions you have, for that. I don't think
25 we've gotten very far. It's kind of embryonic

1 right now, but we can see what we all come up
2 with.

3 PRESIDING MEMBER GEESMAN: I guess I
4 will say there, Paul, that one of the reactions
5 that I had after our workshop in Livermore was the
6 preferability to replacing the proliferation of
7 officially sanctioned scientific advisory
8 committees at the local level, with one at a
9 statewide level.

10 I do recognize the importance that I
11 think it was Julia raised in Livermore, of making
12 certain that there was accessibility to localized
13 or regional expertise on that statewide committee.

14 And I've not personally given any
15 thought at all as to the appropriate scope of
16 engagement of the committee. And I think that's
17 one of the things that we want to look at comment
18 that we get in better shaping that description in
19 the next draft.

20 I'm hesitant to put the staff on the
21 spot here because I think the substitution from
22 local committees to a statewide committee probably
23 more at Committee direction than anything that
24 they came up with on their own. And I've not had
25 any discussions with them, or even given it much

1 further thought beyond where we were in Livermore.

2 Yeah, let me also ask Julia, because she
3 was waving her hand --

4 MR. VERCRUYSEN: I'm sorry, I didn't
5 see --

6 PRESIDING MEMBER GEESMAN: Go ahead,
7 Paul.

8 MR. VERCRUYSEN: Maybe we can like have
9 a couple --

10 PRESIDING MEMBER GEESMAN: You need to
11 talk into the mike so the transcript picks it up.

12 MR. VERCRUYSEN: The concern that I had
13 was that it is mentioned within the guidelines
14 without any description of how the process would
15 be constructed, how people would be chosen for it;
16 really a very thorough description of what their
17 responsibilities would be.

18 I've made a note, Susan used the word
19 discretion in terms of how the lead CEQA agency
20 utilized the scientific advisory committee. So
21 that, to me, says that, you know, they are a
22 resource much more than any sort of regulatory
23 body.

24 The word discretion isn't used in the
25 document, though. So, that's the kind of -- I

1 mean I'd almost like to hear some other people's
2 thoughts on it, because it was something to me
3 that I thought, well, are we going to actually go
4 into this in the document.

5 Or if not, then I think that some
6 additional description of how the informal
7 consultation process would work could be more
8 beneficial. Because there's a number of
9 situations where it seemed to me that you were
10 still forming sort of a de facto scientific
11 advisory committee on a local level. But it
12 wasn't clear what their responsibilities would be.

13 But they're called out both in the
14 preconstruction process to offer input on what
15 studies, designs are going to be, what's
16 necessary, local ecology, things like that. And
17 also they're called out again after the two years
18 post-construction monitoring to determine whether
19 in fact the preconstruction mortality estimates
20 were valid and within an acceptable range of the
21 permit terms.

22 And, again, there was not really a level
23 of specificity, to my satisfaction, anyway, in
24 terms of what that all meant, and who the final
25 decisionmaker was going to be on compliance with

1 contract terms, things like that.

2 So, those were my thoughts.

3 PRESIDING MEMBER GEESMAN: I think
4 that's a good topic for greater elaboration on in
5 written comments. It will be quite a bit more
6 specific in the Committee draft when we release
7 that.

8 MR. VERCRUYSEN: Okay.

9 PRESIDING MEMBER GEESMAN: Julia, did
10 you have anything you wanted to add to it?

11 MS. LEVIN: I've also put this in
12 written comments, but just some of the things that
13 have occurred to me, reading the document and in
14 this discussion, I do think it's important for the
15 guidelines to spell out with some greater
16 specificity the composition and the qualifications
17 of the members and -- our constant refrain from
18 Audubon, but I do think it's very important that
19 they be objective, not have -- free from any
20 conflicts of interest.

21 I do think, and I don't know whether
22 this can be spelled out in the guidelines or not,
23 but I do think it's important that they be
24 compensated. Because that is going to impact
25 their availability. It's not going to be that

1 helpful to have a body that meets quarterly and
2 really isn't very readily accessible or available
3 in between times.

4 And I think that we should all recognize
5 that and support that; and make sure that it's
6 funded properly, including the wildlife agency's
7 participation in it.

8 I also think it would be really helpful
9 if the guidelines are not going to talk about
10 local or regional scientific advisory committees,
11 and I still encourage that in some circumstances,
12 that the statewide committee develop a list of
13 local experts in different regions of the state.

14 Because I think that there will be times
15 when you need that local expertise. Probably
16 quite a few times.

17 And then I think that it would be
18 helpful if the guidelines spelled out a little
19 more clearly the kinds of decisions that the
20 guidelines encourage the lead agency or the
21 developer to consult with the scientific advisory
22 committee in as early in some decisionmaking
23 processes as possible.

24 And I mean the obvious ones are where
25 developers of lead agencies are going to deviate

1 from kind of the standard recommendation in the
2 guidelines. But there are probably a whole range
3 of others.

4 I think it was really helpful for Anne
5 to mention the four areas where fast-tracking may
6 be reasonable. But I think that that's an
7 appropriate area, as well. The scientific
8 advisory to say yes, this is an appropriate case.
9 Because every exception has further exceptions to
10 it.

11 So we'll try to think this out more
12 thoroughly and put it in our written comments.
13 But I think this is a helpful discussion.

14 PRESIDING MEMBER GEESMAN: Well, let me
15 give you my reaction. I think that we probably
16 should extend the deadline for comment to May
17 14th, the full three weeks that several of you
18 have requested.

19 But with that extension I think there's
20 also a heavier burden that I'd like to place on
21 the commenters to be as specific as possible in
22 terms of recommending language; tie your comments
23 to specific lines and pages of the existing draft.

24 I think we've gone beyond the point
25 where large sweeping generalizations will be

1 particularly helpful to us.

2 I'd also encourage, and it may be
3 premature, but I would encourage joint comments if
4 there are topics upon which several of you feel a
5 close enough agreement that you'd be comfortable
6 submitting joint comments.

7 I will tell you in past similar
8 proceedings that joint-comment approach has been
9 quite helpful to the Commission in determining
10 which direction to go, and with what level of
11 specificity to address particular issues.

12 I would very much like to keep us on a
13 track where we do adopt guidelines in August. I
14 say that because Commissioner Pfannenstiel and I
15 have the Integrated Energy Policy Report calendar
16 occupying an increasingly large fraction of our
17 hearing time and our reading time and our thinking
18 time. And the slope of that engagement goes up
19 quite a bit from this point on through the end of
20 the calendar year.

21 So to the extent that we slip beyond
22 August, I think we're endangering the quality of
23 product that we end up with.

24 I guess those are the principal
25 reactions I had. Do you want to add anything,

1 Commissioner?

2 ASSOCIATE MEMBER PFANNENSTIEL: Probably
3 nothing of great note. But, when I read the draft
4 staff report I was taken with how far we've come
5 in this. And the fact that we have a lot of areas
6 that I think are pretty well accepted as the way
7 we should go.

8 But I do think that where we are right
9 now is critical. I think that we need the real
10 clear comments and suggestions of all of the
11 parties here.

12 Because while I think I heard a lot of
13 agreement, I think there ar a couple areas where
14 there is just some real contentious items left.
15 And I'm hoping that this one more round will bring
16 us to closure on them.

17 So, try to, as Commissioner Geesman
18 suggested, get as much agreement as you can when
19 you file your comments. And we'll look forward to
20 reading them.

21 PRESIDING MEMBER GEESMAN: We will make
22 the next draft that you see from us a Committee
23 draft. I recognize that that can, to some extent,
24 inhibit the vitality of your comments.

25 So I'd like to remind you that what

1 you're commenting on right now is a staff draft.
2 So go ahead and indulge as much vitality as you
3 can.

4 But I do think that it's reasonable for
5 you to expect Commissioner Pfannenstiel and I to
6 start making some recommendations in this area, so
7 that the next draft will be a Committee draft.

8 Yeah, Julia?

9 MS. LEVIN: Is that still going to be --
10 do you still expect to release that Committee
11 draft in mid-June?

12 PRESIDING MEMBER GEESMAN: No
13 guarantees. I want to see what the comments look
14 like, and how difficult it'll be to respond to,
15 and incorporate comments.

16 So, beyond the extension of the comment
17 period to May 14th, and my plea that we stay on a
18 track that will result in adoption in August, no
19 details on the schedule at all.

20 We will have another workshop, I can
21 assure you of that. But, we haven't the
22 capability right now to sketch in any more details
23 in that internal schedule.

24 I think that pretty well takes up the
25 subject matter we had today.

1 Thank you all for participating. We'll
2 be adjourned.

3 (Whereupon, at 10:25 a.m., the workshop
4 was adjourned.)

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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 Public Workshop; 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 workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of April, 2007.

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