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

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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COMMISSIONERS PRESENT
John Geesman, Presiding Member
Jackalyne Pfannenstiel, Associate Member

ADVISORS PRESENT
Melissa Jones
Timothy Tutt

STAFF PRESENT
Rick York
Susan Sanders
Misa Ward

ALSO PRESENT
Scott Flint
California Department of Fish and Game
Nancy Rader
California Wind Energy Association
Julia Levin
Audubon California
Carl Zichella
Sierra Club
Paul Vercruyssen
Center for Energy Efficiency and Renewable Technologies
Anne E. Mudge, Attorney
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California Wind Energy Association
Michelle Conway
Oak Creek Energy Center
Brenda LeMay
Horizon Wind Energy
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.
Just want to bring people up to date here as far as some of the things about the Energy Commission here. If there is need to use the bathroom, the bathrooms are outside here near the southeastern door of the Energy Commission.

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

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

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

And I believe that's it, Commissioner. Anybody have any questions?
PRESIDING MEMBER GEESMAN: Okay, then,

Susan, you and I think Scott Flint from DFG were
going to make presentations.

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

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

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

So, over the next ten minutes or so what
I want to do is briefly go over the major changes
from this draft compared to the one you saw that
came out in December.

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

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

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

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

It now also has better linkage. A lot
of you also said it doesn't connect that well to
the rest of the document. So it does a better job
now describing what's in the rest of the chapters.

The remainder of the document is now
five chapters and appendices. And those offer
expanded detail and rationale, what we've provided

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

Chapter 2, which was the section
describing the science advisory committee, we've
eliminated that. And replaced it with a brief
discussion in chapter 3. And a proposal by the
Energy Commission, in consultation with Fish and
Game, to establish a statewide advisory committee.
And that would be a resource that lead agencies
could use at their discretion if they wanted more
scientific advice at any point in the project. And we welcome your suggestions on how to go about doing that.

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

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

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

We've also provided better context and
we think certainty as to what level of study
effort and kinds of methods are needed to
adequately evaluate risk at a site.

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

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

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

Okay, the new chapter 4 is titled,
Assessing Impacts and Selecting Measures for
Mitigation. It retains much of the old chapter 4,
and that discussion of CEQA impacts. And now it
incorporates avoidance, minimization and
compensation measures, and that used to be in
chapter 5. So we've merged those two. And
Scott's going to talk about that, too.
Chapter 5, Operations Monitoring. It's very similar in content and organization to the old chapter 7. But it includes quite a few of your suggestions for improvements.

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

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

The information in this appendix gives the reader a basis for assessing risk to raptors based on the use data that you collect during prepermitting study. It also includes some
cautions in using this simple assessment approach
to extrapolate fatalities and to make impact
assessments.

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

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

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

And I'm done. Scott.

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

As Susan said, the new chapter 2 is CEQA
Wildlife Protection Laws and Permitting Process,
which combined old chapter 6 and old chapter 4.

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

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

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

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

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

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

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

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

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

PRESIDING MEMBER GEESMAN: Nobody's given me any, and there's so few of us that it doesn't really matter. I'll just take a show of hands. Why don't you come up, Nancy, as the first
one. Julia, it sounds like you're next. You were
the second hand I saw go up.

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

PRESIDING MEMBER GEESMAN: Okay.

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

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

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

MS. RADER: Absolutely not. That was my
next request, is that you extend that deadline by
at least three weeks to May 14th to allow us
sufficient time to really go through the document
and to redline it, as we would like to do.

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

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

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

And one of the most problematic aspects
of the first draft, the project-specific
scientific advisory committee concept has mostly
been removed. There's less infringement on the
authority of the local lead agency.

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

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

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

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

First, the document implies that compliance with wildlife laws is possible, and that lots of studies and mitigation can bring a project into compliance despite the fact that
compliance is not possible with many of these laws. Because one bird kill is an inexcusable violation.

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

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

Secondly, there remains insufficient recognition of the variety of ways that sufficient credible evidence about impacts can be gathered. The step-by-step approach, for example, recommends
that particular methods be used to determine abundance, bird use counts and acoustical monitoring even though there are other methods that may be as or more appropriate at a given site. Which is recognized, in fact, in chapter 3.

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

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

If the particular methods are not followed, even if they are not necessary or appropriate in a given situation, it could open up lead agencies and project proponents to
litigation. This is because a project proponent will be presumed not to have made a good faith effort to comply with state and federal laws if he does not use the particular study methods recommended. 

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

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

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

The guidelines largely dictate a one-size-fits-all course of study, type, frequency and
duration without regard to what is already known
about the site, and what additional information is
needed to assess whether there is a significant
risk to bird or bat species.

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

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

The fact is CEQA does not necessarily
consider the loss of a single individual of an
endangered species to constitute a significant
environmental impact. To be significant under
CEQA, the impact must substantially reduce the
The guidelines also do not discuss the fact that CEQA allows lead agencies to approve projects with significant impacts if feasible mitigation is imposed. Even if mitigation cannot reduce impacts to the level of less than significance, projects may still be approved if it's determined that the project has overriding benefits.

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

These and other excessive study requirements are aimed in part to collecting data that will further the understanding of wind impacts on bird and bats. Of course, this is a laudable objective. But imposing costly study requirements on every project is not the appropriate way to obtain this information, nor is it necessary. And it will interfere with the achievement of California's clean energy goals.
Instead the Energy Commission should fund research to obtain this information.

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

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

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

And finally, perhaps needless to say the document provides no suggestion to lead agencies that they should streamline the permitting process for low-income projects such as repowers outside
the Altamont as we proposed, treatment that the
fossil fuel repower projects now enjoy.

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

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

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

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

PRESIDING MEMBER GEESMAN: No. It was
your paraphrasing.
MS. RADER: I said the fact is that CEQA does not necessarily consider the loss of a single individual of an endangered species --

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

MS. RADER: Yeah.

PRESIDING MEMBER GEESMAN: Thank you.

MS. RADER: Yeah. Thank you very much.


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

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

First and foremost that we need more
time to do written comments.

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

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

PRESIDING MEMBER GEESMAN: Okay.

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

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

I do also agree with Nancy's sort of
over-arching comment that while I think that there
are a lot of improvements in this document, it is
easier to read; I think it's better organized;
it's much clearer in some regards. I share her
concern that while I think it provides a lot of
helpful information, particularly to lead agencies
that don't have as much knowledge, even as many of
the developers, that I'm a little concerned about
how much it really is going to reduce impacts on
birds and bats.

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

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

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

I think it's gone too far to the other
extreme, though. While we support a statewide
scientific advisory committee, it's not clear who
will be on it; what the qualifications are.
There's no language about lack of conflict of
interest or unimpeachable credentials. There was
a phrase, I don't remember precisely what it was,
in the previous document that I think is
important.

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

And so I do think that regional
scientific advisory committees or some more
concrete statement of the availability and amount
of support that a statewide committee could
provide are really important. Because otherwise
we miss what I think was the primary purpose of
the scientific advisory committees on a more local
or regional level was basically to assist the
wildlife agencies that don't have the resources to
review every project. Particularly not very early
in the project development process, which I think
is the critical issue here is the siting.

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

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

Particularly where developers want to do
something different than what's recommended in the
guidelines. And I do agree with Nancy; I think in
an effort to simplify things, and I appreciate
that that's the recommendation that we all made in
the last round, I think it's been over-simplified
to the point where it does look like a cookie-
cutter approach that maybe too much in some
places, and not enough in others. And needs more
clarity about when it's going to be which.

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

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

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

But there are a lot of other species
where it might not be quite so clear, but they're
still listed as endangered, or they're fully protected. And I agree with Nancy, the fully protected species and some of the federally listed species, those are strict liability statutes.

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

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

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

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

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

And the way it is described is a
biologist with knowledge of natural history.
Which I don't think is quite the point here. I
think it's a biologist with knowledge of local
biological resources, and their habitat needs and
their migratory patterns and seasonal patterns,
things like that. Natural history is not really
the issue here. So I think that that's important
to clarify, as well.
Two last points. On post-construction, again I think in part I sympathize with Nancy's comment. I think there are times when it may not be necessary to do two years. I think there are other times when it will be necessary to do more. And I think the higher the level of impact, and higher the classification of protection, you know, if you're talking about likely impacts to fully protected species, or highly endangered species, I think it's important to do at least two years, and probably more.

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

I did --

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

MS. LEVIN: I think that would be really helpful. And I think a number of us recommended that last time around. And I know there were a lot of recommendations. I don't mean this as criticism of the draft; I think they've done a lot
to improve it. But I think that would be sort of
the next really helpful improvement, is sort of
setting up different tracks, and would make it
even more clear.

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

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

But I think making that statement that,
you know, the more this can be an open process
where the data is accessible, where researchers are allowed to go onto sites beyond the two-year
 timeframe, would certainly put our minds at much more ease for the post-construction monitoring.

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

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

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

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

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

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

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

So my last comment is, in this I think I
have the opposite concern of Nancy, I think that
the guidelines do need more definition about when
data from adjoining sites or nearby sites is
appropriate, I'm very nervous about that.

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

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

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

We, too, as I said many times, we would
like to make this process as efficient as
possible, but it still needs to have scientific
integrity. And these are not easy decisions when
adjoining data is going to be appropriate and when
not. They're judgment calls, and they're better
made by objective biologists who really have
knowledge. And unfortunately most lead agencies
don't have that on staff.

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

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

PRESIDING MEMBER GEESMAN: Right.

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

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

ASSOCIATE MEMBER PFANNENSTIEL: Excuse
me, I have a question before you go away. Just
some -- if you can provide some more thoughts on your tiers, or your tracks, I think you called them, the fast track, the slow track and the no track at all.

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

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

ASSOCIATE MEMBER PFANNENSTIEL: Okay.

Thanks.

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

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

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

ASSOCIATE MEMBER PFANNENSTIEL:
Perfectly.

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

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

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

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

But I think it gives us consistency, especially because the guidelines are voluntary we can't always expect that they would be empaneled
local scientific advisory committees, or that the
guidelines would be adhered to. But having a
statewide scientific advisory committee gives us
some stability, gives us some continuity, gives us
some ability to advise some of the permitting
agencies proactively.

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

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

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

I do think that it's a good thing to
provide some, as I mentioned in my comments, it
seemed to be adopted in the document, that
compliance with the guidelines connotes some sort
of attempt at good faith effort on the part of permitees. I think that that's a very important benefit the good actors can take advantage of; and it prevents people who are going to ignore the guidelines from having a competitive advantage over those who are doing the right thing. So I disagree with Nancy about that. And I do feel that that part of it is good.

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

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

Will other people bring suits for local reasons? Of course, they're going to do that anyway. So I don't think that that's even an issue for this.
With that I think I'd just like to conclude, and thank you again for this; and reserve the rest of my comments for my written comments. Give myself a chance to communicate with some of our lead volunteers, who have been interested in this issue, around the state. And also to more adequately review everything that's been done here.

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

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

MR. VERCRUYSSEN: Good morning, Commissioner Geesman, Commissioner Pfannenstiel. Staff, again I want to echo everyone's comments that's preceded me, that --

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

MR. VERCRUYSSEN: I'm sorry, Paul Vercruyssen from the Center for Energy Efficiency and Renewable Technologies.

Thank you to the staff for the great work they've done on revising the document. I know it's a very difficult task. And there was a
lot of comments provided in the last round, and throughout the process.

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

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

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

So, time to do that after this workshop.
here, to provide the written comments, would be 
very appreciated. I think three weeks is 
reasonable. I would leave it up to you in terms 
of what you decide, but I think we are close on 
this document. And so, you know, the more time 
you can allow us to provide additional comments 
would be very helpful.

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

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

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

But I think that it is important to 
recognize that, you know, there are, as both Julia 
and Nancy pointed out, areas where the amount of
scientific input and the amount of study can be fast-tracked in some cases. And there's obviously
going to be cases where there's additional input needed and additional study needed.

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

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

And it's also, I think, a major hurdle in the repowering approving process. And that was an issue that I raised at the workshop a couple weeks ago. And I know that the Commission here is working very diligently to find, you know, financial incentives, otherwise to encourage that
type of activity. I think the permitting process
is another important way to try and do that.

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

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

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

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

And the requirement of bat monitoring
for preconstruction on every project throughout
the state might not be the best way to spend the
money. It amounts more to data gathering, rather than focused research, answering focused research questions and providing benefits that can help protect bat species in the future.

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

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

In terms of the tiered structure, if I can go back to that for a second, I think that some additional context could be given for that type of structure to the guidelines. I realize that an effort was made by the staff for that.
And it's appreciated, but I think, again, the fast-tracking idea that is available to the repowering of natural gas plants here in California could be more closely related to what's happening for wind projects. And would, again, encourage that.

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

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

When, in fact, if that does occur, which I don't really see happening very much, if at all, in the future, it's going to end up being revisited, and it's going to be an issue at that
time. And I don't think it really is helpful in trying to address it before the project's steel is even going into the ground. And could actually impede the permitting process by trying to come to the sort of outlier types of project terms that are not going to apply in most cases.

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

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

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

And, thank you very much.

PRESIDING MEMBER GEESMAN: Thanks, Paul.

Anne.

MS. MUDGE: Good morning. Anne Mudge on behalf of the California Wind Energy Association.
I wanted to take a moment to comment on this tiered approach, because I think it's a really fruitful area that the guidelines could continue to explore, because there really isn't much there yet on that point.

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

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

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

And the CEQA guidelines and CEQA, itself, provides a framework for doing just this. It provides certain categories of projects that have sort of a presumption of lower impact. And you have to demonstrate that they do, in fact, have a lower impact, on a case-by-case basis.
This is not a free pass.

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

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

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

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

So, I --
PRESIDING MEMBER GEESMAN: Were your comments in the Bakersfield workshop written or followed up by --

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

PRESIDING MEMBER GEESMAN: No, we --

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

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

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

And under CEQA you do need to have a substantial reduction in the number or restriction of the range of an endangered species to be
considered a significant environmental impact.
And that's directly out of the guidelines.

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

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

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

So, thank you very much.

PRESIDING MEMBER GEESMAN: Thank you.

Who's next? Yes.

MS. CONWAY: Good morning. Michelle Conway, Oak Creek Energy Systems. We're a developer.
We won't have any questions for staff today. We do want to note that the document is much improved. We agree with the others that have come up today.

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

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

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

The good faith language is more evidence that the guidelines are not going to be voluntary. We want to make sure that developers are not following these guidelines solely so that they do
not get sued. Versus what we want to do is
develop the guidelines, develop the studies in
conjunction with the county, under CEQA, and
conduct studies that are right for the ecosystem
in question.

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

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

To give you an example of why we're so
certained about this, in the Tehachapi area, the
Mojave, the west Mojave plan calls for Mojave
ground squirrel surveys. And in the four years
that we've been trapping the squirrel in the area
west of the Mojave, we've trapped zero squirrels.
And this costs us $20,000 per mile to trap. And
the question that we have is couldn't this money
be better spent on species that are at issue in
the area.

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

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

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

But the study that they've set up is
different from what the guidelines requires. So
we're concerned that we're going to be in
violation of the guidelines, and it's going to
demonstrate a bad faith effort.

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

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

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

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

And just to reemphasize why we're so focused on spending money wisely on the right species, and that we don't want a cookie-cutter approach, is that in California, for example, we have to pay sales tax on our projects, full sales...
tax, which is 7 to 8 percent, depending on the county.

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

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

Thank you.

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

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

PRESIDING MEMBER GEESMAN: Thank you.

MS. CONWAY: Thank you.

PRESIDING MEMBER GEESMAN: Anybody else?

Brenda.

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

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

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

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

MS. LeMAY: Sure.

PRESIDING MEMBER GEESMAN: Yeah, go
ahead, Misa.
MS. WARD: Okay, sure.

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

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

MS. LeMAY: Okay.

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

MS. LeMAY: Thank you.

MS. WARD: Sure.

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

I think going three, four or more weeks would push us back on the overall schedule a lot further. And I appreciate and understand
everybody's concerns. I just think we also need
to be aware of what that does to the overall
schedule.

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

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

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

And it may not be deployed in the best
areas. Especially if you consider that your one
year of acoustic monitoring on a preconstruction basis may have, in an extreme example, let's say, turned up absolutely nothing.

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

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

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

PRESIDING MEMBER GEESMAN: Thanks, Brenda. Other comments?

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

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

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

MS. SANDERS: There, how's that? We'd like to hear what suggestions everybody has, what suggestions you have, for that. I don't think we've gotten very far. It's kind of embryonic
right now, but we can see what we all come up with.

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

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

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

I'm hesitant to put the staff on the spot here because I think the substitution from local committees to a statewide committee probably more at Committee direction than anything that they came up with on their own. And I've not had any discussions with them, or even given it much
further thought beyond where we were in Livermore.

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

MR. VERCRUYSSEN: I'm sorry, I didn't see --

PRESIDING MEMBER GEESMAN: Go ahead, Paul.

MR. VERCRUYSSEN: Maybe we can like have a couple --

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

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

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

The word discretion isn't used in the document, though. So, that's the kind of -- I
mean I'd almost like to hear some other people's thoughts on it, because it was something to me that I thought, well, are we going to actually go into this in the document. Or if not, then I think that some additional description of how the informal consultation process would work could be more beneficial. Because there's a number of situations where it seemed to me that you were still forming sort of a de facto scientific advisory committee on a local level. But it wasn't clear what their responsibilities would be. But they're called out both in the preconstruction process to offer input on what studies, designs are going to be, what's necessary, local ecology, things like that. And also they're called out again after the two years post-construction monitoring to determine whether in fact the preconstruction mortality estimates were valid and within an acceptable range of the permit terms. And, again, there was not really a level of specificity, to my satisfaction, anyway, in terms of what that all meant, and who the final decisionmaker was going to be on compliance with
contract terms, things like that.

So, those were my thoughts.

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

MR. VERCRUYSSEN: Okay.

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

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

I do think, and I don't know whether this can be spelled out in the guidelines or not, but I do think it's important that they be compensated. Because that is going to impact their availability. It's not going to be that
helpful to have a body that meets quarterly and
really isn't very readily accessible or available
in between times.

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

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

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

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

And I mean the obvious ones are where
developers of lead agencies are going to deviate
from kind of the standard recommendation in the
guidelines. But there are probably a whole range
of others.

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

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

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

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

I think we've gone beyond the point
where large sweeping generalizations will be
particularly helpful to us.

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

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

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

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

I guess those are the principal reactions I had. Do you want to add anything,
ASSOCIATE MEMBER PFANNENSTIEL: Probably nothing of great note. But, when I read the draft staff report I was taken with how far we've come in this. And the fact that we have a lot of areas that I think are pretty well accepted as the way we should go.

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

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

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

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

So I'd like to remind you that what
you're commenting on right now is a staff draft. So go ahead and indulge as much vitality as you can.

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

Yeah, Julia?

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

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

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

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

I think that pretty well takes up the subject matter we had today.
Thank you all for participating. We'll be adjourned.

(Whereupon, at 10:25 a.m., the workshop 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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