STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: Docket No. 97-AFC-1
Application for Certification for the High Desert Power Plant Project

COMMITTEE STATUS CONFERENCE

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Thursday, February 18, 1999
10:15 a.m. to 12:40 p.m.

Reported and Transcribed by: Theresa Aguilar,
RPR, CSR No. 10498
APPEARANCES

Commissioners Present:
JANANNE SHARPLESS, Presiding Member
ROBERT A. LAURIE

Staff Present:
STANLEY W. VALKOSKY, Chief Hearing Officer
ROSELLA SHAPIRO, Advisor to Commissioner Sharpless

For the Staff of the Commission:
RICHARD K. BUELL, Siting Project Manager
CARYN J. HOUGH, Senior Staff Counsel
NANCEE MURRAY, Senior Staff Counsel

For the Applicant:
ANDREW C. WELCH, P.E., High Desert Power Project LLC
ALLAN THOMPSON, Law Office of Allan J. Thompson
TOM BARNETT, Vice-president of Constellation Power

For the Intervenors:
MARC D. JOSEPH and LIZANNE REYNOLDS, Adams Broadwell & Joseph
   On behalf of California Unions for Reliable Energy

ANDREW W. BETTNY, Assistant General Counsel
   On behalf of Southwest Gas Corporation
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>4</td>
</tr>
<tr>
<td>Adjournment</td>
<td>101</td>
</tr>
<tr>
<td>Certification and Declaration of Transcriber</td>
<td>103</td>
</tr>
</tbody>
</table>
COMMISSIONER SHARPLESS: Good morning.

Good morning, Applicant, Intervenors, Staff.

I know you've had a busy schedule. I know you've been meeting in workshops in responding to our order of December 16th. We'd like to find out today exactly what the order indicated, what the status is and how close we are in going to evidentiary hearings, and we will use the same type of schedule that we used in the past by allowing each party to state their positions and then have discussion.

I hope that we will be able to at the very latest, or perhaps we can be optimistic and get through earlier, but at 3:00 o'clock I have to catch a plane, so it means that we need to stay on point today and see if we can get through the schedule and hope that satisfies everybody here.

I'd like to start with introductions. Most of know who we are. We've been at this since December of '97. We're past our year statutory deadline, but we have adopted a scheduling process that allowed at the agreement the Applicant to skip the process because of the informational needs. So I4
will start the introductions.

I'm Jananne Sharpless. I'm the presiding member of the High Desert Siting Committee. And to my left is Commissioner Laurie, the second member. And also to my left -- my most immediate left is Stan Valkosky, who is the hearing officer. And to my right is Rosella Shapiro, my adviser.

I'd like to allow the individuals at the dyas or at the tables today to introduce themselves so those in the audience, and those who don't know one another can get to know one another.

Why don't we start with you, sir.

MR. BETTWY: Good morning. My name is Andy Bettwy. I'm assistant general counsel for Southwest Gas Corporation.

MR. WELCH: Andy Welch. I'm the project director for the high Desert Project.

MR. THOMPSON: I'm Allan Thompson, Licensing counsel. I guess you called me for the High Desert Power Project. To my left is someone you don't know yet, and I've asked him to say a few words of introduction. His name is Tom Barnett with Constellation.

COMMISSIONER SHARPLESS: Mr. Barnett, nice to have you hear this morning.

MR. BARNETT: Thank you very much. It's a 5
pleasure to meet you all. I want to take just a
second to give a little more of lengthy introduction
to myself, since I'm brand new, certainly to you all.

My name is Tom Barnett. I'm a
vice-president with Constellation Power, which is the
parent company of the members of High Desert Power
Project, LLC. I'm also a vice-president with the LLC
itself and the project manager for the High Dessert
Power Project. I'm replacing Mr. Wolfinger, who I
think most of you met before, who is doing other
things in the east coast for Constellation, pursuing
other projects.

I'm actually relocating from Baltimore.
I've been with Constellation for 11 years, and I've
been involved in quite a number of their projects,
and taken them through the permitting and financing
stage to the beginning of construction, and I'm
relocating to Southern California.

I'm currently out here full time. My wife
isn't here yet, but hopefully will be soon. And I'm
full time on the project now, and have been for about
two months, and had an opportunity to get to know the
staff and attend the workshops, and I'm pretty much,
I think, in the thick of it now. So I'm looking
forward to working with you all and Staff to see this
through the completion.
COMMISSIONER SHARPLESS: We welcome you to the process.

MR. BUELL: My name is Richard Buell. I'm the Energy Commission staff's project manager.

MS. HOUGH: Caryn Hough, Staff counsel.

MR. JOSEPH: Marc Joseph here on behalf of CURE.

MS. REYNOLDS: Lizanne Reynolds, also on behalf of CURE.

COMMISSIONER SHARPLESS: Okay. Just a few other items that probably deserve to be part of the introduction. I'd also like to introduce our public adviser, who you all know, I'm sure, by now.

MS. MENDONCA: It's Roberta Mendonca. We have one possible Intervenor.

COMMISSIONER SHARPLESS: Yeah, I was going to call you forward and allow you to make that statement. The reason I hesitated was not that I forgot your name, but looking from my papers regarding the new request we have for intervening in this case. We have -- I believe we have two, is that right, at this point, and an uncertain.

And that is the issue that you were going to bring to us is the uncertain member?

MS. MENDONCA: I've been having telephone calls this morning, and I expect to have a certain
answer in about a half an hour, so I'm going back and forth.

COMMISSIONER SHARPLESS: Okay. You've also met Roberta because she's the woman with the blue cards that helps us keep our meetings orderly, by allowing us who in the public wishes to address the committee regarding this project. So thank you, Roberta.

The other items I'd like to bring up, we've gotten a request from Southwest Gas Corporation, and I believe that's you.

MR. BETTWY: Yes, ma'am, it is.

COMMISSIONER SHARPLESS: I believe -- Stan, help me here. We just received the request?

JUDGE VALKOSKY: Yes, we received it today.

COMMISSIONER SHARPLESS: And formally under our process, we receive the requests, and judges them, and issues an order. We feel that the statement made by Southwest Gas does, in fact, meet the Intervenor requirements, and we would be sending out an order, so that's why southwest is sitting at the table at this time. Also, we have the Department of Fish and Game. And Nancee Murray I know is in the audience, because I have a blue card up here, and she's senior staff counsel, and we welcome you, Nancee.
Also we would be sending out an order granting Intervenor status to the Department of Fish and Game. Should we bring her up to the table? If you could come up, and I'm sure we can make room for you at the table as well. I'd also like to be --

COMMISSIONER LAURIE: Madam chair?

Commissioner Sharpless, do I understand your comments as indicating your intent to grant the motion to intervene?

COMMISSIONER SHARPLESS: We have received both petitions. One we received just in the last day, and the other one we received as well, and we are prepared to issue an order on it, yes, Commissioner Laurie. I've talked to the hearing officer and he's indicated that since we would be issuing the order, that it's not inappropriate at this time to offer those individuals a place at the table. Are you raising concern?

COMMISSIONER LAURIE: I'm simply unaware of an opportunity for discussion regarding the actual decision to grant the motion.

COMMISSIONER SHARPLESS: Would you like to have that discussion?

COMMISSIONER LAURIE: Not at this moment. I have no objection to the party's sitting at the
table, however, I'm not prepared in this short notice
to indicate my position on a motion to intervene.

COMMISSIONER SHARPLESS: Okay. Fine. I
believe the administrative hearing officer has, in
fact, offered a constructive suggestion to allow the
intervenors to state the scope of their interest in
this project right now, that will help provide some
information. And I'll abide by your wishes,
Commissioner Laurie, that we will have an opportunity
after this hearing to discuss their intervening
status.

COMMISSIONER LAURIE: Thank you.

MR. BETTWY: Thank you. Is it okay to
remain seated?

COMMISSIONER SHARPLESS: As long as we can
get you recorded on the record, then -- I'll have to
ask our reporter if she can record you.

THE REPORTER: It's fine.

MR. BETTWY: Thank you very much,
Commissioners, Mr. Hearing officer. Southwest Gas
Corporation is potentially a provider of gas service
to the power plant that is under consideration.
Southwest Gas of course has been working with High
Desert for well over a year, and Southwest is
supportive of the project. We've been ambivalent
about seeking intervention status, and I would like
to explain briefly why we've made the decision to do so. It's been within the last six months at least, it's clear that there's a substantial interest in aspects of the 32-mile pipeline that would proceed to the north or from the plant to the north to the Curran River transmission pipeline. And at the interest that have been expressed relate to the design, the siting, the construction and the operation of that pipeline.

Additionally, it seems that as a practical matter, if the matter proceeds to hearing, that employees and other representatives of Southwest Gas will be called or asked to be called as witnesses to testify before you. Given those two reasons, Southwest thought that -- I think it clearly has the right to be here, but our decision wasn't based on that. It was more should we or should we stay in the wings like we have been, and we made the decision we thought it would be more appropriate to have that status.

And what I would envision, if I might proceed, and let's assume the matter goes to hearing and employees of Southwest were called. I would propose to work with the Applicant to have those witnesses called during the Applicant's case, but I would be the one calling them and dealing with
cross-examination and whatever, related to the testimony that they would give. If that would be a satisfactory procedure, I guess I'd like to give you a sort of heads up that we see ourselves as sort of the Applicant's case as a practical matter, but having the rights of an Intervenor go along with having intervention status. So, if that's helpful...

COMMISSIONER SHARPLESS: Okay. And Nancee?

MS. MURRAY: The Department of Fish and Game submitted it's petition yesterday, and we believe that while we can and have been working well with the Applicant, we wanted to submit this petition to preserve our rights, should we later on need to present evidence and cross-examination in that evidentiary hearing. The department has trustee responsibilities under the California Fish and Game Code. We are the trustee agency for Fish and Wildlife Resources. We have the authority to issue endangered species acts incidental, take permits, and the authority to issue extreme bed alteration agreements.

We have been working with the Applicant for over a year, and we believe that based on our statutory responsibility, authority, and our interest in the project in all of these workshops and meetings and our continued participation, that we would
benefit from Intervenor status, and I hope that
answers your question.

COMMISSIONER SHARPLESS: Thank you.

Commissioner Laurie?

COMMISSIONER LAURIE: Thank you,

Commissioner Sharpless. It may very well be that
there is a proper practice and history to having
other state agencies intervene in individual
projects. I would appreciate your consideration,
take this matter under submission, and let me simply
offer a thought -- an initial thought: The process
we are going through is not a California Energy
Commission process. It's a State of California
process.

It is, thus, incumbent upon the energy
commission to work with its fellow state agencies in
providing appropriate evidence to go into these
proceedings. And I am just unsure at this point of
what that does to our relationship if, in fact, one
of those parties -- if in fact one of those agencies
suddenly becomes a party. How are we then free to
communicate through our own rules in order to resolve
procedural issues, for example? So I need to give
some thought to that, and I very much appreciate your
willingness to take the matter under submission if
even for a temporary basis.
COMMISSIONER SHARPLESS: Well, I certainly appreciate the fact, Commissioner Laurie, that you are looking at the entire process as a member of this siting committee, that as we get involved in one more case as these issues become more and more relevant. I would only indicate that our own staff is a party and as such, we deal within the same ex parte communication rules that we would with any other state agency. I understand what you mean by the desire to have the State of California well coordinated and working together, but the status of Intervenor allows the opportunity for these individuals to do their own cross-examining, and in some cases, given the issues within this case, there might be an advantage to that. And I think the discussion between you and I is appropriate once we complete our hearing here today.

COMMISSIONER LAURIE: Thank you.

COMMISSIONER SHARPLESS: Yes, Mr. Thompson.

MR. THOMPSON: Thank you. We don't actively oppose either of these petitions to intervene, but we would remind all parties that along with the opportunity to become an Intervenor.

COMMISSIONER SHARPLESS: There are responsibilities.

MR. THOMPSON: Duties and responsibilities
serviced on all parties. We would expect that
meetings between Staff and Intervenors to be noticed
and open to all, certainly members. Everybody is on
the service list, and all members of the public. The
duty not to reopen matters that have already been
settled. And indeed, Intervenors are subject to data
requests, and have the ability to make data requests.
And I'd like to remind everybody that there are
numerous responsibilities that go along with that
status.

COMMISSIONER SHARPRESS: I'm glad you did.
I agree with that. There's both a joy and a risk.
Okay. I'd like to also have an opportunity
to recognize any other state agencies or air
districts that might be in the audience so we know of
your presence. Would you stand and identify yourself
if you are from one of those agencies, please?

MR. EASTON: I'm Robert Easton, and I'm
from Mohave Desert.

MR. DeSALVIO: I'm Alan DeSalvio with the
Mohave Desert.

MR. SPARKS: I'm Robert Sparks from
California ISO.

COMMISSIONER SHARPRESS: Anyone else we
need to identify? Great. Fine.
I'd like to just begin with some opening
remarks and then we can get right to the individuals. To just set the frame for today, this is a prehearing conference, and we indicated that we'd have this prehearing conference in a notice that we dated December 16th, 1998. So the documents that are pertinent to today's conference include the January 21st, 1999 staff assessment, and the February 9th prehearing conference statements from the Applicant, the California Union for Reliable Energy, the California ISO, the California Department of Fish and Game, the Commission Staff, and an Intervenor, Gary Ledford, and I fail to recognize Mr. Ledford.

I apologize. He's not here. As explained in the notice, the basic purposes of the prehearing conference are to assess the parties readiness for evidentiary hearings, to identify areas of agreement and dispute, to discuss procedures which will assist the committee in conducting this licensing process in a timely manner as feasible. And in this latter regard during your presentations, I'd like the parties to discuss these matters as well as the future filing dates for testimony and other evidentiary documents, briefing and comment periods, and other related items.

So, today we will proceed by providing each
party an opportunity to summarize their position, and
I recognize you did so, also, in your preconference
hearing statements of February 9th. It's been going
quickly.

Each party should begin by indicating
whether it favors suspending the process or
proceeding to hearings on any or all of the technical
topic areas, and if the parties believe that topics
are not yet right for hearing, they should specify
which topics.

So as usual, I'd like to begin with the
Applicant, and if you'd like to start with your
statement.

MR. BARNETT: Thank you, Members of the
Committee and Judge Valkosky. I'd like to make some
very brief opening remarks. There's been a great
deal of written documentation submitted to you, and
obviously this process has been going on for quite
sometime. Most of it, unfortunately, before I was
present, but I think I've gotten up to speed, as I
said earlier. And I think that there's a possibility
that sort of the cold words that you see in black and
white don't necessarily reflect the most current
status of the project, and I'd like to make remarks
on behalf of the Applicant to the effect that I've
been involved in the project. I've seen personally
that I believe we've been making very good progress.
I think we've been responding well to all of the
Intervenors and the Staff. In particular, we had
workshops in Victorville a couple of weeks ago and
one here in Sacramento. And subsequent to that,
we've had at least one meeting, and I believe that
the issues that have been identified as still being
in contention are ones that we are making very good
progress on. I don't mean to imply that we have
reached a resolution yet, but we are certainly making
progress. I think that we are working well with the
Staff in that regard, and I, therefore, think that we
are in a position to move forward, more rapidly on
not just the issues of the agreement, but on the ones
that we identified as still being up in the air, and
perhaps might be provided by some written
documentation to proceed.

So I wanted to make sure you understood
that from our perspective and then myself
representing the Applicant, we feel that good
progress is being made. We don't feel that we are at
odds with the Staff, and that we're close to reaching
a resolution on any of the outstanding issues.

COMMISSIONER SHARPLESS: Thank you,
Mr. Barnett. What I would like to ask is of the
issues that you believe are remaining, even though I
think I know what they are, would you identify them for the record?

MR. BARNETT: We believe that it's essentially the air. There are several issues that are related to our air quality management plan and to our water supply plan. Those are the two critical areas. Now, certainly tied up in that, there's a biological impact that really relates to the water issue in our view. So we believe if we solve the water issue, which we're making excellent progress on, that we'll actually resolve not just the water issue, but the biological issues will be resolved with that.

And we think that in the original Staff assessment, cultural was identified as an area that we have not reached an agreement, but we believe subsequent workshops in Victorville have not completely resolved that, but resolved it to a point where it's not really an outstanding issue. And I think that in the Staff's prehearing statement, they identified hazard materials as an issue that they needed to, sort of amplify their previous discussion on, but in our view, that's not really an issue in contention. There's probably some information being provided on that, but it's not a serious matter. So it really comes down to the air and water issues and 19
as they relate to the biological.

COMMISSIONER SHARPLESS: Let's take those sort of one at a time. On the air quality issue, what is your assessment and timing on that issue? When do you think that the issues that have been raised by USCP and ARB can be resolved, and where would that put us in terms of being able to go into an evidentiary hearing?

MR. BARNETT: Let me just make a brief overview, and then I would like to turn it over to the project director, Mr. Andy Welch, and let him make some more specific comments. But in general as I think the Staff has indicated, what's hung us up there to a large extent is that there are issues that can't be resolved at the CEC level, because they involve the EPA's approval of things that are in the air quality management districts, the termination of the clients, as well as the issues of the California Resources Board. So at our hearings or at our workshops in Victorville, we'd hope to make some substantial progress on those issues, but unfortunately, the Environmental Protection Agency did not attend those meetings, and we weren't able to make progress that we had hoped. So we've had to schedule a workshop with EPA at EPA's office in San Francisco, and I believe that's scheduled for
March 2nd. And we believe that that meeting will be a roll up your sleeves, let's get down to the few issues that are remaining that EPA needs to buy off on, and all the interested parties will be there.

We think that will go a long ways towards resolving those issues. I don't expect that it will resolve those issues at that meeting, but I believe that it will layout a plan or a path that will show exactly how to do it, and, therefore, the documentation to follow to come very quickly.

COMMISSIONER SHARPLESS: With respect to the remaining issues in the air quality area, which issues are those?

MR. BARNETT: I'll let Andy Welch --

MR. WELCH: As you are probably aware, the preliminary determination of compliance was issued, which responses were made to that. Primarily, if you separate those into two different categories, one which was the back layer questions and the other would be offsets. On the back layer, we indicated at the workshops in Victorville that we would basically go along with what those comments were, and look to lower the emissions limits.

COMMISSIONER SHARPLESS: What are you going to lower them to?

MR. WELCH: We're going to lower them to
where we were, which is you 2.5 parts per million,
but we agreed to the one-hour standard based upon
similarly done at Feather River with the
Cal-Pine/Sutter Project. And then the CO and the VOC
to exactly what they had asked us for -- that the EPA
had asked for, so we think we're on --

COMMISSIONER SHARPLESS: Is it the
interpollutant trade and the ERCs that are still at
issue here?

MR. WELCH: Right. The ERCs, a lot of the
questions were made up for the actual validity of
certain ones from South Coast. We have, since those
come out, provided copies of option agreements for
those, which is now in the record, and both have been
supplied to the EPA. So the interpollutant then
becomes the big issue.

We submitted protocol and there's been a
lot of work on that, but that's really what needs to
be ironed out.

COMMISSIONER SHARPLESS: Where are you on
the interpollutant trade in terms of your position?

MR. WELCH: Our position is that we've
demonstrated the proper ratio would actually be lower
than 1 to 1, so we have conservatively said 1 to 1
ratio, VOC would be the appropriate, and basically
there's just a matter of going through to determine
that the science behind what we've done is the
correct way to proceed.

The method that we used is one that were
advised to use by EPA in a premeeting back as early
as September.

COMMISSIONER SHARPLESS: So when do you
meet again with USCP?

MR. WELCH: The workshop is scheduled for
March the 2nd, and we're having it at EPA's offices
so that they will be there.

COMMISSIONER SHARPLESS: Is that when
you'll be able to resolve all issues on March 2nd?
Is that what I got from you, Mr. Barnett?

MR. BARNETT: I believe it would be overly
optimistic that we could resolve all issues, but I
believe at that workshop that we will reach agreement
on how to resolve all those issues, and our
anticipation at this point is that as a result of
that meeting, there would probably be one more round
of documentation that we will have to submit, that
addresses the path to resolution that was identified
at the meeting, and, therefore, I guess sort of to
cut ahead to the chase, but we believe that after
that meeting and after roughly a week for us to
submit some additional documentation, that when that
documentation is submitted, we should all
collectively be in position to say that we can go
forward on the evidentiary hearings on this area.

COMMISSIONER SHARPLESS: Would your
estimate be sometime in April?

MR. BARNETT: Our hope would be that we
would like to see it at the end of March, but
somewhere in that time frame.

COMMISSIONER SHARPLESS: If it leads to
another revision in the DOC -- good point -- I think
that there's a 30-day comment period, is there not?

MR. WELCH: Depending on the nature of
those revisions.

COMMISSIONER SHARPLESS: These are fairly
significant, aren't they? These are not what I would
call --

MR. WELCH: They are moving in the
direction of more control as compared to less.

COMMISSIONER SHARPLESS: But you still need
a 30-day comment period, I think. Of course, the air
district is here, and they would be able to give us
the answer.

Would you like to come forward and just
answer that question, or perhaps you are not ready to
answer the question, and I don't want to put you on
the spot, but I will.

MS. HOUGH: If I could just make one point,
EPA filed a letter that they indicated that they expected a revised DOC, so I don't know what the response is to that, but USEPA did indicate that they would expect that.

COMMISSIONER SHARPLESS: The question is does it require a 30-day?

MR. DeSALVIO: Well, it would require another 30-day comment period. At this stage, we're not prepared to say whether or not it's going to be a revised DOC or simply go to a final. Our preference is to go the final.

COMMISSIONER SHARPLESS: And what then would be the difference between having a revised PDOC and going directly to a final? Would you then cut out the 30-day comment period?

MR. DeSALVIO: There would not be a comment period on the final.

COMMISSIONER SHARPLESS: And it would have to go to your board?

MR. DeSALVIO: No, it's acted on by the executive officer.

COMMISSIONER SHARPLESS: Okay. And how quickly could that happen?

MR. DeSALVIO: That's a good question.

COMMISSIONER SHARPLESS: Say they resolve something by the end of March.
We can do it within a week or two, I would say, 'cause the critical issue in our minds is EPA's approval of the interpollutant and offset ratio. And we are still in-waiting mode depending on the March 2nd meeting.

Okay. Perhaps we can move on, Mr. Barnett, to the water issue and give us the status of where you think water is.

Again, we identified a lot of the issues, in fact, there weren't that am, but we identified pretty clearly at the workshops in Victorville, and that was an area where all of the parties were present, and we made good progress at the workshops. We set up a meeting that was held on this past Tuesday that involved all of the parties in Victorville to try and identify a resolution of what really came down to one major outstanding issue on the water. And I think as a result of that meeting there was identification again of how to resolve that issue, some additional information that needed to be submitted. Again, I would like to turn this over to Andy, who was at that meeting and he can give you a summary of where that stands right now.

Andy, also if you could when you reference all parties, could you give us an idea of what that means, who's included, who's 26
Mr. Welch: Okay. At the workshop, we had the CEC staff, the CURE, the Department of Fish and Game, U.S. Fish and Wildlife Service, Mohave Water Agency, Victor Valley Water District and Mr. Gary Ledford were all present.

We talked through the issues and we're basically -- what we came out of there from a suggestion of an approach that staff made that we think looks very reasonable. We're trying to get the actual numbers that go behind that, and we've continued that meeting until or we renoticed it. I'm not sure now --

Ms. Hough: We did both just to make sure we covered our basis.

Mr. Welch: -- for the 26th and we're hopeful that we'll be able to reach a resolution on that issue. The water plant that we put forward and we've been working on for sometime now, which is the injection into the ground for prebank storage to use when the aqueduct is not available, basically ways to determine that that is, in fact, still working to make allowances for any water that would leak out of the storage in the aquifer, and that we would not only be refilling to makeup for the water that we would actually pump out, but to makeup for water that27
is from our account due to leakage.

COMMISSIONER SHARPLESS: Are you also agreeing to interruptability?

MR. WELCH: The plan is that we will not withdraw water to be more than what is in our account. This actually is a step that we made at this last meeting, which I think makes it even cleaner rather than yielding the downstream effects and putting a stopage on it. It's merely saying that we're going to keep the amount of water in there, and if we start to pull out water and we get to the amount of our bank account, if we will not withdraw any more water, which is the agreement we had with Victorville Valley Water District the whole time. So it would require under those circumstances, but it allows us to be proactive so as not to create that situation.

COMMISSIONER SHARPLESS: Who is doing the dry cooling analysis? Is that Staff?

Okay. We'll get to Staff at Staff's turn. So in your estimation, how long will it take to resolve the remaining issues?

MR. WELCH: I think we're very close, provided that, as expected, get the back up to the approach of Staff, and Fish and Game jointly suggested at the meeting, that we may be able to
resolve that at the next workshop.

       COMMISSIONER SHARPLESS: Being the 26th of
February. If it is resolved, there seems to be some
other outstanding litigation issues regarding even
the allocations that currently exist. What is your
feeling about that?

       MR. THOMPSON: It may have been Mr. Ledford
or another citizen who stood up at the workshop and
raised the issue of whether or not the adjudication
would withstand the scrutiny by a higher court. I'm
not in a position to second guess the California
Supreme Court. We don't know. This is an issue that
the Staff raised, so I think you better ask them
about this, if that was the issue.

       MR. WELCH: There is something that we
discussed since the dealing with the Victorville
Valley Water District, that even in the event that
something would happen to overturn the adjudication,
if there's nothing that prevents us from the
agreements to operate with both the Victorville water
agency and Mohave water agency, under the terms that
were put forth in that adjudication. So even if it's
not the law of the land, we can still put ourselves
to that same district standard, which is what the
plan was. So I, at this point, and I believe at the
workshop this week, Mohave water agency also voiced
that they didn't think that that case would necessarily have any impact on this project, whatsoever. It would impact other things. It would impact Mr. Ledford, but it would not impact our water plant.

COMMISSIONER SHARPLESS: So your estimate of -- this is be February 26th, right.

MR. WELCH: Right.

COMMISSIONER SHARPLESS: Your estimate after, say, you've come to resolution after your meeting on the 26th or a few days later, who needs to do what in order to finalize that in terms of bringing it forward to evidentiary hearings? Is there any other steps that need to happen to formalize the agreement, actions by Mohave, actions by Victor Valley?

MR. WELCH: No, it would be, I believe, Staff's completion of their assessment.

MR. THOMPSON: We're not sure whether or not it would require an agreement with one of the water agencies, but I don't think if we reach an agreement there would be anything to preclude us from going ahead with this process.

COMMISSIONER SHARPLESS: So you are saying by early March, you think that the water issue will be resolved? Okay. What about the pipeline issue?
What about the biological issue and the pipeline issue? Where do you see that standing?

I understand that the BLM process is just now beginning, that they are not going to complete until the fall of '99. Am I correct, Mr. Barnett?

MR. BARNETT: That's essentially correct, but I think it's important to understand that this is somewhat of a chicken and the egg process, and that's one of the reasons why we're very concerned about the time line here and the state process. Because while in fact there's a process that we're going through at the BLM and the AIS is involved, I don't think it's fair to characterize if it's just started, and we've actually come a long ways down the road. A lot of documentation has been submitted to BLM and Fish and the Wildlife service, and we think that the review process is well underway. The problem is as we understand it, is that a key time line in this process is the issuance of a formal draft EIS that has public comment periods associated with it, et cetera. And the federal agencies involved in this case are relying heavily on the CEQA process to see exactly what the -- to make sure that they've ducktailed the EIS issues that are identified. And the point of all this is that they want to see the PMPD issued in order to be able to issue
the draft EIS. So it's a process where we can't actually get that formal major step in a federal permitting process underway until this process is nearly completed. So they are very interrelated.

COMMISSIONER SHARPLESS: I'm going to allow Commissioner Laurie in here since the pipeline is considered to be part of this process, and the decision that the presiding member -- a decision is made on is the evidentiary record of the entire project of which the pipeline would be a part.

Commissioner Laurie, would you like to make any statements regarding this issue?

COMMISSIONER LAURIE: Thank you, Commissioner Sharpless. I do have a concern. I think it is a catch 22. I think it is a chicken and an egg problem. I guess my legal or technical concern would be how you take the Federal's analysis and incorporate it into our project. For example, and these are questions that I talked to Commissioner Sharpless about and the hearing officer about. For example, the Federal EIS will have mitigation measures. Are those mitigation measures to be incorporated into our project as a condition for certification? If so, we cannot finalize our own process until the Fed's finish theirs.

I do have an overall CEQA concern, and
maybe the parties would want to address this if it
becomes a problem, but obviously -- strike that. It
may not be obvious, but my understanding is that the
pipeline is a part of this project. And thus might
be in defensible to seek to segregate the true
project for environmental analysis purposes. It may
be dangerous to do so. Thus it seems that the two
processes we have to bring concurrent, because I
don't know how we complete our environmental analysis
until the Fed's complete theirs. My understanding
may be incorrect. I will be seeking additional
education about it, however, but that is my initial
concern today.

MR. BARNETT: I think I'm not in a position
today to discuss this in the kind of detail that it
deserves, obviously, but our understanding and we
have several counsel involved in looking at this
particular issue, is that the CDC and the CEQA
process should be able to go forward under CEQA
permit the pipeline with the expressed condition that
we wouldn't be able to actually do it unless we
received the requisite federal permits, and if that's
a proper way to go forward, that would allow this
process to go forward and then to continue to a point
we're not. And if some for some reason we were
unable to permit it, then your permit had said that
we wouldn't do it unless we got theirs.

COMMISSIONER LAURIE: If in fact that is a legally valid means to proceed, then we may very well say fine. And perhaps that question should be briefed or discussed, and perhaps we can discuss that. But again my initial concern is, as I sit here today, is I don't know how we handle the federal mitigation measures if such are to be incorporated as conditions to this project, because mitigation measures need to be incorporated as conditions of the project. They can't just stand alone. It may be that the mitigation measures for the pipeline can't stand alone in the federal pipeline. And if that is the case, and it is determined to be legally defensible, I certainly don't have any desire delaying this project because of needed federal action if we can move independently.

So I would be most interested in having some of your competent legal staff opine this to the issue. Thank you.

COMMISSIONER SHARPLESS: I'm going to turn to -- Commissioner Laurie, thank you. Do you have any other comments for the Applicant? Okay.

Why don't you go through those.

JUDGE VALKOSKY: Thank you,

Ms. Commissioner.
Mr. Thompson I have some housekeeping matters. I understand that you basically agree with Staff on the hazardous materials handling, that there is no outstanding issue?

MR. THOMPSON: We don't believe that there's an outstanding issue. Our understanding is that Staff has a little more investigation to satisfy itself that we are on all forms, but we don't believe that there's an issue.

JUDGE VALKOSKY: How about cultural resources? You are going to submit additional material actually on cultural resources and on alternatives. When would you propose filing that?

MR. THOMPSON: Well, now that Southwest Gas is an intervenor, I guess I should probably ask them, but our anticipation is as early as next week, we could file testimony which would reflect, A, the construction procedures and maintenance procedures that Southwest Gas follows on the pipeline that we outlined Southwest Gas, and its consultants outlined in our workshop in Victorville that seems to satisfy cultural difficulties or questions regarding that pipeline. So I think that the cultural issue is awaiting only that additional material from Southwest Gas, and I would urge Southwest Gas, that if we can get that in next week, we should be able to do that.
The second is alternatives and how that comes up is the alternatives analysis came out of the Staff report, and that's the first time we saw it. There's some answer testimony, and I think we can get that in next week, kind of in the form of rebuttal, or we can do it at a later date, but those are the only two areas. And I'll let Southwest Gas talk about their schedule, but I was hoping to get that in next week.

JUDGE VALKOSKY: Very well. So the end of next week which I believe is the 26th would be a valid filing date for your alternatives?

MR. THOMPSON: Yes.

JUDGE VALKOSKY: Okay. Southwest Gas is still talking.

MR. BETTWY: If I could have Joe Provenza, who is the project manager in terms of the pipeline project? He has relatively current information, and can explain why one week is a little tight for us, but he can speak to you.

MR. PROVENZA: Yes. I was present at a workshop --

MS. SHAPIRO: Could you state your name for the record, please?

MR. PROVENZA: Yes. My name is Joe Provenza. I'm project manager for Southwest Gas.
COMMISSIONER SHARPRESS: Do you want to
spell that?

MR. PROVENZA: P-R-O-V, as in Victor,
E-N-Z-A. I was present at the BLM workshop
yesterday. Among other things discussed was the
status of the cultural work that's being done towards
the BLM permitting process. A lot of progress has
been made. I took some notes at the meeting. I'm
studying my notes right now. They have a couple of
sites that they need to still investigate. They
identify sites that needed to be avoided, and it will
take another study or two before they are at a point
where they can determine what are all the sites that
will be impacted, and how they will be impacted. So
I don't think it will take -- I think it will take
probably longer than a week or two, maybe a month, or
something like that.

JUDGE VALKOSKY: So could we say a month
from today? I'm just looking for a date so the
parties -- 'cause our staff, too, I'm sure will be
interested in this material. I'd like to have a date
certain by which the other parties can expect this,
and also that would influence the date the Committee
can conduct hearings on this topic.

MR. PROVENZA: I'd like to give you a date
certain. I'm not sure what their scheduling is to do37
this additional testing that has to be done in the
field. I can only surmise it will be about a month.
I don't know. There's no one here from the BLM.

JUDGE VALKOSKY: Is that something that you
can check on in a couple of days and get back to the
Committee on?

MR. PROVENZA: Certainly.

JUDGE VALKOSKY: Or is this by nature open
ended?

MR. PROVENZA: No, I don't think it's open
ended, or indefinite, or anything like that. I just
don't want to give a date that I'm not sure of.

JUDGE VALKOSKY: Okay. If you could by
Monday inform the Committee on the supplemental
cultural resources testimony or the cultural
resources material will be available, that would
certainly assist us.

MR. PROVENZA: Certainly. I can do that.

JUDGE VALKOSKY: Thank you very much.

MR. PROVENZA: You're welcome.

JUDGE VALKOSKY: Mr. Thompson, your
prehearing conference statement -- and again I'm just
trying to find out if in fact you have agreement --
you did mention the topic of the Staff assessment of
facility closure. Do you have any difficulties?

MR. THOMPSON: On facility closure?
JUDGE VALKOSKY: Yeah, basically the compliance plan.

MR. THOMPSON: I don't believe so.

JUDGE VALKOSKY: Okay.

MR. WELCH: Should we?

JUDGE VALKOSKY: You never know when the condition comes up. Also, Mr. Thompson, your prehearing conference statement did not identify specific witnesses contained resumés, or specified exhibits that you would propose for future evidentiary hearings.

How long do you need to do that?

MR. THOMPSON: I can get that in this coming week. I have a witness list, but what I'd like to do is to marry the witness list to a document that has a list of exhibits and exhibit numbers on it. I think putting all that into a single document could be a good baseline.

JUDGE VALKOSKY: That would be helpful because the Committee, when it issues its hearing orders would like to have the witnesses identified and a tentative exhibit list, rather than doing that at the hearings.

MR. THOMPSON: I think I can have that in by next Wednesday.

JUDGE VALKOSKY: The 24th?
MR. THOMPSON: Yes. And my apologies to the Committee for not having that earlier. We've been struggling.

JUDGE VALKOSKY: Now, also you have data requests that have been submitted to you by one of our recent intervenors, Mr. Ledford. When do you intend to respond to those data requests?

MR. THOMPSON: Although they were not addressed directly to the service list at all, we are going to respond the initial 15 days within 15 days of the date of the request, and we'll respond to the statutory 30 days to the requests themselves. We note in passing that we will be able to respond to those questions directed to Mr. Buck Jones of Inland and we take it upon the project to respond to those as we think Mr. Ledford actually meant those for the High Desert Power Project. There are other data requests in the package that we received that go to the water agency and others and we cannot -- there's nothing we can do about those.

JUDGE VALKOSKY: I understand.

MR. THOMPSON: We will be responding.

JUDGE VALKOSKY: Okay. Within the regulatorily permitted time?

MR. THOMPSON: Yes.

JUDGE VALKOSKY: For scheduling purposes, 40
one of the presumptions that we're going to bring
here today is if we started hearings about the 22nd
of March, which topics would be ready for hearings?
And it appears from discussions that we had earlier
that we would likely not be ready for air quality
water resources and biology; is that correct?

MR. THOMPSON: That's probably correct,
although we would hope that we could be very close if
not there on water and water salts biology. So we
will agree with you with the caveat that we may be
coming back saying that we're ready for water and
biology.

JUDGE VALKOSKY: Well, if you are coming
back one of the problems is that the Committee would
issue a hearing order and a notice of evidentiary
hearings by no later than March 2nd, and that would
be followed by pretrial testimony, and then the
hearings.

MR. THOMPSON: Right. My anticipation,
Mr. Valkosky, would be that if, for example, pick a
date March 15, it's all wrapped up, we would make a
filing to the complete saying we believe that this
one is ready for either adjudication or for hearing
with no contested issues outstanding. And then you
can issue whatever order on whatever dates for
hearing.
JUDGE VALKOSKY: So, what I'm getting is if we started hearings about the 22nd of March, we would not likely include the topics of air, Water, and biology.

MR. THOMPSON: I think that's right.

JUDGE VALKOSKY: That would follow at some point depending on the negotiations with the EPA, with the district, with Fish and Game, with CURE, and everybody else.

MR. THOMPSON: Right.

JUDGE VALKOSKY: Okay.

And presently it is uncertain how much longer those hearings would be trailing; is that correct?

MR. THOMPSON: That's correct, especially if we don't know if there are contested issues.

JUDGE VALKOSKY: Right. I'm just saying it's unknown at this time.

MR. THOMPSON: Right.

COMMISSIONER LAURIE: Mr. Hearing Officer, there has been a request to bifurcate issues; is that correct?

JUDGE VALKOSKY: There has not been. That suggestion -- that recommendation is contained in the Staff prehearing conference.

COMMISSIONER LAURIE: And the Committee has
not indicated whether or not in fact to do that?

JUDGE VALKOSKY: That is correct, Commissioner.

COMMISSIONER SHARPLESS: Okay. Thank you. What news do you bring, Ms. Mendonca?

MS. MENDONCA: Roberta Mendonca, public advisor. I've heard from the Los Angeles Water and Power, and they would like to proceed with their intervention. So I believe everybody has the documents, and it would be up to the Committee's decision.

COMMISSIONER SHARPLESS: Okay. Did they indicate the scope of the issue that they are interested in?

MS. MENDONCA: They were not able to be here today, and they have been having ongoing discussions with the technical staff, but they feel that these discussions are not playing out exactly the way they hoped, and so they feel the need to intervene at this point, with the hope in mind they can iron things out.

COMMISSIONER SHARPLESS: And this issue would be in what area?

MS. MENDONCA: It's dealing with where the water the power lines would be over their transmission lines.
COMMISSIONER SHARPLESS: So it's a power line transmission distribution issue?

MS. MENDONCA: It owns property adjacent to the proposed project, and has concerns that the way the interconnection might effect their transmission and public safety.

COMMISSIONER SHARPLESS: Okay.

MR. THOMPSON: We actually welcome this because what I just heard is there have been conversations about our project that we don't know about that have been going on between a utility and the Commission, and now that they are intervenors, we'll actually know what's going on with our project.

COMMISSIONER SHARPLESS: Okay. Well, Staff will have an opportunity to comment in a minute. I'd like to kind of go out of order and bring up the ISO, since I think they are rather brief, and I'd hate to have them sitting through lengthy testimony if they can get theirs on the record, and get them out the door.

COMMISSIONER LAURIE: Commissioner Sharpless, I have something that is approaching the bench. I'd like to ask a question.

COMMISSIONER SHARPLESS: To who?

COMMISSIONER LAURIE: Well, to you.

COMMISSIONER SHARPLESS: Sure.
COMMISSIONER LAURIE: And this goes to the issue of intervention. Any person has a right as a member of the public to participate in our public hearing process. Any person has a right to make requests of us, the Committee, for certain information. For example, any person can say, "We think it serves a public interest to get this information from the Applicant. Will you please ask for it?" They are free to. We are then free to ask for it, I suppose.

Parties seek intervention for other reasons so that they can assure themselves of those discovery rights, that is given that any member of the public can ask us to obtain information from any of the parties.

COMMISSIONER SHARPLESS: I think it has more to do with the ability to submit testimony and to cross-examine, but since I believe we have procedures and rules about intervenors, I would look to Ms. Hough to answer Commissioner Laurie's question, 'cause I don't makeup that whole cloth. It is established.

MS. HOUGH: The section in the Commission's regulations on obtaining information allows other agencies to have the same rights as parties with respect to obtaining information. Typically, parties
intervene because, as Commissioner Sharpless pointed out, they want to participate further in the adjudicatory process. They may want to cross-examine. They may want to put on witnesses and write briefs and file motions. In order to do those types of things, they need to become parties.

COMMISSIONER LAURIE: Any person can submit testimony? Any member of the public can submit?

MS. HOUGH: They can submit public comment, not necessarily submit testimony. I think Mr. Valkosky is the person that should respond to these questions.

JUDGE VALKOSKY: Public comment cannot support finding, only testimony under oath or affirmation can submit testimony. You must be a party or an intervenor.

COMMISSIONER LAURIE: And is testimony sworn?

JUDGE VALKOSKY: Testimony is sworn.

COMMISSIONER LAURIE: In our rules regarding intervening status, there is no statutory criteria; is that correct?

JUDGE VALKOSKY: The regulation essentially provides that a party -- a person has a right to file petition to intervene up to 30 days before the commencement of evidentiary hearings. The Committee 46
then has the option of granting that petition to the extent it deems reasonable and relevant. If a petition is filed after the 30-day date, the Committee has the discretion to bring up that petition to the extent it deems reasonable and relevant, if in its opinion good cause is shown for late filing.

COMMISSIONER LAURIE: Thank you. Thank you, Commissioner Sharpless.

COMMISSIONER SHARPLESS: We will then be receiving LA Water and Power's petition?

MS. MENDONCA: Thank you.

COMMISSIONER SHARPLESS: Okay. There he is.

MR. SPARKS: I'm Robert Sparks of the California ISO. As we indicated in our --

COMMISSIONER SHARPLESS: You're tall and the microphone is not. Thank you.

MR. SPARKS: As we indicated in our prehearing conference statement, Cal-Iso believes that the transmission energy portion for the High Desert Power Project is ready for hearings, and the California site Edson performed a California impact study for the project, and we can use the study and concur with finding, and we are ready to provide testimony for the hearings.
COMMISSIONER SHARPLESS: Okay. And did you indicate who would be the --

MR. SPARKS: We have Steve Mavis who is listed -- who is my supervisor, and I have down that it's not a great deal of trouble to perhaps substitute for him, if I substituted for him.

COMMISSIONER SHARPLESS: All we need is a resumé.

JUDGE VALKOSKY: Yeah, we would like a resumé establishing your qualifications, basically, your familiarity with the stipulated and I presume, and correct me if I'm wrong, you would be offering as an exhibit your October 8th, 1998 determination.

MR. SPARKS: Yes.

JUDGE VALKOSKY: And how long do you think that would take you to prepare testimony, 'cause typically what we do is have it filed between somewhere between 7 and 10 days in advance of the hearings.

MR. SPARKS: I think two to three weeks would be sufficient, even with a decent workload.

JUDGE VALKOSKY: Okay.

COMMISSIONER SHARPLESS: I think that's it.

Thank you.

MR. THOMPSON: Applicant appreciates Cal-ISO's offer including to place their material
into the record. I think it's very helpful.

COMMISSIONER SHARPNESS: Okay. We'll go with Staff.

MR. BUELL: Good morning, Commissioners.

I'd like to turn your attention to Page 3 of Staff's prehearing conference statements. On that page we have identified 16 areas that we believe are ready to go to hearing at this time.

I would like to note about that list that we received pursuant to workshop discussions, CURE's comments on our Staff assessment, and they've made a comment on a number of areas, and Staff has not had a complete opportunity to review all of CURE's comments, but we do believe that in the most cases on those areas they are commenting listed on Page 3 on public health, for example, waste management, land use, cultural resources, social economics, and reliability, that staff would be able to prepare errata that within two weeks and proceed on those hearings on the topic areas, the 16 areas.

COMMISSIONER SHARPNESS: Would you go over the errata list again?

MR. BUELL: The areas that we received comments from CURE on, relative to those 16 areas are the again: Public health, No. 2; waste management, No. 5; land use No. 6; cultural resources, No. 10;
social economics, number 11; and reliability, No. 14.

COMMISSIONER SHARPLESS: Thank you. And you are indicating a two to three week prepared?

MR. BUELL: I think we can do that in two to three weeks, in the form of errata or supplemental testimony.

COMMISSIONER SHARPLESS: Two weeks from today?

MR. BUELL: Yes. And I also note that the Applicant had promised to provide comments of a similar nature, and we have not received those as of yet. According to Mr. Allan Thompson, we should be receiving those in a day or so. And hopefully they are also in the nature of being able to respond in the form of errata.

COMMISSIONER SHARPLESS: On the cultural resources issue given the testimony from the Applicant regarding the pipeline and the time needed, how will staff deal with that issue?

MR. BUELL: I think that depends on exactly when we'll be able to receive from Southwest Gas.

COMMISSIONER SHARPLESS: So does your two weeks on cultural resources assume that you will or won't have that information since we've heard that you won't.

MR. BUELL: I think I haven't really
thought about cultural resources sufficiently.

Perhaps we ought to take that off the list for
evidentiary hearing, only because we haven't received
that information. It would be difficult for us to
anticipate how much work it would be to incorporate
that information at this time.

COMMISSIONER SHARPLESS: Okay.

MR. BUELL: There's two other areas that
I'd like to address that we will be providing errata
to, and those two areas are facility design and
transmission on engineering, but this has to do with
the assessment of the comments that we understand the
department -- that the gas will be providing relative
to their transmission lines will be crossed by the
projects, the transmission line, and the second
natural pipeline. So there's two other areas that
will be providing errata to, that's facility design
and transmission engineering, in response to LAPWs
comments.

COMMISSIONER SHARPLESS: When?

MR. BUELL: I believe we can do that within
two weeks again.

COMMISSIONER SHARPLESS: Okay.

Have they already submitted something in
writing?

MR. BUELL: I've seen that the public
advisor has a letter of intervention from LAW. I have no seen that yet, that's the extent of the comments. Our Staff have talk to their staff, and as of this morning, I thought we were in agreement on what changes need to be made in order to address their concerns, however, the LAW does not apparently agree with that.

COMMISSIONER SHARPLESS: So it's in been in the form of conversations, and based on those conversations you've come up with an estimate of two weeks to address those issues, but since you now heard that they want to be intervenors, perhaps that estimate is in need of revision.

MR. BUELL: I think based on the nature of their concerns, my experts have told me that it's a simple fixture that they have an address to their concerns. I would be surprised it took any longer than two weeks to prepare an errata.

COMMISSIONER SHARPLESS: Does this need to be noticed to other parties?

MR. BUELL: Certainly, Staff would provide.

COMMISSIONER SHARPLESS: Perhaps served.

Maybe I'm not using the right term. Does this need to be served to the other parties, even before you do the analysis?

MR. BUELL: Staff can prepare reports of
conversation that we had to LAWP, and we can file
those as soon as today, I presume.

COMMISSIONER SHARPLESS: Isn't that proper
procedure?

MR. BUell: Yes.

COMMISSIONER SHARPLESS: Good. So your
estimate on the 16 issues, you say two weeks for
everything, but perhaps cultural resources, that
brings us to the beginning of March.

MR. BUell: Yes, I believe so.

COMMISSIONER SHARPLESS: Okay. Why don't
you go to the next area.

MR. BUell: There's two other areas that
we've discussed today that I'd like to add to those
lists of areas that we believe are ready to proceed
to hearings, and that is alternatives. Staff
believes that our testimony is complete as prepared,
and also the compliance plan that wasn't identified
in that list. And I don't believe any parties have
provided any comments on the compliance plan, so that
should be an uncontested area. Moving along to those
areas that we believe are essentially controversial
and will require additional time in order to reach a
conclusion. We believe those are the areas of air
quality, water supply, and water resources,
biological resources and hazardous material handling.
I would note on hazardous material handling, we received extensive comments from CURE this morning regarding haz mat or hazardous material handling, that we think will take more than two weeks to prepare a response to. In our prehearing conference statement, we identified that we thought it would take two weeks to respond to those after seeing the comments. We believe now it's more like a month, given resource and staffing constraints and the nature of the comments.

COMMISSIONER SHARPLESS: Is this to deal with the transportation of hazardous materials?

MR. BUELL: Transportation of hazardous material, specifically ammonia and also concerns about ammonia releases as a result from the storage tanks on site.

COMMISSIONER SHARPLESS: So what's your estimate on that for the hazardous?

MR. BUELL: I believe we'll be able to provide supplemental testimony in about a month from one month up to from today.

Regarding air quality, we had identified in our Staff assessment on Page 3, seven bullets identifying the issues that we believe are associated with air quality. And I will note that as with Mr. Tom Barnett, that we had made areas to resolve...
that. We can take three bullets off the list, but there are still four areas under the topic of air quality that still need be to be resolved. Those areas are the determination of the air pollutant offset ratio. We also note that South Coast still needs to approve any basing process that is part of this project, that USEPA also needs to approve that. And there's an issue related to reasonable, available control technology adjustment of the emissions reduction credits that are being provided for this project. That still needs to be addressed. It might be a minor issue, but it still needs to be addressed.

And lastly, there's a question regarding the validity of ERCs or emissions reduction credits from the George Air Force Base closure that needs to be addressed. We have scheduled as Tom Barnett indicated, a workshop on March 2nd to discuss with USEPA, ARB and also district Staff on how to primarily address the issue of interpollutant offset. We're not sure at this time how long it might take to actually resolve that issue. It is our understanding that based on discussions with USEPA today that they are in the process of preparing a recommendation on how to address -- come up with an offset ratio for interpollutant offsetting. That could lead to a
simple analysis. It could be done within a couple of
weeks to something that might take us a substantial
longer time. So we have no real estimate on when it
will be ready for hearings on the subject of air
quality. In addition, there's the other three issues
that still need to be addressed prior to reaching a
final recommendation on air quality on this project.

COMMISSIONER SHARPLESS: Before you go off
that, we heard the Applicant say that they felt as
though -- they thought they could resolve these
issues within a meeting on March 2nd with USEPA, so
they thought -- yeah, they thought at the end of the
month in order to carry out the processes. You
mentioned something about South Coast Air Quality
Base or South Coast Quality Air District meeting to
do something. Is this a board action? Is this an
administrative action? How much time does it take?

MR. BUELL: I believe it is an action that
their executive officer can perform, and their rules
require them to approve the use of interbasin offsets
that they are providing to another district. So they
would have to -- the executive officer would have to
make a recommendation of approving.

COMMISSIONER SHARPLESS: A recommendation
or just do the approval?

MR. BUELL: An approval.
MR. BARNETT: I'm sorry to interrupt. Our understanding is that that may require board action. We're not sure that that has been delegated.

MS. HOUGH: The statement that that was delegated was something from the last workshop, so maybe it's been updated since then.

MR. BARNETT: Sorry.

COMMISSIONER SHARPLESS: So depending on the outcome of interpollutant ratio and trade issues and the type of analysis, you think it could take two weeks -- what is the outside of what you think the other end of it? Our staff would be doing it, right.

MR. BUELL: I think it would depend on a number of different factors on exactly the type of analysis this EPA would recommend. Certainly our staff is willing to contribute their resources to resolving this issue. It may require expertise beyond the currently capabilities of Staff.

COMMISSIONER SHARPLESS: And where would we get them?

MR. BUELL: Initially, rely on the Air Resources Board and the USEPA to rely on that expertise.

COMMISSIONER SHARPLESS: Okay.

MR. BARNETT: I would hope that the
COMMISSIONER SHARPLESS: Of providing
input?

MR. BARNETT: Right. I think these are
actually district issues.

COMMISSIONER SHARPLESS: Well, all of these
issues become CEC issues, whether they are being
handled by district interpollution trade, they become
the mitigation package. So what they do effects what
our judgements are on this case.

Okay. Now, water is the next one, I
believe.

MR. BUELL: Yes. Regarding water, we
believe that there's three outstanding issues on
water. I agree with Mr. Tom Barnett again that we
are making significant progress on how to deal with
some of these issues, but we're just now seeing the
tunnel -- not the light at the end of the tunnel, is
the way I refer to it. The three issues that need to
be addressed concerning the effectiveness of water
storing for the project -- ground water storing, that
is, that would be used to offset any ground water
impacts resulting from the project pumping ground
water.

The second issue deals with water quality
of that water to be injected. We believe that we can
work with Mohave Water, Regional Water Quality
Control Board staff to prepare the conditions to
address that.

And the third issue has to do with the
availability of State water project water. We
believe that Staff needs to do additional analysis to
address that issue. And lastly, Staff has indicated
a desire to supplement our analysis on dry cooling
that would help address -- provide the community with
additional information on that option in order to
mitigate the project's impact.

COMMISSIONER SHARPLESS: Could you --
Mr. Buell, could you, on the issues that you've just
outlined, give us an idea of where we stand on each
one of these? I know that in your submittal to the
Committee, you are talking about the Staff doing the
analysis on the dry cooling issue. I'm looking for
what you indicated as the amount of time that it
would take to do that.

MR. BUELL: I believe that we could address
all three of the issues that we've identified on
water within two months of today's date. One of the
reasons why we don't -- aren't as optimistic as the
Applicant is whether or not we can resolve that at
the workshop if we continued to the 26th of this
month, is that we have not had an opportunity to
review all the information that the Applicant can
provide to this process. One of the things that's
outstanding at this point are known as pump tests
that the Applicant has conducted. On the wells in
the project area that would help define the aquifer,
and thereby help us to determine the appropriate
mitigation measure for the project. Without that
information and without having seen that information,
we're reluctant to say that it is a slam dunk to
resolve the issue.

COMMISSIONER SHARPRESS: I'm going to raise
another issue and that is under "write up." You
indicate that the La Hontan Regional Water Quality
Control Board initiated a review, but subsequently
decided to defer issuance of the decision until after
the Energy Commission decision on the AFC. What
problems does that pose for us?

MR. BUELL: I think this is a situation
that's similar for all the water agencies that are
involved on this project, is that in reality the
Mohave water agency and also the Victor Valley Water
District is reserving their final judgment on the
project until they see our CEQA documentation for the
project.

In the case of Mohave water agency and
Victor valley water agency, they've given us their
preliminary conditions that they would believe appropriate to mitigate the project. The La Hontan water agency has not done so. Staff believes that we can prepare the conditions that would meet the La Hontan requirements, and we don't believe that it's a significant impediment to proceed with our analysis at this point.

COMMISSIONER SHARPLESS: How do we do that, by working with La Hontan?

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: So while not giving final approval of it, they will have a part in guiding the mitigation of discussion?

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: Commissioner Laurie, any comment? Okay. So we have a slight difference of opinion on how long water is going to take at least from two parties. Biological resources?

MR. BUELL: Again, there are two issues that have to do with biological resources, although the Applicant is correct that a substantial portion of the biological issues associated that remain to be resolved deal with the water supply for this project. There are also issues that Staff believes that need to go back and revise our conditions of certification
to reflect documents that we received from various
comments on the SA at the Staff workshops, and so
there's more than just simply responding to the water
issues that needs to be done. And I think we have
identified that it would take --

COMMISSIONER SHARPLESS: You say an
additional one month?

MR. BUELL: Yes, that's correct.

COMMISSIONER SHARPLESS: You already
covered the hazardous materials management earlier
on, so now we're more or less into issues of witness
identification, exhibits and schedules. Stan?

JUDGE VALKOSKY: Mr. Buell, so that I can
be sure I have this, it's about a month for biology
before you can submit errata to this assessment?

MR. BUELL: That's correct to the extent
that there's water issues that we talked about also.

JUDGE VALKOSKY: Right. And a month for
hazardous material handling?

MR. BUELL: Yes.

JUDGE VALKOSKY: Supply supplemental
testimony on air quality?

MR. BUELL: Not at this time. I think we'd
be better to advise the Committee after the workshop
on the 2nd.

JUDGE VALKOSKY: And then your prehearing 62
conference statement you indicated about two months
for that? You would need to work out closed
conditions with La Hontan; is that correct?

MR. BUELL: Yeah.

JUDGE VALKOSKY: So that April 9th date is
still good?

MR. BUELL: Yes.

JUDGE VALKOSKY: Yes. And that you would
not know cultural resources until you received the
additional material from Southwest Gas, right?

MR. BUELL: That's correct.

JUDGE VALKOSKY: Mr. Thompson, I indicated
some areas before which did not appear ready for
hearing that were before the Commission too, is that
right around the 22nd? I guess I'd have to get
cultural resources to that pending the report from
Southwest Gas.

MR. THOMPSON: I think there's some
confusion probably brought about my misunderstanding
of where the cultural and Southwest Gas situation fit
in. Over my shoulder came, while I was sitting here,
a cultural resources assessment of the Southwest Gas
pipeline. This is going to be filed, I believe,
under confidentiality today, and hopefully this will
resolve the cultural issues that are outstanding. I
had previously thought that the cultural issues were 63
tied to the Southwest Gas testimony on operations, but I have since been informed that I was incorrect, that those are really more of biology type questions.

JUDGE VALKOSKY: Is this the cultural material that Mr. Provenza was speaking about earlier or not?

MR. PROVENZA: Shall I?

MR. THOMPSON: Yes. I'm clearly not helping.

MR. PROVENZA: Yes, sir. And to add further clarification, I also received a report of that. As I said, I was at a meeting yesterday. I had not had the chance to review it or was not aware of the significance of the report as it pertains to this conference that we're having today, and that is what we would like to submit today.

JUDGE VALKOSKY: Okay. So there will not be additional material coming in a month or so?

MR. PROVENZA: There will be some other studies done, but it will not effect this report that would be submitted today.

JUDGE VALKOSKY: Thank you.

MR. WELCH: I believe this is the information that was talked about at the workshops last week, and after those workshops is when Staff listed cultural as being closed because they were
expecting this information.

JUDGE VALKOSKY: So cultural -- Staff will receive it today. And how long Mr. Buell?

MR. BUELL: I believe that we can provide any supplemental or errata to the cultural resource testimony within two weeks, so I would again include that in the issues ready for hearing.

JUDGE VALKOSKY: Thank you.

MR. WELCH: Just to add, Staff will be receiving it tomorrow. We still have copies of it to make.

JUDGE VALKOSKY: I'm sorry, tomorrow.

Mr. Buell, you indicated that there was some difficulty with the working conditions out with the La Hontan Water Port. Do we not have any memorandum of understanding with the State Water Board?

MR. BUELL: Yes, I believe we do an MOU.

JUDGE VALKOSKY: Does this not specify certain times and usage of documents by the respective agencies?

MR. BUELL: I believe it does.

JUDGE VALKOSKY: Is this an indication that that MOU is not working or is it an indication that it is working?

MR. BUELL: I'm not familiar enough with that one to say if it is or isn't working or exactly 65
what the nature of the problem is, in this case, to
comment on the MOU.

JUDGE VALKOSKY: Just wondering because
that may be something that certainly the siting
committee may be interested in if there's some
improvement to be made.

I would also note that when you submit your
testimony on water resources, at least your staff
assessment does not have a resumé for Lou De Bond.

MR. BUELL: We'll correct it.

JUDGE VALKOSKY: Okay. Dry cooling
analysis. How long will that take? Is that also
expected by April 9th?

MR. BUELL: I believe all the issues under
the topic of water resources that we have identified,
we are prepared to provide testimony within two
months.

JUDGE VALKOSKY: April 9th. Thank you.

MS. HOUGH: Excuse me. I would just point
out that we didn't really resolve the question of
whether the supplemental testimony in haz mat, since
we're calling it supplemental testimony, I'm assuming
that it's got to be filed 14 days prior to hearing
consistent with the Commission's regulations. I just
raise that as an issue in terms of scheduling.

JUDGE VALKOSKY: Right.
MS. HOUGH: And that won't be available for another month.

JUDGE VALKOSKY: Or apparently another month.

MS. HOUGH: So you were starting to bump up against your hearing dates?

JUDGE VALKOSKY: Exactly. So haz mat, cultural, air quality water resources, and biology are not, in Staff's opinion, ready to proceed to hearings.

COMMISSIONER SHARPLESS: Okay. Why don't we go to CURE. Yes, Mr. Barnett?

MR. BARNETT: I thought we were just determining that cultural was ready to proceed? In other words with the documentation they will receive tomorrow, that they would only need two weeks.

COMMISSIONER SHARPLESS: Yeah, I think he misspoke.

MR. BARNETT: Okay. I just wanted to make sure.

COMMISSIONER LAURIE: Commissioner Sharpless, if I may? Mr. Buell, can you take a moment and describe to me your working relationship with other state agencies such as Fish and Game? How does that work?

MR. BUELL: Staff generally works with
other state agencies -- local agencies to work out
the details, understand the issues that they would
otherwise have addressed in lieu of the energy
commission staff or energy commission process.

Can I be more specific?

COMMISSIONER LAURIE: What I'm ultimately
trying to get to, and let me not refer to Fish and
Game, let me refer to state agency X, what can state
agency X practically do as a formal party that they
should not be able to do by working as a associate
agency with Staff, that is, if some state agency has
a series of issues and you're made aware of those
issues, is it not incumbent upon you to bring those
forward and seek resolution?

MR. BUELL: Yes, Staff would certainly
believe it would be appropriate for us to present
issues that other state agencies identified on the
project, and certainly we could call in our own
witnesses if we felt that was appropriate. However,
calling another state agency as a witness doesn't
necessarily provide that agency an opportunity to
pursue the issues on its own behalf.

COMMISSIONER LAURIE: No, not on its own
behalf, is the State's behalf, is it not?

MR. BUELL: Yes.

COMMISSIONER LAURIE: Thank you.
COMMISSIONER SHARPLESS: Why don't we move down the line. Next, we'll go to CURE.

MR. JOSEPH: First, I wanted to welcome Tom Barnett to California and I hope long term here is long and fruitful.

COMMISSIONER SHARPLESS: Perhaps he would like to be short and fruitful.

MR. JOSEPH: I heard he's buying a house. First, I'd like to address the issues, which there seems to be general consensus, and are not ready for hearing at this time, at this point, starting with air quality and the issue of offsets. These issues fall into two categories. First, it's the interpollutant offset process. We would be acquired from the South Coast Air District. I think that we're more inclined to agree with the Staff's assessment that it's too soon to tell that on the meeting on March 2nd that Mr. Barnett suggested, that would lead to a path of resolution or not. This is a brand new novel, never done before concept and as a concept of interpollutant interbasin trading. It's an important issue. It may set a precedence for many other projects, and I know that EPA is concerned about the precedent we will be setting, and there are very nontrivial issues to determine the technical justification for this sort of an offset protocol.
We submit it in our comments on the PDOC an analysis by someone who I think is regarded by one of the foremost experts in modeling this thing, and he outlined the protocol which ought to be followed to produce modeling which would technically justify one ratio as another as the appropriate ratio, and at this point we believe that that is the required protocol that needs to be followed.

COMMISSIONER SHARPRESS: Who is this?

MR. JOSEPH: His name is Tom Tershy. And he is referred to in our prehearing conference statement. His resumé is there. He has worked extensively with the Air Resources Board in the past. So I think that's very much an open question as to what the appropriate path will be to resolve that. And then moving along that path will be the next step.

Second, with regard to the question of the South Coast Air District Board approval of these offsets, within the last couple days we have talked to the legal staff at the South Coast Air District. They have confirmed this is, and actually is an action has been taken by the board. It has not been delegated to the executive officer and it does require board action. It also requires an application which they have not yet received, so
there is some time period required even when it's
determined what the quantity of offsets needs to be.

The second ERC issue of course is the
validity of the offsets from the disclosure of the
air force base. EPA, ARB and Staff, we have all
submitted comments saying that these offsets are not
valid to be used in the way they are proposed to be
used. And I don't even see at this point anything in
progress to resolve that issue. There's simply is
statements from all of the expert agencies commenting
on the PDOC saying these aren't valid.

Now to sort of wrap up on the air issue. I
think it's anybody's guess when and if these issues
will be resolved, and I fully sympathize with
Mr. Buell's estimate of when these will be given an
appropriate response. It's not possible to determine
whether this project will be able to acquire offsets
that EPA will approve which will allow the project to
go ahead, and as previous speakers have acknowledged,
these do require EPA's approval before the offsets
can be approved.

Moving on to water, we are also somewhat
less optimistic about a quick resolution to the water
supply issue. At the last workshop on Tuesday in
Victorville, Staff came up with a new idea on how to
deal with some of the issues having to do with
banking water. It is a new idea. It needs some examination. We are currently thinking about it, and our experts are reviewing that information, that concept. It's not certain. I think it's premature to conclude that this brand new idea solves the problem. There are just a raft of issues dealing with this water banking concept which aren't amenable to quick solution. Even with best efforts, they are technically difficult issues with the geology, and the ability of the area to hold the water, the ability to hold the interaction with the Mohave River, and the effectiveness of conditions which it require, Mr. Welch said that don't overdraw our account. It's a difficult concept. Whether it can be done is not yet certain.

Now, if I could, I'd like to move on to the questions of biology specifically with regard to the 32-mile pipeline. Commissioner Laurie, we agree entirely with your idea that this can't be -- in CEQA terminology peacemeal -- from the project. This is part of the project. I think we do disagree with the characterization as this being a chicken and egg problem. And the Committee -- I believe the last time the committee met in the Victorville City Hall, had the concept of EOM meeting to do it's -- to carry out its obligations under NEPA came up, I said at
that time that the appropriate process was a joint EIR/EIS process, which takes care of the chicken and egg problem. You get both chicken and egg at the same time, and we still believe that that is the appropriate process to avoid this problem, and creates certainty when you reach your decision that your conditions of certification are the only certification which will be required by all of the effective agencies.

There's another important issue with regard to the pipeline which has not yet been discussed today, and that is EOM's legal authority to issue the right of way permits. As you are probably aware, CURE filed a 60-day notice to intent to sue BLM because the plan under which they designated the utility corridor as the utility corridor required consultation under the endangered species act with the Fish and Wildlife Service, and BLM has not done that consultation. So it is at this moment beyond the legal authority of BLM to issue permits under that plan until that plan becomes a legal plan upon which to rely.

We filed a 60-day notice in mid December. Yesterday was the 60th day. Yesterday we received a faxed letter from BLM responding to the 60-day notice. They beat close of business by six hours.
So 59 days, 18 hours after the notice went out, we got a response. We are still reviewing that response. I do note that one of the statements in their response is that they say under no circumstances would we consider a right of way grant before October 1999. So in terms of your scheduling, that's what BLM says about their schedule.

COMMISSIONER LAURIE: How much time do you have to file?

MR. JOSEPH: The 60 days is a prerequisite, which we are not allowed to file. We can file after the 60 days. We have not determined what we're going to do.

COMMISSIONER LAURIE: So you don't have to file the next day after the 60 days?

MR. JOSEPH: No. So that's the status of that issue. Now, with respect to the hazardous materials --

COMMISSIONER SHARPRESS: Maybe before you pass me on that issue with respect to the BLM, given the issue is on the table, is there any movement on their part to consult with Fish and Wildlife Service on the California Desert Conservation Plan?

MR. JOSEPH: There's actually a long and tortured history of BLM's actions on this. And I can't give you a full recitation on it. The plan has...
a variety of some parts which are in varying stages of interaction and consultation. I've read their response letter once now, and it's my understanding after one reading is -- they are saying, "We don't actually intend to complete the consultation because we're doing something else instead." And I don't quite understand what something else is at this point.

COMMISSIONER SHARPLESS: Doing something else regarding the project?

MR. JOSEPH: Regarding the plant. And they are sort of saying that what I understand from this letter is they don't intend to do the consultation, because they are taking other actions that should replace the need to consult. But they also site their resourceing constraints in being able to get to the point of having a valid plan. So I can't make any projection about when they would come into compliance.

With respect to hazardous materials, we appreciate the Staff's response. We are hopeful that Staff's revisions to its testimony will fully satisfy the issues that we raised, and I should say that from a general manner, we hope to get to the point where we have no testimony because we end up agreeing that everything that Staff has. And on many issues that
clearly will be the case and on the unresolved issues we have to see where that goes. And what we put in our prehearing conference statement is where we would be today. Now, with respect to the other issues, the list of 16 which has both grown and shrunk a little bit, for six of those issues, I think it is actually premature to proceed to hearings on those because one of the outstanding issues here is whether or not this project will be required to implement dry cooling rather than the water plant they are currently pursuing. It is certainly possible that the Commission will find that this project will cause several significant water supply and water quality impacts, which require mitigation. And that the feasible mitigation measure which the Commission is either obligated to or decides to select is dry cooling. We have indicated that we believe that that is a feasible mitigated measure both technically and economically and we think it's, as well, it entirely eliminates a great number of issues which resolve ground water supply, and in particular, it also addresses a cumulative water supply that this Commission needs to be concerned with, given the great number of power plants that are passing through this building.

Given the fact that dry cooling is
certainly a live possibility at this point, if that
were to be adopted as a mitigation measure, that
would effect the analysis in several of the other
areas which are otherwise uncontested and resolved.
Now, I'm not suggesting that any of these areas would
ultimately be contested areas, but the analysis would
be different, and in most cases the project would
show that it has less impact. The switch to dry
cooling would affect the public health analysis, No.
2 on the Staff's list; waste management issues, No.
5; noise, No. 8; visual impacts, No. 9; and facility
design, reliability, and efficiency, 13, 14 and 15.
Most of those areas would be effected in a beneficial
way, but they would be a different analysis.

And finally -- it's a semi-housekeeping
matter -- we have sent to the Applicant requests
specifically regarding dry cooling, responses to
which are due March 15th.

Commissioner Laurie, you raised the
question whether or not a decision has been made to
bifurcate or not, and it hasn't been made to
bifurcate. Frankly, I don't see what's gained by
going through the exercise of having hearings on
areas for which there is no disputed issue and doing
that in advance. It seems to me that the hearing
time I'm at which ought to be relatively short, there77
is probably going to be no cross-examination. And I'm not sure what is gained by gathering us all together to go through that exercise when there are still significant other areas which are unresolved which effect the viability of the project and which perhaps will result in taking the lion share of the hearing time. I don't know what we will gain by going through the exercises of any of the other issues.

COMMISSIONER SHARPNESS: Staff may need the proposal back. If we do go forward with the 16 or now 15 taking out cultural resources -- Staff, would you like to respond.

MR. BUELL: I think we agreed to put cultural resources back in.

COMMISSIONER SHARPNESS: I'm sorry. I've got it circled in my book. Okay. 16. The primary issue is not cultural resources. The primary issue is going forward on issues that seem to be resolved.

MR. BUELL: I'd also note that we added two issues to that list of 16, and that's alternatives and compliance.

COMMISSIONER SHARPNESS: Fine. Add to the list, but answer the primary question, please, Mr. Buell.

MR. BUELL: I will. I think the value of 78
going forward on these issues is that at some point
in these processes, that we will have to hear
evidence even if we came to a conclusion to recommend
denial on these projects. And that it would be
beneficial to get those issues out of the way, if you
will, at this point in time since we have in our
substantial agreement in those issues with the
Applicant, and for the most part with CURE on many
points. So we believe that there's a benefit in
going forward at this time.

COMMISSIONER SHARPLESS: What's the
latitude if we do go through and establish a record
that the analysis and the mitigation is appropriate
for this project, and then approve something like dry
cooling that would change the impacts? What is the
approach?

MR. BUELL: I would suspect that we -- and
Staff maybe required as other parties will be
required to file supplemental testimony at that point
in time to address that. There's probably one other
area that we identify that CURE didn't identify that
would have to be addressed and that's visual
resources.

COMMISSIONER SHARPLESS: They did.

MR. BUELL: Sorry. I missed that on the
checklist.
COMMISSIONER SHARPRESS: Would you like to address the issue?

MR. THOMPSON: Thank you. I believe the number is 18 areas of substantial agreement between ourselves and staff. And I clearly believe that we should go forward and hear those issues, and there are a couple of reasons that I think are fairly compelling. Number 1 is that in this calendar year, you will see more applications, I suspect, then at any time possibly in the history of the commission. It makes sense to me to start the record and have testimony sworn to and areas of testimony in close, so the committee and ALJ Valkosky could have more freedom of when to write, when should I sit down and start going through this, rather than to wait until all issues are resolved, or until we determine that there are unresolved issues that we have to come in front of you for adjudication. Seems to make sense. Number 2, there are a number of parties who are not sitting at the table right here that may or may not agree with our analysis that areas have been put to bed. There are intervenors such as Mr. Ledford and Fish and Game that may indeed not share the view of Staff and Applicant that these issues are resolved. Scheduling hearings and
scheduling them early would flush that out and we
would see that if, indeed, all parties agree on those
areas. So I would recommend that we go forward.
With regard to other issues, it may well be that we
bring issues to this Committee. It would not
surprise me, for example, the union suggested this
Dr. Tershy's -- that we delay until Dr. Tershy's
material can be incorporated. We don't agree with
Dr. Tershy. He's a brilliant guy. He's done great
modeling, but the model we used is approved by South
Coast and ARB, and that's the one that we probably
think is the right one. That maybe the one issue we
bring for adjudication, whether or not you are going
to adopt CURE and have us remodel and have somebody
else model. There maybe issues like that.

I'd love to be able to tell you that every
issue is going to be resolved by the time we get
here, but I suspect that that may not be the case.
So I think the sooner we start on those areas, the
better off we are.

COMMISSIONER SHARPLESS: When you look at
some of the analysis that might occur after some of
these earlier issues might be discussed and records
built, and mitigations made and then new evidence
comes up that might change the analysis and
consequently the mitigation -- I'm just using this as81
an example, dry cooling -- might make the analysis
look better, and change the mitigations. What's your
feeling about opening items? You made a statement
earlier about closing items and sticking with the
approval. In this case, it could be that later --
issues that we put off until later effect the issues
that we have gone through other evidentiary hearings
on. What is your feeling about reopening those
issues?

MR. THOMPSON: I think when parties sit a
at this table and have no interest in seeing
resolution of issues and closure of issues, there is
always the possibility that new, quote, "issues," end
quote, are going to come up. I mean dry cooling is a
pretty good example I believe it was almost a year
ago that we submitted responses to data requests.
The union now has new data requests as follow up to
those responses of a year ago. This shows me that
there's less interest in interest resolution than
harassment, and that's something that I suspect that
the Committee may have to deal with.

We don't think dry cooling makes sense
economically. We don't think it's the right
geographical location for it. But I don't think we
should hold up hearing the issues based upon -- and I
guess this is styled as mitigation and not as an
alternative -- based upon something that staff or
some other party may think is the right idea for us.

COMMISSIONER SHARPLESS: See, the point is
not that one. The point is when you adjudicate or
have an evidentiary hearing that has all of the
issues that you can start with water and air and
biological issues, and let the rest fall out from
there because they would have an impact on it, and
it's not a question of whether somebody is trying to
harass. It's really a question of evaluating the
options, assessing the information. You may be a
hundred percent right, that might be the conclusion,
but then the rest of it follows. The rest of the
mitigations and the rest of the analysis follows.
When you do it in reverse, it's almost as though if
in fact dry cooling becomes an option in the record
that the Committee has to decide upon based on what's
in the record, the testimony, the expert witness
testimony, then we don't want to be foreclosed from
allowing the entire project to resemble what the
various elements are. So I can see your point
definitely about moving through the items that have
been agreed upon, but the problem is that the
major -- the big items have a great impact on the way
this facility is going to operate. So it really is
sort of a -- I think it's something that the
committee has to weigh. It has not made a decision on this, that's why Commissioner Laurie keeps raising the issue of whether the decision of bifurcation has been made, and that's why he keeps raising it, and that's the purpose for today -- part of the purpose for today's preconference hearing is to get as much input on these issues as we can so we can make an intelligent decision on how to proceed. So I'm very interested in what you have to say and other parties have to say on this issue.

MR. THOMPSON: I don't know that we can never say with any certainty that, No. 1, we will not revisit areas that we thought we had resolved. But similarly, I'm not so sure that we can ever say that new issues are going to arise in the proceeding as we head along the pathway. There may be issues raised by certain parties that we thought we put to bed, land use issues or noise issues which can turn around and effect other issues that have been resolved or unresolved. And I'm suggesting that because of the interrelationships of many of the areas, when you make a change in the project, that we No. 1, that we start on the areas that we think we have resolved; and No. 2, we're not so sure that we see the impacts of the issues remaining to be resolved in the air and the water and the biology areas, being those kinds of
issues that will effect other areas. If a party, for example, disagrees with some aspect of the issues as we see them, we think that that disagreement would probably be confined to that area. If however, something like an issue such as dry cooling is put in front of you, you would have the evidence of ourselves and the parties advocating that. If you told us that we build our project with dry cooling or not at all, we would assess that. And if we came back and said, "We'll take the project with dry cooling," we would anticipate that other areas would have to be reopened, if you will to accept that, but right now that is not our proposal.

COMMISSIONER SHARPLESS: Okay.

MR. BARNETT: I'd like to add something to that. I've done it in a lot of other states. I'm very concerned that there are a lot of projects that have entered this process here in the latest process of deregulation of California and no one has made it through it yet, and there has to be a way --

COMMISSIONER SHARPLESS: I can speak to that because there's one that's going to be coming to the Commission very shortly. There are two others that are proceeding along fairly well. This one hasn't been doing so well for a variety of reasons that we don't need to get into, but don't imply that 85
this is a system that is constipated and can't get
projects out, because that is simply not the truth.
It is an illustration that the better the information
is at the beginning of the process, the more complete
it is. And the response of the Applicant to issues
means that the application gets through a lot faster,
and we've been able to proceed on this one.

Commissioner Laurie, do you have anything
to say?

COMMISSIONER LAURIE: Well, I've managed to
count to 7 or 8 and that was adequate time to
determine that perhaps I should not make a comment in
response to the most recent comment. I would respond
in saying as you and I don't think that question is
relevant to this proceeding.

I am interested in hearing from F&G.

COMMISSIONER SHARPLESS: Yes, we haven't
forgot F&G. Stan has a question of CURE before we
proceed.

JUDGE VALKOSKY: Mr. Joseph, in your
prehearing conference statement, you indicated that
based on this present Staff assessment, you may or
may not have a dispute on public health.

MR. JOSEPH: Well, let me back up with some
facts. Just the last week I believe we received
revised analysis of the health risk from the
Applicant. Perhaps it was earlier than that, but in any event we just completed reviewing that and it's our position at this point, which we included in the comments which we gave the Staff or will be giving to Staff today, that there would be a significant health risk as a result of sulfates generated from the wet cooling towers.

JUDGE VALKOSKY: So, in other words --
MR. JOSEPH: Whether or not we have disagreement, depends on whether Staff responses to the comment.

JUDGE VALKOSKY: So the bottom line is you don't know until you see Staff's.

COMMISSIONER SHARPLESS: I guess you are doing one in public?
MS. HOUGH: We don't know yet. We'd have to review these comments.

MR. JOSEPH: I don't mean to disagree with anything that Staff has said, but I have to disagree with one thing that Mr. Buell said. I don't think that if you were to conclude that there were no valid offsets for the project, that you'd have to hold hearings on all the other issues. I think if you can't meet your statutory obligation to find what the emissions will be offset then that's an adequate evidentiary basis to make a decision on.
COMMISSIONER SHARPLESS: Any comment by Staff?

MS. HOUGH: I hope it doesn't get to this.

COMMISSIONER SHARPLESS: Fine. Great. We'll be optimistic as the Applicants are, that upcoming meetings will be fruitful. We continue to desire that they are. We will continue to try to work with you, and we want to be able to incite a project that is both economical and one that meets all of the environmental requirements.

Now, we need to go to Fish and Game or F&G.

MR. BUDEL: If we might ask the Committee a question?

MR. DeSALVIO: Do you anticipate that you'll need the services of the district staff for the remainder of the day?

COMMISSIONER SHARPLESS: I don't think so. Any parties have any questions? Then I believe that you'll be able to -- we only have a couple of minutes, anyway.

MR. DeSALVIO: We'll have a better feeling of where we are at on March 2nd.

COMMISSIONER SHARPLESS: Thank you for coming here today. I know it's a long trip for you. Okay let's proceed here. Ms. Murray?

MS. MURRAY: My name is Nancee Murray from 88
the Department of Fish and Game. First off, we really don't have a submission on the 18 or 18 or so issues that may or may not be ready to go to hearing sooner rather than later. We have focused on just on the biological resources and water resources. And as to those two issues, we believe they are not ready for evidentiary hearings. As an addition, I think it might be procedurally easier to do all issues at once rather than bifurcate, but that's certainly up to you. And we agree with the Applicant's statement early that the biological resources and water resources are some way interrelated, especially as to our issues with the red pearing corridor and species are potentially effected by the ground water pumping. And there was a workshop earlier this week where we are continuing to make progress.

There is a new idea and I spoke to our consultant yesterday, and he is optimistic about that new idea and is still looking at it, and can make no comment or determination at this time as to the efficacy of this new water idea rather than a more complicated contour map and who is interfering where. It sounds much simpler, but we really don't know at this time if it will work.

COMMISSIONER SHARPLESS: So, are you also looking forward to the -- is it the February 26th
meeting where these will be discussed?

MS. MURRAY: Right.

COMMISSIONER SHARPLESS: And you'll be a full party.

MS. MURRAY: And we expect to make progress at the 26th. And I would hesitate to say that we'll have full resolution on the 26th, when it's all happening at the pretty quick pace, but I do expect that we would again make progress at the 26th meeting.

COMMISSIONER SHARPLESS: So someone within your department with what type of background is looking at the new idea?

MS. MURRAY: We have both a biologist and a hydrologist that were at the workshop two days ago and will be there at the 26th. And our consultant is a hydrologist with an engineering background.

COMMISSIONER SHARPLESS: I think you actually wrote that in your statement, didn't you? They were the two people, Rebecca Jones and Mr. Bemhin?

MS. MURRAY: Right, and I spoke to both of them yesterday and they were both cautiously optimistic and felt that there would be further progress on the 26th and were very open to this process, but not exactly sure of coming to a
resolution in the immediate future.

COMMISSIONER SHARPLESS: Stan, do you have any housekeeping --

MS. MURRAY: I would like to make a couple other points. First, we need to develop the mitigation, and then we need to develop an effectiveness monitoring plan. This is a new requirement under the endangered species act that just came into effect January 1st. And we plan and look forward to working with CEC Staff on developing a monitoring plan in compliance with CEQA, and then that would also take in this additional CESA monitoring requirement, and having that all part of the plan that is part of the permit.

COMMISSIONER SHARPLESS: The monitoring plan depends on the resolution of some of these other issues, right?

MS. MURRAY: Right. And the mitigation has to come first and be resolved. And really we have yet to finish an effectiveness monitoring plan because the biologists say, "What did the legislature mean by that? And we say, "Well, I guess we'll work it out." So if something we're struggling with and will work it out on a case-by-case basis.

COMMISSIONER SHARPLESS: What's your estimate once the mitigation is resolved for putting 91
the effectiveness monitoring plan together?

MS. MURRAY: I have one more factor that might go into the timing and I apologize for not addressing this in the preconference statement. I can only say that I've been so involved in doing the research for the brief that I forgot to mention it here, which is the Supreme Court case, the Mohave Adjudication versus Al Elonto [sic]. Fish and game was a party at the trial court and the court of appeal participated in the court of appeal, we and we are looking into the matter at the Supreme court level. I believe it's the biggest water case in the last 20 years, and certainly perspective ground water and possibly water rights all together. The briefs are due -- the final briefing -- the last brief will be due the first week of March. We expect oral argument either late spring or early summer and a decision this year. That is an extremely abbreviated time schedule for the Supreme Court, however, the justice that wrote the opinion 20 years ago, that was the last biggest ground water case, is still on the court case and is thinking of leaving and still wants to do this before he leaves. It's amazing.

COMMISSIONER SHARPLESS: How old is he?

MS. MURRAY: This was all rumor and I heard he's still there and wants to do this before he
leaves, but I don't know. So that gives us the reasoning for thinking that it will be -- it's on an accelerated track. It has been. They granted review within a month. I mean, that is unheard of timing. So we believe that that -- how that decision resolves itself at the Supreme Court could have an impact -- large impact on the Mohave River Basin and is statewide. That's why we feel that it's a very important state matter. And how that might effect the High Desert Power Project, is that it might effect Mohave's water agencies continued ability to collect assessments to buy the state water to work on their pipeline further for getting the state project water to the Desert area. If this Supreme Court agrees with the court of appeal, it could undermine the current adjudication greatly.

COMMISSIONER SHARPLESS: Would that effect old servers more than new customers?

MS. MURRAY: Well, it would effect everyone and it would effect anyone who is not a farmer that has property that he's pumping and serving to that overlying property. So it would effect any appropriate -- all cities, all areas that are basically not farmers.

COMMISSIONER SHARPLESS: And what would be the adverse outcome? Less water to be appropriated?
MS. MURRAY: The farmers would increase their amount greatly and all others would take a decrease.

COMMISSIONER SHARPLESS: Maybe you ought to make your plant into a farm.

MR. BARNETT: Looks better and better all the time.

COMMISSIONER SHARPLESS: Grow corn.

MS. MURRAY: So the department requests that any hearing on the issues of biological resources and water resources be delayed until the fall to give us time to work on the mitigation, work with Staff on the monitoring, and work with the Applicant on the monitoring plan, and give us time to have potentially have direction from the Supreme Court. Also, we feel that dry cooling is an issue that would be a good thing to look into and give us and give Staff time to look into, and us to respond.

Lastly, I just want to mention -- touch briefly on our petition to intervene. We did file it yesterday and we wanted to file it prior to this hearing today. And we wanted to file it prior to this meeting today in part to make sure that you understand that the petition is really a reservation of rights. We have been working very closely with the Applicant and have been very cooperative. It's
been a wonderful relationship and we're appreciative of that, however, in the event that there's a breakdown of that process or a disagreement that we can't get beyond, we would like to reserve our right to present that issue in the form of testimony that could be relied on as a finding before this Commission. And it is our experience in appearing before the State Water Resource Control Board, the Department, that state agencies have different interests. For example, before the Water Board today, the Department of Fish and Game and the Department of Water Resources is within the same agency, but we have different missions. Our mission is to preserve and protect fish and wildlife resources. The Department of Water Resources' mission is to develop water, and so we have different missions. And as I see your mission is to facilitate energy projects, and to do that in compliance within the laws, CESA/CEQA, however, there might be a point where you believe a weighing and balancing goes one way, and we believe a weighing and balancing goes another way. Those judgements calls that we would like to be able not only to cross-examine and ask questions, but to state our opinions under, specifically, CESA, the Fish and Game Code, but also our opinion for the public trust resources of fish
and wildlife.

MR. BETTWY: Before you close.

COMMISSIONER SHARPLESS: I'm not going to close. I'm going to recognize that I didn't call upon you, and intended to give you an opportunity to speak if you had anything to say.

COMMISSIONER LAURIE: Before you do that, can I talk to Fish and Game for a minute?

COMMISSIONER SHARPLESS: You certainly may.

COMMISSIONER LAURIE: Thank you.

Ms. Murray, I appreciate all those comments and I think I understand. If you are perhaps a hearing officer, as a party, do you have a right to litigate in this case?

MS. MURRAY: Yes, we would have a right to appeal your decision.

COMMISSIONER LAURIE: Do you have a right to litigate any other state agency, Department of Fish and Game versus Department of Water Resources?

Stan, do you know?

JUDGE VALKOSKY: My impression is that state agencies do get into a situation where they do in fact sue each other.

COMMISSIONER SHARPLESS: I think that Stan is right, but I think that under previous governors it was frowned upon and such authorization was
usually not granted.

COMMISSIONER LAURIE: But we think there is the legal ability to do so. What about Staff? Staff is a party. Can Staff litigate against this project?

MS. HOUGH: Staff can take a position recommending denial of the project. Staff cannot sue the Energy Commission if they don't like the decision.

COMMISSIONER SHARPLESS: Would you like to allow them to?

COMMISSIONER LAURIE: Well, I was thinking that Staff should not be a party, but I'm interested in the differentiation if Staff is a party and Persnay [sic] is a party, what rule distinguishes one party from another.

JUDGE VALKOSKY: If I may, there's no rule distinguishing the party. The purpose of the intervention and the party status is to provide both of your examples, those entities equal standing before the committee and the commission of an impartial decision maker. Those parties all have equal status. They all have equal rights, equal obligations.

COMMISSIONER LAURIE: That's fine. But I see various parties and frankly as our processes goes on, not only in this one but others, but there are
potential of large numbers of intervenors, all of which as parties can litigate. Well, question, can any member of the public who has participated in the process, not a party, litigate?

COMMISSIONER SHARPLESS: I guess this gets into the issue of what court it goes to.

JUDGE VALKOSKY: They would have -- if someone had notice was afforded the opportunity to be heard, chose not to be heard, fundamentally did not follow the administrative process, I think they would have a heck of time to establish a standing to take us to court.

COMMISSIONER LAURIE: But if a neighbor shows up and during the course of the public hearing offers comment and that comment is part of the public record, can they litigate on a manner relevant to that comment.

JUDGE VALKOSKY: I think not. That is public comment, that is not sworn testimony. They didn't participate as a formal party to the procedure.

COMMISSIONER LAURIE: So if in fact one wants litigate status, they must intervene?

COMMISSIONER SHARPLESS: Well, I think the issue of litigation -- Caryn, help me out here, because I'm just drawing back in recall, but one of 98
the provisions of the law provided to the Energy
Commission because of our authority of establishing
need, is if these decisions appeal, they are appealed
to what level of court, and on what grounds Supreme
Court and on what grounds?

MS. HOUGH: Stan, do you want.

JUDGE VALKOSKY: Basically, that we have
violated our statute. Bottom line is we didn't have
substantial evidence to support our finding to
support a required finding.

COMMISSIONER SHARPLESS: So you don't go
through all levels of court. You go directly to the
Supreme court.

JUDGE VALKOSKY: Under the current statute,
that's correct.

MS. HOUGH: I don't want to drag this out
too long, but I think there's an important
distinction that we're getting lost in, and that's
litigating within the Energy Commission proceeding
versus litigating the Energy Commission's position.
Staff is a party in the Energy Commission's. In
order to ensure that the Staff's analysis is
impartial as possible, and represents the public
interest now, as Nancee point out, Fish and Game may
interpret the public's interest in fish and
wildlife's resources a little bit differently than
Staff does, and that's why they have the right to participate within the Energy Commission's proceeding on those substantive issues, but it's not the same distinction once you get to a point where you are appealing the Committee's decision. There's a different rationale.

COMMISSIONER SHARPLESS: Now, we'll turn back to you.

MR. BETTWY: Thank you, Commissioner. I want you to know that Southwest Gas came here to be informative, and not to litigate. I have just one clarification question: Earlier we committed to Mr. Valkosky to provide something by Monday, and that was before the cultural report surfaced. Are we off the hook now on that.

JUDGE VALKOSKY: If that's the only cultural report whose status was unknown, then you are off the hook.

MR. BETTWY: I thought the record might better reflect it. And just one other matter, if I might. I hate to volunteer, but we did not file a prehearing conference statement. We were not a party, of course, back on the eighth or ninth when it was due. So one of the bits of information you do not have from us that I would volunteer to make available to the Committee by the 24th, which is the 100
same date that Mr. Thompson indicated that he would
provide a list of witnesses, we would provide that
similar information for the witnesses, that the
Applicant wants Southwest to appear as witnesses, if
that's all right. That's all I have. Thank you very
much.

COMMISSIONER SHARPLESS: Okay. Essentially
we have concluded our agenda for today. There might
be somebody out there in the audience, although I
doubt it, who wishes to come forward and address the
Committee on some item that we've either discussed or
overlooked or need to know about. No?

Okay. Offering the public an opportunity
to comment and hearing no desire for such public to
comment, I think we've come to the bottom of our
agenda. We've come to a conclusion of the meeting
and I guess the one last piece of information and
what the table might be looking at and the Committee
for -- Stan, help me out here, is when we might be
issuing some deliberation about process --

JUDGE VALKOSKY: I'd intend to recommend
the Committee to issue an order potentially also
including a notice of evidentiary hearing, if that's
what you decide after we get the reports back from
the parties, the last of which will be due
February 26th. So within the first week of March we 101
would issue an order.

COMMISSIONER SHARPLESS: So check your mail box. Thank you very much. Thank you for your patience. Thank you for your information.

MR. THOMPSON: If I may ask for two more days. If the 26th is going to be that trigger date, can I have two more days for my exhibits, witness list and all that stuff.

COMMISSIONER SHARPLESS: What would that make it?

MR. THOMPSON: I was going to go on Wednesday. Everything would in on be Friday the 26th.


MR. THOMPSON: Thank you.

(Whereupon, the hearing was adjourned at 12:40 p.m.)

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CERTIFICATE OF TRANSCRIPT

I, Theresa Aguilar, as the Official Transcriber, hereby certify that the attached proceedings before Chief Hearing Officer Valkosky, California Energy Commission,

In the Matter of: ) Docket No. 97-AFC-1

Application for )
Certificate for the )
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were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, and accurate record of the proceeding.

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