COMMITTEE CONFERENCE ON PMPD

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:  

Application for  

Certification for the  

HIGH DESERT POWER PROJECT  

Docket No. 97-AFC-1

COUNCIL CHAMBERS

VICTORVILLE, CALIFORNIA

THURSDAY, JANUARY 27, 2000

1:00 P.M.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
COMMITTEE MEMBERS PRESENT

Robert Laurie, Presiding Member

STAFF PRESENT

Stanley Valkosky, Hearing Officer
Bob Eller, Adviser to Vice Chairman Rohy
Caryn Holmes, Staff Counsel
Richard Buell, Project Manager

REPRESENTING THE APPLICANT

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Thomas M. Barnett, Vice President and Project Manager
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INTERVENORS PRESENT

Gary A. Ledford, Builder
Jess Ranch
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ALSO PRESENT

Norman Caouette
Mojave Water Agency

Robert Wilkins

Lore Sonnenfeld

Jack Beinschroth

Bob Almond
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PRESIDING MEMBER LAURIE: Good morning. I'm Robert Laurie, I'm Presiding Member of the Siting Committee hearing the High Desert Power Project.

To my left is Mr. Stan Valkosky. Mr. Valkosky is the Hearing Officer who will actually conduct today's proceedings. To Mr. Valkosky's left is Mr. Bob Eller, Advisor to Commissioner David Rohy.

The purpose of today's hearing is to conduct a public hearing on the Presiding Member's Proposed Decision which is a public document. For a further description of today's proceeding I'd like to ask Mr. Valkosky to do a couple things. One, have all parties introduce themselves; two, provide some background as to the process that we're going to be following today.

HEARING OFFICER VALKOSKY: Thank you, Commissioner Laurie. I'd like to begin with the introductions of the parties. Staff, if you'd introduce yourself, please.

MR. BUELL: My name is Rick Buell. I'm the Project Manager for the staff.
MS. HOLMES: Caryn Holmes, staff counsel.

HEARING OFFICER VALKOSKY: Thank you.

Mr. Thompson.

MR. THOMPSON: Thank you. My name's Allan Thompson, counsel for the project with regard to CEC matters.

MR. BARNETT: I'm Tom Barnett, I'm the Project Manager for the High Desert Power Project.

MR. WELCH: Andy Welch, Project Director for the High Desert Power Project.

HEARING OFFICER VALKOSKY: Mr. Ledford.

MR. LEDFORD: Thank you, Mr. Chairman, my name is Gary Ledford. And my principle issue is the use of water for evaporative cooling.

HEARING OFFICER VALKOSKY: Are there any other formal parties present here today specifically California Unions for Reliable Energy or California Department of Fish and Game?

They're apparently not present.

PRESIDING MEMBER LAURIE: Mr. Valkosky, I would note that this proceeding is being recorded. So during the course of the proceeding if you are speaking too quickly or there's a problem with the recording, we may interrupt you
temporarily in order to insure that there are no blips in the recordation process.

Two, the applicant's folks, you do not have an amplifying microphone. And so just be cognizant of that, please.

Mr. Valkosky.

HEARING OFFICER VALKOSKY: Thank you.

By way of background I'd like to establish that the Committee issued the Presiding Member's Proposed Decision and scheduled today's conference on December 15, 1999. The public comment period concluded on January 18th of this year.

The following submitted formal comments on the PMPD: applicant, staff, Mr. Ledford, intervening California Department of Fish and Game, the City of Barstow, and Ms. Betty Williams.

In the interim the Mojave Desert Air Quality Management District has provided additional information concerning air offsets, and that was in a letter of December 22, 1999. And the Victor Valley Water District also submitted information concerning the aquifer storage and recovery agreement. The first of those submissions was on December 28, 1999.

In addition, the Bureau of Land
Management initiated formal consultation on the Southwest Gas natural pipeline on December 22, 1999. And the United States Fish and Wildlife Service published a draft environmental impact statement on December 23rd of last year.

I also have received today a filing entitled, opposition to the motion of applicant to reopen the evidentiary record, which has been submitted by Mr. Ledford.

And finally, on January 14th of this year, applicant filed a motion to reopen the proceedings for a limited purpose.

Today we basically have two main items on the agenda. The first is to afford all those present an opportunity to discuss applicant's motion to reopen the evidentiary record. And after we have finished with that, we'll take general comments from the parties and all members of the public concerning the existing Presiding Member's Proposed Decision.

Are there any questions or is there any objection to that procedure? Seeing none, with that we will begin by discussing applicant's motion to reopen. And the order in which I intend to proceed is to have applicant explain its
motion. Then I'd like to get reactions from staff, and from Mr. Ledford, and as I said before, the other intervenors are not present. After that we'll open discussion on the motion to reopen to members of the public.

Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Valkosky. I will try and be loud enough so the audience can hear without blowing up the ear drums of the reporter.

Following the issuance of the Presiding Member's Proposed Decision it was clear to us that there were two areas of concern that that document invited additional testimony. Those two areas were air offsets and the water issue.

With regard to air offsets, the California Code requires that offsets be acquired prior to licensing, which I interpret to mean before the final decision. So there was no requirement that the offsets all be acquired prior to the Presiding Member's Proposed Decision.

However, this Committee correctly, I believe, stated that it needed evidence of the acquisition of all required offsets before the Committee could recommend to the full Commission
that this project be licensed. This was pointed out in the Presiding Member's Proposed Decision, as I said.

And subsequent to the date of that decision we acquired -- the project acquired all required offsets. And one of the areas that we wanted to place additional testimony in the record was to demonstrate that those offsets had been acquired.

The second issue is the water issue. Those of you that were in attendance at the last meeting that we had here understand that the California Fish & Game and staff had some difficulties with some of the contract provisions that the VVWD contract contained within it.

The applicant took a backseat in many of those negotiations as VVWD had some contract requirements that they wanted to, in order to better serve the citizens of this community. We left the last meeting with the understanding that the parties would work toward an agreement that would satisfy the Commission Staff that the agreement would be in concert with the conditions of certification of the decision. And also satisfy VVWD, California Fish and Game that their...
concerns were addressed in the contract.

That was done, and the contract that was finally approved for signing was the second item that we wanted to put into the record and was the subject of our motion.

Given that we were asking the Committee to open up the proceeding to take two additional pieces of information, we also decided to put in two other things.

One was evidence of site control. The Presiding Member's Proposed Decision pointed out that site control had not yet been achieved, so we thought that that was an invitation to us to address that issue when we obtained site control, which has been done. That was the third item that was contained in our motion.

And finally we sought to put in some additional material on the economics of dry cooling, especially in peak summer periods.

It was those four items that we requested in our motion that the Committee reopen the proceeding to hear to complete the record.

HEARING OFFICER VALKOSKY: Thank you,

Mr. Thompson. Mr. Holmes.

MS. HOLMES: Staff does not oppose the
motion to reopen the record of the proceeding. We would point out if the Committee is going to be looking for any additional testimony from staff, other than a reaction to what the applicant has proposed to enter in, we would need some notice and some time to respond.

HEARING OFFICER VALKOSKY: Mr. Ledford.

MR. LEDFORD: Thank you. To make the record clear my motion this morning, it's in opposition to the applicant's motion to reopen the evidentiary record and hold additional -- and a separate motion of my own to reopen the evidentiary record and hold additional evidentiary hearings for the same limited purposes.

My concern is that this motion would be perfunctorily approved without a public hearing, without the ability to have these documents placed in the record on a formal basis with the ability to cross-examine witnesses.

And I have specifically outlined what I believe to be the deficiencies in the documents as they exist. And I won't belabor that because I've outlined those issues.

Specifically I object and have made a motion to strike the prepared testimony by
Mr. Welch on dry cooling. Mr. Welch was never qualified as an expert witness.

And furthermore, as an intervenor, I requested documents to be prepared and served on me the relative to the economic feasibility by the applicant on dry cooling. And that was completely stonewalled. We were told that all that was proprietary information and would not be provided.

It is my opinion that since the applicant was unwilling to provide any economic information on dry cooling in the discovery process, that no new information relative to economics should be available to them at this time.

And then finally if the Committee elects to reopen the evidentiary record and allow new evidence to be placed in the record, then I would like the opportunity to also place new evidence in the record. Specifically issues that have come to light on water just in the recent few weeks.

One of those issues is there's scientific evidence of JPL Laboratories that over the next 10 to 20 years we can expect a drought in this region.

The best available evidence that was
presented in this case was that there would be not
longer than a three-year drought, and the maximum
amount of banking that has been provided as a
mitigation measure is for no more than three
years.

I think this is a significant amount of
new evidence that mitigation measures proposed for
water banking may not work here.

Also, a separate action by the state
water resources control board, which in a
companion case, which we have discussed relative
to the use of reclaimed water from the sewage
treatment plant, those hearings have been put on
indefinite hold until the State Supreme Court
rules on water rights.

I think the issues that the state water
resources control board raises on the issue of
water and a good reason to wait on any action in
that case should be germane in this case.

And then finally the conduct of the
applicant since the last hearings relative to
certain political matters in this valley, extreme
unprofessionalism bringing an unbelievable amount
of money to this valley to smear good citizens of
this valley so that they could put people in
political office so they could get a vote their way.

After the Mojave Water Agency had studied the issue of consumptive use for more than a year and made their ruling, this applicant, we believe, conducted themselves in a highly unprofessional way. I don't think that that is the way to bring power plants into fruition in this state.

And if this Committee elects to reopen these hearings we'd like to have them as full evidentiary hearings and be able to have witnesses and cross-examination and provide additional evidence, as well.

Thank you.

HEARING OFFICER Valkosky: Any reaction, Mr. Thompson?

Mr. Thompson: I do have a reaction. First of all, let me say that California 20 CCR 1754(b), the first sentence reads: The Chairman may require that certain statements by parties and other persons be submitted in writing in advance of hearings.

I think there's a reason for that, and that is that filing a motion with this type of
evidence three minutes before the hearing puts us in somewhat of a disadvantage to have a proper reaction.

But going to the merits, I believe that the Committee has considered the case for opening up the proceeding for this type of evidence. The Committee understood that the evidence that we intend to proffer into the record will be beneficial. And I would urge the Committee to reject Mr. Ledford's motion to deny our motion to reopen.

With regard to the affirmative positions of Mr. Ledford, Mr. Welch has a mechanical engineer, bachelor of science from Rutgers University with 12 years in the power industry. I would suggest that he's absolutely well qualified. However, issues such as that can be handled at the hearings, and I would invite Mr. Ledford to ask questions regarding Mr. Welch's competence in the engineering area.

With regard to our refusal to provide cost data some time ago, I obviously do not have those documents with me today because of the lateness of Mr. Ledford's motion. However, our recollection is that those questions were on a
different matter.

With regard to the costs that Mr. Ledford alleges, the amount of money that a project would make on certain hot days, I don't think that that is really germane. The new JPL evidence, if it could be considered evidence, is in the nature of a newspaper article. I'm not sure that it rises to the level of testimony or sponsored exhibits in a proceeding such as this.

The companion case and the state water resources control board action, I would submit, has little or no relevance.

And the conduct of applicant, we believe is untruthful. We don't believe that there is anything to this. And I guess I would further say that if the citizens of this valley go to the polls and have an election and cast their votes, they have spoken. And we respect whichever way they vote and whomever they vote.

Having said that, we would reiterate our motion for evidentiary hearings. But if Mr. Ledford wants to present his evidence, in quotes, at that time, we would not object strenuously to keeping him out.

HEARING OFFICER VALKOSKY: Thank you.
Ms. Holmes, any reaction from staff?

MS. HOLMES: I think the only reaction I have is that I believe that if the Committee is going to be reopening the record on certain subjects, staff believes that the record should be reopened for all parties to put in evidence, not just one party. That to do otherwise would be unfair.

HEARING OFFICER VALKOSKY: Thank you. I've got a few more questions so I can better understand what we're talking about in terms of potential evidence.

But I'd like to preface this by indicating to all present that if the Committee does, in fact, decide to order reopening of the record, it would essentially be a continuation of the proceedings we most recently held in October. It would be a full evidentiary hearing or hearings; witnesses would be present to testify, to sponsor exhibits; cross-examination by other parties would be allowed.

So, Mr. Ledford, that's not at issue if it's reopened.

MR. LEDFORD: All right, thank you, that was my concern.
HEARING OFFICER VALKOSKY: Yes, that would certainly happen.

Mr. Thompson, are there any documents other than those appended to your January 14th filing that you anticipate offering as exhibits?

MR. THOMPSON: When a clean copy of the VVWD agreement that we have previously filed gets signed, and I would anticipate that in the next day or two, we will submit a signed, executed copy. But it will be the same as the document that has previously been submitted.

HEARING OFFICER VALKOSKY: Right, so --

MR. THOMPSON: Other than that, the answer's no.

HEARING OFFICER VALKOSKY: Okay, so I can understand then that -- or can I understand that VVWD has, in fact, adopted that agreement at this time?

MR. THOMPSON: That is correct. And I think that there may be someone from VVWD here to speak to that at the proper time if you wish.

HEARING OFFICER VALKOSKY: Okay. Well, I don't know if I need any more than that right now at least.

Secondly, would it be your intent to
have a representative from the air district
present to validate the production of the emission
reduction credits?

MR. THOMPSON: Yes, if you grant our
motion and we present the evidence on the emission
credits, we would intend to ask the district if
they can have a representative there to confirm
that all the offsets have been acquired.

HEARING OFFICER VALKOSKY: Okay, so then
basically we're just dealing with the, I believe
it's four exhibits, Mr. Welch as your primary
witness, and a witness from the air district. How
about from the water district, would you intend to
have a water district witness to authenticate the
agreement?

MR. THOMPSON: Yes, we will.

HEARING OFFICER VALKOSKY: Okay, thank
you. Staff, which of those area indicated by
applicant would you intend to cross-examine on?

Air, water, site control and dry cooling.

MS. HOLMES: At this time we don't have
any plans to cross-examine the applicant on any of
those areas. But I don't know that our staff has
looked, technical staff has looked yet at the
filing. It's possible there might be a few
questions on dry cooling. But there certainly
would not be extensive cross-examination.

HEARING OFFICER VALKOSKY: Okay, would
you intend to present a witness on an area such as
water to examine the coordination between your
proposed conditions and those contained in the
aquifer storage and recovery agreement?

MS. HOLMES: We can make a witness
available, and we'd plan to make a witness
available for both of the areas which were
unresolved, in staff's opinion, at the end of the
hearings, that is air and water.

HEARING OFFICER VALKOSKY: So you would
have an air --

MS. HOLMES: Yes.

HEARING OFFICER VALKOSKY: -- and a
water witness and potentially do some cross-
examination on dry cooling? Would --

MS. HOLMES: That's --

HEARING OFFICER VALKOSKY: -- you also
have a witness on dry cooling or not?

MS. HOLMES: Not unless the Committee
asked for additional testimony.

HEARING OFFICER VALKOSKY: Thank you.

Mr. Ledford, would you be cross-examining on all
four of the issues indicated by applicant?

MR. LEDFORD: Probably, probably I would.

HEARING OFFICER VALKOSKY: Okay. Would you be calling any additional witnesses on any of those four areas?

MR. LEDFORD: I would hope to have at least one witness relative to water.

HEARING OFFICER VALKOSKY: And that witness would be who?

MR. LEDFORD: I'm not sure who it would be at this point.

HEARING OFFICER VALKOSKY: What would be the witness' field? I mean would it be a --

MR. LEDFORD: I mean the issue continues from our standpoint to be one of the overdrafted basin and the 50 percent consumptive use. So that would be the expertise that we would be looking for.

HEARING OFFICER VALKOSKY: Okay, but you understand that the applicant is moving to reopen really only to discuss the sufficiency of the water agreement, the VVWD aquifer storage and recovery agreement?

MR. LEDFORD: Correct.
HEARING OFFICER VALKOSKY: Okay, so would your witness pertain specifically to that agreement?

MR. LEDFORD: Correct.

HEARING OFFICER VALKOSKY: Okay. Then as far as your intent to offer the JPL and the water resources control board information, would you tend to sponsor that with a witness or just the documentary submissions that you've attached to your motion?

MR. LEDFORD: This information just came out the day before yesterday. So I haven't had an opportunity to attempt to contact the people in Pasadena. But since they're close I would hope that there could be a witness that would be able to support that position so that if it is significant enough, that a three-year drought-tolerant mitigation program isn't appropriate, that something else should be considered.

HEARING OFFICER VALKOSKY: Okay.

MR. LEDFORD: This is brand new information for us.

HEARING OFFICER VALKOSKY: Okay. At this point the Committee is going to take this under submission temporarily. We'll continue with
the rest of the proceedings today, and take a
break in a little while.

Are there any members of the public that
wish to comment on the matter we've just
discussed, that is the motions to reopen the
record for a limited purpose?

Okay, there are not. Thank you.

Next we'll move to general comments on
the Presiding Member's Proposed Decision. By way
of introduction the parties may assume that the
Committee will incorporate the appropriate
technical and editorial minor revisions suggested.
And appreciate if the parties could just focus
primarily on those comments which they have
submitted which affect the substance of the PMPD,
including any necessary modifications to the
conditions of certification.

Mr. Thompson.

MR. THOMPSON: Thank you. I'm trying to
decide whether any of our comments rise to the
level of needing to be addressed.

HEARING OFFICER VALKOSKY: Well, one of
them certainly does.

MR. THOMPSON: Which one are you
referring to?
HEARING OFFICER VALKOSKY: The dollar amounts in Bio-7.

MR. THOMPSON: Our understanding of this, and I may ask some help from those at the table with me, is that these are calculated figures, and do not represent any new numbers or new methods of calculation.

Our understanding it was a mathematical mistake that was made somewhere along the way.

HEARING OFFICER VALKOSKY: Okay, because I'd just like to clarify that the Committee used the figures -- excuse me -- the figures that the Committee used were derived directly from the testimony on the record. And your figures are somewhat different. And I'd like an explanation, either of the derivation of your dollar amounts, or the reason for the discrepancy.

Primarily all the Committee is interested in is making sure the conditions contain the proper dollar amounts.

MR. THOMPSON: Yes. And we, as well. And our understanding is that these figures are the proper amounts, and I know that staff has been involved in this. I'd like to hear if staff has any difficulty with it.
We do not intend to offer new evidence on these numbers. If these are not the right numbers, you know, we would move to strike this comment.

HEARING OFFICER VALKOSKY: Okay, fine.

And other than that which I brought up, do you have any other general comments on the PMPD?

MR. THOMPSON: None other than I would offer for the record that this is a very small number of comments to have on a document this size, which synthesized and analyzed the number of documents that we had in the record.

And I think that the Committee is to be commended. Difficult task done well.

HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: About the only thing I can add to that is that we did check with Marc Sazaki, who is the biologist who testified on biological resources during the hearings. And he was unaware of any mathematical errors and believed that the dollar figures that he gave at the hearing were, in fact, correct.

HEARING OFFICER VALKOSKY: Okay.

Getting off that point just for a second -- I will come back to that.
Do you have any other comments on the PMPD, general comments?

MS. HOLMES: The only other comment I have is that we need to correct an error in our comments on I believe it's page 9. We said that staff and Fish & Game are concerned that the payments to the federal government constitute mitigation. Should have been do not constitute. And that makes the rest of the sentence make more sense.

HEARING OFFICER VALKOSKY: Okay. Does staff have any problems with the revisions applicant has proposed to air quality conditions of certification 28-A and 34-A?

MS. HOLMES: No. It's our understanding that that was an error on staff's part. Those are conditions that are found in the DOC. And staff inadvertently failed to include them in its proposed conditions.

HEARING OFFICER VALKOSKY: Okay, fine. How about applicant's proposed revisions to condition Hazmat-5?

MS. HOLMES: We have no problems with that.

HEARING OFFICER VALKOSKY: Okay, so that
will not create any difficulties in terms of compliance, or the other issues you raised during the hearings?

MS. HOLMES: No.

HEARING OFFICER VALKOSKY: Thank you.

Mr. Ledford.

MR. LEDFORD: Thank you.

I'd like to just say at the outset that many people have said that I'm the only one that has showed up to oppose this High Desert Power Project. I'd certainly like this record to be clear that I do not oppose the High Desert Power Project.

My opposition has been consistent from the beginning that I oppose the use of water from the state project for evaporative cooling when we're in such a severe state of overdraft.

And I oppose the direct use of water from the state project unless the High Desert Power Project is treated equitably with all other producers and users of water. The taxpayers in this valley are going to be subsidizing this project, and it is a tremendous inequity for the water rights holders, as well as the taxpayers in the valley.
I believe that my brief addresses those issues -- my comments address those issues. I am very specific in relation to my concern as to whether or not the document drafted that supports this decision meets the functional equivalent of CEQA for the use of this document in other projects.

And by way of specific example, the lease for this project is a 50-year lease. Whereas the environmental analysis that's been done for this Commission is for 30 years. And by way of further example, the water storage and aquifer agreement is for 80 years, not 30 years.

When you do an environmental analysis for a specific project, it's for the project and the term and the timing.

And then by way of further analysis, by way of further comments, that is, the water storage and aquifer agreement which was testified to here in October, the testimony was that the only time that the High Desert Power Project's facilities would ever be used was in the case of some drastic emergency. And then there was a lot of dancing around in that testimony as to what that all meant.
And now when this agreement comes back before this Commission what you see is that these facilities can be used at anytime. And then there's new conditions that there has to be a balancing of the wells and a review of what the production is. None of these things that this Commission ultimately is going to have anything control over.

But most significantly, never studied and never a part of the environmental analysis.

And I thought that the direction from this Committee was quite specific. That the Presiding Member's Proposed Decision could not be used for anything that did not have to do with this project. And that is exactly what is intended.

It is not that it is bad that we're building 24-inch pipelines and 16-inch pipelines to provide 40,000 acrefeet of water for the redevelopment of George Air Force Base. But what is bad is that we're doing it and circumventing the process and providing the mechanism that will affect other people's property rights. And I'm extremely concerned about that.

I'd like to get off of that and go
straight to the issues of conditions. Because I'm
certain that this project is going to be approved.
And with that my concern is with the conditions.

In August when your staff provided
conditions, the very first condition was that if
the conditions weren't met that the project shall
not operate. All of a sudden in all of your
conditions the words shall not operate does not
exist. The closest that it comes to is there's
some words that say may not operate.

I'm not a lawyer but I know when you use
the word may that becomes a discretionary action.
So, if for some reason, they're not complying with
the conditions, or the Victor Valley Water
District isn't complying with the conditions, who
you have no authority over, then we're only in the
may not operate mode. There's not even a fining
process.

So I'm very concerned that if this
doesn't work, and we find ourselves in a serious
situation, and these folks invested $300- or $400-
or $500 million in this power project that it is
going to be very difficulty to get anybody to step
up to the plate and say, you know, we got a real
water problem up here we haven't solved. And we
all thought it would work, but it didn't. And
guess what, guys, you got to shut down that $500
million project. I don't think that's going to
happen. I don't see that in these conditions.
I'm extremely concerned about that.

I have provided kind of a blow-by-blow,
and provided some language that never shows up, so
I don't know what else to say. I could spend a
considerable amount of time going through it line-
by-line, but I would prefer at this point, if you
think any of this is meaningful, to respond to
your questions.

HEARING OFFICER VALKOSKY: Mr. Ledford,
I note that conditions soil and water-1 states
that the only water used for project operation,
except for domestic purposes, shall be state water
project water obtained by the project owner
consistent with the provisions of MWA's ordinance
9.

Now, to me at least that means that's
the sole source of operational water for the
project.

MR. LEDFORD: Then show me, sir, what
happens -- what is the trigger if that doesn't
happen? Where does it say that the plant shall
not operate?

It's in the August conditions that were
drafted by staff, the original words in there, in
the very first condition of soil and water was, if
you don't meet all these conditions, this project
shall not operate. That is now not part of the
conditions.

HEARING OFFICER VALKOSKY: Okay. Mr. Buell, could you address this?

MR. BUELL: I'm trying to look at the
condition of certification that staff recommended
in part C of condition 1 in which it says the
project may not operate. That was the text of the
testimony that we presented in the October
hearings.

There may have been an earlier draft in
August that Mr. Ledford's referring to, but that
was not staff's testimony at the hearings.

HEARING OFFICER VALKOSKY: Since you
were one of the primary developers of staff's
condition, what is your understanding of the
condition?

MR. BUELL: It's my understanding that
if the project does not conform with the
conditions as outlined in the Presiding Member's
Proposed Decision, it shall not operate.

MS. HOLMES: I believe that staff testified in the October hearings that staff's understanding was that when the bank balance, as we've been referring to it, reached zero, the project cannot operate.

HEARING OFFICER VALKOSKY: Okay, so in other words, and I'm looking at condition soil and water 1-C, in the third line are you saying that the last word on that line, which is currently "may", could be "shall"?

MS. HOLMES: I believe it was intended to be -- if you read the sentence as a whole, taken in conjunction with staff's testimony, my belief is that that would be another way of saying exactly the same thing. The project shall not operate when the bank balance is at zero.

HEARING OFFICER VALKOSKY: Right. Mr. Thompson, is that applicant's understanding of this condition?

MR. THOMPSON: It is, however I would add that I see nothing wrong with reading those two together, and that is that we will not use local water and will not pull any water locally if it reaches zero.
But there may be a situation, and I realize this is not in the record and I'm not suggesting this change, where sometime in the future maybe you buy water out of the district and it goes through the aqueduct and it is delivered, even if the balance is at zero and you're not pulling up any water out of the ground.

I realize that we probably should have addressed this earlier, but actually -- did we --

(Pause.)

MR. THOMPSON: And I believe that that actually is in -- that material is in the record. So our understanding is that those two are consistent and to be read together.

HEARING OFFICER VALKOSKY: Okay, well, let me rephrase that. Is there any difficulty, in your opinion, in changing the existing word "may" in condition 1-C to the word "shall"? I mean that, as I understand what Ms. Holmes said, that is certainly staff's, and I assume Fish & Game's intent, since they joined in these conditions.

MS. HOLMES: Yes.

HEARING OFFICER VALKOSKY: Okay.

MR. THOMPSON: The difficulty is the one I just outlined, is that the way it reads now is
the only water used for our operations will be
state water project water. And that's fine, we
can live with that.

And it seems to me that may works very
well following that. Because if we buy water from
someone else and use the state water project as a
transporter -- can we get 30 seconds?

HEARING OFFICER VALKOSKY: Actually, Mr.
Thompson, why don't I do this. Why don't you let
me take other public comment on the PMPD. At that
time we'll take a recess, and then we'll revisit
this, okay?

MR. THOMPSON: We may not have an issue
here.

HEARING OFFICER VALKOSKY: Oh, okay.

(Pause.)

MR. LEDFORD: I don't think that I'm
quite finished, but --

HEARING OFFICER VALKOSKY: No, I
understand.

MR. LEDFORD: Okay.

HEARING OFFICER VALKOSKY: But I don't
want to get off this point at this time, Mr.
Ledford.

MR. LEDFORD: And I don't want you to,
by the way.

HEARING OFFICER VALKOSKY: Okay.

MR. THOMPSON: Never mind. We can live with shall.

HEARING OFFICER VALKOSKY: Okay. Thank you. All right, --

MR. LEDFORD: That helps.

HEARING OFFICER VALKOSKY: -- continue, Mr. Ledford.

MR. LEDFORD: That helps. I think what I'm concerned with is that there is, within the body of this condition, is that the CEC will issue an order to cease operations if that doesn't work. And that's what I'm -- I think the shall says that they should, but if they don't, I would assume that someone else could take an action in some other court, a judge would probably do that.

I think since this water issue is so critical and we've all acknowledged, every one of us have acknowledged that this water issue is critical, that the public here in the Victor Valley has the assurance that if it doesn't work that they will do that. Is that --

HEARING OFFICER VALKOSKY: Okay, --

MR. LEDFORD: -- how can we get to that?
HEARING OFFICER VALKOSKY: -- Mr. Ledford, under the Energy Commission's compliance provisions, and these are the provisions that come into effect after a project is certified, there are two ways, at least two ways in which an action can be brought before the Commission for the violation of a condition of certification.

First is staff, as it becomes aware of a violation of a condition of certification, has the option to basically file an action to seek certain relief as it deems is appropriate.

Secondly, a member of the public can do the same thing.

MR. LEDFORD: Okay.

HEARING OFFICER VALKOSKY: And that's, you know, that's existing in our regulations.

MR. LEDFORD: All right. With the record clarified that way on that, --

HEARING OFFICER VALKOSKY: Okay.

MR. LEDFORD: -- that issue will be satisfied.

HEARING OFFICER VALKOSKY: And some of that is addressed briefly in the compliance section of the proposed decision, at least the references are provided in there.
MR. LEDFORD: All right. Another thing that I think that we should all be concerned about, in your proposed decision you have reflected specifically upon the fact that there are risks involved, but that the Commission shouldn't be concerned with those risks in certifying this plant.

I am of the opinion that the conditions should reflect that same type of language that the applicant understands that there's significant risk that the California Supreme Court's adjudication may change how all this works. And that they're going to indemnify all the parties in the Victor Valley that would be in the contract.

If I could reflect, last night at the Mojave Water Agency's meeting they presented a report on the overdraft. And the overdraft for the 1997/98 year was 53,000 acrefeet of water.

And the testimony before this Committee was that with the 75,000 acrefeet of entitlement the maximum amount of annual water available from the state would be about 53,000 acrefeet of water.

So, we're not solving the overdraft. And if we were solving the overdraft and purchasing the water, it would take all of the
I'm just extremely concerned that this action is going to set a precedent, that other water agencies are going to attempt to emulate it. And that we're not going to solve the problem that we have here.

So, I'm concerned that we, in a public sense, put it out just as boldly as we possibly can that there's significant risk here and that the applicant is taking those risks.

HEARING OFFICER VALKOSKY: Thank you.

MR. LEDFORD: Okay. In soil and water-3 I had suggested that the will-serve letter which we're still lacking, and has been much described, and the standard will-serve letter that the Victor Valley Water District issues for its developer clients that are putting in subdivisions, has many of those types of indemnities within it.

By way of example, if a real estate developer wanting to build houses gets a will-serve letter from the Victor Valley Water District, it basically says it's conditional. It states that there's a water adjudication, and it states that the developer is taking all the risk.
and understands that the Victor Valley Water
District may or may not be able to provide water
under the will-serve letter.

I just suggest that we add some language
there that has that type of compliance in it.

Soil and water-3 under will-serve letter.

HEARING OFFICER VALKOSKY: Mr. Thompson,
do you have any reaction to that?

MR. THOMPSON: If we understand Mr.
Ledford's comment to be that we will need a will-
serve letter prior to project operations, I
believe that we have agreed to that, and we will
have that. And the structure for providing that
letter is already in the decision.

If he is suggesting that we have it
prior to a decision I believe that that comment
has been responded to in the hearings in chief,
and that staff and applicant worked on a system
whereby we were all satisfied that the conditions
of such a letter were made known to the public,
and we know what will be in that letter. And,
again, that was worked out, you know, some months
ago.

HEARING OFFICER VALKOSKY: And those
conditions are contained in the most recent
aquifer storage and recovery agreement, is that correct?

MR. THOMPSON: That's right. That's correct.

HEARING OFFICER VALKOSKY: Okay. Do you have anything further on that point after applicant's explanation, Mr. Ledford?

MR. LEDFORD: I just believe that the will-serve letter, which does not exist today, will probably be not in the same format as the will-serve letter that is issued to general developers, since applicant's witness would be available if you reopen the hearings, or the aquifer storage agreement, I believe we could address that issue then.

HEARING OFFICER VALKOSKY: Okay, fine.

MR. LEDFORD: I'm really concerned with soil and water and the idea that the applicant could actually withdraw all of the water down to zero. In many of the previous workshops the conditions at one point were that they couldn't withdraw less than 1000 acrefeet of water.

I would think that in order to protect the groundwater basin that they can't draw out all of the water. It would have to have some positive
water bank. I'd propose the number of 500.

HEARING OFFICER VALKOSKY: Okay, at this point let me check with staff, because my recollection is that there always has to be a minimum of a 1000-acrefoot balance. That's what has been referred to as the buffer amount.

Is that correct, Mr. Buell or Ms. Holmes?

MR. BUELL: Yes. I think you'll find that in conditions number 5, the part A of that.

PRESIDING MEMBER LAURIE: What page is that, Mr. Buell?

MS. HOLMES: On the printed version it's page 217 and it doesn't have an A, it's the first full paragraph, the last line. Minus 1000 acrefeet.

PRESIDING MEMBER LAURIE: Yes.

HEARING OFFICER VALKOSKY: Okay, now, Mr. Thompson, does that comport with applicant's understanding of that condition? In other words, there always has to be a minimum of a 1000-acrefoot balance in the water bank?

MR. THOMPSON: That is our understanding, with the exception of the first year.
HEARING OFFICER VALKOSKY: Right.

PRESIDING MEMBER LAURIE: Is there a question, Mr. Ledford, whether that condition accomplishes that intent?

MR. LEDFORD: No, but with that explanation and the record being made clear by the Committee and the applicant, I'm satisfied with that.

HEARING OFFICER VALKOSKY: Okay, thank you.

MR. LEDFORD: If I could address this to the applicant, though, on soil and water, when I have discussed this informally, my understanding of the condition is that after the fifth year when there's a 13,000 acrefoot water bank, that water bank, that 13,000 acrefeet has to then be fully maintained unless we're in a drought situation, or during the off-peak times. So if you use the water -- hypothetically during one year you use 500 acrefeet, the next year you would have to refill the water bank. Is that applicant's understanding?

HEARING OFFICER VALKOSKY: Mr. Thompson, respond to that, please.
MR. THOMPSON: I think, Mr. Ledford, that the refill provisions are in the next provision, soil and water-7.

MR. LEDFORD: Right, and so my question is, is your understanding that if you use the water and the water is then available the following year, that you would refill the water bank up until the last three years of the project during which time you could take your 12,000 acrefeet out?

MR. THOMPSON: I'll tell you what we'll do, Mr. Ledford, we will comply with number 6 and 7. These are conditions that were hashed out in hearings over a fairly long period of time. And without evidence in the record that these are somehow lacking, I'm very reluctant to agree to something on the spur of the moment right now.

We have looked at 6 and 7, as has staff, and other parties I assume, and we are all -- we all think that they do what we all agreed to do.

MS. HOLMES: I would just add from staff's perspective that we do agree that 6 and 7 must be read together. And when they are read together it states that once you read the 13,000 acrefeet, water that you use must be replaced.
MR. LEDFORD: Well, there's a statement in 7 that says, the project owner may choose to delay replacement of a limited quantity of banked water used for the project operations until the cumulative amount of groundwater withdrawn from the bank reaches 1000 acrefeet.

My question to you is once they've filled it to 13,000 acrefeet, can they then spend the next ten years, even if it's 500, 500, 300, and then 2000 and 3000, withdrawing it all the way down to 1000 acrefeet before they have to replace it?

That sentence, to me, is confusing. And when I asked the applicant he told me that's exactly what it meant.

MR. BUELL: No, my reading of that, Mr. Ledford, is that once a cumulative total of 1000 acrefeet has been reached in drawdown the applicant must replace that 1000 acrefeet in the following year.

HEARING OFFICER VALKOSKY: But I don't think that's a question. I'm sorry, Mr. Welch.

MR. WELCH: My comment, it's the 1000 is the amount withdrawn, not the amount left. So, the example he gave, 500, 500, at the end of that...
second 500 we'd be under the obligation to replace
the 1000.

So it's not taking it down to 1000
acreefeet, it's when you've pulled out 1000.

MS. HOLMES: And for example, if it was
100 feet, then, yes, it would be ten years before
the replacement was required. But it's 1000 feet
cumulative that is the trigger for replacement.

MR. LEDFORD: So if they don't withdraw
any more than 1000 acreefeet within say three
years, they don't have to replace it until they
get to that 1000. That's what that means?

MS. HOLMES: It means once they have
reached a withdraw of 1000 that they need to
replace it. Over whatever time period that takes.

MR. LEDFORD: Okay. Now, does that 1000
acreefeet include the dissipated water?

MS. HOLMES: If it's withdrawn it's not
dissipating.

MR. LEDFORD: Okay, but my point is
there's another provision here for dissipated
water.

MS. HOLMES: That's correct. The bank
balance is calculated taking into account a
dissipation rate. But the 1000 acreefeet applies
to water that's taken out and used for cooling.
Once it's taken out and used for cooling we're not

going to be applying a dissipation rate that would
have applied had it been in the ground.

MR. LEDFORD: I understand. But what

happens if over three years there's 3000 acrefeet

of water dissipated? Do they have to replace that

water, as well?

MS. HOLMES: No. The dissipation rate
does not -- the dissipation rate just affects the

bank balance.

MR. LEDFORD: So if the water in the

water bank at the end of -- say the end of three

years they've only drawn down 1000 acrefeet. But

the dissipation rate was enough that there was

only -- there was 3000 acrefeet, so the total was

4000 acrefeet. They would only have to replace

1000 acrefeet, they would not have to replace the
dissipated water?

MR. BUELL: That's correct, they would

not have to replace that dissipated water. The
dissipated water, however, would not be available

for them to use as cooling for the project.

So that's their option. There's no

requirement that they maintain 13,000 acrefeet in
the bank at all times.

Does that help?

MR. LEDFORD: Well, it makes it real confusing when you go back and read soil and

water-6.

MR. THOMPSON: Mr. Valkosky, could I interject something here?

These conditions were contained in the staff testimony, the final analysis, and were the subject of extensive cross-examination and comment during the evidentiary phase of this proceeding.

And I would just voice an objection that we are spending time doing something, ground that has already been covered. And these are not the subject of --

HEARING OFFICER VALKOSKY: I understand that, Mr. Thompson. But, you know, so far on the three or four areas that we've had Mr. Ledford inquire on, he's basically been satisfied with responses. And this is just because of some misunderstanding or desire, at least as I see it, on his part for additional clarification.

To the extent we can assist him in understanding this, I'm going to give him some more leeway.
MR. THOMPSON: Understand.

HEARING OFFICER VALKOSKY: Okay?

MR. THOMPSON: Right.

MR. LEDFORD: I would also like to say that I will brief this, and in my -- all of these issues were briefed --

HEARING OFFICER VALKOSKY: Right, and again, I will afford you some leeway if you're seeking clarification on some of the language in the conditions, or if you've got specific changes that you'd like to propose.

MR. LEDFORD: Well, I say when you go back, when you hear the explanation but you go back and read soil and water-6 -- soil and water-6 leads you to believe that there's going to be 13,000 acrefeet in the water bank. That's the way that it looked to me.

MS. HOLMES: That's correct.

MR. LEDFORD: If for some reason there's a leaky bottom to this tank, and there's no water in the tank there would be no water to draw on. And so you wouldn't have a water bank.

MS. HOLMES: That's correct, --

HEARING OFFICER VALKOSKY: Right.

MS. HOLMES: -- and out of that they...
could not operate.

HEARING OFFICER VALKOSKY: Exactly.

That's the point. They could not withdraw any water from a bank which has a zero balance.

MR. LEDFORD: On the other hand, if we were four or five years into the project and there was 6000 acrefeet in the water and we went into a three-year drought, we would not have provided a mitigation measure to cover a three-year drought.

I mean when we went into this whole process we talked about making sure that we had enough water in a water bank to cover a three-year drought, because that was what everybody thought might be the worst case condition.

So my --

HEARING OFFICER VALKOSKY: Right, but, Mr. Ledford, and I think we've gone far enough on this, that the purpose, at least as the Committee understood it, of having water in the bank for the three-year drought was to insure project operations.

Now, if you've got a more severe drought, or you've got an extended drought, and no water goes into the bank, under these conditions, as I understand it, the penalty for that falls on
the applicant. Because they have no water for
their cooling towers, therefore they do not
operate. Their protection, in that case, has
failed. But it's basically to their peril.

Mr. Thompson, is that a sufficient
summary of applicant's understanding or assumption
of the risk on this?

MR. THOMPSON: That is an excellent
summary of our understanding.

HEARING OFFICER VALKOSKY: Yeah, so I
mean I don't think we have to go any farther on
that. It's something that --

MR. LEDFORD: But --

HEARING OFFICER VALKOSKY: -- they have
assumed.

MR. LEDFORD: And I will again say, with
that explanation by you and staff and applicant,
in making this record clear, that will satisfy my
concern.

HEARING OFFICER VALKOSKY: Okay, thank
you.

MR. LEDFORD: Because at some point in
time if it doesn't work we'll bring this record
before somebody and say, this is what we all said,
guys.
HEARING OFFICER VALKOSKY: And that's entirely appropriate.

MR. LEDFORD: Okay.

HEARING OFFICER VALKOSKY: It certainly is.

MR. LEDFORD: And so this makes me feel much better. The fact that you won't put it in the conditions is troublesome. I don't know why you won't. But the fact that you've clarified it in the record works.

HEARING OFFICER VALKOSKY: One of the options is that the text of the revised decision could be clarified.

MR. LEDFORD: Thank you. I think with that, that will conclude my comments.

HEARING OFFICER VALKOSKY: Thank you, sir. Anything further from applicant or staff before we open to general public comment?

MS. HOLMES: Nothing further.

HEARING OFFICER VALKOSKY: Okay, at this time I've got cards from three members of the public.

(Pause.)

HEARING OFFICER VALKOSKY: All right, Mr. Jack Beinschroth. If you could, sir, just
approach the microphone here. Tell us your name, and if you could spell the last name for the court reporter, we'd appreciate that.

MR. BEINSCHROTH: My name is Jack Beinschroth. I'm a registered civil engineer, have been a registered civil engineer in the State of California for over 30 years. A former Director on Mojave Water Agency. And I'll go into that former business in a moment.

I'm a graduate of CalTech, a masters degree in civil engineering, structural engineering, and water resources. So I would like to feel that I am not the village idiot, and I think I can address some of these things in an intelligent manner.

It bothers me, in fact it surprises me that this has reached this point as far as the siting of this power plant in our location, in our area, where we're in a situation where we're 60,000 acrefeet of overdraft, and there's no way of curing it under the present conditions.

And we need to take into consideration, in trying to correct this overdraft, the Mojave Water Agency went out and purchased some additional entitlement. They bought 25 million
acrefeet, and it's going to cost them $50 million
to pay it back.

So that we, out of this entitlement, are
giving use of 4000 acrefeet, or $8 million worth
of entitlement water to this project, when the
people in the public and the taxpayers have not
yet seen the end of their payments. This is 20
years that this will be required to pay this
entitlement off.

So that the taxpayers of the area are
literally giving the power plant an $8 million
gift which they'll be paying for for the next 20
years.

I just can't believe that we've reached
this stage in siting this project without taking
into consideration the water conditions in the
area. We don't have water to utilize on this
project.

They say, well, we're bringing it in on
the aqueduct. You're bringing it in on the
aqueduct, but you're still taking it away from the
entitlement. And so, one way or the other, it's
going to strike home.

This plant should not be located in this
area. And if it is located in this area, it
should be a dry cooling process. I can't imagine
that it's got to this stage without someone
objecting and making it a serious point that this
be a dry cooling process.

In getting to this position, while I was
a member of the Mojave Water Agency Board of
Directors, I objected strenuously to the use of
water in a one-to-one basis. In other words,
we're losing our entitlement, we're losing 4000
acrefeet of entitlement, and we're not putting
anything back into the groundwater.

So that was the reason that we felt that
if they wanted to purchase 4000 acrefeet they
should do as all the rest of the people the agency
are required to do, put 4000 back into the
underground.

Well, needless to say, the election came
along and they, on the last two or three days
before the election I had a call, and they said,
will you withdraw from running on this board. And
if not, why you'll be faced with a major character
assassination.

I says, I'm not withdrawing because I
feel very strongly about this. Well, if you look
at some of the details, look at this chart. This
is what they did. Money supplied by the power project through Buck Johns in the amount of somewhere close to $100,000, made a major character assassination on myself, Don Brennel and anyone who had voted for the two-for-one policy.

Now, this is the type of people that you're dealing with. People that have no conscience. They're interested in one thing, making a profit, and they're not interested in the overall area, or the people that are in the area.

I am very disturbed to see that this thing reached this stage. And I can't believe that you people have not taken into consideration that we're in an area that has 60,000 acrefeet of overdraft. We don't have the water. We just should not even entertain this type of a project with a water cooling system.

HEARING OFFICER VALKOSKY: Thank you, sir. Appreciate your comments.

Okay, Lore Sonnenfeld. Ma'am, if you could spell your name for the record, please.

MS. SONNENFELD: Lore, L-o-r-e, Sonnenfeld, S-o-n-n-e-n-f-e-l-d.

I have land in the desert, 395, and other land, too. And I think my water bill got so
high, and we have no water for so long. I don't
like that. To pay, pay, pay. What do we get
back? Nothing.

I don't like. This is unfair to the
people.

That's all I have to say. And last time
I wasn't here because I had to move. So many
robberies around here. And I didn't get the form
for the meeting in December -- 15 December. So I
came this time.

So I really don't like that I pay so
much for water when I don't receive nothing.

Thank you.

HEARING OFFICER VALKOSKY: Thank you, ma'am.

Mr. Bob Almond.

MR. ALMOND: Thank you. Bob Almond,
12875 Bear Valley Road, Victorville.

I'd like to speak to the overdraft
situation here for a moment if I might. I am a
Director with the Mojave Water Agency, and I'm
pretty much involved in the water issues up here
in the Victor Valley. I've been involved in
politics and water for the last 11 years.

Some of the problems that we have here
are a major overdraft. The reason I say I know there's a major overdraft is because at our meeting last night we had an engineering presentation that recommended that we ramp everybody down another 5 percent.

We are currently at 80 percent ramp down. They recommend we go another 5 percent, so that would cut everybody back to 75 percent ramp down. So that should tell you right there that we do have a water situation up here in this desert.

And I think that would really bode well for making this a dry cooled process for this plant if it was approved. Because we cannot afford the 4000 acrefeet that this project is going to be taking from the state water project aqueduct over there.

That water in that aqueduct right now is not enough to replace the overdraft that we have right now, presently today. So what do you think is going to happen a year from now?

What we're looking at is we're looking at major problems, and I don't believe that they're going to come along and shut this plant down once they get water to that plant and start pumping it up.
And that 4000 acrefeet, to give you a little idea of how much it is, the whole city of Adelanto only uses just a little bit more than 4000 acrefeet per year, and 50 percent of that water is credited with going back to the ground again.

This plant is 100 percent consumptive use, meaning everything goes up into the air. So I would recommend at this hearing here that this plant be limited to the dry cooling process or no process at all.

Thank you. Any questions?

HEARING OFFICER VALKOSKY: Just as I understand it, since you're a Director you can probably confirm, but MWA will be the authority which decides whether or not to allocate water to the project on an annual basis, isn't that correct?

MR. ALMOND: That is correct.

HEARING OFFICER VALKOSKY: Okay, thank you.

Okay, are there any other members of the public who wish to offer comment on any of the matters we've discussed today, or those covered in the Presiding Member's Proposed Decision? Okay,
Okay, at this point we're going to take a ten-minute recess. We'll reconvene at approximately 2:25.

(RECESS.)

HEARING OFFICER VALKOSKY: Back on the record, please. During the recess the Committee considered the comments that we've received today. And has decided that it will, in fact, reopen the evidentiary record on the following areas. And this will be followed in a written order, but that won't be issued until early next week. So this is more in the way of preview.

We will reopen the area of air quality to address the matter of the sufficiency of the emission reduction credits. Tentatively we expect a witness from applicant and the district on those matters, as well as potentially by staff.

On the area of site control applicant has indicated it will sponsor a witness indicating its control of the site. We also believe, however, that Mr. Ledford has raised a pertinent related point, which in our parlance would result to any growth-inducing impacts by virtue of the fact that the site lease is apparently for a
longer period of time than is the expected project
life.

So in any testimony from the parties the
Committee would expect the issue of growth-
inducing impacts to also be addressed.

On dry cooling, we will reopen to
receive additional testimony from applicant
concerning the feasibility or the comparison of
the use of the wet and dry cooling technologies.
Also the Committee would like the City of
Barstow's comments to be specifically addressed in
any testimony.

Insofar as staff is concerned, that at
this point, since it is not staff's project, we
will afford staff the opportunity to offer
additional evidence on that area. And when I say
staff, I'm including all parties. This is
shorthand right now.

Insofar as the water agreement is
concerned, we will reopen to examine the final
aquifer storage and recovery agreement from the
Victor Valley Water District. The three chief
areas of concern under there. And what we expect
the witnesses to address are the consistency of
that agreement with the conditions of
certification proposed in the Presiding Member's
Proposed Decision.

As in site control, any potential
growth-inducing impacts arising from the fact that
water agreement is apparently for a period in
excess of the expected life of the project. And I
would also advise the staff and applicant to
specifically address any of the changes suggested
by Mr. Ledford insofar as the proposed conditions
of certification are concerned.

And with this I think attention has to
be given, as is required in the California
Environmental Quality Act, to insuring that the
conditions are both understandable and most
importantly, enforceable. So that will be a topic
in the water testimony.

And finally, as I have it, what the
Committee requires from the parties is some
agreement or some specification as to why there is
this disagreement as to the dollar amounts
concerning the mitigation measures specified in
the condition of certification Bio-7.

Are there any questions?

And I will get to the estimated timing
for this next.
Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Valkosky.

You mentioned comments by Barstow?

HEARING OFFICER VALKOSKY: Yes.

MR. THOMPSON: Have those been served?

Did I somehow miss those?

HEARING OFFICER VALKOSKY: They certainly have been docketed. I don't know if they have been served or not. But the City of Barstow, on January 18th, I believe -- here, Mr. Thompson, provide you with Mr. Eller's copy.

MR. THOMPSON: There's a possibility that this could have been served on everyone but the applicant? We haven't seen this, so we'll get a copy and we'll be ready.

HEARING OFFICER VALKOSKY: Okay. I'd say that's one of the benefits of coming to these public events, even for the applicant.

(Laughter.)

MR. THOMPSON: Among the many, Mr. Valkosky.

(Laughter.)

HEARING OFFICER VALKOSKY: Okay. Are there any questions before I get into the timeframes the Committee is entertaining for the
next evidentiary hearing?

MS. HOLMES: None from staff.

MR. THOMPSON: No, none.

HEARING OFFICER VALKOSKY: Okay. The timeframe proposed by the Committee, and if the parties view it as unrealistic, let's discuss it, but the Committee could proceed to an evidentiary hearing on February 17th here in Victorville. I believe that's a Thursday.

In order to provide parties time to prepare and examine their testimony, and I will note that certainly the bulk of applicant's testimony has already been submitted on January 14th, the Committee would propose that the parties submit their prepared testimony, witness identification, indication of which areas they're going to cross-examine upon, and copies of any proposed exhibits which have not thus far been submitted, on February 10th -- I should say by February 10th, a week before the hearing.

Does that create undue difficulties for anyone? Mr. Thompson.

MR. THOMPSON: No, sir, none for us.

HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: One moment, please.
Staff's concern, we don't have a problem with filing testimony on the 10th in any area other than evaluating the comments of Mr. Ledford on the aquifer storage and recovery agreement, should that review require additional testimony from staff.

As the Committee will recall, we had hired an expert witness from the outside to conduct that analysis. Should we need to hire this person again, the 10th will not work. And unfortunately, I cannot tell you right now whether or not that's going to be necessary. We would need to contact her and talk with her and talk with the staff witness who co-sponsored the testimony.

I can --

HEARING OFFICER VALKOSKY: When would you know?

MS. HOLMES: I think that we could file something hopefully by -- yeah, we can file something by tomorrow in the dockets, and we'll serve it, letting you know whether or not we would need to hire somebody.

HEARING OFFICER VALKOSKY: And if you needed to re-retain Ms. Bond?
MS. HOLMES: Then it would probably postpone preparation of testimony by another two weeks or so.

MR. BUELL: It might be even longer than that. If I recall the last time we amended her contract it took a month or two.

HEARING OFFICER VALKOSKY: Well, I guess --

PRESIDING MEMBER LAURIE: That's not going to be acceptable.

MS. HOLMES: I beg your pardon?

PRESIDING MEMBER LAURIE: That's not going to be acceptable.

MR. BUELL: I understand that, so staff will have to evaluate its options tomorrow and let the Committee know who will be our witness. Hopefully we can satisfy the needs of the Committee.

HEARING OFFICER VALKOSKY: And we'll look, at this point, we'll look for your testimony on the 10th of February then.

MS. HOLMES: That's fine.

HEARING OFFICER VALKOSKY: Mr. Ledford, a timeframe?

MR. LEDFORD: For anything that I know
of at this point, it would be okay. If the
applicant comes up with some new stuff, it
wouldn't. And the only other restricting area
would be if we were able to get witnesses from JPL
to come in and testify about the droughts.

HEARING OFFICER VALKOSKY: Okay, I'm
sorry, just a minute, go off the record.
(Off the record.)

HEARING OFFICER VALKOSKY: Okay, we've
just been informed -- I should say I would just
like to emphasize that the 10th and the 17th are,
at this point, tentative dates. The only thing I
can guarantee for sure is that those dates will
not be earlier than the 10th or the 17th.

I've been informed there could be some
unforeseen scheduling difficulties. But that will
be addressed in the order that comes out hopefully
by Monday.

Are there any other comments on anything
we've covered here today?

MR. THOMPSON: Thank you, Mr. Valkosky.

With regard to addressing Mr. Ledford's comments
on the conditions of certification, those
conditions were arrived at with Fish & Game, the
staff, ourselves, and I believe Mr. Ledford in a
joint effort.

And I would just like to request that the Committee give us all the flexibility to reply in a similar manner. If the staff has some difficulty finding their expert witness or something, maybe we can jointly make a presentation that addresses Mr. Ledford's comments, rather than individual presentations. And I would just ask for the flexibility to allow us to do that. I'm not sure we will. But if we have the flexibility to do that, --

HEARING OFFICER VALKOSKY: You're talking about at the evidentiary hearing?

MR. THOMPSON: That's exactly right.

HEARING OFFICER VALKOSKY: If that's appropriate at that time, so move and, you know, you could certainly present a panel if that's appropriate.

Okay. Is there anything further? Thank you for your attendance and participation. With that, we're adjourned.

(Whereupon, at 2:50 p.m., the conference was concluded.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Conference, nor in any way interested in the outcome of said Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of February, 2000.

DEBI BAKER

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