HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:                   
Application for                   
Certification for the            ) Docket No. 97-AFC-1
HIGH DESERT POWER PROJECT       )

COUNCIL CHAMBERS
CITY OF VICTORVILLE
14343 CIVIC DRIVE
VICTORVILLE, CALIFORNIA

FRIDAY, FEBRUARY 18, 2000
9:30 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITEE MEMBERS PRESENT
Robert Laurie, Presiding Member

STAFF PRESENT
Stanley Valkosky, Hearing Officer
Terry O'Brien, Adviser to Chairman Keese
Caryn Holmes, Staff Counsel
Richard Buell, Project Manager
Marc Sazaki

REPRESENTING THE APPLICANT
Allan J. Thompson, Attorney
21 C Orinda Way
Suite 314
Orinda, CA  94563

Thomas M. Barnett, Vice President and Project Manager
Andrew C. Welch, P.E., Project Director
Constellation Power
High Desert Power Project LLC
3501 Jamboree Road, South Tower, Suite 606
Newport Beach, CA 92660

Michael Carroll
Lawfirm of Latham and Watkins

INTERVENORS PRESENT
Gary A. Ledford, Builder
Jess Ranch
11000 Apple Valley Road
Apple Valley, CA 92308

Robert Almond
Jack Beinschroth

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
ALSO PRESENT

Stephen Adams, Staff Counsel
California Department of Fish and Game
Environmental Services
330 Golden Shore, Suite 50
Long Beach, CA 90802

Alan De Salvio
Mojave Desert Air Quality Management District

Charles R. Fryxell
Air Pollution Control Officer
Mojave Desert Air Quality Management District

John Roberts
City Manager, City of Victorville
Executive Director, Southern California Logistics Airport Authority

Randy Hill
General Manager, Victor Valley Water District

William Huyck

Peggy Sartor

Larry Huber, President
Victor Valley Water District

Hammelone Sonnenfeld

Esther Privett

Barbara Howard

Ron Leatz

Terry Flint
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
PROCEEDINGS

1:00 p.m.

PRESIDING MEMBER LAURIE: Before you do
that I would ask everybody in the audience to
check your cell phones. We do not want cell phone
interruption. If you need it on, turn it to
vibrate, please.

Mr. Valkosky.

HEARING OFFICER VALKOSKY: Thank you,
Commissioner Laurie. Today is the evidentiary
hearing for a limited purpose on the High Desert
Power Project. To my right is Commissioner Robert
Laurie, Presiding Member of this Committee. To my
left is Mr. Terry O'Brien, who is Adviser for
Chairman Keese, who has been appointed as the
Second Member of the Committee. My name is Stan
Valkosky. I'm the Hearing Officer for the
Committee.

First order of business is I'd like the
parties to introduce themselves beginning with the
applicant, Mr. Thompson.

MR. THOMPSON: Thank you. My name's
Allan Thompson; I'm CEC Project Counsel. To my
immediate right is Mr. Tom Barnett of
Constellation, the Project Director and Sponsor.
To his right is Mr. Andy Welch, also with Constellation. And to my immediate left is Mr. Mike Carroll of the lawfirm of Latham and Watkins.

HEARING OFFICER VALKOSKY: Thank you.

Mr. Buell.

MR. BUELL: Yes. My name is Richard Buell, I'm the Project Manager for the staff. And to my left is Caryn Holmes. And in the audience we have Mr. Marc Sazaki, who will be testifying on biological resources.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: Steve Adams, Department of Fish and Game, Staff Counsel. And I'll be here mainly asking a few questions and answering questions, perhaps, that the Committee Members might have.

We are not presenting witnesses today.

HEARING OFFICER VALKOSKY: Okay. Mr. Ledford.

MR. LEDFORD: Gary Ledford, Intervenor. My principal concern is water resources.

HEARING OFFICER VALKOSKY: Okay. Thank you. By way of background the Committee reopened the evidentiary record in this case and scheduled today's hearing in an order of notice February 1st
of this year.

The record is being reopened for the limited purpose of receiving evidence on only the following items.

The topic of air quality; we want to examine the sufficiency of the emission reduction credits obtained by the applicant.

The topic of biological resources. The area of inquiry is a correct monetary amounts for the mitigation specified in condition of certification BIO-7. Applicant has offered additional evidence concerning its control of the proposed project site, so we'll hear that under site control.

On the topic of dry cooling we will receive supplemental economic information.

And finally, insofar as the water agreement is concerned, the Committee has reopened to receive into evidence the final aquifer storage and recovery agreement. And this will include the consistency of the terms of that agreement with the proposed soil and water conditions of certification, any potential growth-inducing impacts associated with the water agreement, and any specific changes which the parties may propose.
in relation to suggestions made by Mr. Ledford in his comments on the Presiding Member's Proposed Decision.

Documents pertinent to today's hearing include testimony filed by the applicant in its motion to reopen the proceeding on January 13th. Applicant then filed additional prepared testimony of Andy Welch, which was docketed on February 10th.

We have received an executed copy of the aquifer storage and recovery agreement dated January 18, 2000.

Staff has filed testimony on February 10th followed by an errata on February 15th.

We also have prepared testimony and a proposed witness and exhibit list from Mr. Ledford which was filed on the 10th of this month.

Applicant has also filed a motion to exclude proffered testimony on the 14th, followed by a reply from Mr. Ledford dated on the 16th.

And finally, we have comments from the California Department of Fish and Game.

In addition, I have prepared a list of exhibits proposed by the parties which have been identified in the various filings. And I have
distributed this to the parties. And there were
copies on the table up here.

Procedures we'll follow today. Based
upon the filed materials there's apparently a
degree of confusion over the scope of today's
hearings and the witnesses who will appear.

The Committee will reiterate that it has
convened today's hearing for the limited purposes
mentioned previously. We have not reopened the
record to hear all matters already addressed
during the September and October 1999 hearings,
and discussed in the Presiding Member's Proposed
Decision.

Thus, the only witnesses we expect to
testify today are those who have sponsored
supplemental testimony addressing matters within
the scope of the order on reopening. Based on the
filings these witnesses are:

On behalf of the applicant, Mr. Welch.
On behalf of the staff, Mr. Buell and Mr. Sazaki.
And on behalf of Mr. Ledford, Mr. Ledford,
himself, Mr. Almond and Mr. Beinschroth.

Additionally, as stated in the January
27th conference, the Committee will accept
testimony on behalf of the Mojave Desert Air
Quality Management District concerning the sufficiency of emission reduction credits, as well as from a representative of the Victor Valley Water District concerning the aquifer storage and recovery agreements.

When we get to the evidentiary presentations the parties shall first present the direct testimony of their respective witnesses, who will then be subject to cross-examination, redirect and recross, as appropriate.

Members of the public may, of course, offer unsworn public comment on any of the matters addressed today. The way I would prefer to handle this is as we approach the conclusion of the topic area if a member of the public has any comment on that particular topic, that would be an appropriate time to make it.

I understand there could be some scheduling difficulties, and I will also accord the members of the public an opportunity at the end of today's proceeding to offer any public comment on the matters covered.

Are there any questions?

Okay. Before we begin the evidentiary presentations I'd like to address the matter of
the motion to exclude certain exhibits filed by

the applicant.

Mr. Thompson, I'll give you a maximum of
five minutes to explain your motion. Mr. Ledford,
you can have a similar time to respond to
applicant's motion. Staff and Fish and Game will
have an opportunity to comment as they may deem
appropriate.

Mr. Thompson.

MR. THOMPSON: Thank you, Mr. Valkosky,
I don't think I'll use the majority of the five
minutes.

Applicant took particular note of the
order reopening evidentiary record and notice of
evidentiary hearing. That document was very
specific in the topics that the Committee would
consider at today's hearing. And in fact, in the
order in paragraph two, the Committee indicated,
and I quote, "has indicated at the July 27
conference we will reopen the evidentiary record
for the" in bold, underlined "limited purpose" end
of bold and underline, "of receiving evidence only
on the following items." Then it listed the
items.

Exactly the same as you outlined not
five minutes ago, Mr. Valkosky, with the exception
that the water agreement discussion said any
potential growth-inducing impacts associated with
the term of the water agreement.

Second, we went back to the transcript
and found that the order reopening the evidentiary
record mirrors the discussion in the transcript
wherein the Committee gave the exact same guidance
to the parties and the public.

And so we took those two documents
together and reviewed the proffered testimony of
Mr. Ledford, and found that to -- and we concluded
that there were a number of topic areas that had
been raised in Mr. Ledford's testimony that had
been covered a number of times previously and were
not included or contemplated in the order by this
Committee.

Therefore, we move that that testimony
be excluded, and not heard today.

HEARING OFFICER VALKOSKY: Thank you,
Mr. Thompson.

Mr. Ledford.

MR. LEDFORD: Well, I guess when we come
to these hearings we get different impressions on
what was said. I've read the transcript, as well
and I don't disagree that the purpose of this hearing, as you've said, is for the limited purpose of addressing a contract that we haven't seen heretofore, and conditions that we haven't seen heretofore.

And the growth-inducing impacts which I have called growth-inducing impacts in previous times called cumulative impacts, I think, you'll find in the testimony today that they do combine.

The testimony that we have proffered of the witnesses, I mean there's specific testimony in their prepared testimony addressing the growth-inducing impacts.

But to get to that point we have to have a background. And what I've attempted to do in the proffered testimony is to examine the witnesses on their background and their knowledge of the water issues up here, and why that the growth-inducing or cumulative impacts of the issues we're going to address today are important.

I did a reply to their motion. I reviewed the law relative to evidence that can be proffered, and testimony that can be proffered. And I believe that what we have submitted in proffered testimony complies with the rules, with
the law. And it certainly fits into our
presentation on what growth-inducing impacts are.

HEARING OFFICER VALKOSKY: That conclude
your statement?

MR. LEDFORD: Yes, sir.

HEARING OFFICER VALKOSKY: Thank you, sir.

Does staff have any comment?

MS. HOLMES: Staff does not have a
comment on this topic.

HEARING OFFICER VALKOSKY: Mr. Adams,
Fish and Game.

MR. ADAMS: Fish and Game has no
comment.

HEARING OFFICER VALKOSKY: The Committee
will take a brief recess now, no longer than ten
minutes, to consider the matter. We'll reconvene
approximately 10:00.

(Brief recess.)

HEARING OFFICER VALKOSKY: During the
recess the Committee has considered all of the
exhibits identified on the document entitled,
Identification of Proposed Exhibits.

And before we issue the ruling, Mr.
Ledford, for your benefit I'd like you to note
that the materials that have been docketed in this proceeding are, in fact, part of the administrative record, and can be and are and have been considered by the Committee in formulating its proposed decision. And the additional documents can be and will be considered today.

That having been said, there is a distinction, however, between the items in the administrative record and the items in the hearing record.

Hearing record items are typically those that are offered by witnesses competent to sponsor them, and within the scope of the matters of concern to the Committee.

The chief difference is that while the matters in the administrative record may be used to explain, expand and enhance the understanding of the Committee in its decision-making process, only the matters offered into the evidentiary record can, in fact, solely form the basis for a finding as necessary.

That having been said, and after examining the items identified, we're going to rule as follows:

We will not admit as evidentiary
exhibits those items identified on the exhibit list as numbers 147 through 167. All of these items have been docketed. Some of the items, specifically Committee rulings and things, are a part of the record, are not something which anyone can really offer into evidence.

And moreover, each of these items, with the exception of the briefs, predate the September and October 1999 hearings. Exhibits 166 and 167, that is your briefs, are in the nature of argument, are not susceptible to being considered as probative evidence. But your arguments have been considered and will be reconsidered in any revised proposed decision that the Committee issues.

Therefore, we will not admit those items identified as exhibits 147 through 167 into the evidentiary record.

Your proposed documents, which we have identified as exhibits 171 and 173, relate, in our estimation, solely to local political matters, specifically the Mojave Water Agency board elections held last November. This event is not relevant to the environmental impact of the proposed project, nor is it within the scope of
the record reopened today. Therefore, we will not consider exhibits 171 or 173 as part of the evidentiary record.

Similarly, portions of exhibit 168, which is the prepared testimony of Jack Beinschroth, and of exhibit 172, which is the prepared testimony of Bob Almond, relate to matters covered during the October hearings. And are similarly not within the scope of the present reopening.

Additionally, portions of these documents seek to address, again, local political matters, specifically the MWA election, and are not within the province of the concerns of this Committee.

As to exhibit 168, in the Committee's estimation the matters covered in questions 3 to 7, 9 to 13, and 18 to 22 either address matters previously heard, are speculative, or are beyond the limited purposes of today's hearings. And are therefore not eligible for inclusion into the evidentiary record.

The responses, however, to questions 1, 2 and 8 of exhibit 128 appear to be qualifying in nature. And the responses to questions 14 through
17 address the VVWD contract and growth-inducing impacts. These are relevant, and the testimony may be presented to that limited extent.

Regarding exhibit 172, it appears the responses to questions 4 to 11 cover matters previously heard and numbers 16 through 34 address election matters. As said, these are not relevant.

The responses, however to questions 1 through 3, 12 through 15 and 35 through 38 do appear to address relevant matters. And the witness' testimony may be offered to that limited extent.

Finally, regarding exhibit 175, this is essentially Mr. Ledford's sponsorship of a news release from the Jet Propulsion Labs regarding future weather patterns. This matter, again, is beyond the scope of today's hearing. And, at best, would only have the weight of hearsay accorded to it. And could not independently sustain a filing. We note that it is docketed and will be treated accordingly, but it will not be admitted into the evidentiary record.

I believe that concludes the matters covered in the motions. Reply? Mr. Ledford.
MR. LEDFORD: I think we might have missed exhibit 174, the ruling on that?

HEARING OFFICER VALKOSKY: 174, that's a good point there, Mr. Ledford. Could you explain the purpose of exhibit 174? That's a consumptive use study.

MR. LEDFORD: It's a new document that the Commission has not seen because it was only produced here in the last month. And it's a consumptive use study which indicates how much water the Mojave Water Agency needs in order to balance the basin.

HEARING OFFICER VALKOSKY: Go off the record for a second.

(Off the record.)

HEARING OFFICER VALKOSKY: Okay, back on the record. Could you explain its relevancy to today's proceeding?

MR. LEDFORD: The relevancy relative to the contract that we're talking about with Victor Valley Water District is the water storage agreement that is a supplemental part of that contract which ultimately has to be approved by the Mojave Water Agency, and it has not been approved.
And the directors are going to have to consider the availability of water for this project in the consumptive use portion of it when that issue comes back before the Mojave Water Agency Board of Directors, which although it's been testified to in these hearings that there's draft agreements out there, to the best of my knowledge no such draft agreements even exist.

HEARING OFFICER VALKOSKY: Right, but would that exhibit influence or otherwise change the fact that the availability of state water project water to the project is on an interruptible and annually reviewable basis --

MR. LEDFORD: The purpose of this hearing is to evaluate the growth-inducing impacts from over-sized utility lines both to the project site, and to the project well site, what those growth-inducing impacts from the over-sized capacity of this project is.

I have preached this for some time, that there's two projects here. One project, which is a project to get water to the project, treat it, put it in the ground and take it back. And those uses which is what we're talking about.

And so I say, yes, it is very definitely
germane in relation to how those contracts are
ultimately going to be approved by the other
agencies that you have not seen contracts with. I
do believe it's applicable.

HEARING OFFICER VALKOSKY: Okay, Mr.
Thompson, your response?

MR. THOMPSON: I frankly don't care.
The MWA is going to consider what it wants to
consider when the contract is before it. And it
can be things that are admitted into the record or
things that are not admitted into the record.
I'm not so sure that this is germane to our
proceeding. But I don't think it really has much
relevance.

HEARING OFFICER VALKOSKY: Okay, you
said you really don't care. Does that mean you're
not objecting to it?

MR. THOMPSON: I'm not objecting.

HEARING OFFICER VALKOSKY: Okay. Any
other party objecting to it?

MS. HOLMES: Staff does not.

MR. ADAMS: No.

HEARING OFFICER VALKOSKY: There are no
objections, Mr. Ledford, we'll receive 174. You
may sponsor 174 during the water portion of
today's proceeding. Exhibit 170, I'm sorry for that. That was my oversight. That, again, appears overly remote.

MR. LEDFORD: I'm sorry, I think we're still missing 168 and 169. What is the ruling on those?

HEARING OFFICER VALKOSKY: No, exhibit 168 we addressed. Portions of it are admissible. Not the portions --

MR. LEDFORD: I'm sorry, 169 and 170.

HEARING OFFICER VALKOSKY: All right, again, explain the purpose of exhibit 169?

MR. LEDFORD: 169, I believe, is the missing exhibit to the current proposed contract. Exhibit A to the Victor Valley Water District contract. If it's not the precise exhibit, it is a similar exhibit.

It actually is a portion of exhibit number 65 which was introduced into evidence on October 7th. And it's figure 1 out of exhibit 65. And we have blown that exhibit up for purposes of clarification, both for the testimony of Mr. Beinschroth, and we've also got a blown-up version of it for the public.

HEARING OFFICER VALKOSKY: Okay.
Mr. Thompson?

MR. THOMPSON: I guess, Mr. Valkosky, if it's part of exhibit 65, it's already in the record. And --

HEARING OFFICER VALKOSKY: That's correct, so it would be just illustrative purposes today, is that fundamentally what you're --

MR. LEDFORD: That's fundamentally what I'm --

HEARING OFFICER VALKOSKY: -- what you're offering it for?

MR. LEDFORD: Yes, sir.

HEARING OFFICER VALKOSKY: That's fine. We'll note that it is in the record as part of exhibit 65, and we'll allow you to use it to illustrate your points today. It will need not be admitted as a separate exhibit, though.

MR. LEDFORD: Exhibit B is --

HEARING OFFICER VALKOSKY: That's exhibit 170 that you're referring to now?

MR. LEDFORD: Exhibit 170 is the sewage treatment plant pipeline. And the sewage treatment plant pipeline is an 18-inch pipeline that runs parallel to the project site, is actually on the project's east boundary.
The pipeline is designed to carry some 9000 acrefeet of water. It is currently proposed to carry 1500 acrefeet of water to a golf course.

It is our understanding that regardless of what the testimony in this hearing has been, that the High Desert Power people intend to use treated water in the treatment plant.

This pipeline is adjacent to their project. It is a current environmental project in the High Desert, and it should be considered as to its cumulative impacts or growth-inducing impacts, as it relates to this project.

HEARING OFFICER VALKOSKY: Mr. Thompson?

MR. THOMPSON: First of all, I think you can believe applicant in what they say.

Second of all, the conditions of certification specify what the project components are and what will be used.

To infer or say that we are going to do something other than what is contained in the testimony that has been sworn to, and what is described in the Committee's Presiding Member's Proposed Decision, I think, begs credibility.

This project, proposed by someone else, undoubtedly being approved by some other body, has
absolutely no relevance to this project whatsoever. And therefore I don't see how any probative value can be obtained from its admission.

HEARING OFFICER VALKOSKY: I'll take that as an objection.

MR. THOMPSON: That is an objection.

(Laughter.)

HEARING OFFICER VALKOSKY: Thank you.

All right, --

MR. LEDFORD: May I have a follow-on to it?

HEARING OFFICER VALKOSKY: Mr. Ledford, does exhibit 170 deal directly with the over-sizing of the pipeline pursuant to the contract?

MR. LEDFORD: It deals with the cumulative impacts of growth inducement, combining the two projects together.

HEARING OFFICER VALKOSKY: But it is, in fact, a separate project, not --

MR. LEDFORD: It is --

HEARING OFFICER VALKOSKY: -- not appurtenant to the power plant?

MR. LEDFORD: We believe it's very pertinent to the power plant, and on the issue of
HEARING OFFICER VALKOSKY: Not being --
let me rephrase that, not being certified as part
of the High Desert Power Project?
MR. LEDFORD: Not being certified as
part of -- it is a -- I think as the testimony
goes along today we may be able to see how that
the water treatment facility and the water project
are separate from the power project, and that is
what we are talking about today.
HEARING OFFICER VALKOSKY: No, what
we're talking about today are any growth-inducing
impacts logically and reasonably related to the
facilities for which the applicant is seeking
certification. And that's really what we're
talking about.
MR. LEDFORD: My reading of staff's
testimony indicates that there are many things
about this part of the project that they have not
studied that is not a part of this proceeding.
HEARING OFFICER VALKOSKY: And we'll
discuss that when we get to that point.
MR. LEDFORD: And I think when we get to
that point that we'll see how this part of this
fits into that equation.
HEARING OFFICER VALKOSKY: Okay. At this point we'll reserve decision on exhibit 170 till we get to the growth-inducing impacts. Okay?

MR. LEDFORD: Thank you.

HEARING OFFICER VALKOSKY: All right, are there any other matters on the motion? Okay, with that we will now turn to the topic of air quality. Mr. Thompson.

MR. THOMPSON: Thank you very much. Applicant would like to call Mr. Andy Welch to the stand.

MR. WELCH: Do I need to be sworn? I've been sworn previously.

HEARING OFFICER VALKOSKY: Swear the witness, please.

Whereupon,

ANDREW WELCH was called as a witness herein and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Welch, would you please state your name and place of employ?

A My name is Andrew Welch and I'm employed
Q: And what are your duties and responsibilities for Constellation Power?
A: I'm the Project Director for the High Desert Power Project, and have been working on the project for several years.
Q: Would you please briefly describe your educational background?
A: I'm a degreed engineer from Rutgers University College of Engineering, degree in mechanical engineering.
Q: And how many years do you have experience in the power industry?
A: I've been working in the independent power industry for 12 years.
Q: Thank you. Am I correct that you are here today to sponsor exhibits 143 and 144?
A: Yes.
Q: And specifically with regard to air quality, in exhibit 143 there is material in there on the offsets, the emission reduction credits. Would you please briefly describe what is contained in the air section of exhibit 143?
A: Certainly. In the air section 143 we have together, one, the option agreement with the
Southern California Logistics Airport Authority
for the remainder of the offsets. At the
previous hearings it was identified that we had
the majority of them, but not 100 percent of what
was required. This agreement takes the total up
to 100 percent of what was required.
Additionally, we have attached all the
relevant extensions to the previously submitted
option agreements.

Q    So your testimony today is that
applicant has secured all required emission
reduction credits for this project?

A    That is correct.

MR. THOMPSON: That concludes Mr.
Welch's testimony on the subject of air offsets
portion of exhibit 143.

HEARING OFFICER VALKOSKY: Thank you,
Mr. Thompson. Any cross?

MS. HOLMES: No cross from staff.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford,
any questions?

MR. LEDFORD: No questions.

HEARING OFFICER VALKOSKY: Mr. Thompson,
do you have a witness from the district, also?
MR. THOMPSON: I'm not sure he's our witness. The air district is independent, but I think there is someone here for the air district. Mr. DeSalvio, is that correct?

HEARING OFFICER VALKOSKY: Would you present that witness, please? Thank you, Mr. Welch.

MR. THOMPSON: We would be delighted to present Mr. DeSalvio as a witness.

HEARING OFFICER VALKOSKY: We'd like to have you sworn, Mr. DeSalvio.

Whereupon,

ALAN DeSALVIO

was called as a witness herein and after first being duly sworn, was examined and testified as follows:

MR. DeSALVIO: Alan DeSalvio, Air Quality Engineer with the Mojave Desert AQMD.

DIRECT EXAMINATION

BY MR. THOMPSON:

Q And, Mr. DeSalvio, are you familiar with this application by High Desert Power Project and the emission reduction credits information that has been submitted in this record, is that correct?
A    Yes.
Q    Has the district reached any conclusions
with regard to the sufficiency of those credits?
A    Yes, the district has. The district has
determined that the project has -- the applicant
has secured not only sufficient credits for the
project, but also all the credits that were
identified in the final determination of
compliance executed by the MDAQMD.
Q    Do you have anything else to add, Mr.
DeSalvio?
A    No. Just to further clarify, those
issues that we had raised in October have been
resolved.

EXAMINATION
BY HEARING OFFICER VALKOSKY:
Q    Mr. DeSalvio, when you say obtained, do
you mean as acquired either by purchase or
otherwise legally enforceable right, the title to
these emission offset credits?
A    If I understand your question correctly,
that's a very good point. They have secured the
ability to purchase when required to do so. I
don't believe they have actually purchased them.
They have option contracts in every case.
The authority to construct does not require that they actually purchase the offsets until -- well, the condition is that they purchase them prior to beginning construction.

Q Right, but again, right now, they have the legally enforceable right to purchase them?

A First right of refusal for each set of credits, yes.

Q All right, and these are a complete amount required for the project, correct?

A In excess of, yes.

Q In excess of. Thank you.

HEARING OFFICER VALKOSKY: Any questions?

MS. HOLMES: No questions.

HEARING OFFICER VALKOSKY: Mr. Adams, any questions? Mr. Ledford, any questions?

MR. LEDFORD: No questions.

HEARING OFFICER VALKOSKY: Mr. DeSalvio, thank you very much.

MR. THOMPSON: That concludes applicant's testimony in the area of air quality, sir.

HEARING OFFICER VALKOSKY: Staff?

MS. HOLMES: Staff will call Richard
Buell. He's already been sworn.

HEARING OFFICER VALKOSKY: Since we're refreshing everyone's oath, re-swear Mr. Buell, too.

Whereupon,

RICHARD BUELL

was called as a witness herein and after first being duly sworn, was examined and testified as follows:

MS. HOLMES: Before I begin my direct of Mr. Buell I'd like to request that staff's testimony, which is currently identified as exhibit 146, be broken up into two parts. The reason for that is that the page numbers start over again when we reach the biology section. If they're not broken up into two parts, we'll have two page 5, 6, 7 of the same exhibit number.

So I think it would make sense to have a separate exhibit number given to the biological resources testimony.

HEARING OFFICER VALKOSKY: Okay, so let's break it up into 146A and 146B. And it is my understanding that your biological resources testimony will be 146B?

MS. HOLMES: That's fine.
HEARING OFFICER VALKOSKY: The rest will be 146A?

MS. HOLMES: That's fine.

HEARING OFFICER VALKOSKY: All right, we'll designate it that way.

MS. HOLMES: Thank you.

DIRECT EXAMINATION

BY MS. HOLMES:

Q Mr. Buell, do you have in front of you a copy of what's just been identified as exhibit 146A?

A Yes, I do.

Q And was the air quality portion of that prepared by you or under your direction?

A Yes.

Q Are the facts contained in that testimony true and correct to the best of your knowledge?

A Yes, they are.

Q And do the opinions in that testimony represent your best professional judgment?

A Yes, they do.

Q Do you have any changes or corrections to the air quality portion of your testimony?

A No, I do not.
Q  Would you like to summarize your testimony, please?
A  Simply that I'd like to summarize it by stating that with the receipt of the contract information provided by the applicant on January 14th and also on October 26th, staff believes the applicant has demonstrated that it has the right to obtain sufficient ERCs or offsets for the proposed project.

Q  Does that conclude your summary?
A  Yes, it does.

MS. HOLMES: Mr. Buell is available for cross-examination.

HEARING OFFICER VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions, other than an apology that the Crown Cork & Seal document was not included in apparently all of the documents that we initially sent out. And other than that, we have no questions of staff.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

MR. LEDFORD: Are we including the Crown Cork & Seal document as a part of this exhibit? Are we including that?
HEARING OFFICER VALKOSKY: That would be part of applicant's exhibit 143.

MR. LEDFORD: We are adding it to the exhibit?

HEARING OFFICER VALKOSKY: Mr. Thompson, as I understood, that was part of attachment 1 to exhibit 143, but it may not have been forwarded through all copies, is that correct?

MR. THOMPSON: I am on the service list, and my copy that my paralegal sent out, I got one, but apparently staff did not get one. So I can't tell you how many -- who got them and who didn't. So we resubmitted.

But, yes, I would like it included as part of 143.

HEARING OFFICER VALKOSKY: Okay, fine. Does that clarify it, Mr. Ledford?

MR. LEDFORD: Yes, it does.

HEARING OFFICER VALKOSKY: Okay. Are there any -- thank you, Mr. Buell. Are there any comments from any members of the public pertaining to the topic of air quality?

Sir, if you could identify yourself for the record and spell your last name, please.

MR. FRYXELL: Good morning. My name is
Charles L. Fryxell. I'm the Air Pollution Control Officer for Mojave Desert Air Quality Management District.

I just wanted to say that it's been a pleasure working with this Committee and your staff and the applicant on this project. It's a very exciting project for this area.

The applicant has been thoroughly cooperative in all the things that we have asked them to do. And they have completed all the requirements for the district, including the emission reduction credit purchases.

And we think it's a very good project and we'd like to see it go forward. Thank you.

HEARING OFFICER VALKOSKY: Thank you, Mr. Fryxell.

Any other comments on the topic of air quality? Okay, we'll close the record on that topic at this point.

Next topic is biological resources. Mr. Thompson, do you have a witness?

MR. THOMPSON: Yes, we do, thank you.

Applicant would like to recall Mr. Andy Welch.

HEARING OFFICER VALKOSKY: Mr. Welch.

MR. LEDFORD: I didn't hear a motion to
enter that exhibit into the record, which I do
have an objection to.

HEARING OFFICER VALKOSKY: It is part of
exhibit 143. My assumption is that Mr. Thompson
will attempt to move the whole exhibit into the
record at once, because there are several
different portions of it. Is that a correct
assumption, Mr. Thompson?

MR. THOMPSON: That is correct. My
intention was to move it after all of the subjects
have been covered.

MR. LEDFORD: Fine.

HEARING OFFICER VALKOSKY: Okay?

MR. LEDFORD: Thank you.

HEARING OFFICER VALKOSKY: Mr. Thompson.

MR. THOMPSON: Thank you.

DIRECT EXAMINATION

BY MR. THOMPSON:

Q    Mr. Welch, having been previously sworn,
let's make this nice and short. Did applicant
submit additional biological resources testimony
in either exhibit 143 or 144?

A    No.

Q    Have you had a chance to review staff's
biology testimony contained in 146B?
A    Yes.

Q    On behalf of the applicant do you accept

and agree with that testimony of Mr. Sazaki?

A    Yes, I do.

MR. THOMPSON: Thank you very much,

that's all we have.

HEARING OFFICER VALKOSKY: Questions for

Mr. Welch?

MS. HOLMES: Not from staff.

MR. ADAMS: No questions.

MR. LEDFORD: No questions.

HEARING OFFICER VALKOSKY: Thank you,

Mr. Welch.

Staff.

MS. HOLMES: Staff would recall Mr. Marc

Sazaki.

Whereupon,

MARC SAZAKI

was called as a witness herein and after first

being duly sworn, was examined and testified as

follows:

DIRECT EXAMINATION

BY MS. HOLMES:

Q    Good morning, Mr. Sazaki. Do you have

in front of you a copy of what was recently
identified as exhibit 146B?

A    Yes, I do.

Q    And was that testimony prepared by you

or under your direction?

A    Yes.

Q    Do you have any corrections to make to

that testimony at this time?

A    No, I do not.

Q    Are the facts contained in that

testimony true and correct?

A    Yes, they are.

Q    And do the opinions represent your best

professional judgment?

A    Yes.

Q    Can you please give a brief summary of

your testimony.

A    Shortly before the hearing in October

where we were dealing with the area of biological

resources, we had assumed we had an agreement with

the federal agencies as to the level of habitat

compensation for desert tortoise and Mojave ground

squirrels.

And at that time the Bureau of Land

Management decided that rather than adhere to the

memorandum of understanding that they have with
the Department of Fish and Game regarding the disposition of habitat compensation lands, they decided that for any impacts to endangered species' habitat on federal lands, the compensation would go to the federal government. And as a result of that, although everyone agreed that the total acreage for the second natural gas pipeline and the project was to be 1242.8 acres, we had to recompute the split and what the assignments would be for the state and the federal government. And because of the short time involved we made some estimates based on the percentage of land that would be going to one party versus the other. And unfortunately that wasn't exactly the appropriate way for making that adjustment. And subsequent to that hearing there was confusion as to exactly what the final disposition of the shares of the habitat compensation would be. So to clarify this I re-ran the property analysis record software that was originally used to determine what the acquisition fees would be, the initial enhancement fees, as well as the endowment fees. And I did that for both,
excluding the 318 acres that the Bureau would be requiring, I did it for both the project with and without the 32-mile gas pipeline.

And the result of that process, I have a new set of estimates that will be used to base the assurances for the habitat compensation. And these I've included in my new proposed conditions of certification BIO-7.

Q Thank you. Does that conclude your summary?

A Yes, it does.

MS. HOLMES: Mr. Sazaki is available for cross-examination.

HEARING OFFICER VALKOSKY: Mr. Thompson.

MR. THOMPSON: We have no questions except for again we would like to thank Mr. Sazaki for taking upon himself the difficult task of wading through the formulas and the recalculations. And we would hope that he could get on an earlier flight, as today is his wife's birthday.

(Laughter.)

MR. SAZAKI: She'll appreciate that.

MR. THOMPSON: I'm sure. We have no other questions or comments.
HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: I have no questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

MR. LEDFORD: None.

EXAMINATION

BY HEARING OFFICER VALKOSKY:

Q Mr. Sazaki, are these figures consistent
with those used in the federal biological
assessment?

A Yes, they are, as to the acreages.

HEARING OFFICER VALKOSKY: Thank you, sir.

MS. HOLMES: Mr. Hearing Officer, at
this point I'd like to move exhibit 146B entered
into the record.

HEARING OFFICER VALKOSKY: Is there
objection?

MR. THOMPSON: None from applicant.

MR. LEDFORD: None from --

HEARING OFFICER VALKOSKY: 146B is
admitted.

Are there comments from any members of
the public on the topic of biological resources?

Fair enough.

Thank you, Mr. Sazaki. Close the record
on the topic of biological resources.

The next item on the agenda is site
control. Mr. Thompson.

MR. THOMPSON: Thank you. Applicant
would like to recall Mr. Andy Welch.

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Mr. Welch, having previously been
sworn, --

A Yes.

Q Mr. Welch, in exhibit 143 applicant
submitted a document entitled -- well, it was a
lease with the Southern California Logistics
Airport Authority, is that correct?

A Yes.

Q And what is the reason for the inclusion
of that document in exhibit 143?

A To demonstrate for the Committee that
the applicant does have site control.

Q And the term of that agreement?

A The lease agreement would be a 50-year
lease.

MR. THOMPSON: Thank you very much, Mr.
Welch. Mr. Welch is tendered for cross-

examination.
MS. HOLMES: No questions.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford?

MR. LEDFORD: Thank you.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q Mr. Welch, did you negotiate this lease?

A I was involved in the negotiation.

Q And are you signature to the lease?

A No, I'm not.

Q Who is the signature to the lease?

A I believe that Mr. Barnett is.

Q And what is his position in this project?

A Mr. Barnett is the Vice President of the project, Vice President and Project Manager.

Q And does he work for Constellation Power, also?

A Yes, he does.

Q And is he a Vice President of Constellation Power, also?

A He is the Vice President of Constellation Power Development, which is --

Q A different company?

A It gets complicated. I guess
technically he is not an officer of Constellation
Power, Inc.

Q  All right. Looking at the exhibit that
you placed into a portion of the record, this
appears to be a lease option agreement.

A  Correct.

Q  And included in this is several
exhibits. I think the exhibits are from A to F.
And I don't find any of the exhibits attached to
what I've gotten as a part of this document. Are
exhibits A to F available?

A  I don't know that we have them here.

Q  Well, with all due respect, your
testimony before this Commission is that you have
a lease, that is what your testimony is --

A  That's correct, and that lease was
approved also at a public meeting of the Southern
California Logistics Airport Authority.

Q  -- and the --

A  So it is a public document.

Q  -- and the lease is attached. But you
have an option. The option agreement does reflect
that there is a lease attached. But there is no
lease attached.

MR. LEDFORD: I respectfully submit that
without all of the documents that this doesn't rise to the level of a complete exhibit. And the public is entitled to see all the exhibits.

MR. WELCH: We submitted what we believed was relevant and necessary for the proceeding.

MR. LEDFORD: My objection to this document, as apportioned, will be that it's an incomplete exhibit.

I raised this issue in my opposition to their motion to reopen, that this particular exhibit lacked the exhibits. And so this is not a surprise, it was in my original motion.

HEARING OFFICER VALKOSKY: Mr. Welch, is the purpose of your testimony to establish that you, to sponsor in the provisions of the lease agreement, or to establish applicant has obtained an option to lease the proposed site?

MR. WELCH: To establish that the applicant has an option to lease the site.

HEARING OFFICER VALKOSKY: Thank you. Mr. Thompson, any redirect?

REDIRECT EXAMINATION

BY MR. THOMPSON:

Q  Mr. Welch, in your opinion is that
option currently valid?
   A Yes, it is.
Q Has this been approved by any agency or reviewed by any agency other than this one?
   A It has been authorized and entered into by the Southern California Logistics Airport Authority.

MR. THOMPSON: Thank you, that's all I have.

HEARING OFFICER VALKOSKY: Any redirect?

Mr. Ledford? Thank you, Mr. Welch.

Staff?

MS. HOLMES: Mr. Buell needs to be called again.

DIRECT EXAMINATION

BY MS. HOLMES:

Q Mr. Buell, did you prepare that section of exhibit 146A that relates to site control?
   A Yes, I did.
Q And I'll just skip the pro forma questions and ask you to please summarize what your conclusions were.
   A We believe that the information provided on January 14th by the applicant provides evidence that they have site control.
Q    Does that conclude your summary?
A    Yes.

MS. HOLMES: Thank you. Mr. Buell is available for cross-examination.

HEARING OFFICER VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions, thank you.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q    Mr. Buell, I note this lease is for 50 years.
A    Yes.

Q    Is a lease under California law by a public agency required to have CEQA review?

MS. HOLMES: I'm going to object to that question on the grounds it calls for a legal conclusion from the witness.

HEARING OFFICER VALKOSKY: Sustained.

Anything else, Mr. Ledford?

MR. LEDFORD: Well, you stumped me for half a second. If you give me half a second, I will.

(Laughter.)
BY MR. LEDFORD:

Q In evaluating the project that is currently being proposed by the Energy Commission, it's for a period of only 30 years, is that correct?

A Yes.

Q And would this lease, the extension of time on this particular lease, provide for growth-inducing impacts on this project?

A Not that I'm aware of.

Q Have you reviewed the lease, itself, Mr. Buell?

A Yes, I have.

Q And is there any provision that talks about water in any portion of the lease?

A Not to my recollection.

Q And do you have a copy of the lease that could be attached to this exhibit in the permanent record of this proceeding?

A I'm not sure I understand your question. I have a copy of the lease agreement that the applicant attached to their January 14th filing.

Q My question simply is in order to make the record clear and to eliminate my objection to this option agreement, could your copy of the
lease be attached to the permanent record, and could the public have an available copy?

A  My copy of the lease is the copy that the applicant provided. It is also missing the attachments which you identified.

Q  So the answer is you have not reviewed the lease, the 50-year lease?

A  I've reviewed the documents, the agreement that the applicant has provided on January 14th.

Q  You missed my question. My question simply is have you reviewed the lease, exhibit A, the lease for 50 years?

A  If that's attached in A, no, I have not.

Q  And if, for any reason, there was discussion in the lease relative to water, or High Desert Power Project providing water service to the Victor Valley Economic Development Authority during that 50-year period, might that have issues of growth-inducing impacts that you've not studied?

MS. HOLMES: Again, I'm going to object to that because Mr. Buell's testimony does not go to the growth-inducing impacts of the lease, it goes to the growth-inducing impacts of the
project. And those are two separate issues.

HEARING OFFICER VALKOSKY: I'm going to
overrule that. I think it's relevant. Mr. Buell,
please answer it.

MR. BUELL: The question, as I
understand it, is if there were terms in the lease
agreement that dealt with water that whether or
not we should evaluate that. And I believe that
my answer is yes, if I understand your question
correctly.

BY MR. LEDFORD:

Q    Previous testimony in this proceeding
has been that the regimen of water was that it was
going to go first from the Mojave Water Agency to
the plant. And then from the plant to the Victor
Valley Water District.

But if you may recall when we built the
graph, we actually showed -- you may recall that
Victorville is one of the two applicants to get
the 4000 acrefeet of water on an annual basis. Do
you recall that?

A    I recall that there's a very complicated
scheme by which water is being provided for this
project, yes.

Q    And in the application, the City of
Victorville puts in the application that they intend to use the water for municipal purposes, and so since the City of Victorville is one of those applicants, the regimen of water may be addressed in the lease. And that's my concern.

A  I'm not sure I understand what your question is.

Q  Okay. I'm sure that I -- I think I've actually made the point that I needed to make here, so, thank you.

A  Okay.

HEARING OFFICER VALKOSKY: Any redirect?

MS. HOLMES: I have one question.

REDIRECT EXAMINATION

BY MS. HOLMES:

Q  Mr. Buell, is it your understanding that the project's use of water would be controlled by the terms of the lease or by the Energy Commission's conditions of certification?

A  It would be controlled by the Energy Commission's conditions of certification.

MS. HOLMES: Thank you. I don't have any additional redirect.

HEARING OFFICER VALKOSKY: Recross?

MR. THOMPSON: Nothing from applicant.
HEARING OFFICER VALKOSKY: Mr. Ledford, recross? Thank you, Mr. Buell.

Are there any comments from any members of the public on the area of site control at this time?

Sir, if you'd identify yourself and spell your last name, please.

MR. ROBERTS: Mr. Chairman, Members of the Board, Commission, my name is John Roberts, R-o-b-e-r-t-s. I am the City Manager of the City of Victorville, and the Executive Director of the Southern California Logistics Airport Authority.

The option to lease the land on which the power project is designated was approved by unanimous vote by the City Council of the City of Victorville which sits as the Board of Directors of the Southern California Logistics Airport Authority.

That document has been executed and that document provides control over the site to the High Desert Power Partners. There are no provisions within either the option document nor the lease document which pertain to the provision of water.

HEARING OFFICER VALKOSKY: Thank you,
sir.

PRESIDING MEMBER LAURIE: Mr. Roberts,
just a note on behalf of the Energy Commission.
We really do very much appreciate the cooperation
of the City in providing these accommodations.
Your folks have been very helpful, thank you.

MR. ROBERTS: Very glad to have you here.

HEARING OFFICER VALKOSKY: Any other
comments from any members of the public on the
topic area of site control? Seeing none, we'll
close the record on that.

The next topic is the additional
economic information concerning the use of dry
cooling. Mr. Thompson.

MR. THOMPSON: Thank you. Applicant
would like to recall Mr. Welch.

DIRECT EXAMINATION
BY MR. THOMPSON:

Q Mr. Welch, in your prepared testimony,
which is a part of exhibit 143, you have some
material in there, a question and answer on dry
cooling, as an alternative. Do you adopt that
testimony as your own?

A Yes, I do.
Q: Do you have any corrections, additions or deletions to make to that material?

A: No. Basically the purpose of that was a qualitative analysis of things that I believe had not been considered in other submittals on dry cooling.

Q: Your testimony here today is to give an example or an illustration of the costs of dry cooling, you are not here as an engineering expert on feasibility, is that correct?

A: That is correct.

MR. THOMPSON: Thank you very much. Mr. Welch is tendered for cross-examination on the issue of dry cooling.

HEARING OFFICER VALKOSKY: Ms. Holmes?

MS. HOLMES: No questions.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q: Mr. Welch, what is your background related to dry cooling?

A: As I've stated earlier, I've been involved in the independent power business for
over a decade.

Q  Have you ever operated a plant that has dry cooling?

A  No, I have not. I have evaluated the use of it in several plants and have found it not to be an effective way of cooling a power plant.

MR. LEDFORD: Motion to strike the last. That wasn't my question and I'd appreciate it if you'd just answer the questions I do offer.

BY MR. LEDFORD:

Q  Do you have any direct educational background in dry cooling as part of your mechanical engineering degree?

A  I have a mechanical engineering degree which does teach me how to do heat balances, but I'd say further specifically what I do is that I have used experts that have educated me on this issue, in particular on this project. And further, that I also have more importantly on that, the experience of the economics of a power plant and the type of things that go into the decision of whether to build or not to build a plant.

Q  Are you familiar with a project called Eldorado Power?
A    Yes, I have.
Q    Have you -- what can you tell me about that project?
A    I understand that it's being built in southern Nevada; that it has dry cooling. And I guess, as of yesterday I heard that the contractors paying liquidated damages because they failed to meet their performance test requirements.
Q    All right. On the plant, itself, what size is the plant?
A    I believe it may be 500 megawatts. I'm not exactly sure. It's either 500 or some variation, something around the size of our plant.
Q    And is that power plant located in a high desert environment very similar to the Victor Valley?
A    I mean southern Nevada, I believe, is a desert environment, but I'm not that familiar with what the altitude is at that location.
Q    Is the location on Boulder City, Nevada?
A    That's -- yes. Or outside of it, actually.
Q    Is Boulder City very close to Las Vegas?
A    Yes.
Are you familiar with what the elevation in Boulder City is?

No, I'm not.

If I told you that it was 2800 feet would you have any reason to disbelieve that?

No.

Is the Eldorado Power Project going to be selling power into the same energy grid as the High Desert Power Project sells power?

I believe that they probably will be importing power into California; they are not within the same control area. They are located outside the state of California.

They're selling power into the same power grid, though, is that correct?

Well, depending -- define power grid.

The power lines that come from Hoover Dam and come through here and go to Los Angeles --

If you're talking the Western System Coordinating Council as a single power grid, yes, they are.

Do you know what the summertime temperatures are in Boulder City?

No, I don't.

Would you expect that they would be
similar to what they are in the Victor Valley or
higher?

A  I would expect that they probably are
very similar.

Q  If the Eldorado project found that it
was economically feasible to build their plant,
would it not make sense that the High Desert Power
Plant could also build a plant with dry cooling?

A  I do not know the economic assumptions
that went into the decision of the two companies
that built that plant in order to do it.

I do know that they did have the ability
to go from plant proposal to construction a lot
quicker than a plant in California has the
opportunity to do.

That there are many different economic
assumptions that go into it. They do have to deal
with -- also, they are, will likely be serving the
southern Nevada region for power growth which is,
I believe, now the fastest growing area in the
nation. So those economic assumptions are
different.

They would be able to serve that load
under different circumstances than we are entitled
to due to the fact that there is no independent
system operator in Nevada, as there is in California.

So there are many factors that differentiate between the plants.

Q  On how many days in the Victor Valley is the temperature in excess of 108 degrees?
A  I don't know that precisely.
Q  Well, how much money do you expect to sell the power for on hot days?
A  On hot days the cost of power is the highest because the demand for power is the highest. And so, as you know, being a consumer you pay more for power on those days.
Q  But you can't tell me how many days the power project would be selling power when it's over 108 degrees?
A  I would expect all of them.
Q  No. You can't tell me how many days that there --
A  No, I cannot predict the weather, sorry.
Q  And you haven't studied on an average basis in your economic analysis how many average days there are a year?
A  We have various economic analyses that we have made clear as far as the assumption of
what the weather and what the price of power is going to be. It's considered proprietary information.

Q Isn't the bottom line that it's not that it's economically infeasible, but that your company would just make less profit?

A As I've stated on many occasions the point of building this project is to make a profit. There is a level at which a project where the risk is not paid off by the profit available, and which you would choose not to do it.

And it has been my testimony that according to our calculations that using a dry cooling would bring it to the point where it would not offer enough of a payback to make this investment worth the risk.

Q One other question. Are you familiar with a term called misting?

A In what use?

Q In dry cooling.

A Basically that would be what's also known as the hybrid cooling system.

Q Can you explain to us what misting means?

A Misting is that you use an evaporative
cooling on top of a dry cooling to help its efficiency.

Q  Especially on hot days?
A  Especially on hot days.

MR. LEDFORD: Thank you. No further questions.

EXAMINATION

BY HEARING OFFICER VALKOSKY:

Q  Mr. Welch, could you just briefly tell me what are the chief economic ramifications of using dry cooling on the project?
A  The chief is actually reduction in output. We're looking at, you know, we get these peak days we mentioned that we could see a 10 percent drop of the, you know, on the order of 70 megawatts of loss. And that would be at the time when the State of California is in most need of that capacity.

Q  And in your economic analysis, and I take it that that approximate 70 percent (sic) drop in output basically represents the borderline between economic feasibility and infeasibility? Is that another way to look at it?
A  That is one of the factors. There's many, the initial capital cost and the ongoing...
operation aspects of the dry cooling. But that is
a major factor.

Q    Thank you.

HEARING OFFICER VALKOSKY: Mr. O'Brien.

BY MR. O'BRIEN:

Q    Mr. Welch, I have a question for you. In terms of your testimony you talk about a 10 percent penalty at 112 degrees, and a 5 percent penalty at 98 degrees, therefore the penalty increases with temperature.

Below 98 degrees does the penalty decrease? And at some point does it go to zero?

A    At very cool temperatures it approaches zero. It does decrease. It's asymptotic on its reduction, approaching zero, doesn't quite reach it. And I guess also to emphasize that the 5 percent calculation was done in 98 degrees, assuming a very high relative humidity that is considered the design case for a cooling tower. This area does not often see high relative humidity. So most of the time the 98 degrees would see more than a 5 percent difference.

MR. O'BRIEN: Okay, thank you.

HEARING OFFICER VALKOSKY: Any redirect, Mr. Thompson?
MR. THOMPSON: Just one question, thank you.

REDIRECT EXAMINATION

BY MR. THOMPSON:

Q The testimony today, including your direct, was based upon giving an economic assumption for the record with regard to dry cooling, but we've touched on a number of other issues.

Would you very briefly tell the Committee and the public if there are noneconomic issues associated with the use of dry cooling, such as the size of the facility or noise or anything else?

A Yeah, actually, I mean, it's -- I don't know how many people have seen it, I guess Mr. Ledford actually has brought in a visual of the dry cooling for the Eldorado facility. And as you can clearly see, the facility is -- the cooling part of the power plant is larger than the rest of the power plant combined on that plant.

It is a large, it is 80 to 100 feet in the air, probably the size, estimated to be the size of a football field would be for our -- it would take up a lot of room. It would impact
visually significantly the area.

And as I once said, I saw an application of this in a very different environment, New Jersey, and it was the only thing I could see that could make a refinery not stand out, because there was dry cooling in the refinery which was even more imposing visually.

MR. THOMPSON: Thank you very much.

That's all I have.

HEARING OFFICER VALKOSKY: Ms. Holmes, recross?

MS. HOLMES: No.

HEARING OFFICER VALKOSKY: Mr. Ledford.

RECROSS-EXAMINATION

BY MR. LEDFORD:

Q Just a clarification. Chairman Valkosky said that 70 percent reduction. Ten percent reduction is what your testimony is?

A Yes, 10 percent, which would be 70 megawatts. He misspoke.

Q Which would amount to 70 megawatts of reduced amount of power that you could put into the grid?

A Correct.

Q And that means that that would be 70
megawatts that you would not be able to earn a
profit on?

A     And 70 megawatts somebody else would
have to generate.

MR. LEDFORD: No further questions.

HEARING OFFICER VALKOSKY: Thank you,
anything else for Mr. Welch? Thank you, Mr.

Welch.

Ms. Holmes.

MS. HOLMES: Mr. Buell.

DIRECT EXAMINATION

BY MS. HOLMES:

Q    Mr. Buell, did you prepare the dry
cooling portion of what's been identified as
exhibit 146A?

A     Yes, I did.

Q    Do you have any corrections to make at
this time?

A     No, I do not.

Q    Would you please summarize your
testimony?

A     Although dry cooling would make the High

Desert Power Project less economic, staff does not
believe the applicant has demonstrated the project
would be economically infeasible using dry
However, staff has conducted its water analysis on the project, as well as other projects, to determine whether the use of fresh inland water would result in any significant environmental impacts.

Barring identification of any significant environmental impacts, staff has concluded that the decision on which cooling technology to use should be determined by the project developers.

Staff believes it important to note that the risk of using dry or wet cooling is that of the applicants in a competitive market.

Q And does your conclusion that staff is not recommending dry cooling as a result of the fact that staff has not found any significant water impacts rest on Commission adoption of the conditions that staff has presented in its testimony that will be discussed later today?

A Yes, it does.

MS. HOLMES: Thank you. Mr. Buell is available for cross-examination.

HEARING OFFICER VALKOSKY: Mr. Thompson.

MR. THOMPSON: No questions.
HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q  Mr. Buell, are you familiar with the Eldorado Power Project?

A  I'm familiar with the information that you provided me, yes.

Q  And do you have any reason to believe that that project is economically infeasible?

A  No, I do not.

Q  And is that project, to the best of your knowledge and belief, located in an area that is similar in altitude and temperature climate to the Victor Valley?

A  Based on the information that you provided me, yes.

Q  In your testimony relative to impacts on water, four lines down, four columns across, you say that there's a significant probability of the project failing due to the unavailability of SWP water.

While you have said that it's up to the applicant to take the risk, is it your opinion...
that this project has a significant possibility of failing?

PRESIDING MEMBER LAURIE: One moment, Mr. Buell.

(Pause.)

HEARING OFFICER VALKOSKY: Mr. Ledford, I'll note that while staff didn't object, I believe that's part of Mr. Buell's testimony for growth-inducing impacts, is that not correct?

MR. LEDFORD: Correct, but he also testified that the reason that staff was not objecting to -- or promoting dry cooling, I don't remember the exact testimony, but the reason was because it was up to them to take the risk.

So I think that raises the level of the question to ask him what level of risk that he thinks that the project has.

Now, whether or not I go to this other document that's one page, two pages behind this or not, --

HEARING OFFICER VALKOSKY: Right, right.

MR. LEDFORD: -- I don't know if I can get to that, or not.

HEARING OFFICER VALKOSKY: But I'm just trying to keep the record as orderly as possible.
Ms. Holmes, you had something to say?

MS. HOLMES: My only point was going to be, and I was planning to object but I wasn't as quick as you were, is that I don't believe that the question of the risk is relevant to staff's testimony on dry cooling.

HEARING OFFICER VALKOSKY: Okay, let me just try to cut through some of this.

Mr. Buell, is it your testimony that any risk associated with that, the choice of cooling technologies, any economic risk, is essentially applicant's in this case?

MR. BUELL: Yes, that's my testimony, provided that the environmental consequences of whatever choice you use have been adequately mitigated.

HEARING OFFICER VALKOSKY: Correct. And is it your further testimony that with the implementation of all of the conditions of certification proposed by staff, that the environmental consequences of the wet cooling technology will be mitigated below a level of significance?

MR. BUELL: Yes.

HEARING OFFICER VALKOSKY: Okay.
Mr. Ledford, I think, you know, to the extent you want to get into growth-inducing impacts, that's the next topic. Right now, again, we're limited to the supplemental economic considerations about dry cooling.

And I think, I know Mr. Buell has --

MR. LEDFORD: I think that Mr. Buell --

HEARING OFFICER VALKOSKY: -- said all he's going to say. You're free to ask a question, but, you know, --

BY MR. LEDFORD:

Q The question is, do you think that this project has a significant risk of failure using wet cooling?

MS. HOLMES: And, again, I'm going to object. I don't have a problem with that question being asked during the discussion about water and growth-inducing impacts. But I don't think it's relevant to dry cooling.

MR. LEDFORD: Risk of failing has a lot to do with economics. We're talking about economics. And he's already stated that the reason that the staff isn't recommending dry cooling is because that the risk is to be borne by the applicant.
I believe if Mr. Buell has an opinion as
to whether there's significant risk, he can answer
that question.

MS. HOLMES: Mr. Buell did not testify
about the economics of dry cooling. His testimony
specifically says staff has not conducted an
analysis of whether or not dry cooling is
economically feasible. We simply chose not to
recommend it as a result of the fact that we
hadn't identified any adverse water impacts.

MR. LEDFORD: I simply asked the
question as to whether or not he has an opinion as
to whether or not, if the project uses wet
cooling, that it has a significant risk of
failure.

HEARING OFFICER VALKOSKY: I think the
easiest way is just, Mr. Buell, just answer the
question. We'll move on. Yes or no.

MR. BUELL: I would like to say that I
think that the water situation in this basin is
very complex. There's a number of players that
are going to lead to decisions in the future. And
it is possible that the project may, at some point
in the future, lose a water supply from the state
water project. That could lead to failure of the
project economically.

The applicant could also, at that time, decide to retrofit the facility with dry cooling. And continue operation.

MR. LEDFORD: Thank you, Mr. Buell.

HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: No additional questions.

HEARING OFFICER VALKOSKY: Any other questions for Mr. Buell at this time?

Any public comment on the -- thank you, Mr. Buell -- on the economic aspects of dry cooling? Sir.

(Off the record.)

HEARING OFFICER VALKOSKY: Back on the record. Public comment on the topic of dry cooling. Sir, if you could approach and spell your last name for the record, please.

MR. HUYCK: I'm William Huyck; last name is spelled H-u-y-c-k. I've given a note to the court reporter for the spelling.

I'm from Hesperia, just a citizen. I participate on committees, but this is not the -- that has nothing to do with this hearing. I just want to thank you for the privilege of being able to speak to you.
I just want to make a statement that I'm against the use of water for cooling. And the testimony and the discussions that went into this, I made statements at the MWA on it.

I think that the fact, and this was discussed at our council meeting last night, council was as concerned about the fact that the MWA possibly is going to have to ramp down again another 5 percent. And there's some talk that there could be other ramp-downs because of the overdraft.

I'm also Chairman of Public Works Advisory Committee, but this is not -- I'm not talking -- I'm talking as a citizen.

I just think that if there's any potential or possibility of doing the dry cooling that every effort should be given towards that end. I think that the economics of the project in having this dry cooling has been demonstrated in the last few months that when come time to have an election and being able to support candidates, that would, in my opinion, at least, I'm going to say roll over and say to hell with the two-for-one, that's just my opinion.

But I'm saying that we are in an over-
draft, and our public are going to come unglued. I'm being asked to support a rate increase in
Hesperia because of some of the things that's
going on. They're buying water now from one
location, 3700-some acrefeet of water at $1 a
year. We ought to be out dancing in the streets.
Those days are coming to an end.

But what struck me is the fact that that
amount of water we're going to give away for
evaporation, total loss of that water.

And I think that every effort out to be
made, and I would appeal to you folks conducting
this hearing, give a lot of thought to it.
Because, you know, they tell me that there are
going to be $100 million worth of new development
and all like that. And I tell them that being in
southern California desert, southern California
desert, again we import all of our water. It's a
precious commodity. It's not a renewable -- it's
not something you just open -- put a larger pipe
in, oversize, and say well, now our water
situation is taken care of.

The water issues in southern California
in general, northern California's going to be
involved in it, is a very serious matter. It's
being discussed at CalFed up and down the state and across the nation.

And I just think if we're going to err, let's err in an area that we have water. That's the lifeblood of this country, water, is the lifeblood. And all said and done, the electricity that we need in these grids, as they talk about, could be imported from somewhere else. Go somewhere where water's plentiful, or go out into the ocean and use water from the ocean, whatever needs to be done.

And I just hope that you'll take this thought that I'm bringing to you as a constructive criticism. I'm not being nasty about it. I'm a little bit, you know, I'm very conscious of the fact that we have a water shortage.

It's not getting better. It's actually getting worse. And what I'm hearing from people from MWA, they're going to have to make some decisions.

And when I saw people making discussion and decisions based on the fact that -- with the water, the two-for-one, or whatever, go for it. We've got a director right in my city that got elected, and I won't go into that. But I'll be
Okay? And I really do want to thank you greatly for allowing me to talk. I have an appointment, also that I've got to pick up my wife, so bear with me, and good luck to all of you.

Thank you.

HEARING OFFICER VALKOSKY: Thank you for your comments, Mr. Huyck.

(Applause.)

MR. LEDFORD: Mr. Chairman, if I could beg your indulgence, I would like to make public comments relative to dry cooling. And I realize that these pictures that I've passed around today were not docketed or made as exhibits.

However, my wife and I traveled to Boulder City, Colorado (sic) last weekend. And so our availability for this information was late. And if I could, I'd like to make a brief presentation as to what we saw and submit this picture for the record.

HEARING OFFICER VALKOSKY: Certainlly, Mr. Ledford.

MR. LEDFORD: If this mike conks out, because I think this is important to the public,
my wife and I traveled to Boulder City, Nevada, which is about 150 miles from our location here.

And we visited the Eldorado Power Project and were toured through the facility by Mr. Cameron.

The facility is two gas turbine generators similar to what the High Desert Power Project is proposing, and one steam turbine generator. They're Westinghouse generators; they have serial numbers 01 and 02. So they are just getting started with this technology.

We were impressed with the power plant and we found in discussing this project with Mr. Cameron that the citizens of Boulder City were extremely concerned about a power project, about what it would look like, about the use of water.

The City of Boulder City has groundwater rights well in excess of 50,000 acrefeet of which they only use about 5000 acrefeet. They are not in an over-drafted basin. This particular site is about ten miles from Hoover Dam.

The project proponents took into consideration what the concerns of the citizens of the area were when they constructed this facility. They have budgeted 400 hours of time to
operate the plant in excess of the 98-degree
factor. And currently it is not a hybrid plant.

They have water rights leased to them by
the City of Boulder City of 300 acrefeet of water
per year. They expect that they will use no more
than 150 acrefeet of water. It's a complete
closed loop system.

They have told me that they believe that
the dry cooling process is economically feasible
and that's the reason that they've built the
plant. They have an option to double the size of
the plant to 1000 megawatts.

They have not installed any hybrid
system, but he did explain to me a system called
misting, which is, as Mr. Welch said, basically
evaporative cooling process. It is a very
inexpensive process and for those 400 hours they
estimate that it would take another 200 acrefeet
to use the hybrid system.

I would just like to say that relative
economics, if there is a plant that is within 150
miles of this site, that's at 2800 feet in
elevation, and it is 100 percent dry cooled, that
that should be demonstrative evidence for this
Commission to determine that dry cooling is

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Thank you.

(Applause.)

HEARING OFFICER VALKOSKY: Thank you, Mr. Ledford. I take it you want to docket the photograph?

MR. LEDFORD: Yes, thank you, I would.

HEARING OFFICER VALKOSKY: Okay. I'll make sure that is docketed.

Are there any other members of the public who wish to address the Committee on the topic area of dry cooling? Sir?

MR. BEINSCHROTH: My name is Jack Beinschroth.

In your dry cooling data you stated that it is not significant environmental impact barring identification of significant environmental impact. It's the decision of the project which is the most economically feasible.

There is a direct environmental impact by the fact they're utilizing 4000 acrefeet of water. In this respect the Mojave Water Agency is currently trying to -- in the process of negotiating storage agreements with agencies in the northern part of the state, wherein if they
will bring water and put it in our area, pay the transportation costs, and pay a significant per-acrefoot cost for the privilege of doing so.

And to do this they need to be assured that there is sufficient entitlement available so that they can conduct these storage agreements.

Now, with the entitlement that they've given to the power plant, or would be given to the power plant, it means that these storage agreements may be limited, and that there would be an environmental impact by the fact that we wouldn't be able to put additional water in under a storage agreement because of the amount of acreage that is tied up in the entitlement that's given to these people.

And the entitlement that is given to these people there's no replenishment to the area, no replenishment to the underground.

And with these storage agreements that they're processing there would actually put as high as 40,000 acrefeet into storage. And at some time in the future, on a paper transaction, would take water from the aqueduct, and this water would remain.

So that the chips are the amount of
entitlement we have. If we don't have entitlement, we don't have the chips to deal.

And I think that this is a direct impact environmentally by allowing this amount of water to be used in an area of such an overdraft.

Thank you.

HEARING OFFICER VALKOSKY: Thank you, sir. Any other comments from members of the public on the area that we're covering here?

Okay, I see none. With that, we'll close the record on the topic of dry cooling.

(Pause.)

HEARING OFFICER VALKOSKY: All right, we have one substantive topic on the agenda, and that deals with a water agreement and the growth-inducing impacts.

The Committee does not intend to hear testimony from the witnesses on that prior to lunch. However, if there are any members of the public who would like to comment on that, and don't want to come back this afternoon, you can make your comment now. Are there any? Ma'am.

MS. SARTOR: I was hoping to wait until the end to give you a summary statement, but it may be difficult for me to get back. My name is

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Peggy Sartor. I've lived in Victorville all my life. I always hate to give my bio because people who are good at math can add it up and think I'm a lot older than I am.

But I would like to, because of the background I have, let you know where I'm coming from. I think it's very important to the decision that you people have been forced into having to make.

I grew up here, from a construction family, and we became very involved in building commercial, housing, waterlines, sewerlines and all of those things. In fact, Mr. Ledford's wife's father and my father put together the first water recycling irrigation project on the original Jess Ranch. So we've been very interested in water conservation, planning for the future, and recognizing that growth is good and growth is bad, depending on how you look at it.

And during this need for my being involved I became a member of the city council. I served 20 years, five terms. I served 12 years as a member of the Lahontan regional water quality control board. I served a term on the Mojave Water Agency.
And then also I was a member of the SCAG executive committee representing San Bernardino County for over a decade. I also put together the first hazardous waste management project for southern California as a part of SCAG. Worked as the first chair of the desert advisory committee on air quality, back before we had our own district.

And all of that has given me a background of concern that's much broader than just the flushing of my own toilet or watering of my own lawn, and those things which are very important to all of us individually. But we must look at the total picture.

I remember when this community had fewer than 5000 people total, the whole valley was my hometown. And now then, as we grow, we have to plan for the future. And I don't think we're doing as well as we might.

We look at things and don't realize that, well, for instance, let's take the typewriter and the computer. A few years ago I would never have believed what's going on in the computer. Today water is managed in a way that is similar to the growth of using computers versus
typewriters. So, I think that we need to look at
the broader issue.

Now, then I'd like to just say that all
of the things I've heard today I'm familiar with,
and they've been addressed. And I think you are
eminently patient to have gone through all of this
over and over and over.

I first heard about the project when I
was a member of the Mojave Water Agency Board. My
first reaction was emotional: They can't take my
water. And then I became much more concerned
about what they were going to do, how it was going
to work.

I realize Mojave Water Agency is
obligated to take a certain amount of water out of
the state water project. We pay for it. If we
let it go on down to the other parts of southern
California, it isn't benefitting us. We need to
take our allotment.

We need to sell water. Mojave Water
Agency has only two ways of supporting itself.
One, to sell the water they have to buy out of the
state project. The other is to raise taxes. As a
taxpayer I don't think that's a very popular idea.

So we would like to see the power
project go forward. I've spent a lot of time
talking to experts. I've spent a lot of time
talking to local people. I followed this project
through the newspapers.

I've come to the conclusion, based on my
carversation with many people, we are anxious to
see the project go forward. We understand the
difference between water cooling and air cooling.
We understand the cost of doing business. We
understand that a lot of things that are very
important today are extinct tomorrow.

But we have to use what we have
judiciously. And I think, from what I hear, that
the bulk of the people in the community are in
favor of moving on with the power project. I
think they're also becoming increasingly disgusted
or impatient with the delays which are probably
minimal self-serving, different agendas than the
whole community.

So I would ask the members of this
Commission to conclude with a decision that will
make it possible for the community to enjoy the
benefits of the kind of jobs that we're all
begging for. We have many vacant houses. We have
lots of low-level entry jobs, and even those are
diminishing.

But we need the benefits of the type of jobs that would be engendered through the construction of the power project and its operation. Water and power are the two elements that we need probably more than anything else, besides air. And we must protect them, we must use them judiciously, but we also have to use them.

I would just like to thank you for your patience, your indulgence, and to say that if there is anything you think I haven't covered, or you would like to ask, I'd be glad to do it. If not, I hope you have a good lunch. I hope you all stayed over last night. I used to travel to Sacramento and we have the same kind of fog problems you do up there.

Thank you.

HEARING OFFICER VALKOSKY: Thank you, ma'am, for your comments.

(Applause.)

MR. HUBER: Thank you, I'm Larry Huber, H-u-b-e-r. I'm President of Victor Valley Water District. Good morning and welcome to sunny Victorville, and warm. It's usually better than
I'm here with four of our other board members. And we are really concerned. We are elected by the people to do the best job for our water users.

It took me and other board members a long time to think this project was good for our community. But with the tax money, jobs to the valley, some small benefits in the agreement to our water users, we voted to approve the project.

No one in our district has opposed this project at the water board level. 15,000 users, no one has come to our board and opposed this project. There must be some confidence in what we've been doing.

I asked Mr. Buell last January 18th if this would be his last time at the water district if everything was okay. He said that everything was okay with the water.

What has really changed? It looks like the project is getting on a political side. Jack Beinschroth and Bob Almond's testimony, almost one-third of the questions are political. That sure seems strange to me, a project this size.

According to the paper Mr. Ledford is
doing everything possible to kill the project.
All he is really concerned about is his own
interest.

Please make the High Desert Power
Project a win/win for all. It is important that
we may have a tool to get some water in our
overdraft basin.

The MWA's running water down the Mojave
River is not the answer to our basin. Help us to
solve some of our problems and improve our aquifer
storage agreement and recovery agreement, as
approved by our board members.

Thank you.

HEARING OFFICER VALKOSKY: Thank you, sir.

MS. SONNERFELD: My name is Hammelone
Sonnerfeld. I don't approve of this project. To
bring some water in my land in other land. The
water is very bad, and I should pay so much money
every year, $800 for no water, and it's all
contaminated.

I'm not approving for this. Thank you.

HEARING OFFICER VALKOSKY: Thank you,
Ms. Sonnerfeld.

Any other comments, Mr. Roberts?
MR. ROBERTS: Mr. Chairman, Members of the Committee, if you'll briefly indulge me again to reiterate the importance of this project to the entire Victor Valley.

When George Air Force Base was closed by the federal government it had a devastating effect upon the economy of this valley. The valley came together probably in one of the rare unanimous coalitions to redevelop former George Air Force Base and to bring back those lost jobs.

And the key component to that redevelopment effort is the redevelopment tax increment that will be generated to invest the hundreds of millions of dollars needed to rehabilitate that project.

This town project is the single most vital component to launching an energizing that redevelopment project area. It is widely supported by the public. I think you've seen that by the lack of widespread opposition to the project in your hearings, and in the other hearings that have been held by the other agencies.

As Mr. Huber pointed out, there has been no opposition to any of the hearings that the City
of Victorville and the SCLA Board of Directors have held in approving this project.

There is a concern growing in the community, as it has been expressed to me, about this permitting process in that it appears that the permitting is being delayed. And that is at great cost to the community in this redevelopment project.

And what 90 days ago appeared to be an opposition and a concern regarding the use of water and the fact that that would inhibit growth is now an argument that that very same use and method is going to induce growth. So there is a growing lack of confidence among the community about this very much anticipated project.

The power partners, City of Victorville was concerned about water, and the power partners over the last 18 months have set out very vigorously to address this issue. We have forged a joint agreement with the Victor Valley Water District that we are both comfortable with, and the relationship between the water district and the city has never been stronger.

We are very much concerned about the impact that this may have on the entire balance
and the working relationships of the agencies.

I'm not an expert on the California Environmental Quality Act, but on the issue of growth the City of Victorville and the City of Victorville Planning Commission addressed that issue on every project that occurs in this city.

This particular project, the power project, the lead agency is the CEC. But any projects that would come before the city in future growth, and the contention is that the water would be an inducement to growth, would be subject to review and approval by the planning commission, the city council and if necessary, environmental reviews.

The growth of the city has already been environmentally analyzed in our general plan, in our zoning. And any project that comes forth in the future will be viewed in terms of those environmental reviews.

We urge the Committee to quickly move forward with the permitting of this project. And we remain here to provide you any assistance that we may.

Thank you.

HEARING OFFICER VALKOSKY: Thank you.
Any other comments on this topic area? Ma'am.

MS. PRIVETT: Yes, I'm Esther Privett, and I'm a retired registered nurse, and I write now as a freelancer. And I live, I guess it's downstream from where the project will be. And it's a lovely community called Silver Lakes. With wonderful water, delicious water that we don't have to chlorinate, as I understand Victorville is now doing. I hope it stays that way.

I understand that power plants who inject water into the riverbed pollute. They may say they're going to clean it; they're going to process it and give it back to us as pure water. But I wouldn't wait 30 years to prove that point, which is an article that was in the paper today, that you'll be required to do that in 30 years.

I also don't like to see people just write off farmers and pioneering people who have helped to develop this valley. And just say, well, if they don't have enough and they can't pay for it, let them go do something else. I think that's not a kindness when you're looking at residents. We're not all realtors who live in this area.

I'm just saying there was a time when
they were talking about bringing small business, inviting small business here. If this power plant does it, I'm not certain that it is necessary that a power plant be here to bring small, clean business to this area.

I don't know. Do we want another power plant, when we have one -- Gary Ledford talking about one that's only 150 miles away who could provide us with power, why do we need another power plant. It's going to take precious water from the aqueduct and it will suck up water from the river more than one time a month.

I think it will contribute to smog. And, as my main concern is that it will endanger our water supply.

That's all I have to say.

HEARING OFFICER VALKOSKY: Thank you, ma'am.

(Appause.)

HEARING OFFICER VALKOSKY: Anyone else?

Yes.

MS. HOWARD: Yes. My name is Barbara Howard, and I live approximately seven miles north of the proposed power plant.

To me it's ludicrous to bring a plant or
an industry into the high desert that depends on
water when our water supply is in question.

I have recently read in the paper, I
don't know how much is fact, that the Commission
is leaning towards the power plant being in
control of their own wells. I'm sorry, but I
don't like the idea of the fox guarding the hen
house. Who monitors them when they decide that
the water from the aqueduct might be too expensive
to purchase and we will pump a little bit more out
of the aquifer.

That's all I have to say. Thank you.

(Applause.)

HEARING OFFICER VALKOSKY: Thank you, ma'am.

Any further comments?

Okay, if there are no more comments, as
I indicated earlier we will hear the witnesses on
the water agreement/growth-inducing impacts
following lunch.

After that, after the presentations of
the witnesses there will be an opportunity for
public comment. There is, however, also that
opportunity now for those that may not wish to
attend this afternoon's session.
If there are none, we'll close the --

sir?

MR. LEDFORD: Could you advise us as to

how this is going to be concluded? Is there going
to be closing arguments? Is there going to be

briefs?

HEARING OFFICER VALKOSKY: Okay, the

Committee will evaluate the need for briefs at the

conclusion of the presentation of the testimony

this afternoon.

We will accord each of the parties a

brief period depending on how much time we've got

left to make closing argument this afternoon.

MR. LEDFORD: Thank you.

HEARING OFFICER VALKOSKY: Okay. With

that we will recess for lunch. We will reconvene

here at 12:45.

(Whereupon, at 11:40 a.m., the hearing

was adjourned, to reconvene at 12:45

p.m., this same day.)

--o0o--
1 AFTERNOON SESSION

2 12:50 p.m.

3 HEARING OFFICER VALKOSKY: We will reconvene with the topic of the water agreement
4 and associated growth-inducing impacts.
5
6 Mr. Thompson.
7
8 MR. THOMPSON: Thank you very much. We would like to recall Mr. Andy Welch in the area
9 of -- but I would like to make a very brief statement about the direction of the testimony in
10 this area.

11 We read the Committee order which directs the applicant and staff to address any
12 potential growth-inducing impacts associated with the term of the water agreement. And went back to
13 the transcript where Hearing Officer Valkosky says that, "We also believe, however, that Mr. Ledford
14 has raised a pertinent related point, which in our parlance, would result to any growth-inducing
15 impacts by virtue of the fact that the site lease is apparently for a longer period of time than is
16 the expected project life."

17 Reading those we believe that the issue as outlined by the Committee is the length of the
18 aquifer storage agreement, and address that in our
further direct testimony in two ways, which you
will hear from our witness.

The impacts of adopting the staff
proposed conditions of certification in a couple
areas will also be addressed in our testimony, as
we believe that the staff proposal does not
contain the analysis that we thought it would, but
the fix, the two solutions in the fix are neither
acceptable. One is a further delay or onerous
conditions of certification.

So, with that as the background, Mr.
Welch, you've been previously sworn?

MR. WELCH: Yes, I have.

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Do you have in front of you exhibit 144,
which has been identified as the additional
prepared testimony of Andy Welch?

A Yes, I do.

Q Do you have any corrections, additions
or deletions to make to that material?

A Only in 4A there was a bit of an error
in typing. What 4A, number 2 should have said is,
does not seem that site control and water access
may not be fully utilized in later years could be
seen as limiting growth not contributing to area
growth.

Q And would you like that change made to
your testimony?

A Yes.

Q Now, with regard to exhibit 145 which
has been identified as the aquifer storage and
recovery agreement dated January 18, 2000, would
you please summarize the differences between this
version and the previous version of that same
agreement?

A This version and the one that was
submitted earlier in January differ in two areas,
one of which was the reduction of the term of the
agreement from 80 years to 50 years; and the
second is a paragraph was inserted by the water
district to state that approval could be impacted,
or their agreement could be impacted if the Energy
Commission conditions of certification which are
attached were to change in the final decision.

Q With regard to the reduction in the term
from 80 years to 50 years, is 50 years also the
term of the site lease?

A Yes, it is.

Q Do you believe that the reduction of 80
years to 50 years makes it clear, or at least
leads to the conclusion that there are no growth-
inducing impacts with that agreement, given the
new length of the agreement?

A    Yes, it was always the anticipation that
the term of the agreement would be more likely
determined by the termination on the written
notice from High Desert Power to the water
district in order to make it so that it wouldn't
be an agreement with an indefinite term.

    Originally there was an 80-year number
put in there as a maximum. We lowered it to 50
years in this case. It wasn't dropped all the way
down to 30 years because like the site lease, our
financing experts have informed us that it's
necessary when financing a project like this that
certain key agreements have terms longer than the
expected life of the project, and significantly
longer gives that level of comfort.

    So that's what was targeted here.

Q    Thank you. Have you had a chance to
review exhibit 46, which is the staff's testimony
of February 18th, along with the conditions of
certification?

A    Yes, I have. I believe you mean 146?
Q If I said 46, I'm mistaken. 146.
A Yes.
Q Thank you. And with regard to the soils and water conditions contained in exhibit 146, would you please describe those conditions which are unacceptable to applicant, or your choice, those which are acceptable?
A There were several changes to it, many of which were simply reordering. And rather than go into the specifics I think it would be easier to say that it is the new conditions which is a new concept on number 7 and number 17.4, which pose a problem to us.
I'd say not the least issue of which is it is inconsistent with the way that the aquifer storage and recovery agreement now stands.
Q So if those conditions were to be adopted the aquifer storage and recovery agreement would have to be amended, if it could be?
A That's right, it would have to be amended again.
Q Are there any other difficulties that you have with those two conditions?
A Yeah, they do impact, I mean we specifically had arranged things in the contract
and the ownership -- for example, the ownership of the wells, that rather than being by the project would be by the water district. Not the least of which is the reason for that is because drilling and maintaining operating wells is what they do, and not what the power plant does.

Makes a lot of things easier on their point perspective. We have gone through a lengthy process of, in what is condition number 17, to limit restrict what other use that they could have of those wells. It specifically contemplated that they could not rely on those wells to meet any load growth or even existing demand in their territory. That they would have to do that amongst their own wells. And they could use these only as a backup and take advantage of it for both -- not only for emergency, but for economic advantages, however minor they may be.

Q    In exhibit 146 under growth-inducing impacts, this is the staff testimony on page 3, let me read a phrase and get a reaction from you if I could.

    Quote, "VVWD's use of HDPP facilities are potentially growth-inducing, since this would provide an increased water supply for VVWD,
thereby removing an obstacle to growth." End quote.

Do you have any comments or observations on that statement?

A  Yeah, I think there are several problems with it, one of which is that I don't think it's appropriate to say that the building of a well is an obstacle to growth. As it exists now the water district has, I believe, drilled at least two wells last year. Plans to do several more this year.

What's further also is that the mere drilling of a well under the adjudication is not the same as having rights to produce out of that well.

There would be no rights transferred to the wells, or no free production allowance that are associated with them. So, it's essentially a hole in the ground with a pump on top, and not the ability to pull any water out other than consistent with the adjudication. And their rights to acquire free production allowance or to, you know, any other way of handling wells exists today, and they could build their own facilities to support that.
So I don't think it's appropriate to say that the ownership of the facilities in this basin are the same as having water rights, or even having additional water supplies.

Q Is it your understanding of the aquifer storage agreement that as it is currently written, as it currently stands, those water treatment facilities could be used for water injection aquifer replenishment, but could not be used for domestic water supplies. Is that your understanding?

A That is correct. The only use of any of the water treatment facilities that is even contemplated under that agreement would be for them to use them as part of a water injection. The facilities are not being designed to be used for domestic use.

And those are facilities that we intend to own.

Q Finally, Mr. Welch, if I could direct you to table 1 of the staff’s material.

A Yes.

Q Do you have any observations to make with regard to the contents on table 1 on page 4?

A Yes, I do. I have several observations
to make, one of which is to reiterate my earlier
statement about, you know, they maintain that the
impacts to groundwater would be possible because
they have additional pumping facilities. And, as
I've stated, that they'd need rights to pump water
in order to do that.

So that goes back, and we reference the
Presiding Member's Proposed Decision, page 199,
when they're talking about the intervenor's claim
that this would, in fact, be a growth inhibiting
project, that they say that the evidence does not
establish the effect that the sole factor of water
would or would not play in possible development.
It would be clear then the water facilities,
without even the right to pump water, would be
even less likely to lead to possible development.
And makes that estimate even more speculative.

I'd also go on to point that we do --
had quite a bit of problem at first reading on the
staff's characterization that there is a
significant probability of the project failing
prematurely. We obviously do not feel that way.

We believe that all of our studies have
indicated that while there is a potential, we've
analyzed with, we agree with again the Presiding
Member's Decision on, I believe it was page 215, their conclusion where they thought sufficient SWP supplies would be available to the project.

So, Mr. Buell did state earlier to go into further detail of what the definition of significant probability meant. And it may not be as strong as I had it at first reading.

But I do think that that should at best be considered an uncertain probability.

Q    Let me try a summary question and see if you can agree with my premise, and then elaborate. Are you testifying that the term growth-inducing impacts requires a nexus or a cause-and-effect between the activity and the result? I'm hesitant to use my wife's experience in inducing labor, but I tend to think of it as something that is more than just a chance. It is almost a necessary conclusion given a set of circumstances.

And if that is what you believe a definition or set of circumstances are, if you agree with that, have you testified to issues that fail that test?

A    Yeah, I believe so. Then I would like to state that I don't share your experience of inducing labor and that my wife is only now
expecting our first child.

But I would say that yeah, we believe that there, in fact, needs to be a cause and effect to, you know, staff has indicated that their concern would be to do further studies as to what the environmental impact of any induced growth would be.

We think that first the test has to be that there would be an expectation, more than purely speculative, that there, in fact, would be growth induced by the project.

And on the water side, I think in some discussions we've have further, and perhaps Mr. Hill will go into further, these are things that while giving them flexibility and perhaps even being beneficial to the environment, don't actually offer any economic incentives to lower the rates.

Though I think you'll also want to make clear to anybody in the public that they do have protection from the ratepayers not having to pay our costs. But it does not necessarily afford a lot to see their reduction in costs.

MR. THOMPSON: Thank you very much. Mr. Welch is tendered for cross-examination.
HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: Thank you, I have just a couple of questions.

CROSS-EXAMINATION

BY MS. HOLMES:

Q As I understand your proposal, Victor Valley Water District would own the wells that would be constructed for the High Desert Project, is that correct?

A Yes, the contract calls for them to design and construct them, and us to reimburse them for those costs.

Q So you'd be paying for them, and they'd take title to them, is that correct?

A Yes.

Q How much money does that entail?

A It includes water lines and all, I mean it's millions of dollars.

Q So that's millions of dollars that VVWD would otherwise have to spend to obtain the same facilities that in this case you're providing for them, as a result of the agreement?

A Well, a good portion of those facilities, actually the pipeline to deliver to our project site, as well as to build those wells
for dual purpose injection and withdrawal, that
does increase the price of them.

So, that's right. In exchange for that
there is the commitment on their part that they
will not use these wells to be considered towards
their demand, or their capacity.

Q   I'm trying to focus on my original
question, which is this is an avoided cost, if you
will, to VVWD?

A   Well, for the life of the project it's
not, it's a cost they wouldn't have had to incur
without us. That the only use of those wells,
with the exception of displacement of others,
which they wouldn't otherwise do, is a -- for
example, the use that they're allowed to do under
condition 17 is not something that they would
drill new wells in order to do.

It may be a benefit to them, but it is
not something that they would drill new wells for.
So, it's not an avoided cost that -- or it's not a
cost that they're avoiding, it's something that
wouldn't be done.

Q   Didn't you just testify that VVWD
drilled two new wells last year?

A   Oh, they're capable of drilling wells,
but for the purpose of meeting their demand they
would drill wells. But for the limit that they
have on using these wells under condition 17 of
your conditions, which are incorporated in that
agreement, they would not drill wells just in
order to use it to temporarily displace from wells
that are closer to the river.

Q  But they are getting to use them without
having to pay any capital costs associated with
them?

A  Yes.

Q  Earlier you talked about rights to pump.
And I'm trying to recollect my understanding of
how that works in this area. Isn't it true that
you don't need a free production allowance to
produce water from a well?

A  That -- the two choices in the
adjudication are free production allowance or
replacement water.

Q  Right, earlier today you said there
weren't any free production allowances associated
with the well, and I thought you were implying
that that would mean that there weren't any water
rights associated with the well.

Did I understand you correctly?
A I'm trying to remember what I was saying.

Q I'll ask it in a slightly different way. Isn't it true that the fact that there may be no free production allowance associated with a specific well doesn't mean that VVWD can't pump from it?

A If they pump the well and they do not acquire free production allowance, whether it's, you know, any well, whether it's one they built or not, they could also buy replacement water for it.

Q Thank you. You also talked a little bit about the agreement allowing use of the treatment facility only to store water into the aquifer, is that correct?

A Yes.

Q And would that be using the VVWD wells?

A That would to use the project facilities which are, by definition of the contract, owned by VVWD.

Q And can't VVWD turn around and pump from those wells, as well, under the terms of the agreement?

A Provided they're displacing pumping from other wells.
MS. HOLMES: Thank you. Those are all my questions.

HEARING OFFICER VALKOSKY: Mr. Adams.

CROSS-EXAMINATION

BY MR. ADAMS:

Q Exhibit A to the agreement is a map showing locations of the project facilities. And it hasn't been attached to the last couple of drafts, but my understanding is that it is unchanged from the exhibit that was distributed with the evaluation of alternative water supplies, is that correct?

A That's correct, exhibit A is the existing and proposed groundwater production wells and water transmission pipelines in the Victorville/Adelanto area dated the 6th of November 1998.

Q Okay, and that hasn't been changed since it was submitted?

A Has not been changed since November of '98.

Q November of '98.

MR. LEDFORD: Excuse me, is that exhibit before the Commission today? Because it's not a part of the exhibits that have been presented --
HEARING OFFICER VALKOSKY: I believe Mr. Adams is referring to an attachment to the aquifer storage and recovery agreement which we have identified as exhibit 145, is that correct?

MR. ADAMS: Yes, specifically I'm asking the aquifer storage agreement has a placeholder exhibit A and references in it to exhibit A, which is the location of future project water facilities.

And that exhibit A, if I'm understanding Mr. Welch correctly, is the same as a map that was submitted in November of '98, hasn't been changed. That's all I was trying to establish.

HEARING OFFICER VALKOSKY: And that is the case, right?

MR. WELCH: Yes, it is.

HEARING OFFICER VALKOSKY: It's the same map?

MR. WELCH: It's the same map, yes.

MR. LEDFORD: Okay. Mr. Chairman, my question is it's not before the Commission today as a part of the exhibit? At least it's not --

MR. WELCH: It is part of earlier exhibits.

MR. LEDFORD: Your exhibit number 46, it...
HEARING OFFICER VALKOSKY: Physically, it is not --

MR. LEDFORD: And in the November --

HEARING OFFICER VALKOSKY: -- before it.

It is --

MR. LEDFORD: -- hearings it was not identified as an exhibit. The closest one we could come to is, which I think it is probably emulated off of is the exhibit out of Mr. Beebe's testimony, which was exhibit number 65, is that correct?

MR. WELCH: I believe it in all likelihood was the same.

MR. LEDFORD: It says figure 1 on it, so.

MR. WELCH: That would be it.

MR. LEDFORD: It only had --

MR. WELCH: If it matches what I read is the title block and the date, it's the same.

MR. LEDFORD: It only has a different date on it because Mr. Beebe's testimony is from March of '99, so. When looking at them side-by-side they appear to be the same.

My problem is there isn't an exhibit in
the -- as a part of exhibit number 46, as it sits here today.

HEARING OFFICER VALKOSKY: Right, and as I understand it, applicant is referring to that portion of exhibit 65 by reference.

MR. LEDFORD: That works for me. I just wanted to make sure we're --

HEARING OFFICER VALKOSKY: Yeah,

that's --

MR. WELCH: Yes, that's --

MR. LEDFORD: -- reading off the same --

HEARING OFFICER VALKOSKY: Yeah,

that's --

MR. LEDFORD: -- sheet of music here.

HEARING OFFICER VALKOSKY: -- that's what I understand the case to be.

MR. LEDFORD: Thank you.

BY MR. ADAMS:

Q I'd like to direct your attention to section 11.2 in the storage agreement. It talks about the district retaining -- well, to quote exactly the last sentence of that section says, any water remaining in storage will become the property of the district. Is it your understanding that that will
transfer title of the 1000 acrefeet that is required to be left in the bank under soil and water condition number 7?

A No, it's not. I'm getting the feeling that we've run through this before. It's reading the same language; I believe you and I have different interpretations of what it means.

What I read this is that there will be a net positive balance of at least 1000 acrefeet at the end of the sentence before that. The any remaining water refers to the water above that 1000 acrefeet.

Q Also, just to clarify, your only objection to staff recommendations on soil and water conditions at this stage is to condition number 7 and condition 17-4?

A That's correct.

Q So the other conditions are acceptable to High Desert?

A Yes.

Q And, again, for clarification, two other questions. It's your position that the reduction in the term of the water storage agreement from 80 to 50 years has eliminated all growth-inducing impacts from the project?
That it eliminates, we believe, the concerns from. I don't know that there were ever any growth-inducing impacts in the longer term. But I would say, yes, it should eliminate the concerns that there are any growth-inducing impacts from the project.

Okay, and finally again to clarify, is it your testimony that growth-inducing impacts are limited to those impacts that are certain to flow from the project?

I'm not sure that certain is the right criteria, but it's somewhere between certain and highly speculative. That the growth-inducing impacts that would reasonably be expected to proceed from the project.

Which is a higher standard in your view than potential growth --

Yes, --

-- potential of growth-induced --

-- yeah, I would say it's a higher standard.

Okay.

MR. ADAMS: Thank you, I don't have further questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.
CROSS-EXAMINATION

BY MR. LEDFORD:

Q    Mr. Welch, do you recall your testimony back in October, October 7th, before this Commission?

A    I recall testifying before the Commission.

Q    I'd like to read from page 179. "As I stated, the aquifer storage and recovery agreement is complete." That was in October of last year. And was that statement true at that time?

A    I thought it was.

Q    "And the storage agreement is in development. The draft's being developed on that."

Are there any draft storage agreements at this date? That would be the storage agreement that is within the aquifer storage and recovery agreement. The one that's referenced with MWA.

A    There is an internal draft that exists that is confidential, but that has not been seen by the agency yet.

Q    "As far as the conditions of certification go, all of those agreements are
meant to be consistent with that. There is a specific provision in the conditions that state that there's two sources of water, being either the stored and recovered water from the aqueduct, or direct use of aqueduct are the only two sources of water available to the project. Typically you could only call that one source of water, since it's just all aqueduct imported water being stored and provided to the project. And there is no other agreement to provide anything else."

That was your testimony then. Is that still your testimony?

A  Yeah, the only thing that we are contemplating is taking water directly off the aqueduct or to use water that is stored from the aqueduct in the aquifer for recovery according to the agreement with the Victor Valley Water District.

Q  This dialogue transpired between Fish and Game and yourself primarily, and it was in reference to the use of the facilities for other purposes. And both your testimony and that of Mr. Hill was that it could only be done on your written consent, that was your testimony. His testimony, I believe, was that it would only be
done in the case of an emergency, which is also
Fish and Game's position, I believe, here today.

But, sir, that simply isn't the case of
the contract as it sits here before us today four
months later, is it?

A The -- still includes the written
permission and it still includes the means under
which they could use it. I don't know that Mr.
Hill ever testified that it was only emergency
conditions that they could use it, and that is, in
fact, what the major efforts were done on the part
of all the parties to come up with condition
number 17.

Q If we could look at exhibit A to the
contract, you have it?

A Sure.

Q And if you could explain to us the 24-
inch pipeline that comes from the aqueduct to the
plant site, itself.

A Explain it? It's a pipe that runs from
the aqueduct to the plant site.

Q And what capacity would a 24-inch
pipeline provide?

A That was -- the design criteria was to
meet the maximum peak flow into the project which
would in all likelihood include water, not only to
the plant for cooling, but also for treatment and
injection into the aquifer.

Q   So would your testimony be that the
maximum design capacity of this 24-inch line is
8000 acrefeet of water a year?

A   No. The peak flow, the I think 8000
acrefeet is something -- my memory's going to fail
me -- somewhere around 2500 gallons per minute.
But the peak use of the plant is actually higher
than that. It's the average use that comes out to
4000 acrefeet.

Q   So the capacity is --

A   So it's designed for peak flows, not for
average flow.

Q   So the capacity of the pipeline would be
significantly more than 8000 acrefeet by capacity?

A   It's again designed for the peak flow.

Q   My recollection of the testimony before
the Committee was that when the water actually
gets to the project site it gets divided. It
splits into essentially two projects, a water
treatment project that treats water for aquifer
storage, and one that treats water that goes into
the steam turbines, is that correct?
Actually it goes into the cooling tower first.

Cooling tower. But there's two separate, the water actually separates itself. It's a 24-inch line until it gets to the plant, but once it gets to the plant it divides into two separate treatment facilities?

Yeah, that's accurate.

And the RO treatment facility that treats water that's going to be used for ground banking is designed to be 4000 acrefeet a year?

Final design isn't done on that yet, but that would be the design condition.

And under the conditions of approval before the Commission the project is obligated to bank within five years, 13,000 acrefeet, is that correct?

Yes.

And I believe your testimony was that once that -- you're going to invest several million dollars in this water treatment facility, this water treatment project?

Yes.

And so once that the banking is complete you are going to have a several million dollar
investment that is capable of producing 4000 acrefeet of reverse osmosis water that will be essentially sitting idle?

A    Yes, except under the provisions of the agreement where others may use it for injection, for further injection into the aquifer recharge.

Q    And would it be your testimony that if the Victor Valley Water District desired to purchase water for injection that you would provide additional water for injection?

A    They would not purchase the water from us for injection. That would be agreements with the MWA.

Q    They would have to purchase the water through the MWA, but in order to get it through the plant you would have to actually process the water, isn't that true?

A    Yes. That's right.

Q    So what we have, sir, is a surplus capacity on the plant for a period of 25 years for between 3500 and 4000 acrefeet of water a year?

A    I mean as it turns out we have to build it for the peak flow, and that is an unfortunate investment that we're making that would likely not be able to be used unless changes were made to the
permit.

Q Now, if we look at the exhibit again, and you look at the red line that comes out of the plant, there is one that goes directly south of the plant that shows as a proposed 18-inch High Desert Power transmission pipeline, is that correct?

A Yes.

Q Then it doglegs itself to the west for perhaps a quarter of a mile, and then goes south again perhaps another half mile? Is that -- I need to follow this pipeline all the way to the end.

A Yes, correct, it basically routes itself around the --

Q Doglegs --

A -- corrections facility.

Q And then it doglegs itself back to the right, back to the east a quarter of a mile, and then south a half a mile?

A Yeah, roughly.

Q And then there is a -- on that particular pipeline there are two wells proposed, two High Desert Power Project wells proposed?

A Yes.
Q And then we go across to the west again another half mile, and that looks like it's a 12-inch line. And this plan says 18, but the little nomenclature on there looks like 12. Can you clarify that? Is that an 18-inch line?

A I don't know.

Q When we arrive now at that intersection and we go, we can go south first about a half a mile, there appears to be three wells on that pipeline. And that pipeline appears to be a dashed line. And that shows on here to be the existing Victor Valley Water District pipeline, transmission pipeline, to the Southern California International Airport, is that correct?

A Can you say that again?

Q Well, I'm going to try this a little differently. If we go back to the High Desert Power Plant project site, --

A Yes.

Q -- and we go south on that less than a quarter of a mile, probably, an eighth of a mile, you'll see an intersection, another red line that intersects, and that's a dashed line.

A Right, the one that goes up, I was going to say El Evado, it's now Phantom Road east.
Q    And then it goes on a bias and then
comes down onto a section line, and that ties to
five additional wells. That's a dashed line all
the way down.

According to this plan that's an
existing 18-inch pipeline?

A    It's my understanding that that is
existing, yes.

Q    And so the five new wells that are going
to be drilled over on the existing 18-inch water
supply pipeline to the Air Base, is actually a
municipal line, is that correct? It's a municipal
pipeline currently --

A    That existing line is a -- actually it's
a water district pipeline.

Q    When you treat the water in the plant
and you put the water -- and this creates a loop,
you're going to put in six miles of pipeline,
there's another six or seven miles of existing
pipeline --

A    I don't think the intent is to hook the
wells in, though, the final design will be done by
the water district. I don't think the intent is
to hook those into that existing line, but instead
to have them hooked into this new line, so as to
dedicate, to be able to get the injection water
directly from the plant to it, and not mix it with
the existing groundwater supplies that the water
district provides to their customers.

Q    That's not what this plan shows, though,
is it?

A    This is not a design drawing.

Q    Well, it --

A    This is a diagram. I assure you before
they dig holes and stick pipes in the ground they
will have design grade drawings done.

Q    Well, I have to say that this is the
exhibit that is attached.

A    Those wells appear to be adjacent to
that pipeline, but it does not say anywhere that
they are tied into that existing pipeline.

Q    Well, sir, the contract says that
they're six and a half miles of pipeline. I can
add up all the miles on the one connected pipeline
and I can add up six and a half miles.

I can also add up about six and a half
or seven miles of existing pipeline.

So something simply doesn't add up in
the equation of the contract of what you're saying
that you're going to build.
A: I don't know, I haven't recently gone and counted that. You know, maybe we're a mile off on the amount of pipelines. But the idea is, as I'm sure you can understand, that there was a need not to mix the injection water and the groundwater for domestic purposes. So that he needs to be able to isolate us from the rest of his system.

Q: Sounds like another condition.

A: Sounds like a way that the water district does business.

Q: Sir, if this was a connected loop pipeline and you were producing RO water into the system, would there be any reason why that the Victor Valley Water District couldn't directly use that water in their municipal system?

A: I am not familiar with the health department regulations enough to answer that question, but I believe that there are. That we do not envision that we will meet the letter of the qualification of, I believe, the drinking water standards. Though the water may be of similar or for all appearances, to be exactly the same. There are technicalities of what you have to deal with and further liability that the power
plant is not willing to deal with to provide
drinking water.

And that is why that that is
specifically not mentioned anywhere in this
agreement.

Q The fact that it's specifically not
mentioned doesn't mean that it couldn't be done.
A There are lots of things that aren't
mentioned that could be done.

Q Exactly right. There's lots of things
that aren't mentioned that could be done. The
plant capacity is for 25 years it exceeds the
amount of capacity that you need, the design
capacity of the pipelines exceed the capacity of
the plant and the plant's requirements. These are
all things that could provide water both for
banking and for extraction and for growth, do you
agree with that?
A I believe I clearly testified that the
pipe sizes were developed by our engineers under
specific instructions to meet only our need, and
these are the numbers I got back for the pipe
sizes. So I do not believe that they are over-
sized.

I would go back before any investment is
finally done to check that. But that is -- I
would not agree with you that these pipes are
oversized. If they are, then our engineer made a
mistake.

Q    You testified about the adjudication and
the use of water out of the wells, and I was a
little confused. Wouldn't it be your
understanding that if you were to drill wells on
your property, and you stipulated to the
adjudication, that you could actually put water
through your plant?

MR. THOMPSON: I'm going to object to
the extent it calls for the reading of the
adjudication. We did not qualify Mr. Welch as an
expert on the adjudication.

MR. LEDFORD: I find that interesting.
Mr. Welch, I think, opened the door fairly wide.
He talked quite a bit about the adjudication at
your request, Mr. Thompson.

HEARING OFFICER VALKOSKY: Mr. Welch,
answer the question to the ability you're able.

MR. WELCH: We did not look to put wells
on our site or on the area immediately around it,
on the Airport site, because we were informed by
the United States Air Force Base Conversion Agency
that they had contamination on the perched aquifer
and they would not permit anyone to drill through
those, that perched aquifer, at the risk of
spreading that contamination to the lower.

So we never considered that -- well,
after talking to them we never considered it as a
possibility.

BY MR. LEDFORD:

Q    Did you ever consider just tapping into
the perched aquifer and pumping the contaminated
water, processing that for use in your cooling
system?

A    We did look at it. It would be a

concern that that would have the adequate flows
that would be required, as well as there's a lot
of complications, and that was not something that
when we asked the EPA, the Lahontan regional water
quality control board, and the Air Force Base
Conversion Agency that they seemed very interested
in happening.

Without cooperation of those agencies
there seemed very little hope of getting a permit
to do that.

Q    Assuming that there is a 3500 acrefoot
to 4000 acrefoot surplus capacity in your plant
are you prepared to sell that water to the Victor Valley Water District?

A    Sell --

Q    Process it, I'm sorry, they would buy the water. Process that water for the Victor Valley Water District?

A    Provided that we did not need the injection the contract does say that they can use our facilities to inject water into the aquifer.

Q    And --

A    It does not say that they can use water to provide domestic purposes.

Q    Assuming that there was no objection by any health authorities would you have any problem with putting water directly into their domestic system?

A    At this time I cannot envision anytime when our company would be willing to take the liability associated with providing domestic water to homeowners and businesses.

Q    Can you explain to me why that there's a provision in the contract specifically states that Victor Valley Water District can put wellhead chlorination on the wells if they want to?

A    Because consistent with condition of
certification number 17, they may use these wells
to displace other well use closer to the river.
And if they, in the event, in the future, are
required to put wellhead chlorination on all of
their wells, they would not be able to use these
for that displacement unless it was also similarly
had wellhead chlorination on them.
So they put that provision in in a
forward look of what the regulations may change to
in the future.
Q And, sir, doesn't that mean that those
wells would be directly tied into their municipal
water system?
A There is no question that the water,
once banked into the aquifer, can be withdrawn and
used as domestic water.
But to use it directly out of the plant
is a whole different case.
MR. LEDFORD: I have no further
questions.
HEARING OFFICER VALKOSKY: Thank you,
Mr. Ledford.

EXAMINATION

BY HEARING OFFICER VALKOSKY:
Q Mr. Welch, are you familiar with the
amendments to conditions 6A and B suggested by
Fish and Game in their comments?

A   Fish and Game suggested changes to the
staff's latest?

Q   Yeah, that's correct in their --

A   I believe I have their comments here, if
you would give me a moment.

Q   Yes, specifically on the bottom of page
2 and the top of page 3.

A   Yeah, actually -- thank you. That would
be yeah, no, for those most are fine.

Q   That is acceptable --

A   That is acceptable, yes.

Q   Okay. As I understood your testimony,
the inclusion of condition 6-D, as in delta,
proposed by staff and the verification to
condition 6 are acceptable to applicant, is that
correct?

A   Yeah, we consider 6-D to be unusual, but
is acceptable.

Q   Will the inclusion of these conditions
require any modification to the aquifer storage
and recovery agreement with VVWD?

A   Of 6-D and the verification of 6 would,
I believe, not require a modification.
Q Okay. What are your principal objections to including staff's proposed conditions 7 and 17.4 into the aquifer storage and recovery agreement? And specify those for me, please.

A We believe that there is no tie between those and environmental impact, taking a speculative look forward of growth-inducement which we don't believe is accurate. That as we've stated, that the existence of these facilities, in itself, is not adequate to be considered growth-inducing. And that it puts a limitation on our ability to do business, or to have the wells specifically owned and operated by the water district. Which has always been envisioned as part of our contract.

We do not see, with them accepting the limitations in the contract, that there is any reason to justify that we have to maintain ownership.

Q Well, let me posit the fact that if you retained ownership, the Commission clearly has enforcement authority, is that not correct?

A That is my understanding.

Q Over the use of the facility, right.
And the Commission has no direct enforcement authority over VVWD, do you agree with that?

A That I'm not certain of. I know in most cases, but as these are project facilities, there has been indication from the staff that that falls under their jurisdiction also.

I think that they can rely further upon, though, the contract which specifically incorporates in the Energy Commission's conditions, incorporated by reference, that make them part of what it is. And therefore, the ability of the Energy Commission to force us to enforce our contract provisions gives the same protection.

So in your view it would be the Energy Commission forcing you to directly require VVWD to follow a condition of certification, is that the --

A I would hope that for one, there wouldn't be a violation of that by the water district, --

Right, --

A -- but if there was that we would act on our own first. But in the end it would appear that the Energy Commission would have the ability
to force us to enforce our contract rights.

Q   Do you know if VVWD -- I understand Mr. Hill is here, but do you know if VVWD agrees with that interpretation?
A   I believe they do.
Q   Okay. Which provision in the aquifer storage and recovery agreement, or is there a provision which limits VVWD to using the project facilities for injection only?
A   Got too many things out here. The project facilities, itself, mentioning the wells, are the -- specifically for injection purposes only, is 8.3. And that's the only time when it deals with anything about them being able to use the treatment plant.

And then I believe it is district use of project facilities, section 15, which most of the Energy Commission conditions are incorporated into, specifically by reference.

Q   I'm sorry, the second one was condition 15, did you say --
A   Section 15.
Q   -- section 15?
A   Yes.

HEARING OFFICER VALKOSKY: Okay, thank
you. Redirect, Mr. Thompson?

BY PRESIDING MEMBER LAURIE:

Q    Well, question. Mr. Welch, your

testimony is that these facilities are not being

oversized, is that correct?

A    That's correct.

Q    Would you have any objection to

including such a condition indicating that the

size of the facilities must be consistent with the

design specifications of the project only?

A    I don't think that would be any problem.

PRESIDING MEMBER LAURIE: Thank you.

HEARING OFFICER VALKOSKY: Redirect, Mr.

Thompson?

MR. THOMPSON: Mr. Carroll will ask some

questions on redirect.

REDIRECT EXAMINATION

BY MR. CARROLL:

Q    Just a couple of clarifying questions,

Mr. Welch. You testified that the dollars to be

transferred to VVWD for construction of the

project water facilities would be in the millions

of dollars, is that correct?

A    That's correct.

Q    I believe it was also your testimony
that but for the High Desert Power Project these
are not facilities that VVWD would undertake to
construct? In other words, --

    A   Yeah, right, they would not construct
facilities with these kinds of limitations on
their use.

    Q   Thank you. So it's not the case that
this is a gift of millions of dollars to VVWD to
construct facilities for which they would
otherwise have to pay for out of their own
pockets?

    A   That's correct. This is merely
reimbursing them for the costs that are specific
for us.

    Q   Okay, thank you. I believe you did
testify that there are a couple of ancillary
benefits that would accrue to VVWD, those being
the ability to use the facilities for groundwater
recharge, and the ability to use the wells to
extract water provided that was in compliance with
the adjudication that they otherwise had a right
to do that.

    With respect to the first of those
advantages that would accrue to VVWD, that being
the ability to use the facilities for recharge, do
you have any sense of what the circumstances would be under which that would occur?

A Vaguely, in that, you know, there could be conditions when there is water available to the MWA, during a wet year, that is particularly low cost and they see an advantage to doing some recharge.

Plus there has been some questions that we've come across in our process that the recharge at the outlets that the MWA uses may not be that efficient as far as delivering their replacement water into the regional aquifer. And they could choose to use the unused, or the idle capacity of the power plant treatment facility and injection facilities for recharging the aquifer, and therefore seeing an environmental benefit.

Q That was going to be my next question, actually. Based on what you've learned during these proceedings, would you expect that those circumstances would result in a positive environmental benefit?

A I believe that would be very much a positive benefit.

Q Okay. And then with respect to the second ancillary benefit that would accrue to
VVWD, as I understand your testimony, and correct me if I'm wrong, it would be limited to physical mechanism to produce water, which they would have to obtain either through a free production allowance or by providing replacement water, so what we're talking about is simply a physical mechanism there, is that correct?

A Yes, except that they have more limitation even than that under condition 17, which says incorporated by reference in the contract, is that they can only use the facilities to offset existing well production from other wells. And then only specifically wells that are closer to the river. And the concerns of the environment from the Department of Fish and Game.

Q Do you have any information regarding whether or not water that might be produced from those wells, what I'll call the project facility wells, would be materially less expensive from water that VVWD would produce from any of its other wells?

A That there's a chance that there could be slight efficiency of the newer equipment, but I don't think it would be materially better.

Q And then just a couple of questions with
respect to your concerns regarding soil and water condition 7. Is it also, is it your understanding that VVWD would have the power of eminent domain over properties on which the project facilities would be located?

A Yes. Yes, I believe they would.

Q And would High Desert Power Project, if they were the entity that was required to own and construct those facilities, have that same power?

A No.

Q And would you also have some concerns that a lender on the project might take pause at the notion that one of the conditions that would allow continuing operation of the project would be that High Desert Power Project continue to own those facilities, in which case if the lender were to foreclose, for example, on the project they would not be in a position to continue operating because it would be in violation of condition 7? Would that cause you any concern?

A Yes, we do so, specifically it would impact the security arrangements of a loan.

MR. CARROLL: Thank you.

HEARING OFFICER VALKOSKY: Are you done, Mr. Carroll?
MR. CARROLL: Yes, I am. Thank you very much.

HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: No questions.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Ledford.

RECROSS-EXAMINATION

BY MR. LEDFORD:

Q In your testimony you testified that you had no intention of using the water line -- water from the Victor Valley Wastewater Authority. Would you be willing to agree to a condition that said that the High Desert Power Project would never use any water from the Victor Valley Wastewater Authority?

A I think condition number 1 specifically handles it. It says that we can get water only from the aqueduct.

Q But your testimony --

A I mean --

Q -- in the past has been, and actually the testimony in this particular proceeding, at the last hearing when we wanted to change the condition to say shall -- does everybody remember
about shall? It got changed to can, went from may
to can, didn't go to shall.

And Mr. Thompson explained that there
might be many other ways that you could get water.
The one that we're really concerned about here
today, and have been concerned about for some time
is the 18-inch pipeline that's coming from the
wastewater authority.

And, giving you the benefit of the
doubt, you may not know that the City of
Victorville wants to get you water cheap. That's
what we think.

A You are not aware, because it precedes
your time on this project, but the original plan
for providing water to the High Desert Power
Project was to take wastewater from the VVWRA. In
the course of dealing with the Department of Fish
and Game and as they said under oath here the last
time, that they would have serious problems with
that.

We went away from that. We abandoned
it. We've said several times on the record we
have no intent of getting wastewater.

Your provision about saying never in
there is, I mean it just -- I mean the fallacy of
it is that in order for us to get water from
anywhere else we'd have to come in for an
amendment.

If there had a condition that said that
we would never do something, we could come in and
amend that condition, also. So I don't see any
benefit.

But if you want to insist that they have
a benefit by putting never next to all the
different sources that we are prevented from
getting water from, I don't see any problem with
that. We would not dispute that.

Q  Our concern, sir, is about an 18-inch
pipeline that will carry 10,000 acrefeet of water
that's going to run along your east property line.

A  I understand that, but your concern is
not with this project or this Commission because
we have nothing to do with that.

Q  Considering the fact that it was where
you originally proposed, you have testified to
that today, and it has been testified to on
several other occasions in this project, and there
are many people in the community who have said the
purpose of this new pipeline that is being
proposed to carry 1500 acrefeet of water to a golf
course that needs about 600 acrefeet, believe that
the true intent of the pipeline in the political
sense is to provide water for your plant.

And that's our concern today. And you
agree to a condition that says that you won't use
Victor Valley wastewater reclaimed water in your
plant. If you can do that it would certainly
eliminate a lot of our concern.

MR. THOMPSON: Mr. Ledford, I'm going to
object to this line of questioning. We've been
over this before. This is really the time for
recross. This is a subject that we've gone over
with some tedium. Witnesses have testified that
that project has nothing to do with our project.

Our witnesses testified that we believe
we're covered by the condition of certification
that already exists. So I object to further
questions on this subject.

HEARING OFFICER VALKOSKY: All right,
Mr. Thompson, I will permit no further questions.
However, I would like to get Mr. Welch's answer to
the last question that was posed.

Which, correct me if I'm wrong, Mr.
Ledford, does the applicant object to a condition
that would prevent it from using wastewater from
the Reclamation Authority for the power plant, is that correct?

MR. LEDFORD: That's correct.

MR. WELCH: And I believe I just stated that no, we would not object to a condition that would prevent us from using water --

HEARING OFFICER VALKOSKY: Okay, --

MR. WELCH: -- the wastewater --

HEARING OFFICER VALKOSKY: -- fine, that's --

MR. WELCH: -- facility.

HEARING OFFICER VALKOSKY: Great. That's clear. Now we can move off that topic.

Okay, anything else, Mr. Ledford?

MR. LEDFORD: I believe that will do it, thank you.

HEARING OFFICER VALKOSKY: Okay. Are there any questions from any of the parties for Mr. Welch?

(Laughter.)

HEARING OFFICER VALKOSKY: If there are none, you can continue --

MR. WELCH: Told me I could go.

HEARING OFFICER VALKOSKY: -- going.

We're going to take a brief recess in a couple of
minutes.

I'd just like one indication. Mr. Thompson, are you going to present Mr. Hill at this time?

MR. THOMPSON: Mr. Hill is here and either staff or us, either of us, if -- yes.

(Laughter.)

HEARING OFFICER VALKOSKY: The answer is yes?

MR. THOMPSON: Yeah, well, if it's okay with Mr. Hill I will present him. We were both shrugging our shoulders.

HEARING OFFICER VALKOSKY: I'm sure it has nothing to do with Mr. Hill's personal popularity.

Okay, with that we'll recess briefly. Reconvene promptly at 2:00.

(Brief recess.)

HEARING OFFICER VALKOSKY: Okay, if we can reconvene, please. Mr. Thompson, if you'll present Mr. Hill.

MR. THOMPSON: Yes, could I have Mr. Hill sworn, please.

HEARING OFFICER VALKOSKY: If you'd swear the witness, please.
Whereupon,

RANDY HILL

was called as a witness herein and after first
being duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q    Mr. Hill, by way of introduction, my
name is Allan Thompson and I represent the
applicant. For the folks in the audience, I do
not represent any agency located within the Victor
Valley. I guess I don’t represent any agency
anywhere.

               Mr. Hill, would you please give your
name and place of employ for the record?

   A    My name is Randy Hill. I'm the General
Manager with the Victor Valley Water District.

   Q    And you are here to offer comments today
in your capacity as the General Manager?

   A    That is correct.

   Q    Would you please give those comments to
the Commission?

   A    First of all, I'd like to thank you for
introducing me and clear up some of the reason
that no one was quite sure who wanted to call me,
as some of my comments today no one wants to hear.

Some people at the power project don't want to hear what I'm going to say, and some people on staff don't necessarily agree with what I'm going to say. So that's why there was some difficulty in deciding who wanted to call me. So I'm kind of the double-edged sword.

Basically the Victor Valley Water District is opposed to the latest revisions to the conditions that we've become so familiar with. We are still trying to recover a little bit from the surprise of the latest changes that we became aware of only one week ago.

And the reason that we're surprised by those changes is that the original agreement that we developed and submitted openly to the public and before the CEC, as far back as October, include provisions within it for us to own the project facilities, and to use the treatment plant for groundwater recharge.

Suddenly, as of one week ago, those terms are unacceptable. Our agreement has been subject to a great deal of attention. Has been the subject within the last 12 months at our board of directors meetings at least ten times.
At those meetings there's been a lot of discussion made. And the project has been approved three times. Each time we have modified the agreement in response to concerns that people had about the language in the agreement. The very vast majority of those comments we feel did not change the intent of the agreement whatsoever.

It was approved on September 28th. There was a hearing in October. We made changes to the agreement in order to incorporate concerns addressed at that hearing.

After that hearing both Fish and Game and CEC Staff were to provide us written comments to that agreement. They never did.

We, to the best of our ability, incorporated what we thought their concerns were in revising the agreement, which was once again approved on December 7th.

Subject to that there were some additional concerns raised by CEC Staff that expressed that there were conditions within that agreement that weren't in alignment with the CEC conditions.

So another revised agreement was developed. That agreement, its language entirely
was submitted to the CEC for review. They did not seem to have any problems with that agreement at that time.

At that time I also asked Mr. Buell if he would come to my board meeting when that agreement was presented, because I was tired of having to change the agreement over and over. And, frankly, wanted to avoid the appearance before my board of directors that we didn't know what we were doing.

So I wanted him to come and explain why those changes once again were necessary to the agreement.

Mr. Buell was good enough to come, and in the comments that he made, of which I'll read some from our minutes, staff had identified some areas that were inconsistent and we have provided our recommendation on where to make the two documents consistent, to Mr. Hill. And he has incorporated those changes. With those changes we now consider the document is consistent with our proposed decision and we would recommend the board approve the project, and also that the project be approved.

That was on January 18th. On February
11th, by then something had drastically changed.

In all of our board meetings in the last 12 months there have been two people who have spoken out against the project, Mr. Ledford was one of those people. Neither Mr. Ledford, nor the other person who opposed the project, are actually our water customers.

At this point I would say that our water customers are in favor of the project, at least the way it was in the existing agreement, because of the benefits that it provides to our customers and to the community.

One of the proposed changes that is in the CEC Staff analysis regards the ownership of facilities. There's been concern expressed about the ability of the CEC to shut the project down in the event that CEC conditions aren't met.

Apparently the feeling is that the CEC powers are weak. And I disagree with that. The CEC certainly has the authority to shut down the plant if the conditions aren't met.

The CEC conditions, themselves, have been made an explicit part of our agreement by reference and attachment and I'll give just two examples of that.
Section 8 of the agreement under water injection says, that it's subject to California Energy Commission conditions of certification Soil and Water 4, 6, 7 and 5 attached in exhibit D, and incorporated herein by reference.

Also under section 15, District use of project facilities. It says, provided such use is consistent with the requirements of the California Energy Commission conditions of certification Soils and Water 5, 17 and 18, attached in exhibit D, and incorporated herein by this reference.

So, certainly, I think that gives a great deal of power and authority to those conditions. They're in the agreement. They're enforceable.

And also there's a specific performance clause within the agreement that gives the power to the High Desert Power Project to bring against the District as a result of a breach of the agreement.

It reads, paragraph 40, if as a result of the breach of this agreement by the District and HDPP has no other adequate remedy at law, the District agrees that this agreement may be enforced by HDPP by, without limitation,
injunctions and restraining orders. If as a result of the breach of this agreement by HDPP, the District has no other adequate remedy at law, HDPP agrees that this agreement may be enforced by District by, without limitation, injunctions and restraining orders.

Those are pretty broad-based powers. I'd also like to indicate that under the conditions of approval the conditions of concern about overdrafting the basin or some other such thing would not occur rapidly.

There's extensive requirement in the conditions for regular reporting and annual analysis. Such reporting should give any interested party plenty of time to force specific action if they feel it is necessary. Certainly the Fish and Game has directly requested that those reports be provided to them.

I feel, given these controls, that the condition proposed that the High Desert Power Project cannot have its own facilities is not necessary.

Regarding the ownership at closure, I would instead suggest that instead of putting a condition in the project proposal regarding
evaluating who owns facilities at the end, that
those be determined now and put in the conditions
in advance. And I'd recommend that you extend the
existing CEC conditions to the project closure
condition, which would include:

   Number one, restricting that the project
wells could only be used when offsetting other
production closer to the river. And, number two,
that you would require any use above the baseline
to be replenished with imported water. That would
have a net effect on the groundwater basin of

   I feel that this project and the
proposed conditions that are in the aquifer
storage and recovery agreement are nothing but
environmentally friendly.

   And I'll have to say this, that
originally we had not envisioned using the project
wells other than in an emergency. But in response
to questions by Fish and Game, it came to our
awareness that there may be some win/win solutions
that would have worked both for our customers and
for the concerns of Fish and Game. And that had
to do with offsetting production away from the
river.
And given that we developed conditions that we feel benefit not only our customers and the community, the groundwater basin, but also the concerns of Fish and Game.

Regarding the idea of growth-inducement. In the same manner that power plants are constructed to meet growing demand, rather than creating demand, the District also responds to the demand for water. It seems that any analysis that's made for adding power or water would be basically identical.

In our service area we're predicting a long-range growth of about 3 percent. That growth will occur whether or not this project is constructed. And our facilities are constructed in response to population growth.

We don't feel that this project infrastructure is growth-inducing because it doesn't remove an existing restriction on water use. There's nothing that prevents us from drilling an unlimited number of wells in this valley.

We did construct two new wells last year. We're planning on constructing some more wells next year. In addition, we are never
permitted by a clause that I put in the agreement
to rely upon the project wells for our own
capacity. We will continue to maintain a
completely one-hundred percent independent source
of supply to meet all of our customers' needs. We
will not be relying on the High Desert Power
Project.

Lower water rate. There seems to be a
little bit of confusion about that. Basically
there's been some statements made that the use of
project wells could lead to lower water rates, and
thereby induce growth. I wish that were the case.
Unfortunately, it is not the case that this will
result in a decrease of water rates.

Just to give you an idea, I'm the one
that's responsible on an annual basis for bringing
a recommendation to our board of directors on
setting rates. And I could tell you, because of
that, what some of the future holds for water
rates in the valley.

Based on the analysis that our agency
has done recently, we feel that we need to
substantially reduce the amount of groundwater
that we are using over time. That will be one of
our objectives as we look at our future planning.
So we want to increase our use of imported water in order to reduce our amount of groundwater use.

To give you some idea I've got a little Post-It note over there which is about the biggest Post-It note I could find, that talks about growth-inducement.

Some of the discussions by opponents have talked about a possible production capacity of 35 acrefeet per year of additional capacity. So I wanted to give you an idea of what that would really mean to our community. So that's what that chart is over there.

If you look, the cost of imported water, by the time you pay for it, treat it and deliver it to site, is about $400 an acrefoot. Right now there's a cost of imported water at Mojave Water Agency of $171 an acrefoot. To give you an idea, that's a very reasonable number. Last year the Metropolitan Water District treated water rate was $431 an acrefoot. So that's a very realistic number.

If you take that number times 3500 acrefeet you'll get $1.4 million. If you compare that against our cost for native water, right now
our agency is buying unused groundwater as
carryover rights at $35 an acrefoot. If you
multiply that out, it's about $123,000.

So, obviously using the High Desert
Power Project facilities is going to increase our
water costs by over $1 million every year. It
amounts to about $80 per customer per year if we
were to take 3500 acrefeet of imported water,
treat it and put it down into the ground. This is
not growth-inducing, not by any means.

Now, I think some of the confusion that
has evolved about the idea that it could result in
lower water rates is based on some of the
statements that I've made earlier.

We basically operate wells in their most
efficient order based on current customer demand.
We turn our most efficient wells on first, the
second most efficient second; third, fourth, et
cetera.

So our intent, having the availability
of project wells that are not being used to meet
the High Desert Power Project, is if we could turn
that water into our system, and we won't know
until we construct them, but it's possible that
some of those wells will have a higher total

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efficiency than our existing wells closer to the river. If that's the case, we'd prefer to turn those on before wells that are closer to the river. So there is some possible benefit to using those wells in that order.

But using them in that order, although it produces some financial benefit to us, is dwarfed by paying for the cost of imported water. Certainly there will not be, unfortunately, lower water rates as a result of the project.

Regarding the direct use of a water treatment plant, I'd like to clarify that our current agreement for storage and recovery agreement with the High Desert Power Project does not include the ownership of a treatment plant where the control of it simply allows us to use water at cost through that treatment plant for groundwater recharge.

The direct use of a treatment plant by the Victor Valley Water District, although it's intriguing to me as an idea, and one I think that my agency should pursue, is not one that is part of this project, and is one that would certainly require additional analysis.

In conclusion, I'd like to make a couple
points. The first is that on Tuesday of this week the Victor Valley Water District Board of Directors voted unanimously to oppose the newly proposed changes to the conditions. These conditions basically nullify our executed agreement with the High Desert Power Project. Substantial benefits to our customers are lost as a result of the proposed conditions, and I don't want to see those benefits lost for our customers. If these proposed conditions remain as they are, I would have serious doubts about recommending my agency to enter into a new agreement with High Desert Power Project. And if we cannot come to terms that are favorable to the Victor Valley Water District, I would also recommend that my agency oppose the placement of project wells within our service area. And that concludes what I have to say, and I'll answer all questions.

HEARING OFFICER VALKOSKY: Before the parties, I'd just like a couple points of clarification, Mr. Hill.

EXAMINATION

BY HEARING OFFICER VALKOSKY:

Q Did I hear correctly that the Victor
Valley Water District will not own the treatment facilities?

A That is correct. Our aquifer storage and recovery agreement does not call for ownership of the treatment plant by the Victor Valley Water District.

Q Okay. The board's opposition to staff's newly proposed conditions, regarding that, is there any gradation in opposition to those conditions because to my reading condition 6 in the verification, the addition to condition 6 in the verification provide for reevaluating the groundwater study in 30 years, and require that any future operation of water facilities be addressed in the project closure plan.

Condition deals with the ownership; and 17.4 limits VVWD's use of water facilities.

My question to you do you oppose those proposed conditions?

A I can be more specific.

Q Pardon?

A I can be more specific.

Q Okay.

A Item 5-B I think is something that we would remove our opposition immediately as soon as
we spell our name correctly.

(Laughter.)

MR. HILL: The verification of Soil and Water 6 is linked to project ownership, and we're opposed to the verification because we feel that the disposition of the project facilities should be determined in advance to enable us to have ownership of them.

Soil and Water condition 7 is a similar concern, ownership of the facilities.

And the dreaded 17.4, which is a deal killer, is the allowance of the water treatment plant for groundwater recharge.

BY HEARING OFFICER VALKOSKY:

Q So, in other words, again, just 6-D, I guess it is, reevaluating the groundwater study, you have really no opposition to?

A No, the other conditions we have no opposition to.

Q Okay. And you oppose the other three staff conditions now, okay.

A And the proposed conditions that Fish and Game have in their letter are not a problem.

Q Okay. Fish and Game proposals are okay.

You mentioned, and I would like you to explain a
little bit further for the Committee's benefit, extending the coverage of certain of the existing proposed conditions concerning the use of the baseline, conditions 1 and 2, I believe you mentioned?

A I'm sorry, say again?

Q You mentioned extending, or at least my notes say extending the coverage of certain of the existing conditions in your testimony regarding the use of the baseline, or clarifying the existing conditions.

I mean that's what I heard and I want some clarification on it.

A Can you ask it another way? I'm still not getting the question.

Q I'm not sure I can, but if it comes to me I'll repeat it. In thrust, a portion of your testimony seemed to me to be a suggestion that one of the methods of dealing with some of the apparent problems was to further specify in the proposed conditions the applicability of the computation for the use of the baseline water amount?

MR. THOMPSON: Could you have been talking about conditions that relate to the first
30 years versus conditions after that time? I'm striking out, too?

MR. HILL: I'm not following.

MR. CARROLL: I thought there was testimony, or a suggestion that the conditions of approval applicable to the first 30 years be extended to the post-closure period.

MR. HILL: Oh, thank you. Yeah, my suggestion was --

HEARING OFFICER VALKOSKY: Thank you, Mr. Carroll.

MR. HILL: -- was related to ownership of the facilities. One of the conditions right now on the project is that the determination of ownership be also addressed at project closure.

Since I'm arguing that we should have the ability to own the project facilities up front, when I'm proposing to address the concerns of what happens to the project facilities post-closure of the High Desert Power Project facility, is you determine that up front, what happens to those wells after closure of the project.

And what I'm saying is you just set the conditions right now that on closure the same conditions apply, which is that you cannot use the
project wells unless you offset production closer
to the river, and you cannot use the project wells
unless you -- if you over-produce that amount, you
replenish it with imported water.

And the intent of that condition
established in advance is to assure that those
project facilities will never be used to
contribute to the existing groundwater overdraft
in the area.

Does that --

HEARING OFFICER VALKOSKY: Okay, thank
you. Mr. Thompson, do you have anything further?

BY PRESIDING MEMBER LAURIE:

Q    Wait, wait, wait, wait. Question. Mr.

Hill, you mentioned the benefit of this project to
your ratepayers. What kinds of benefits were you
referring to from this project?

A    There are multiple benefits. The

benefits that I'm concerned about losing
particularly is the ability to recharge an
overdrafted groundwater basin. It's one of our
objectives to reduce the amount of groundwater
that we take from the ground. And the ability to
treat water and put it back in the ground is
something that's very valuable to us.
Q  Okay, and how will this project help you do that?
A  Well, the availability of treated water for injection is something that we do not have now.

Q  Okay. Now, do you understand the concern expressed by the agencies, and I think Mr. Ledford, is that use of that injection water will, in fact, be utilized for the purposes of adding to your water supply, and thus being made available to your customers?

My understanding is that's the concern. And the question is how do you insure that that won't happen?

A  No, I think the question is whether or not that induces growth. And we will pump water out of the ground regardless of whether or not we can refill it with imported water, because our responsibility is to meet the water demand of our customers.

And our groundwater production is directly related to the water demand of our customers. In the same way that a power project provides power for the demands of California.

PRESIDING MEMBER LAURIE: Fine.
BY HEARING OFFICER VALKOSKY:

Q    Okay, so then it is your testimony that the facilities built in conjunction with the High Desert Project would be used solely for reinjection purposes?

A    That is correct.

HEARING OFFICER VALKOSKY: Mr. Thompson, anything else?

MR. THOMPSON: No, sir.

HEARING OFFICER VALKOSKY: Ms. Holmes?

MS. HOLMES: No questions.

HEARING OFFICER VALKOSKY: Mr. Adams.

MR. ADAMS: Just a few, yeah.

CROSS-EXAMINATION

BY MR. ADAMS:

Q    Just to follow up on the questions asked a minute ago, if the treatment plant and wells are being used to inject, and just for clarification the wells will also be used pursuant to Soil and Water 17 to withdraw, right, to take water out, offsetting production near the river, if the facilities are being used to inject water, does that increase Victor Valley Water District's overall capacity to deliver water?

In other words, by injecting water
aren't you then allowed to, under the adjudication, withdraw more water?

A  The adjudication does not limit our production of groundwater. There is no limitation on us and how much groundwater we can produce.

Q  But wouldn't it require replacement of water over a certain amount, if your production exceeded a certain amount, wouldn't you have to replace it?

A  Certainly.

Q  So doesn't this somehow work to increase the total capacity of the district to deliver water to customers?

A  No, because our capacity to deliver water is the construction of new wells of which we have no restriction on.

Q  Well, separating well capacity issue from the actual production, it just seems -- now, not knowing the adjudication, obviously, from the generality of the question, it just seems that if you have the ability to put a lot of water into the ground that that increases your allowance, your ability to pull water out of the ground and deliver it to customers. Aren't you given credit for that?
A  Let me explain how that may work, it may
benefit others in the room, as well. The
adjudication established a water master. That is
the party which is responsible for managing the
basin.

Part of their responsibility is to
manage groundwater storage. What we would do with
the injected water is put it into a storage
account with the Mojave Water Agency.

Now, there's not currently an agreement
between our agency and the water master. That
agreement would need to be in place before we can
store water into an account and obtain a credit
for it.

But the principal idea is that you take
imported water when it's ample and available on
the state system, you take it in advance and store
it in the ground for future use.

Q  Okay. I think that helps, to some
degree, my understanding. Although not entirely.

You heard my questions earlier of Mr.
Welch about the 1000 acrefeet that Soil and Water
7 require be left in the ground at the time of
project closure?

Actually, that misstates it. It says
that 1000 acrefeet -- I've got the wrong number, as well.

Well, we talked about this prior to the hearing, it pertains to 11.2 in your water storage agreement, and the provision that any water remaining in storage will become the property of the district.

Could you tell us the district's intent as far as whether that includes the 1000 acrefeet that High Desert is required under condition Soil and Water 7 to leave in the water bank?

A I'd be glad to. Basically the intent of the agreement is if that the High Desert Power Project leaves the area and they leave groundwater in storage, we looked at that as an opportunity to obtain that for our customers. And so we asked them to include a provision which they would unlikely to leave the water in the ground, but if they were, that it would become ours.

It was not intended to include that 1000 acrefoot. The confusion is because of the proximity of that statement to the discussion of the 1000 acrefeet.

Just to provide you some assurance of that, an area that I quoted earlier, which is on...
injection, specifically incorporates Soil and
Water 6 into the agreement, specifically paragraph
8 of our agreement says, "subject to California
Energy Commission conditions of certification Soil
and Water 4, 6, 7 and 5 attached in exhibit D, and
incorporated herein by reference."

And just to refer you back to what Soil
and Water 6 says, it specifically states that, "At
no time may the balance of banked water decline
below 1000 acrefeet, and the remaining balance of
1000 acrefeet banked in the groundwater system at
closure."

So it's already in our agreement by
explicitly attaching and incorporating the CEC
conditions.

Q Yeah. The Committee probably doesn't
want to hear us debate the terms of the agreement
anymore after the last hearing, but I certainly
think -- the only reason I'm asking about intent
is I think the provision in that section of the
agreement can certainly be read to include the
1000. So I appreciate your clarification of that.

Finally, your suggestion of applying the
same restrictions on use of project wells after
the 30 years, or after closure, I think is a very
attractive proposal, or solution, to the disputed condition.

However, if you have any thoughts on how the Commission can go about enforcing that, or having that happen, I think that's what has all of us stumped, that because there's really no regulatory relationship between Victor Valley Water District and the Commission, how do we -- how does the Commission address impacts that might occur after High Desert isn't around anymore?

A    I'm not an attorney, but I'm open to suggestions. If you have a contractual arrangement that you feel establishes that?

Q    I think it's a tough one, that's why I thought maybe you had some ideas.

MR. ADAMS: That's all my questions, thanks.

PRESIDING MEMBER LAURIE: Well, let me ask Mr. Valkosky, contracts are voluntary. Is there any reason why, as a condition to approval, or a condition to some subsequent event, there has to be shown a contractual relationship between the District and the Energy Commission providing for and satisfying our needs for validation?

HEARING OFFICER VALKOSKY: I think in a
more general term that is, and that, please,
staff, correct me if I'm wrong, but that is the
type of thing that was intended to be encompassed
in the verification to condition 6, which required
an examination of the future operation and
ownership of the water facilities to be addressed
in the closure plan. Is that correct?

MS. HOLMES: We were not anticipating a
contractual arrangement between the Energy
Commission and Victor Valley Water District.
That's certainly one of the options that we
discussed earlier on, and I believe it's one
that -- it is an avenue that's available to the
Commission.

Commission Staff and particularly the
compliance unit has always been very very
reluctant to either become third party
beneficiaries to contracts or enter directly into
contracts. In other words, between the Energy
Commission and other agencies, because we haven't
wanted to get involved in the business of contract
enforcement.

It's not an area in which we have a lot
of expertise, and it would be a considerable
resource drain.
I understand a lot of Mr. Hill's concerns, and I think Mr. Buell will be testifying about them later. But we have tried to avoid a situation in which the staff recommends that the Energy Commission enter into a contract with VVWD For practical reasons.

I'm not aware of any legal impediment.

HEARING OFFICER VALKOSKY: But aside from the contractual relationship, as I understood that verification could have been one of the possibilities which would have been explored at that time, is that not correct?

MS. HOLMES: I'm not understanding your question, Mr. Valkosky, I'm sorry.

HEARING OFFICER VALKOSKY: Okay. The verification that you're proposing to condition 6, as I understood it that would just be essentially an evaluation of what do you do with the water facilities after the present applicant goes away, right?

MS. HOLMES: That is correct. It's really no different than what we do --

HEARING OFFICER VALKOSKY: Exactly.

MS. HOLMES: -- in reviewing any other part of the project --
HEARING OFFICER VALKOSKY: Right.

MS. HOLMES: -- when there's a closure plan.

HEARING OFFICER VALKOSKY: And within the scope of that, one of the logical alternatives would have, could have been entering into a contractual relationship, is that not correct?

MS. HOLMES: That's certainly an alternative, yes.

HEARING OFFICER VALKOSKY: Right. And staff's suggestion was essentially to defer that analysis until three years prior to expected project closure?

MS. HOLMES: That's correct.

HEARING OFFICER VALKOSKY: Okay, thank you. Anything further, Mr. Adams?

MR. ADAMS: No.

HEARING OFFICER VALKOSKY: Mr. Ledford.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q Mr. Hill.

A Hi, Gary.

Q Can I call you Randy?

A Sure, Gary.

Q Can you tell me how many acrefeet a year
that your district produces?

A Our current average annual demand is between 15,000 and 16,000 acrefeet per year.

Q And of that 15,000 to 16,000 acrefeet, based on the current USGS reports, how much of that is overdrafting the regional aquifer?

A I don't know that the study that was done by USGS broke out over-production by agency, so I don't know the answer to that.

Q Are any of the wells that are within your district naturally recharged by the flood plane aquifer?

A By the Mojave River?

Q Correct.

A My understanding is that there is some limited interaction between the Mojave River and the regional basin, but it's not a very strong connection. The bulk of my wells do not seem to be obtaining the benefit of recharge at Rock Springs.

Q I think that it's fair to say that this water treatment facility, the water treatment project at the power plant would produce a potential benefit of 3500 acrefeet of water that you could inject into your basin on an annual
basis?

A I agree with that.

Q And based on your ability to raise funds, would it be your intent to inject that water?

A It would certainly be one of the strategies available to us as an agency. It's a very expensive process to do, as you can see. So one of the challenges that my agency faces in the coming years is how to gradually wean ourselves off a serious overdraft. And there's a cost impact associated with that.

Q Would it be fair to say that you have advised your agency that water injection -- water treatment and water injection are going to be the solution to providing for a continuous water resource for your agency in the future?

A My water supply plans include the use of a treatment plant directly, not this one, but another one up by the aqueduct. Includes groundwater recharge. It includes the use of recycled water, and increased use of conservation. All four components are needed for a future water supply.

Q Right. And you understand that my
concern in these proceedings principally is the use of water for evaporation and the consumptive use requirements for replacement water within the basin?

A    Yes, I assume you're not opposed to recharging the basin with imported water?

Q    That's correct.

A    Thank you.

Q    I didn't know you could ask me questions, but I guess that works.

(Laughter.)

BY MR. LEDFORD:

Q    Well, I sort of get blamed for opposing the project, and that's --

A    I appreciate your support in that area.

Q    -- and you testified earlier that I showed up to oppose the project. My opposition, of course, is that the project -- there is a project that I oppose, at least at this juncture, and my opposition is in approving a project that hasn't had adequate CEQA analysis.

And the project that's being proposed is one that not only the power project has a benefit from, but also the district. And whether growth-inducing or cumulative, there's a number of
impacts that haven't been studied.

And it would be fair to say that whatever impacts have been studied have not been studied for longer than 30 years, would you agree with that?

A  Oh, I'm sorry, I didn't -- can you repeat the question?

Q  Sure.

A  I thought you were making a statement.

Q  Would it be fair to say that for whatever project benefits relative to the water treatment facility within the power project have not been studied for longer than 30 years?

A  I think the power project people have only been studying it for a few years.

Q  I'm talking about the staff analysis from the standpoint of CEQA.

A  I believe the period that was looked at was 30, but I'm not an expert in that area.

Q  Can you tell me if you've been experiencing water quality problems in your wells?

A  No, we have not been experiencing water quality in our wells with respect to natural sources of water, as far as what's native in the groundwater, mineral content, that type of thing.
We have had a problem within our wells recently of bacteria contamination coming from the outside.

Q Okay. Relative to water rates, when you begin injecting water, what is your projection for water rates to your customers over the next five years?

A That is a difficult question to answer, and certainly one that will be the subject of much discussion between myself and our directors. And I don't have an answer to you, because I haven't discussed it with my board.

Q I had asked Mr. Welch some questions relative to exhibit 1, to the contract, or exhibit A.

A Okay.

Q The one I don't actually have, but have a similar one. And on this figure 1 there is an interconnected pipeline that says existing 18-inch pipeline. Is that existing 18-inch pipeline a part of your municipal system at the present time?

A No, actually it's owned by the City of Victorville, and I believe that's the Southern California Logistics Airport line. There is a memo of understanding between our agency and the
city that we will wholesale a limited amount of
water to the city at that connection. And they
own that pipeline. The connection point's at -- I
don't remember exactly where the connection point
is, but --

Q    I possibly didn't posture that question
very well. Is the pipeline for municipal
purposes? Maybe that's a --

A    The pipeline is to supply water to the
City of Victorville. I don't know what their
intended use is for the water.

Q    Okay. Does the pipeline carry potable
water?

A    Yes, it will.

Q    All right. Now on this particular
diagram it shows that pipeline connecting to the
new pipeline, the new High Desert Power pipeline
that travels south, is that the intent?

A    No, I had no intention, as far as I knew
of, of connecting the seven High Desert Project
wells pipelines in a loop system to that SCLA
pipeline.

Q    So if you looked at this plan you
wouldn't get that interpretation from it?

A    No, that's not the intent.
Q So, is the pipeline that -- there's much more than six miles of pipeline that's drawn on this plan if these section lines equal a mile.

A I'm not sure of the exact quantity of pipeline. I'd believed it was about six miles.

Q And it's not intended that this be a loop system?

A No, it's not.

Q So all of the wells that are shown on this pipeline on this plan are only for the purpose of providing water to or from the water treatment facility and the power project?

A That's their primary intent. There also would be a connection somehow to our distribution system to enable us to offset production closer to the river and take it into our system. Those connection points have not been studied or determined.

Q But how would you do that?

A We would connect the pipe from our system to theirs.

Q I understand, but what the power project people have told us here is that they don't intend to provide the water to drinking water standards, that wouldn't be their intent.
So if they put water that was not qualified to be treatment water into that pipeline, and you took that pipeline and injected the water into the ground, but then tomorrow you decided that you needed to extract the water out of the ground, you'd still have residual pipeline problems, you can't have nontreated water in the pipelines --

A No, I think --

Q -- and use it for municipal purposes --

A I believe that the water that will be treated will have to be treated to potable water standards because I believe that's what the regional board will require.

Q And once that happens --

A Because I'm familiar with the requirements for injected water, and it has to be potable water standards to be injected.

Q I kind of have a propensity to believe that that may be the case, as well, but given that, which is where I was headed, once you have a pipeline, an 18-inch pipeline that has treated water in it, there isn't any reason why that treated water can't just go out to your system?

A That would be a possibility, but it's
certainly not a part of this analysis. And if
that were to be done, it would require a separate
CEQA analysis.

Q But how would anybody know?
A I don't know.

Q Relative to the issue of consumptive
use, what would be the District's position on the
water that was banked in the ground?
A I don't understand the question, Gary.

Q We've had this discussion and I'm not
sure how awkward I am at posing the question, but
the position of one or more water agencies has
been that if they purchased water, treated it and
put the water in the ground that that water would
not be subject to the consumptive use requirements
within the judgment. And that would include
paying replacement water obligations and the like.
A My understanding in the adjudication
with respect to consumptive use, it has to do with
the change of existing use of groundwater, and if
you move the groundwater source from an industrial
use to residential, or something, there's an
analysis done by water master to determine if
there is an increase of consumptive use.

Q Correct. I still haven't postured this
The issue would be would the District ask for a credit for banked water?

A   The banked water is not a credit, it's accredited to a storage account.

Q   Right.

A   Yes.

Q   If the water flowed through your sewer lines to the waste treatment plant would you assume that that water belonged to you?

A   Oh, that's a totally different question than your first one.

Q   Yes, it is.

A   No. As I understand it, that water first belongs to the customer, then belongs to the city, then belongs to the reclamation authority.

Q   So you would not be intending to make a claim?

A   I'd love to, but I can't.

Q   Okay.

MR. LEDFORD: I think that concludes my questions for the moment.

HEARING OFFICER VALKOSKY: Thank you, Mr. Ledford. Are there any other questions for Mr. Hill?

Okay, Mr. Hill, thank you very much.
MR. HILL: Can I go to Disneyland now?

HEARING OFFICER VALKOSKY: You can go to Disneyland.

(Laughter.)

MR. HILL: That's where my family is right now, and I was supposed to be with them, so.

MR. THOMPSON: I might add that Mr. Hill's agency is closed today and this is a voluntary appearance on a day when he should be with his family.

MR. HILL: Voluntary?

MR. THOMPSON: Well, --

(Laughter.)

MR. THOMPSON: -- quasi-voluntary.

HEARING OFFICER VALKOSKY: Well, again, on behalf of the Committee, we thank you, Mr. Hill.

MR. LEDFORD: Thank you, Randy.

HEARING OFFICER VALKOSKY: Mr. Thompson, does that conclude your presentation of witnesses?

MR. THOMPSON: It does. And I would like to move into the record exhibits 143, 144 and 145.

HEARING OFFICER VALKOSKY: Are there objections? Staff?
MS. HOLMES: No objections.

MR. ADAMS: No objections.

HEARING OFFICER VALKOSKY: Mr. Ledford?

MR. LEDFORD: I have an objection to the extent that the exhibits are either redacted or that they are not inclusive of all the exhibits that are proffered within the exhibits.

I believe that the lease, the option to lease should have all the exhibits attached that's appropriate.

And I specifically think that the redaction of what the costs of air quality credits on a public agency's document are not appropriate for this proceeding.

The applicant has provided some financial information in their latest filing that they made a part of the record. I can't see a reason for any secrecy in the balance of it.

I don't object to the exhibits provided that they're complete.

HEARING OFFICER VALKOSKY: Okay. I would note that specifically insofar as the costs of the emission offset credits, that is typically considered confidential within Commission proceedings. So I'm going to overrule the
objection to that effect.

As to the redaction, as you phrase it, I would note that at least one of the exhibits refers to materials, specifically exhibit 65, which is already part of the record. Your objection is noted insofar as the lease agreement, and we'll accept it for what it purports to be, an option, at this time.

With that, those exhibits are admitted.

MR. THOMPSON: Thank you.

HEARING OFFICER VALKOSKY: Ms. Holmes.

MS. HOLMES: We would recall Mr. Buell.

DIRECT EXAMINATION

BY MS. HOLMES:

Q    Good afternoon, Mr. Buell. Did you prepare the water portion of exhibit 146A, as well as exhibit 176?

A    Yes.

Q    And my understanding is that 176 is corrections to the water portion of 146A. Do you have additional corrections to make at this time?

A    Yes, I have some additional corrections. I might start with soils and water condition number 4 which appears on page 7. Part A, the last sentence, which reads during the period the
project owner may pump banked groundwater that is
available to the project, as determined by soils
and water condition 5.

That is redundant, I propose to strike
that.

Q    Do you have any additional corrections?
A    Yes, I do. Soils and water number 5, part B, I'd make a correction to the spelling of
Victor Valley Water District --

(Laughter.)

MR. BUELL: Soils and water A, I would
adopt the errata that was proposed by Fish and
Game, which namely is to add the phrase "and minus
any amount described in soils and water 5B" to the
end of part A.

Likewise, I would add that phrase to the
end of part B of condition 6.

And lastly, on condition, soils and
water condition number 18 on page 14, the very
last line refers to soils and water condition
17.2, that should read 17.1, Roman numeral ii.

That is the errata that I have.

BY MS. HOLMES:

Q    And with those corrections is your
testimony true and correct?
Yes, it is.

And do the opinions contained in it represent your best professional judgment?

Yes, they do.

Could you please summarize your testimony?

First, I'd like to explain that I believe there's a lot of confusion and concern about why it took staff so long to identify potential impacts of the project.

I'd like to explain that although staff knew that the Victor Valley Water District was going to own the project facilities, it wasn't until the October 7th and 8th hearings that staff understood that VVWD intended to operate these facilities for purposes of than to supply the High Desert Power Project. And at that hearing VVWD identified that they were for emergency conditions.

In December and January of this year staff worked with the Department of Fish and Game, VVWD and the High Desert applicant to draft conditions to address VVWD's use of the wells.

And we learned at that time that VVWD intended to -- did not want to limit the operation
of those facilities to emergency conditions.

At that time staff considered growth-inducing impacts from what I would call normal operation of those wells as described in conditions 5 and 17. We believed that we had addressed those growth-inducing impacts from, quote, "normal" operations.

However, at the last hearing in Victorville on the 27th of January, we were made aware of potential issues by Mr. Ledford regarding growth-inducing impacts. At that time we realized that we had failed to consider some of the aspects of Victor Valley Water District's use.

Namely, we had not considered Victor Valley Water District's use of wells if the High Desert Power Project were to close prematurely, Victor Valley Water District's use of the water treatment facility. The potential for High Desert or Victor Valley to operate the wells for more than 30 years.

And we failed also to realize the implication of VVWD's ownership of the wells in conjunction with their operation of the wells. This latter point is particularly important because the Energy Commission has jurisdiction.
over construction and continuing use of project facilities.

And second, because we need to have conditions that we can place upon the applicant which are enforceable. And conditions upon a third party, such as VVWD, raise concerns which we have elaborated earlier in this hearing.

This was an oversight on staff's part. I am responsible. And I feel particularly responsible since I went to the VVWD's Board hearing on the 18th of this year and told them that I had no problems with any of the conditions that were laid out at that time.

It was an oversight. I guess I owe both Mr. Randy Hill and his Board an apology for that.

At this point I think it's important for us to focus on the fact that the project has potential growth-inducing impacts that staff has not yet identified from the operation of the wells and the water treatment facility.

We also want to emphasize that these are reasonably foreseeable operations of the project, as discussed here today. I think Mr. Hill has identified that there's a likelihood that they would inject water for the purposes of storing
that water for later sale to their customers as
potentially a growth-inducing additional increase
in supply for the district.

    I would have to agree with Mr. Welch
that the soils conditions 5 and 17 mitigate
potential growth-inducing impacts from normal
operation. But we haven't dealt with the closure
of the facility at this point, and how the
ownership of the wells would be dealt with at that
point.

    Staff believes there's two ways that we
could address this. We could ask for additional
time to conduct the analysis of the growth-
inducing impacts. It's by no means conclusive
that we'd find that there's a significant impact.
But we need to do that in an analysis.

    In lieu of doing that we could adopt
conditions of certification that would preclude
those growth-inducing impacts from occurring in
the first place. And that's what staff has
included in its proposed conditions of
certification, measures that we think are
necessary to limit that potential from happening.

    That is to add a new condition to
revisit the water study after 30 years; to add a
new condition requiring the applicant to maintain
ownership of the water facilities, including the
water treatment facility. To add a new condition
requiring future operation of water facilities to
be addressed in a closure plan once the project
reaches closure.

And, lastly, to add a new condition
limiting VVWD's use of the water treatment
facilities to emergency conditions.

I'd like to make one small clarification
to the statement that has been pointed out by Andy
Welch in his summary regarding table 1, and the
statement that there is a significant probability
of the project failing due to unavailability of
state water project water.

When I drafted that I didn't mean to be
making a statement on the likelihood of the
project's failure. What I was trying to say is
that if the project were to fail, it would likely
be due to the lack of water availability. That
that was the primary reason I would see the
project failing, is that there would be an
unavailability of water. I have, today, I think,
taken a position on the probability of the project
failing, however.
With that, that would conclude my summary of my testimony.

BY MS. HOLMES:

Q   Mr. Buell, you were involved in the development of the condition and also helped staff provide comments on the aquifer storage and recovery agreement.

   Has VVWD expressed a strong interest in using some portions of the water treatment facilities?

A   The testimony that I heard today was that they have an interest in using those. It's identified in the aquifer and storage agreement in a couple of places.

   It is also identified to the sections that Andy Welch identified. It's also discussed in section 10.3, which identifies that in the event the district enters into a groundwater storage agreement with MWA, Mojave Water Agency, which provides for storage of water beyond that required for the project, the High Desert Power Project shall be responsible for reimbursing the district only for those costs associated with storing water for the benefit of the project, meaning the High Desert Project.
So, those clauses, in addition to 8.3, I think establish that there's an interest from VVWD for using the water treatment facilities.

Q And did that lead you to conclude that their use, in fact, is reasonably foreseeable?

A Yes.

Q When you were working with VVWD to develop language for the aquifer storage and recovery agreement, did you start on the premise that VVWD was interested in using facilities for emergency purposes only?

A We started with that premise, although it became evident rather soon that there was other benefits that VVWD would like to take advantage of. And we had drafted the conditions of certification to allow that broader use.

Q So they were opposed to the use of a condition that would limit their use to emergency purposes only?

A That's my recollection.

Q There was a discussion earlier this morning, I think it was a member of the public making a comment, about the risk associated with HDPP retaining ownership of the wells.

Can you briefly explain the compliance
conditions that would insure that HDPP's ownership
would not result in violation of the conditions?

A  I'm not sure I understand your question.

Q  I was just hoping to get something on
the record in response to somebody's -- a member
of the public's concern about HDPP retaining
ownership of the wells, thereby being able to
avoid compliance with certain conditions.

A  Yes.  I think the term that was used
was the hen guarding the -- the fox guarding the
hen house, excuse me, I got my analogy backwards.

The Energy Commission Staff feels that
it would be -- that we are the responsible agency
for insuring compliance with the project
conditions.

We have often used self-monitoring
requirements or self-enforcing conditions of
certification with various applicants, and we've
found that that's successful, has been successful
for many years.

I don't view this as giving control back
to the applicant for compliance of those
facilities, or with the conditions of
certification. Staff or the Energy Commission
will insure the compliance with those conditions.
Q  Thank you. We also had some discussion earlier today about the risk of failure. You alluded to that a few moments ago in your summary. Could you please explain how the risk of failure that you described affected your testimony on the potential for growth-inducing impacts?

A  It affected it in two ways. One is that I felt that there was a potential that this project could fail prematurely. And as I said earlier, primarily due to the lack of water availability.

And in looking at that I felt it was an appropriate scenario to examine what would happen to the project facilities after that closure. What conditions of certification could the Energy Commission apply that would dictate the use of those wells after the project closed, because obviously they would still have some value.

And at that time it became evident that we wouldn't have any hook, if you will, over the ownership of those wells, other than if it was to the applicant.

The other thing is that in evaluating the probability of growth-inducing impacts we also wanted to make a consistent assumption if there
were a high probability that the project would fail due to the unavailability of water, how did that relate to future growth-inducing impacts. And did that make it less or more likely.

Q Thank you. There was a discussion earlier this afternoon on limiting the capacity of the water facilities to certain design specifications.

Is it your understanding that there would be a different capacity if it were based on peak demand versus annual average demand?

A I understand that the facility would need to be designed to peak capacity to meet peak water demand during various scenarios. Namely, for example, supplying both the project cooling water supply and also injecting water pursuant to the storage requirements.

Q And does that mean that when there is a peak demand, there's excess capacity?

A That is correct.

Q Thank you. There was also a discussion earlier today about whether or not the water that was injected would meet drinking water standards. Do you recollect the statements of the regional water quality control board on that issue that
were filed with the Energy Commission last year?

A  It's my recollection that the regional water quality control board, the Lahontan Regional Water Quality Control Board, required that the water injected by the project meet drinking water standards.

Q  Thank you. There's also been some discussion today about whether or not the Energy Commission should deal with closure conditions at the time of licensing.

Staff hasn't recommended that. Can you explain why we'd like to address specific closure conditions at the time that closure's being proposed?

A  There's a number of reasons. One is you never know what the situation that brought about closure was. You don't know, can't always reasonably foresee what the circumstances are.

The second reason is the regulations change, requirements change. That the, for example in this case, the adjudication may have been modified by that date, and have entirely different requirements that would nullify or change the nature of what we would think are appropriate conditions to place on that future use
of the wells, for example, at that time.

Q Thank you. Could you please explain why, in light of the conditions that are contained in staff's testimony -- let me start over again.

Can you please explain why, under the conditions that are included in the aquifer storage and recovery agreement, you have a concern about growth-inducing impacts associated with use of the water treatment facility?

A I have concern because I see that as a potential additional source of water. Certain, I think Mr. Hill's identified that there's an initial step of banking that water first. I think that's a potential benefit to the groundwater aquifer, but it still has the potential to lead to future growth-inducing impacts from additional water supplies being made available to Victor Valley Water District.

Q Are you referring to the fact that the water can be taken out of the ground once it's banked?

A Yes, certainly that if you've entered into a water storage agreement with the Mojave Water Agency, part of that agreement is how one can extract that water for future use. And I
think Mr. Hill also alluded to that.

Q    Is staff opposed to VVWD recharging water?

A    No.

Q    Is staff opposed to allowing use of project facilities to be used for recharging water without examining any associated environmental effects?

A    I believe that staff would think it would be appropriate for the Mojave Water Agency to go through an analysis similar to that that we have conducted for the proposed project to understand what the water -- how much water is actually stored in the aquifer, what's an appropriate dissipation rate, what credit Victor Valley should be given for banked water.

That's all something in an analysis that should be conducted as part of the water storage agreement.

Q    So your opposition isn't to recharge, it's to allowing VVWD to increase its water supply without an analysis being conducted first?

A    That's correct.

Q    And with respect to the prohibition on selling facilities, does staff oppose VVWD having
the ability to sell facilities absolutely?

A    I believe you meant High Desert, but --

Q    Yes, thank you, excuse me.

A    No, we do not oppose. In fact, there's

a general condition of certification that deals

with change of ownership of project facilities as

a general condition that's included in all project

licenses that if there is such a change in

ownership the applicant must come back to the

Energy Commission.

Q    Thank you.

MS. HOLMES: Mr. Buell is available for
cross-examination.

PRESIDING MEMBER LAURIE: Mr. Valkosky,

I'd like to ask a question first.

EXAMINATION

BY PRESIDING MEMBER LAURIE:

Q    Well, I really need an education, Mr. 

Buell. Your concern appears to be the need for an

in-depth analysis on growth-inducing impacts. You

argue that it is reasonably foreseeable that the

district will utilize the recharge for service to

its customers because you think that that's the

commonsense conclusion of the circumstances at

hand. Is that a fair statement?
A That's what I heard Randy Hill say earlier today.

Q Okay. So, in that regard, it's your position that you have to examine the growth-inducing impacts of the district suddenly getting some additional water supply, the amount is unknown.

I thought I had a fair understanding of what a growth-inducing analysis, growth-impact analysis does, or is supposed to say. And my understanding would be a typical analysis says, okay, so you throw in 1000 acrefeet into a system, you have 1000 acrefeet to then utilize, what does that mean?

Well, I think it means you can serve 1000 more people. So, I'm kind of lost as to what kind of in-depth analysis you have to do, other than take a fact and reach a conclusion. The conclusion is if there's additional water supply, well, then you can serve X number of additional people. Why is it more complicated than that?

What am I missing?

A I don't think that you're missing anything. I think that what we need to do is to quantify what those environmental consequences
are. Exactly what does an additional water supply mean to future population growth in this basin --

Q    Well, now, wait a minute, are you suggesting that you have to -- you think you have to do an environmental impact of adding 1000 more people to Victorville if it's consistent with their general plan?

A    I think I have to evaluate what the reasonable consequences of this project are, and if that's a logical conclusion of what the actions this Commission is taking in licensing this project, then I think we have to evaluate those impacts.

BY HEARING OFFICER VALKOSKY:

Q    But if, hypothetically, if 1000 more homes were built, environmentally does it make any difference whether the water was available by virtue of the facilities from this project, or as Mr. Hill said, if the district needs water they can just go sink a well.

A    Again, I think I must reiterate, if it's a logical conclusion that this project is eliminating an impediment to that growth, that we must consider the consequence of eliminating that impediment.
You know, to put some numbers on the magnitude of what we're talking about here is that let's presume for a moment that there's 4000 acrefeet of excess capacity from the water treatment facility, and that all that would be available to Victor Valley for additional water supply.

Assuming an average per capita consumption of water of approximately .38 acrefeet per capita, that's 12,000 people that this additional water supply would supply. And that's approximately one-quarter of the current population of Victorville. This is not a small amount of water we're talking about here.

BY PRESIDING MEMBER LAURIE:

Q Doesn't Victorville have a general plan?
A Yes.
Q And doesn't any growth have to be consistent with that general plan?
A Yes.
Q And would not that general plan have had an environmental analysis?
A I believe so.

PRESIDING MEMBER LAURIE: Okay.
HEARING OFFICER VALKOSKY: Mr. Thompson.
MR. THOMPSON: Thank you. Just two short areas.

CROSS-EXAMINATION

BY MR. THOMPSON:

Q Mr. Buell, am I correct that VVWD may pump beyond its allowance and buy replacement water, replacement water's cheaper than storage and is put in after withdrawal. So am I right, that there aren't additional supplies, just better environmental solutions in that balance?

A I think there's an additional potential supply of water there, as well as certainly that is one way of using the water. But it could also be used to provide additional supply to Victor Valley Water District.

Q If there's an allocation obtained for that water?

A An allocation from?

Q Well, a part of your assumption is that there is additional water that is purchased out of the state water project, or somewhere else, right?

A Yes.

Q You mentioned the phrase eliminating impediments to growth, and reasonably foreseeable results. And it strikes me that that may be a
standard that you're using.

What I would like to do is to quote from four past Commission pronouncements and see if you believe that they're consistent with that standard.

Number one, the final staff assessment in the Sunrise Cogeneration Project. This was docketed, I believe, September 30th. This document points out that in addition to serving existing oil wells, this is an enhanced oil recovery project, roughly 700 new production and injection wells are expected to be constructed in this section.

And do you believe that providing steam for 700 new wells is not growth-inducing?

A I believe that the environmental consequences of those 700 wells that are being served by that project should be analyzed.

Q Were they in the Sunrise project a growth-inducing impact?

A I don't know from my own knowledge.

Q In the Pittsburg District Energy Facility Commission decision, at page 20, the Commission summarizes under alternatives the objectives. And one of the objectives was to
assist the City of Pittsburg by building a long
planned waterfront truck route, and to help
Pittsburg realize it's economic development goals.

Do you believe that that is a growth-
inducing impact?

A    I don't know that I'd call it
necessarily, or characterize it as growth-
inducing. It is certainly a consequence of the
project that should be evaluated. The cumulative
impacts, it's a reasonable foreseeable project
that should be considered in the analysis.

Q    Do you know if the growth-inducing
impacts were evaluated with regard to this?

A    I don't know of my own knowledge.

Q    In Sutter the Commission decision, and
I'm afraid I don't have a date, let me quote from
page 296, this is staff witness McCuen, quote,
"The SBP provides significant power to the
Sacramento Valley area, would help mitigate local
systems voltage problems, and provide moderate
power for load growth."

Do you see the providing power for load
growth being a growth-inducing impact coming from
this transmission line?

A    I don't believe that providing
additional capacity to California's electricity system is necessary growth-inducing, since those actions are in response to demand, not creating demand.

Q Much like the water that Mr. Hill testified to?

A I would argue that the case in this case is that the water supply for Victor Valley Water District is coming prior to the increase in demand, rather than as a consequence.

Q I think the citizens of California would hope that the power would come before the demand, as well.

A Well, I can only quote what Mr. John Roberts' statement was, is that they're looking for additional growth in this community to respond to recover their economic base.

Q Do you know if the Sutter decision, or the staff in Sutter evaluated growth-inducing impacts from this line?

A I'm not aware if they did or not.

Q And finally, the LaPaloma Generating Project, the Commission decision earlier this year, quote, on page 2, "Finally applicant has chosen to place the project in a community which
welcomes it. The only public input which we received during the proceeding is favored construction of the LaPaloma Generating Project and the economic development it will bring to western Kern County area."

Do you know if the staff of the Commission evaluated growth-inducing impacts for that project?

A No, I'm not aware of that.

MR. THOMPSON: We have no more questions.

HEARING OFFICER VALKOSKY: Okay, I'd like the parties to be aware that in order to make transportation connections we're looking at somewhere between 30 and 40 minutes of hearing time left.

So to the extent that everybody can keep that in mind, I'd appreciate it.

Mr. Adams.

MR. ADAMS: Just one question.

CROSS-EXAMINATION

BY MR. ADAMS:

Q Related to questions of other witness, Mr. Buell, do you remember, in drafting Soil and Water 6, the provision that 1000 acrefeet remain
in the bank at the closure of the project?

A  Yes, I do.

Q  Can you explain the purpose for that provision?

A  My understanding is that 1000 acrefeet was a buffer to insure that we had more than enough mitigation for the project impacts.

MR. ADAMS: Thank you.

HEARING OFFICER VALKOSKY: Mr. Ledford.

MR. LEDFORD: Thank you.

CROSS-EXAMINATION

BY MR. LEDFORD:

Q  Mr. Buell, it's true that the Commission has only studied the impacts of this project based on a 30-year project, is that true?

A  That's correct.

Q  And it's also true that you've only considered the use by the project of 4000 acrefeet for evaporative cooling and 13,000 acrefeet of banking, is that also true?

A  That is correct.

Q  And you have not considered the use of water by the Victor Valley Water District, 3500 to 4000 acrefeet, for the five years to the 25 years, even within your current environmental analysis?
A I would argue that the conditions that we've put forth in condition 5 and 17 would limit VVWD to not increasing production above the baseline, therefore there would be no environmental consequences of that water use.

The things that we have not examined are VVWD's use of those wells once the project closes. We have not looked at VVWD's use of the water treatment facility.

Q I'm sorry, I didn't ask that question quite right. There's 3500 acrefeet of surplus capacity within the plant in year five or six to year 30, would that be a correct statement?

A Yes.

Q And if I heard Randy Hill's testimony correctly, the water that is going to come out of the plant, out of the treatment plant, is going to be drinking water standards?

A It's my understanding --

Q Be treated to drinking water standards?

A That's my understanding, yes.

Q And there is no reason why that water cannot be put directly into the municipal system?

A There's no reason that I would believe that it could not be.
Q And in fact, in order for Victor Valley Water District to use the wells as he proposes, the project facilities, the project waterlines have to be drinking water standard water lines? They have to be able to contain water that is treated to drinking water standards?

A That would be correct.

Q And so my question to you again is has your study of the surplus capacity for the period that you've actually studied the project for included the availability and use of that water at 3500 to 4000 acrefeet?

A I can only repeat my answer again, that we have not studied the implications of VVWD's access to the treated water from the treatment facility.

Q And just one more time. When we were here in hearings in October and November the proposal at that time, the draft contracted at that time, it was your understanding that the facilities were going to be project facilities, and their ability to use those facilities was only going to be on an emergency basis?

A That was the testimony of Mr. Hill that I recall, yes.
Q  And from those hearings to this point, sir, have we had a workshop where all the parties were involved in discussing these types of -- I mean the conditions have changed now, I think three times since then, but has there been any workshop where all the parties were invited to attend and participate?

A  No, there has not. Although staff did circulate its proposed changes to add conditions -- modify condition 5 and add conditions 17 and 18 to all the parties. That was filed to the POS list, so all parties had an opportunity, and staff asked for comments on those proposed conditions from all parties.

Q  And if I could just go to condition soil and water 1, which I thought we had sort of thrashed out last time, previously it said may be pumped and may not operate, and we talked about the word shall being put in. I thought everybody agreed to the word shall.

And this word that's put in is can, but it's not underlined or struck through, so I'm not sure how that all happened.

A  Which condition are you referring to?

Q  Soil and Water 1, paragraph C, page 6.
A Yeah, I do recall at the hearing on the 27th --

Q I'm sorry, I'm not in the right place here, I guess.

A I believe you are, you're on the third line where it says the project cannot operate?

Q Right.

A And I think the comment, as I recall at the hearing on the Presiding Member's Report on January 17th, was that should have been changed to shall. And I note that it has not here. It's can. I think it said should not operate previously.

I think that was an oversight on staff's point. That should read shall not operate.

HEARING OFFICER VALKOSKY: Mr. Ledford, I'd also note the Committee recalls that. And remember that these are only staff-proposed conditions. Certainly it would be the Committee's indication that to the extent this condition is carried forward that it read shall.

MR. LEDFORD: And only for the record at this point, before I leave this witness, there's been an indication that I agree with staff's conditions.
I've tried to participate in the process to the extent that I can. I have a strong disagreement on the consumptive use of water. And regardless of the outcome of these hearings I will proceed with those.

So, with that clarification, I appreciate the opportunity to offer input into the conditions.

Thank you, Mr. Buell.

HEARING OFFICER VALKOSKY: Thank you, Mr. Ledford.

EXAMINATION

BY HEARING OFFICER VALKOSKY:

Q Mr. Buell, before redirect, did you indicate that VVWD would own the water treatment facilities?

A No, I did not.

Q Okay, were you operating under that assumption?

A No, I was not.

Q Thank you. So, I mean you had nothing to contradict Mr. Hill's statement that they will, in fact, not own the water treatment facilities?

A No, I think that part of the problem comes from the definition that staff used in its
testimony for what constitute project water facilities. We included the water facilities in our definition of project facilities.

And clearly, reading the storage agreement, that it's not envisioned as being one of the project facilities as defined in that document.

Q    Okay, fine, that comports with my understanding of the aquifer storage agreement, too.

HEARING OFFICER VALKOSKY: Redirect?

MS. HOLMES: I don't believe I have any redirect.

HEARING OFFICER VALKOSKY: Okay, just one question, Mr. Buell.

BY HEARING OFFICER VALKOSKY:

Q    Do you view the four changes that you've suggested in your proposed conditions as equally important to preventing any growth-inducing impacts?

A    Yes.

Q    Okay, so there is -- do you also view them as a package of conditions, or are they appropriate in stand-alone form? In other words, could they be selected or de-selected on an
individual basis?

A I think the Committee has every right to
select what they believe are the appropriate ones,
and exclude those that they have a basis to
exclude.

HEARING OFFICER VALKOSKY: Okay, thank
you. Are there any other questions for Mr. Buell?

Thank you, Mr. Buell.

Mr. Ledford.

MR. LEDFORD: I would call Jack
Beinschroth to testify.

HEARING OFFICER VALKOSKY: Excuse me,
before you do that, Ms. Holmes, does that conclude
staff's case?

MS. HOLMES: Yes, at this point we'd
like to move exhibit 176 and 146A into the record.

HEARING OFFICER VALKOSKY: Is there
objection? No objection, they'll be admitted into
evidence.

I'm sorry, go ahead, Mr. Ledford.

MR. LEDFORD: Call Jack Beinschroth. I
would like to move to reconsider the issue of the
questions relative to the Mojave Water Agency and
State Water Resources Control Board on the basis
that issues relative to overdraft and ramp-down
and balancing the water basin has been testified to by Mr. Andy Welch, by Mr. Randy Hill and Mr. Buell.

Questions have been asked directly on those topic areas by Mr. Thompson and by members of the Commission.

I would think that precluding what limited number of questions that we have in this area from the record would be prejudicial based on the testimony that's been allowed thus far today.

HEARING OFFICER VALKOSKY: Okay, you're referring to exhibit 168, your prepared testimony, what we've identified as exhibit 168?

MR. LEDFORD: Correct, per Mr. Beinschroth.

HEARING OFFICER VALKOSKY: Okay. Are there comments from any of the other parties? Mr. Thompson?

MR. THOMPSON: I think our position is with regard to those questions and answers that have been discussed here today, I don't think we would have any objection of letting them in for the value that they represent.

HEARING OFFICER VALKOSKY: Okay, other parties? Staff? Okay, Mr. Ledford, applicant has
essentially removed its objection. I would, however, caution you that the Committee will not accept those portions of the testimony dealing with the election and the political matters.

MR. LEDFORD: And with that clarification, and also we don't intend to ask Mr. Beinschroth any follow-on questions in those areas. We will focus only on the growth-inducing impacts.

HEARING OFFICER VALKOSKY: Okay, proceed.

MR. LEDFORD: Has Mr. Beinschroth been sworn?

Whereupon,

JACK BEINSCHROTH was called as a witness herein and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEDFORD:

Q Mr. Beinschroth, is the prepared testimony that's before the Committee testimony that's either been prepared by you or prepared at your direction?

A Yes.
Q    And have you reviewed this testimony?
A    Yes.

Q    And is this your testimony?
A    Pardon?

Q    Is this your testimony?
A    Yes, it is.

Q    And do you wish to make any changes, modification or additions to the testimony?
A    No, I don't.

Q    Okay, I would like to just have you tell us in relation to the oversizing of the infrastructure, how you calculated what the capacity of the 24-inch pipeline was.

A    Well, the hydraulic flow of a 24-inch pipeline based on a normal psi, I used 50, will give you 14,000 acrefeet a year, based on a yearly basis. Is this what your striving for, I mean --

Q    That's correct. And your testimony is that the pipeline is oversized for producing enough water to provide for 8000 acrefeet of water to a water treatment facility and for evaporative cooling on the treatment plant, is that correct?
A    Well, if that's -- yes.

Q    Very good. And is it your testimony that you believe that the oversizing is nearly
twice what is actually required?

A    Well, 14, 8, practically twice, yes.

Q    Now you also testified in your prepared
testimony about growth-inducing impacts. Is it
your testimony that having this surplus capacity
in both the supply pipelines to the project site,
and in the pipelines that go to the wells and the
district facilities, would provide growth-inducing
impacts?

A    Well, there's sufficient additional
water that would be available that could produce
growth impact. I mean there's water that's way in
excess of what the plant would require designed
into the pipelines, if that's what you're
inferring.

Q    Correct. And your testimony relative to
these pipelines was deduced, I guess, from
evaluation of figure 1 from exhibit 65, which has
been blown up as exhibit A to your testimony?

A    You referring to the size of the pipe?

Q    Correct.

A    Well, a 240-inch line, I think it was on
page 214, U.S. Fish and Wildlife draft or
environmental impact statement, they indicated a
24-inch line.
And conversation subsequent to that indicate that they proposed a 24-inch line to supply the plant from the aqueduct.

The 18-inch line from the treatment plant, that was a proposal that was made by Victorville to Mojave Water Agency some time ago. So that size has been established.

Q    Okay.
A    Those are two basic supply lines that could be used.

Q    All right. With that testimony, is there any other item relative to growth-inducing impacts that you believe that the Committee should be aware of?

A    Growth-inducing impacts. Well, they have the possibility or let's say the availability of inducing additional water to the storage, and then they also have the ability to pump this out, which would give them excess water, which would be made useable by the water district.

And excess water comes back to growth-inducement. And as I understand it, there has been no environmental impact study made over and above the 4000 acrefeet that they originally requested.
So I would say it would definitely be a growth-inducement.

Q Thank you.

MR. LEDFORD: No further questions.

HEARING OFFICER VALKOSKY: Thank you.

Mr. Thompson?

MR. THOMPSON: No questions.

MS. HOLMES: No questions.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Okay, sir, thank you very much. You're excused.

MR. BEINSCHROTH: No you got about 20 minutes before you catch your plane.

(Laughter.)

HEARING OFFICER VALKOSKY: Proceed, Mr. Ledford.

MR. LEDFORD: Call Bob Almond, please.

And I would have the same motion for Mr. Almond relative to issues that are noncampaign issues.

HEARING OFFICER VALKOSKY: Okay, to the -- Mr. Thompson.

MR. THOMPSON: You're catching me off guard here.

Yes, if the same restriction applies, it's fine.
HEARING OFFICER VALKOSKY: Okay.

Nothing from the other parties? Okay. The same exclusion as to the campaign, the election issues will apply to exhibit 172.

Would you swear the witness, please.

Whereupon,

BOB ALMOND

was called as a witness herein and after first being duly sworn, was examined and testified as follows:

MR. ALMOND: The first thing I would like to start off with is I'm not here as a member of the Mojave Water Agency. I'm here as a private citizen and concerned taxpayer.

MR. LEDFORD: Thank you, Mr. Almond.

DIRECT EXAMINATION

BY MR. LEDFORD:

Q The prepared testimony that's before the Commission today, was it prepared by you or at your direction?

A Yes.

Q And have you reviewed this testimony?

A Yes, I have.

Q And is this testimony yours?

A Yes, it is.
Q  And do you wish to make any modifications, changes or additions to this testimony at this time?
A  No, I don't.
Q  I would just like to go to where we were looking at question 12, and we're talking about the -- we're here today to talk about the contract for the Victor Valley Water District.

And to the extent that you can summarize your testimony relative to growth-inducing impacts for the Committee, we'd appreciate that.

A  Okay, thank you. I've reviewed the contract and related exhibits, especially the exhibit that shows the various waterlines. I can see from the waterline exhibit that these lines are fully over-sized.

I am concerned that the objective of the Victor Valley Water District and the City of Victorville is much greater than what they've stated in this approval process.

First, the water treatment plants are modular and can be easily added onto for further capacity. Assuming that the High Desert Power Project water treatment plant is designed to treat only 4000 acrefeet of water per year, after the
initial banking, the plant would be idle for
sufficient periods of time. At a minimum this
would amount to about 3500 acrefeet per year, if
the banking project works as they anticipate.

This water would be used for development
outside the scope of the environmental studies
conducted by the California Energy Commission.
The water you have considered for use is directly
on the power project.

Since they would have generated a
surplus capacity of at least 3500 acrefeet of
treated water, this action, if approved would be a
growth-inducement for the project area, not
studied at this present time.

I am very concerned about the oversizing
of the waterlines. I'm also concerned about the
direct connection with Victor Valley Water
District, who would have a direct connection with
the California aqueduct.

Q  Does that conclude your testimony?
A  Yes, it does.

MR. LEDFORD: No further questions.

HEARING OFFICER VALKOSKY: Okay, Mr.
Thompson?

MR. THOMPSON: No questions.
MS. HOLMES: No questions.

MR. ADAMS: No questions.

HEARING OFFICER VALKOSKY: Mr. Almond, thank you very much.

MR. LEDFORD: I have nothing further.

HEARING OFFICER VALKOSKY: I'm sorry, Mr. Ledford?

MR. LEDFORD: Other than a closing argument or statement, if we have an opportunity, I have nothing further.

HEARING OFFICER VALKOSKY: Okay, would you like to move your exhibits 168 --

MR. LEDFORD: Yes, I would.

HEARING OFFICER VALKOSKY: -- and 172?

Is there objection?

MR. THOMPSON: None.


MR. THOMPSON: I think 170 was reserved.

HEARING OFFICER VALKOSKY: 170 was reserved. I was referring to 168, which is the prepared testimony of Mr. Beinschroth and 172, which was the prepared testimony of Mr. Almond. Let's take those at this time. Is there any objection to the admission of those exhibits?
MS. HOLMES: None.

HEARING OFFICER VALKOSKY: I take it there is none. Those exhibits are entered into the evidentiary record.

Your next exhibit, Mr. Ledford, was?

MR. LEDFORD: That would be exhibit B, which is the -- exhibit A to the prepared testimony, blown up exhibit from Victor Valley Water District, which is what Mr. Beinschroth used to calculate the size of the pipelines.

HEARING OFFICER VALKOSKY: Okay, and that was essentially --

MR. LEDFORD: That was actually off of exhibit number 65.

HEARING OFFICER VALKOSKY: A reproduction of exhibit 65.

MR. LEDFORD: Correct.

HEARING OFFICER VALKOSKY: So that it is --

MR. LEDFORD: It is a portion of.

HEARING OFFICER VALKOSKY: -- it is a portion of the record. Is there any objection to receiving the blown-up version?

MS. HOLMES: None.

MR. ADAMS: No.
HEARING OFFICER VALKOSKY: None?

MR. THOMPSON: No.

HEARING OFFICER VALKOSKY: Okay, that will be admitted.

Next, Mr. Ledford.

MR. LEDFORD: Exhibit 170, which is a part of Mr. Beinschroth's prepared testimony relative to the size and capacity of the sewage treatment plant pipeline. It's also been referred to in other portions of evidentiary material and testimony in today's hearings.

HEARING OFFICER VALKOSKY: Okay, Mr. Thompson?

MR. THOMPSON: I'm a little fearful that this exhibit which describes something that is not a part of this project and has no connection to it could muddy the record. And I guess I would object on that ground.

HEARING OFFICER VALKOSKY: Ms. Holmes?

MS. HOLMES: No objection.

MR. ADAMS: No objection.

HEARING OFFICER VALKOSKY: I'll admit it. I'm not sure it will muddy the record any more than it has already been muddied.

(Laughter.)
MR. CARROLL: We set a fairly low
standard here.

(Laughter.)

HEARING OFFICER VALKOSKY: At any rate,
we'll receive it. I agree with Mr. Ledford, that
it has been referred to numerous times.

MR. LEDFORD: And then exhibit number
174, which is exhibit B to the direct testimony of
Bob Almond. It's entitled, consumptive use study.
His testimony covers that it's also been discussed
other times in this hearing today.

HEARING OFFICER VALKOSKY: Mr. Thompson?

MR. THOMPSON: No objection.

MS. HOLMES: No objection.

MR. ADAMS: No objection.

HEARING OFFICER VALKOSKY: Without
objection, it's admitted.

Does that conclude your presentation,
Mr. Ledford?

MR. LEDFORD: That concludes it.

HEARING OFFICER VALKOSKY: Okay. Are
there any members of the public, if I could just
have a show of hands, that wish to offer comment
on any of the matters here discussed?

Okay, sir, would you like to approach,
make sure I give you a chance --

MR. LEATZ: My name is Ron Leatz, L-e-a-t-z. I basically have two things I'd like to address to the Commission.

Number one, I'd like to thank you for spending your time and coming down on this project. I know you probably know the road to Victorville better than the locals.

I think what you have to remember is you represent the taxpayers of the State of California, and this represents not just the high desert, it represents all of California.

I think the project that goes on and on and on basically has one problem, the problem is water. I think the project, as it's proposed, should be rejected. And the dry cooling method, if that's the way they want to go, resubmit it and see if it works that way.

The second thing I would like to talk about is something that you have not wanted to talk about all day. I don't expect to read all of this information, but there was a committee formed by the Mayor of Victorville, called the Victor Valley Economic Committee.

I'm going to summarize it real quick:
The people that were elected to the Mojave Water Agency, which I'm involved with unfortunately because they are the water purveyor over the Victor Valley Water District, received 67 percent of their campaign money from the High Desert Power Project.

I had one vote in the polls, they used that money. And the three people that were elected to the Victor Valley Water District each received $2500. This is now public record, comes from Sacramento, anybody can get it. I have it. I'd like to leave it with the clerk. You can look at it, you can throw it away. But it's awful amazing that they spent I think it was $72,000 to get the right people on the water boards when water seems to be the issue.

HEARING OFFICER VALKOSKY: Sir, if you'd like to submit that, if you'd give it to me I'll enter it into our docket.

MR. LEATZ: Thank you. I also have a newspaper article that kind of summarizes this, if you don't believe the reporter, throw it away.

Thank you.

HEARING OFFICER VALKOSKY: Would you like a copy of the article docketed, too?
MR. LEATZ: Pardon?

HEARING OFFICER VALKOSKY: Would you like a copy of the article docketed, also?

MR. LEATZ: Yes, please.

HEARING OFFICER VALKOSKY: Okay. Ma'am.

MR. LEATZ: Could I make one last comment?

HEARING OFFICER VALKOSKY: Oh, I'm sorry, sir, sure.

MR. LEATZ: We've had testimony today, and of course you don't know the people involved. As an example, the city manager comes up and says, this is the greatest thing since canned soup. That's his job. But he does not live in the City of Victorville. He does not live in the Victor Valley Water District.

Mr. Huber, whose president of the water district, came up and said he's had no complaints. There's been more than one complaint. The manager of the water district says there have been complaints. So just kind of unfortunately weigh all this out. You're only hearing some parts of the story.

Thank you very much.

HEARING OFFICER VALKOSKY: Thank you,
MS. FLINT: Hi, I'll be quick. My name's Terry Flint. I'm on the Victor Valley Water District Board. I, too, would like to thank you for coming today and spending your whole day here.

I'd like to clarify, before I forget, something Mr. Leatz just said. Our manager stated that out of our 15,000 customers not one of our customers has complained. That was Mr. Huber's testimony, and that was our manager's testimony. We feel this is an excellent project. It will benefit the taxpayers of this valley by VVWD receiving the wells, the water treatment plant, which we don't have. And we would be able to spend the money we do have to look at other projects if we receive these wells.

I hope that this project does go through. I also have heard some concern today, I believe from Mr. Buell, about VVWD having control over the wells, or the High Desert Power Project having control over the wells.

Victor Valley Water District has an excellent reputation. And I don't understand why anyone would have trouble with us having control.
of the wells. I would think that that would be a
plus, that if, in the end, everyone knew that we
would be taking ownership. I would think that
that would be a benefit.

And I hope that this project makes it.

Thank you very much.

HEARING OFFICER VALKOSKY: Thank you.

The Committee will consider your comments.

Anything else from anyone here present?

Okay, with that we'll close the record
on the topic of water agreement and growth-
inducing impacts.

Due to the hour we find it necessary to
do away with an opportunity for a closing
statement. However, the Committee will extend the
parties a period of two weeks to submit any final
statements, written argument, in the form of
written briefs. Okay?

MR. LEDFORD: My recollection, Mr.

Valkosky, is that we did have a closing argument
when the record was closed at the last hearing.
That's my recollection.

HEARING OFFICER VALKOSKY: That's
correct. Okay, the briefing, by my count, will
extend until March 7th. The intention is two
weeks from today, I think that's March 7th. If it's not, go for the two-week date.

And with that, unless there are any other matters to discuss, -- I'm sorry, Mr. Thompson?

MR. THOMPSON: What topics does the Committee anticipate covering in the briefing?

HEARING OFFICER VALKOSKY: The topic of chief concern to the Committee is the matters concerning the water agreement and growth-inducing impacts.

Specifically, would like to address the necessity for consistency of the conditions of certification with the provisions of the water agreement, the necessity for the provisions proposed by staff in their testimony, the four additional conditions. And the other matters generally addressed under the water agreement/growth-inducing impacts as discussed at today's hearing. Okay?

MR. THOMPSON: Thank you.

HEARING OFFICER VALKOSKY: Any other questions?

With that, again, I thank you all for your attendance and participation. And we're
adjourned. Thank you.

(Whereupon, at 4:05 p.m., the hearing was adjourned.)

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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 Hearing; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2000.

DEBI BAKER

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