PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
HIGH DESERT POWER PROJECT ) 97-AFC-1C (C1)
WATER ISSUES ) Complaint-1
____________________________)

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

MONDAY, JANUARY 14, 2002
10:10 A.M.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Robert Laurie, Presiding Member
Robert Pernell, Associate Member
Scott Tomashefsky, Advisor
Susan Gefter, Hearing Officer

STAFF PRESENT
Paul Kramer, Staff Counsel
Bob Haussler
Steve Munro

PUBLIC ADVISER
Roberta Mendonca

COMPLAINANT
Gary A. Ledford
Jess Ranch

REPRESENTING THE RESPONDENT
Michael J. Carroll, Attorney
Latham and Watkins

Thomas M. Barnett, Vice President and Project Manager
High Desert Power Project LLC

Andrew C. Welch, Vice President
Constellation Power Source

ALSO PRESENT
Norman Caouette
Kirby Brill
Mojave Water Agency

Laurie Okun
LaHanton Regional Board

PETERS SHORTHAND REPORTING CORPORATION   (916) 362-2345
# Index

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Introductions</td>
<td>1</td>
</tr>
<tr>
<td>Opening Remarks</td>
<td>4</td>
</tr>
<tr>
<td>Presiding Member Laurie</td>
<td>4</td>
</tr>
<tr>
<td>Hearing Officer Gefter</td>
<td>6</td>
</tr>
<tr>
<td>Proposals for Stipulated Facts</td>
<td>8</td>
</tr>
<tr>
<td>Complainant</td>
<td>8</td>
</tr>
<tr>
<td>Respondent</td>
<td>18</td>
</tr>
<tr>
<td>CEC Staff</td>
<td>19</td>
</tr>
<tr>
<td>Conditions of Certification</td>
<td>30</td>
</tr>
<tr>
<td>Review Witness/Exhibit Lists</td>
<td>34</td>
</tr>
<tr>
<td>Committee Order</td>
<td>77</td>
</tr>
<tr>
<td>Adjournment</td>
<td>80</td>
</tr>
<tr>
<td>Certificate of Reporter</td>
<td>81</td>
</tr>
</tbody>
</table>
PROCEEDINGS

10:10 a.m.

PRESIDING MEMBER LAURIE: Good morning, ladies and gentlemen. My name is Robert Laurie, I'm Presiding Member of the Siting Committee. Along with my Associate Member, Commissioner Pernell, we have been designated to hear the matter at hand.

The matter at hand is a complaint filed by Mr. Ledford regarding compliance of conditions of the High Desert Power project.

For purposes of introduction Mr. Scott Tomashefsky is to my left. Mr. Tomashefsky is my Senior Advisor. To my right is Ms. Susan Gefter, the Hearing Officer assigned to this matter. Ms. Gefter will administer these proceedings.

Commissioner Pernell is entering the room and is present. And with him will be his Advisor, Ms. Ellie Townsend-Smith.

Also present in the room is Roberta Mendonca, the Public Adviser.

Let me continue with introductions before I offer an introductory set of remarks.

We'll call Mr. Ledford the complainant. Mr. Ledford, will you introduce yourself, please.
MR. LEDFORD: I'm Gary Ledford, the complainant.

PRESIDING MEMBER LAURIE: Thank you.
The respondent, High Desert Power project. And, Mr. Carroll, if you could introduce yourself and the members of your party that are present, please.

MR. CARROLL: My name is Mike Carroll; I'm with Latham and Watkins. I'm here on behalf of High Desert Power project. With me is Thomas Barnett and Andrew Welch with High Desert Power project LLC.

PRESIDING MEMBER LAURIE: Thank you.

Staff, if you could introduce yourself and members present at the table, please.

MR. KRAMER: Staff Counsel Paul Kramer. And to your right is Bob Haussler from the Environmental Office; and to your left is Steve Munro, the Compliance Project Manager.

PRESIDING MEMBER LAURIE: Thank you, gentlemen. Ms. Mendonca, would you like to acknowledge your presence and offer any comment at this time, please.

MS. MENDONCA: Good morning, thank you very much, Commissioner Laurie. Roberta Mendonca

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
for the Public Adviser's Office. Thank you.

PRESIDING MEMBER LAURIE: We do have parties on the telephone. This is being teleconferenced. It's also being transcribed I'd like to note.

Could you identify yourselves for the record, please.

MS. OKUN: This is Laurie Okun; I represent the LaHanton Regional Board.

PRESIDING MEMBER LAURIE: Thank you, Laurie.

MR. CAOUETTE: Good morning, Norman Caouette with the Mojave Water Agency.

HEARING OFFICER GEFTER: That's Norman Caouette. Mr. Caouette, for the record because this is being transcribed, could you spell your name for us, please?

MR. CAOUETTE: Certainly.

C-a-o-u-e-t-t-e.

MR. BRILL: Kirby Brill with the Mojave Water Agency on the phone, as well.

HEARING OFFICER GEFTER: Would you spell your name for us, please.

MR. BRILL: First name, K-i-r-b-y, last name B-r-i-l-l.
HEARING OFFICER GEFTER: Thank you. I understand Mr. John Roberts of Victorville is on the phone? Mr. Roberts?

PRESIDING MEMBER LAURIE: Evidently not yet. I know his office was on the phone, so we expect Mr. Roberts to be joining us.

Just a moment for introduction, if I might. This is a prehearing conference, and the purpose of the prehearing conference is to set the scope and the manner in which the conference is going to be held, effective Wednesday.

The conference is pursuant to a complaint filed by Mr. Ledford. The complaint makes a number of allegations. We are interpreting those allegations as alleging violations of conditions of the approval of the project, because that is the only matter for which we have jurisdiction.

It is not our intent, and we will not address any issues that do not bear a direct relationship with the conditions and their compliance.

Therefore, all discussions will be centered about an identification of the conditions alleged to be violated, and the basis of the
alleged violations.

We will determine whether there's any evidence to proceed with a further examination of the allegations; the extent of that; and the scope of the analysis that will be conducted so that the Commission can determine if there has been any violations, the nature and scope of those violations. And then determine an appropriate remedy if such violations exist.

We will also look at the parties' proposed witness lists and exhibits. This Committee will make a ruling as to permitted witnesses, permitted exhibits, the nature and scope and length of the testimony, having determined which of such is relevant to the allegations at hand.

Mr. Ledford has also made a series of discovery requests. We will conduct the same analysis in regards to that request.

Mr. Ledford does have the burden of proof in providing evidence to support the complaint. The respondent, the operator, has the burden of establishing compliance with the conditions of certification.

Staff has the responsibility to inform
the Commission, the responsible agencies and the parties if the respondent has failed to comply with the conditions. And if so, what action the respondent should take to cure the noncompliance.

At this point I'd like to ask Ms. Gefter -- before I do that let me welcome Commissioner Pernell and ask Commissioner Pernell if Commissioner Pernell has any opening comments.

ASSOCIATE MEMBER PERNELL: Thank you, Commissioner Laurie. I don't have any comments at this time.

PRESIDING MEMBER LAURIE: Thank you, sir. At this time I'd ask Hearing Officer Gefter to review the process and to deal with the issue of proposals for stipulations. Ms. Gefter.

HEARING OFFICER GEFTER: Thank you, Commissioner Laurie. The first thing I did want to welcome the water agencies, the individuals on the phone who have called in. If you would be patient until we get to issues in which we would ask you to comment, it may take a little bit of time, but we appreciate your patience and your participation.

PRESIDING MEMBER LAURIE: Just let me interrupt quickly. I would hope that your
patience at this point will be a good investment
of time, because it may save us all a lot of time
over the next couple days. So one minute invested
today may save us some hours over the next couple
days. So your participation today is appreciated.

HEARING OFFICER GEFTER: Thank you. I
wanted to talk about the agenda. Again, we're
going to repeat what Commissioner Laurie mentioned
earlier, but again, our first inquiry will be
looking at the conditions of certification that we
identified in our notice of hearing. And we will
consider whether the required compliance documents
have been filed.

And then after that we will review the
parties' witness lists and the proposed exhibits.
We got quite a number of proposed exhibits
submitted both by Mr. Ledford and by the
respondent. And we want to again try to go
through those exhibits to determine whether any of
them should be considered for the record.

And then we will discuss finally the
discovery request that Mr. Ledford has filed.
That would be the last item on the agenda.

What we want to do right now is the
complainant and respondent have filed proposals
for stipulated facts. We saw those documents.
And we've asked the parties to review those
proposals and indicate areas of agreement.

    We'd like you to address that at this
time. Mr. Ledford, do you want to go first.

    PRESIDING MEMBER LAURIE: Mr. Ledford,
you have to bring that microphone very close to
you otherwise it will not pick it up.

    MR. LEDFORD: How about now, is that
working?

    PRESIDING MEMBER LAURIE: Thank you.

    MR. LEDFORD: Okay, I have agreed to
stipulate to agreeing to in High Desert Power's
proposed stipulations to stipulation A,
stipulation B --

    HEARING OFFICER GEFTER: Wait, Mr.
Ledford, wait a second.

    MR. LEDFORD: How would you like this to
be handled?

    HEARING OFFICER GEFTER: I want to make
sure that the Commissioners have copies of those.

    ASSOCIATE MEMBER PERNELL: There's two
dates here, one is January 11 and one is I think
the 7th.

    HEARING OFFICER GEFTER: You are
referring to the respondent's proposed
stipulations?

MR. LEDFORD: Exactly, contained in HDP
position statement which begins on page 2.

HEARING OFFICER GEFTER: Right. And
that's a document that was filed January 11th.
All right. Would you wait a second and let me
make sure that the Committee Members have a copy
of that document.

All right, staff has a copy, is that
right?

MR. KRAMER: Yes.

HEARING OFFICER GEFTER: We're ready to
go, Mr. Ledford, let's proceed now.

MR. LEDFORD: Would you like this to be
read?

HEARING OFFICER GEFTER: Start at the
beginning, yes.

MR. LEDFORD: Would you like them to be
read or just --

HEARING OFFICER GEFTER: Yes.

MR. LEDFORD: -- the numbers? Okay. I
am prepared to stipulate that the High Desert
Power project is a nominal 720 megawatt natural
gas fired electrical power plant located at a site
on the former George Air Force Base in the City of Victorville. That's contained in paragraph A.

I'm prepared -- I'm sorry?

MR. KRAMER: Would it be helpful for us to chime in on each of these to save some time?

HEARING OFFICER GEFTER: Yes.

MR. CARROLL: Staff would so stipulate.

MR. LEDFORD: I'm prepared to stipulate an application for certification, AFC, of the project was submitted to this Commission on June 30, 1997. And the Commission accepted the application as complete on December 3, 1997.

The Commission Staff issued its final assessment of the project in January of 1999. The Project Siting Committee issued its proposed decision on the project on December 15, 1999.

The public evidentiary hearing on the proposed decision was held January 27, 2000. A revised proposed decision was issued by the Project Siting --

PRESIDING MEMBER LAURIE: Wait a minute.

Did you skip the sentence that the Project Siting Committee issued its proposed decision on December 15th? Did we skip that? The Project Siting Committee issued its proposed decision on the
project on December 15, 1999.

MR. LEDFORD: I'm stipulating to that, as well. I did skip it, thank you.

A public evidentiary hearing on the project decision was held on January 27, 2000. A revised proposed decision was issued by the Project Siting Committee on March 31, 2000. The Commission adopted the revised proposed decision on May 3, 2000. That's contained in paragraph B.

Construction of the project commenced on May 17, 2000, as contained in paragraph C.

MR. KRAMER: As to B, staff would stipulate. As to C, staff believes that the date of construction was later than that. We could not stipulate.


MR. LEDFORD: Correct.

Moving to paragraph F, I'm prepared to stipulate that the peak flow demand to meet project cooling needs and injection for storage is 5800 gallons per minute.

MR. KRAMER: Staff would agree.
MR. LEDFORD: Paragraph J, I'm prepared to stipulate that High Desert Power proposes to construct a water supply line which is 24 inches in diameter.

Moving to paragraph --

HEARING OFFICER GEFTER: Staff?

MR. KRAMER: Yes, we would so stipulate.

Same as to F, I'm not sure we said that.

MR. LEDFORD: Moving to paragraph O, I'm prepared to stipulate that HDPP has not commenced banking of State Project water.

MR. KRAMER: Staff agrees.

MR. LEDFORD: Paragraph P, I believe that we have an agreement on some modified language. I will read it: HDPP has submitted to the Regional Water Quality Board of LaHanton Region, RWQCB, and the Commission, a revised report of waste discharge and an anti-degradation analysis for the proposed High Desert Power project groundwater banking operation dated May 2001 from the report in the record. I believe that report was exhibit 54.

HEARING OFFICER GEFTER: Would you repeat that last?

MR. LEDFORD: From the report in the
record, which I believe was exhibit 54.

MR. KRAMER: Which record is that then?

I'm confused.

MR. LEDFORD: That would be in the record of decision. The decision, exhibits in the decision.

MR. KRAMER: But the decision was rendered in 2000, so it couldn't possibly have included a document dated 2001.

MR. LEDFORD: No, I'm saying that it's revised. I added the word revised in line 16 after "a", "a revised report".

MR. KRAMER: Okay, now I understand.

MR. LEDFORD: In other words they submitted a revised report. That's what I'm stipulating to.

MR. KRAMER: We would so stipulate.

MR. CARROLL: Respondent would so stipulate, as well.

MR. LEDFORD: Moving to paragraph Q, I would stipulate that High Desert Power project has submitted to the Regional Water Quality Control Board and the Commission supplemental reports of waste discharge dated June 20, 2001, June 29, 2001, and July 30, 2001 as exhibits, as
respondent's exhibits, I should say, and I'm going
to look those up here.

MR. CARROLL: These three documents were
events Q, R and S to respondent's answer. And
we would stipulate to identifying them as such.

MR. KRAMER: Staff agrees.

MR. LEDFORD: Moving to paragraph R, I'm
prepared to stipulate that High Desert Power
submitted to the Regional Water Quality Control
Board and the Commission a supplemental anti-
degradation analysis dated August 23, 2001, as
respondent's exhibit --

MR. CARROLL: The document was
respondent's exhibit U to its answer to the
complaint. And we would stipulate to its
identification as such.

MR. KRAMER: Staff agrees.

MR. LEDFORD: Moving to paragraph CC, I
would stipulate that the Regional Water Quality
Control Board has not issued waste discharge
requirements or a waiver of discharge requirements
for the project. HDPP has not submitted any such
document to the Commission.

MR. KRAMER: Staff agrees.

MR. LEDFORD: Moving to paragraph CE, I
would stipulate that High Desert Power project has not begun implementation of a water treatment and monitoring plan or submitted any annual monitoring results in connection therewith.

MR. KRAMER: Staff agrees.

MR. LEDFORD: Moving to paragraph FF, I'd ask staff if Mr. Larson is going to be a witness.

MR. KRAMER: He wasn't listed in our report, --

MR. LEDFORD: No, he was not.

MR. KRAMER: -- and we have not changed our mind on that point, so, no.

MR. LEDFORD: Is Steve Munro going to be a witness?

MR. KRAMER: Yes, as described in our prehearing, forgot what we called that document, but anyway, the document we filed on Friday. Position statement.

MR. LEDFORD: Okay, moving to paragraph GG, I would stipulate that the letter from Steve Munro, California Energy Commission, to Neil Pierce of High Desert Power project, dated May 17, 2001, attached to respondent's answer as exhibit K is a true and correct copy of what it purports to
be and can be admitted into evidence without the 
sponsorship of any party provided that Mr. Munro 
is made available to be examined on the letter. 

MR. KRAMER: That's acceptable to staff. 

MR. CARROLL: That would not be 

acceptable to respondent. Respondent's view is 

that these documents listed in paragraphs FF 

through KK should be admissible whether or not the 

parties to those documents are presented as 

witnesses during the evidentiary hearings. 

(Pause.) 

MR. LEDFORD: All right, that would be 

the extent of my stipulations. 

PRESIDING MEMBER LAURIE: Let me first 

advise all parties that it is my intent to not 

comply with formalized rules of evidence in this 

proceeding. My goal is to get to the facts. 

We're not practicing in front of the United States 

Supreme Court here. 

So, whether there's a party here, 

whether there's not a party here, as long as it is 

legal to admit a document I'm going to admit a 

document. And so we're not going to spend time 

debating those kinds of issues. 

Do all parties understand that?
MR. CARROLL: Yes.

PRESIDING MEMBER LAURIE: Okay, thank you. Okay, where are we?

HEARING OFFICER GEFTER: Okay. So we have a series of stipulations. Does the respondent, do you have any other proposals at this point for stipulation?

MR. KRAMER: If I might, --

HEARING OFFICER GEFTER: Yes.

MR. KRAMER: -- though, on that point that Commissioner Laurie raised, I know in the case of some of the documents that Mr. Ledford has served that staff may be very reluctant to just have them come in for the truth of much of anything, because they appear to be lacking in context in some cases. We may have to argue about that.

PRESIDING MEMBER LAURIE: My reference was to relevant documents. If documents are not relevant they will not be admitted. And my anticipation is that a good portion of the documentation that has been submitted is not relevant to the issues at hand. And we are -- all parties are free to argue relevancy.

MR. KRAMER: Actually I was speaking to
the case where I really want to have the maker of
the document present so he could be questioned
about it. And just seeing the document for the
first -- or knowing that it was an issue on
Friday, it's a little bit difficult for me to
arrange all that by Wednesday.

PRESIDING MEMBER LAURIE: I understand.
And that, to me, is a different question than
whether we're going to bar a piece of paper
because its author is not present.

MR. KRAMER: Okay, I understand.

MR. CARROLL: Point of clarification and
I'll respond to Ms. Gefter's question. I seem to
have lost track of my notes with respect to
proposed stipulation D, which is on line 17 of
page 2.

MR. LEDFORD: Sorry, I'm -- we'll move
back to D, I guess. I'm prepared to stipulate
that the High Desert Power project expects to
begin its groundwater recharge program in
approximately September 2000.

MR. KRAMER: Staff agrees.

HEARING OFFICER GEFTER: September of
2002.

MR. LEDFORD: 2002, I'm sorry. And I
would stipulate to E, the High Desert Power
project expects to commence commercial operation
of the project in the spring of 2003.

MR. KRAMER: Staff agrees.

MR. CARROLL: Thank you. With response
to your question, Ms. Gefter, we do not have any
additional proposed stipulations at this time.

PRESIDING MEMBER LAURIE: Are there any
proposed stipulations from staff in regards to Mr.
Carroll's proposals, in addition to what Mr.
Ledford has stipulated to? That is, are you in
agreement with items in addition to those that Mr.
Ledford stipulated to?

MR. KRAMER: Yes.

PRESIDING MEMBER LAURIE: Because there
were numerous items that were skipped over.

MR. KRAMER: Would you like me to read
these, because I could probably say everything but
two or three of them. Is that -- how would you
like me to approach this?

HEARING OFFICER GEFTER: In other words
you're offering to cosponsor some of these
stipulations?

MR. KRAMER: Most of them.

HEARING OFFICER GEFTER: Tell us the
ones that staff does not stipulate to.

MR. KRAMER: Okay. We've already
discussed C, we had a disagreement as to the date.

PRESIDING MEMBER LAURIE: What is the
date that you believe construction commenced on?

MR. KRAMER: Approximately June 30th of
2001 when the first foundations for the cooling
towers were poured.

PRESIDING MEMBER LAURIE: And, Mr.
Carroll, where are you getting May 17th?

MR. LEDFORD: I could tell you where I'm
getting it. Would that help?

PRESIDING MEMBER LAURIE: Okay, in a
moment.

MR. LEDFORD: I'm getting it from the
compliance documents that were filed with the
Commission. And it's listed as date the
construction started was actually May 16th. But
for a day I wasn't going to object.

MR. KRAMER: I think this is a matter,
it's a --

MR. LEDFORD: A silly matter.

MR. KRAMER: -- it's a semantic matter
as far as definitions go. We're operating under
the definition in the Warren Alquist Act which
compliance staff interprets construction to start
when there is actual work on a structure, as
opposed to mobilization and other activities,
rough grading and that sort of thing.

PRESIDING MEMBER LAURIE: Okay. Of
course, it's only going to become relevant as
applicable to those conditions that are at issue.

MR. KRAMER: I don't think it's going to
matter in this particular case. But we're just
trying to be accurate.

PRESIDING MEMBER LAURIE: Okay, thank
you.

HEARING OFFICER GEFTER: And, Mr.
Carroll, did you have a comment? Or do you agree
with what we just discussed?

MR. CARROLL: I agree with what you just
discussed. I don't believe it's going to be
relevant.

MR. KRAMER: Then our next point of
departure is stipulation H, and that's -- we can't
find the reference at this point. It's supposed
to reference to a 24-inch supply pipe. But we
understand and believe that that was discussed
during the course of the siting case.

So, again I think our refusal to
stipulate there is more a question of technical
accuracy.

The next is stipulation N; there's a lot
of interpretation involved in that. Mr. Munro is
planning on visiting the site again prior to the
hearing, if he has the time; and he's going to
ascertain exactly the status of the water
treatment facilities for his own information. But
we're not going to stipulate to that today as --

PRESIDING MEMBER LAURIE: And that was
letter?

MR. KRAMER: N, whether the water
treatment facilities have begun construction.
That's N, as in Nancy.

We would stipulate to the --

ASSOCIATE MEMBER PERNELL: Excuse me.

MR. KRAMER: -- remainder --

HEARING OFFICER GEFTER: Just a
moment, --

ASSOCIATE MEMBER PERNELL: I have a
question on this.

MR. KRAMER: -- of the --

HEARING OFFICER GEFTER: -- Mr. Kramer.

ASSOCIATE MEMBER PERNELL: On N, it just
simply says the project's water treatment facility
has not yet been constructed. Isn't that a matter of going out and seeing whether it's up or not?

MR. KRAMER: Well, does it mean fully constructed? started? Have they started the grade?

ASSOCIATE MEMBER PERNELL: Well, it says has not yet been constructed.

MR. KRAMER: If you interpret that to ask if they've been completed, then clearly the answer is no. If it's --

ASSOCIATE MEMBER PERNELL: I don't know. Who wrote this one? What's the --

MR. KRAMER: Mr. Carroll wrote it.

MR. CARROLL: I did write it. We would propose modifying it to read: The project's water treatment facilities has not yet been completed. The reason that this fact is relevant is that there's an allegation as to whether or not the water treatment facilities are being used in a manner consistent with the conditions of certification.

Our point in getting the stipulation on the record is that it's impossible at this point for them to be used in any other way because it hasn't been completed yet.
So, the intent here was completed, as opposed to constructed.

MR. KRAMER: We could agree with that stipulation.

PRESIDING MEMBER LAURIE: Mr. Ledford, do you agree that the water treatment facilities have not, as yet, been completed?

MR. LEDFORD: I agree it hasn't been completed. I don't know what the status is because I haven't been on the project site.

PRESIDING MEMBER LAURIE: Okay, thank you.

HEARING OFFICER GEFTER: Do we have agreement on the language of this stipulation?

MR. KRAMER: Staff agrees.

HEARING OFFICER GEFTER: Mr. Ledford, do you agree with the language, as modified?

MR. LEDFORD: The project's water treatment facilities have not yet been completed. I guess. If we could have a stipulation that they have been started. They are under construction, physically under construction.

(Pause.)

MR. CARROLL: I apologize. The reason we're conferring on this is that since there's no
precise definition of what portions of the project
are considered the water treatment facilities and
which are not, it's a little difficult to say.

But I think we're prepared to stipulate
that construction has commenced. Frankly, we
don't think the commencement of the construction
of those facilities is relevant to any of the
inquiries before the Committee. Therefore, we
don't have any problem stipulating to that.

HEARING OFFICER GEFTER: So the revised
language is the project's water treatment
facilities are under construction but have not yet
been completed? Is that the proposed stipulation?

MR. LEDFORD: Yes.

MR. CARROLL: That would be acceptable
to respondent.

MR. KRAMER: Acceptable to staff.

MR. LEDFORD: Before we leave this
topic, if we can, not stipulations but further in
High Desert Power disputed issues, I don't know if
I can cut some of those hours off that
Commissioner Laurie was talking about, but if we
went to page 10 and we're talking about whether
compliance with soil and water condition 13, I
think that 13 is prospective. It's not really a
direct part of my complaint. And I don't disagree
with High Desert Power it is not ripe for review.

I think that the Commission had said
that they would look at those conditions in their
order. So I'm not certain where the Commission is
on that issue. But I don't think it was
specifically my issue, other than on a prospective
basis.

PRESIDING MEMBER LAURIE: Thank you.

ASSOCIATE MEMBER PERNELL: Just so I can
follow this, so you're referring to page 10
commencing with line 8 and ending with line 14?

MR. LEDFORD: Right. High Desert Power
has indicated that this is an issue of dispute
between myself and them, and I'm not certain that
it is. I'm not certain that's an issue of dispute
between myself and High Desert Power, other than
as a prospective issue.

And it's not addressed directly in any
one of the six separate complaint issues that I've
placed before the Commission.

HEARING OFFICER GEFTER: So you would
not oppose the Committee severing the allegation
as to condition 13 --

MR. LEDFORD: It's not ripe --
HEARING OFFICER GEFTER: -- from the complaint?

MR. LEDFORD: On the basis that it's not ripe.

HEARING OFFICER GEFTER: Okay. Thank you, Mr. Ledford. We will rule on that later in the proceeding.

MR. LEDFORD: I think that's all.

HEARING OFFICER GEFTER: Mr. Kramer, does the staff have any other stipulations -- any other facts that you would not agree with that are proposed by respondent's stipulations?

MR. KRAMER: No, from where we left off, we agreed with the remainder of the proposed stipulations from HDPP.

(Pause.)

HEARING OFFICER GEFTER: Are we ready to move on to another topic, then? Or are you still looking through your stipulations?

MR. KRAMER: Oh, no, no, we're okay with the rest of them.

HEARING OFFICER GEFTER: All right, thank you. Let's move on then.

As we mentioned earlier we wanted to review the conditions --
MR. CARROLL: I apologize for interrupting, Ms. Gefter. There were some proposed stipulations submitted by Mr. Ledford to the CEC Staff. And we are prepared to stipulate to some of the items in that document.

HEARING OFFICER GEFTER: Oh. All right, thank you.

MR. CARROLL: I'm looking at a document that was attached to a December 26, 2001 letter from Mr. Ledford to Mr. Kramer. It indicates it was sent by email only. It's a 34-page document, and then attached to that was a six-page proposed stipulation.

(Pause.)

HEARING OFFICER GEFTER: Okay, we have a copy here to look at.

MR. CARROLL: The respondent would be prepared to stipulate to numbered paragraph 7 on page 2 of that document which reads, after condition 19, a water storage agreement between the Watermaster and VVWD, either in draft form or otherwise, has not been submitted to the CEC for review and/or approval.

MR. KRAMER: Staff would agree with that.
stipulation.

MR. CARROLL: We would also be prepared to stipulate to numbered paragraph 9 which reads, as to condition 12, there is no CEC approved water treatment plan that demonstrates that the -- State Water Project water, prior to injection, shall be the levels approaching background levels of the receiving aquifer as required by this condition 12.

MR. KRAMER: Staff would agree.

MR. CARROLL: We would also be prepared to stipulate to paragraph 10 which reads, there has been no plan submitted to the CEC by HDPP that demonstrates the plan complies with the requirements identified in the report of waste discharge prepared by Bookman Edmonston in 1998 as required by condition 12.

MR. KRAMER: Staff agrees.

MR. CARROLL: We would also stipulate to numbered paragraph 13 which reads, as to condition 2, as of December 18, 2001, HDPP has not supplied to the CEC CPM a copy of any application for a water storage agreement with the MWA.

MR. KRAMER: Staff would agree.

MR. CARROLL: And we would stipulate to
numbered paragraph 14 which reads, as of December
18, 2001, there is no approved water storage
agreement between MWA and HDPP.

MR. KRAMER: Staff agrees.

HEARING OFFICER GEFTER: Is that it?

MR. CARROLL: Yes, that concludes our
stipulations.

HEARING OFFICER GEFTER: Thank you. I expect during the course of the hearings we will have an explanation of what this report of waste discharge prepared by Bookman Edmonston refers to?

MR. CARROLL: Yes.

HEARING OFFICER GEFTER: All right. And so we're going to move on now. On the basis of those stipulations we can go forward and eliminate some of the time it would have taken to get to those facts.

We're going to talk about condition 1E. The condition states that the project's water supply facilities shall be appropriately sized to meet project needs. And that the verification requires the project owner to provide final design drawings of the project's water supply facilities 30 days before commencing project construction.

Complainant Mr. Ledford alleges that no
final design drawings were filed prior to
construction. The respondent has indicated that
they filed the final drawings on March 27, 2001,
and staff seems to agree with that statement.

We wanted to ask Mr. Ledford, first of
all, are you going to submit evidence to rebut the
timely filing of the final design plans? And
also, will you be able to show that the decision
was changed in any way by the design plans that
the pipeline was not originally going to be 24
inches, as the respondent has alleged?

MR. LEDFORD: The evidence, I believe
that I've pretty well identified in evidentiary
documents. The HDPP submittals amount to, in
relation to the water supply facilities, as I
understand it, a schematic drawing, potentially a
schematic drawing that was produced to me as a
part of the documents, which would have been the
documents that the Commission ordered to be
produced. And they did that in the form of an
answer to the complaint with exhibits.

And so my understanding of that is that
the exhibits they've provided demonstrate that
compliance was a schematic drawing of the
treatment plant.
I did not find any other drawings of the water supply facilities which would have been pipelines, booster pumps, well-fields, those types of things, within those exhibits.

On the other hand, I have proposed exhibits that -- I think there's a couple of thresholds here, and I've identified them in my position statement.

We sort of have two pieces to the water supply facilities. One is the pipelines and wells, and one is the treatment facility. So you can't have one without the other. In order to make the water supply plan work, you have to have it all.

In relation to the water treatment plant, they did submit a schematic drawing with a letter from an equipment vendor identifying the equipment that they intended to supply. And that was a reverse osmosis water treatment plant.

Subsequent to that the Commission issued a will-proceed order on the project. Now, they submitted lots of documents, lots of plans to the Commission. The Commission had a big role in looking at all the things they had to look at.

But I would assume that the water
treatment plant they submitted, and what they've said that they had approved was a reverse osmosis treatment plant, one component part.

In relation to the water supply lines, I believe the record is quite clear that the water supply lines were oversized. Both testimony from my witnesses, myself and also from the CEC Staff said the water supply lines, as well as other utilities, were oversized.

So the issue wasn't that they weren't. The issue was that if they were, and I think the record will support this, if they were that they had to be redone. And that High Desert had some obligation to provide the plans, and final plans. And I don't think that was done. I believe my evidence will support that.

PRESIDING MEMBER LAURIE: Well, okay. Now, I'm trying to determine what questions are relevant to this issue.

In both the condition, itself, and the verification which requires submittal of plans, I would expect to see evidence of the final design drawings, one. And then I would expect to hear a discussion about appropriate size to meet project needs.
That's your complaint, is it not, Mr. Ledford?

MR. LEDFORD: That is my complaint. That is my evidence. That will be my witness' testimony. And I suspect at the end of the day it will be other witnesses' testimony, as well.

PRESIDING MEMBER LAURIE: Okay. So, let's address the witnesses. What witnesses do we have proposed to deal with the question of whether a 24-inch pipeline is the appropriate size pipeline to meet the project needs?

First of all, does anybody object to forming the question on that basis? Is that the correct question we need to ask? Does anybody have any objection to that?

MR. CARROLL: Respondent's only objection is that that question was squarely before the Siting Committee and decided conclusively in the decision.

We are prepared to go back over it again, and I think if we are going back over it again that is the proper question.

PRESIDING MEMBER LAURIE: Well, but unfortunately the condition was not written so that it said you'll build this thing with a 24-
inch pipeline. The condition was written so that
it says it has to be appropriate, which raises the
issue if Mr. Ledford alleges that the final design
drawings have a size that is inappropriate.

Now, if the matter was resolved or
addressed during the hearings, and I believe it
was, because I believe I sat through many hours of
that, well then the answer is it has already been
considered.

So, the amount of testimony required
would be minimal. What are the parties' positions
in that regard?

MR. CARROLL: Respondent would concur it
was, to the extent we are talking about -- let's
just divide them up so we're clear here, the
pipelines first. The size of the pipeline that
supplies water to the project has been 24 inches
since the beginning. We just all entered into a
stipulation that we're constructing a 24-inch
pipeline.

The question whether or not a 24-inch
pipeline was adequate to meet the project's needs,
and only the project's needs, was taken up by the
Siting Committee, and decided conclusively. And
nothing has changed since that time.
I agree there should be very minimal testimony on this issue if any at all.

MR. LEDFORD: Well, we stipulated that High Desert Power proposes to construct a 24-inch pipeline. Let's start with what we can stipulate to. And the testimony in the record is somewhat voluminous relative to the size of the facilities. And I think that you, Commissioner Laurie, were somewhat exasperated by the amount of testimony that there was.

I think the record will show with how you dealt with it at least in the hearings. Certainly nobody knows what your mindset was when you developed the condition. But ultimately the condition doesn't say that they're going to build a 24-inch pipeline, that you decided that that pipeline was the right size.

You actually, my memory's just a little vague, but my general recollection was you asked Mr. Welch whether or not it was the right size, and he said it was. If it was the wrong size he would have to review it with his engineers. He'd go back before they constructed the pipelines and make absolutely sure it was the right size.

I think at the end of the day you had
both your staff -- the CEC Staff saying the
pipeline was oversized. You had me saying it was
oversized. You had Mr. Beinschroth, who is a
civil engineer, saying that he checked the design
and it's oversized.

And now we're prepared to have the
Mojave Water Agency tell you what the design
capacity of the line is and how much water they
can put in it and what other uses that they have
in mind for the same pipeline.

So I believe that the evidence in this
case will be conclusive that the 24-inch pipeline
is over designed for 5800 gallons per minute
project.

PRESIDING MEMBER LAURIE: Now, Mr.
Ledford, does it matter if it's over designed,
just so long as its use is limited to servicing
the project?

MR. LEDFORD: Well, yes, it does,
because, you know, I don't think we're here for me
to try and make my case, only to tell you what I
think the various documents, exhibits are going to
say, because, again, there's several component
parts to it.

MR. CARROLL: If I may just respond. I
think Mr. Ledford, in his previous statement,
prior to responding to Commissioner Laurie's
question, really mischaracterized the evidence
that was presented during evidentiary hearings.

If I could cite from the Commission
decision on page 227, and I quote: The evidence
simply does not support Mr. Ledford's conjecture.
Direct, uncontradicted testimony establishes that
the design capacity of the project pipelines is
required to meet project needs. These needs
include peak, not just average water flows, in
order to transport water both for cooling as well
as injection for storage."

Again, this issue was squarely before
the Committee and it was decided conclusively in
the final decision. And what Mr. Ledford is
seeking to do is to revisit that discussion upon
which we spent many hours.

MR. LEDFORD: Actually there's a
footnote on that. You may want to read the
footnote, as well. I don't have it with me. I
just remember there was a footnote.

HEARING OFFICER GEFTER: Footnote 55, it
says: We have included an additional condition
specifying that the water facilities be consistent
with the design specifications of the project."

MR. KRAMER: If staff could make a comment here. We share High Desert's belief that this was gone over extensively during -- discussed extensively during the siting case, and that nothing has changed. And therefore the issue should be very limited, this discussion.

We're especially concerned that Mr. Ledford appears to be wanting to offer reams of testimony to the effect that Victor Valley and other people have this secret plan, or not so secret plan to use the plant. And therefore that's somehow evidence that it's oversized.

And if nothing else today I'd like to come away with an understanding about whether any of that testimony is going to come in on Wednesday so I can make my travel plans.

MR. LEDFORD: I suspect that that will be something we'll talk about later.

PRESIDING MEMBER LAURIE: Okay.

MR. KRAMER: Aren't we talking about that issue now, though?

PRESIDING MEMBER LAURIE: I'm sorry?

MR. KRAMER: We are talking about the issue, issue number 1, to which this evidence that
we're concerned about would be directed. So I think this would be the time to determine whether that's relevant evidence.

PRESIDING MEMBER LAURIE: Well, yes, sir, we will. I'm not satisfied that we're going to issue a ruling at this moment to meet your pleasure. But we understand the timeliness of it all. We may do it before the parties go home today. We may do it this evening.

MR. KRAMER: I'm sorry, I misunderstood the tone of the conversation to be that it would be decided at the hearing.

PRESIDING MEMBER LAURIE: No, no. The purpose of today's meeting is to set the parameters of the hearing. We're not going to fly a bunch of folks down there for matters that the Committee does not determine to be relevant.

HEARING OFFICER GEFTER: Also, on this condition 1E, we're talking about final design plans. And I would like to know from the staff whether the design plans that were submitted by respondent prior to the letter that authorized the project to go forward and construct, whether those plans that were submitted were considered final design plans, or were they schematics, as
Mr. Ledford indicates.

MR. MUNRO: They were final design plans.

HEARING OFFICER GEFTER: Okay. Were they consistent with design plans from other certification projects, other projects that have licenses that --

MR. MUNRO: I'm not aware that we have a requirement for any other cases like that.

PRESIDING MEMBER LAURIE: Mr. Munro, you're not being picked up on tape.

MR. MUNRO: I'm not aware that any other case requires something like that.

HEARING OFFICER GEFTER: But the basis on which the compliance staff authorized the project to go forward and begin construction, were based on those design plans that were submitted by respondent. And you deem them final design plans?

MR. MUNRO: Correct.

MR. LEDFORD: Are we talking about what respondent has submitted as exhibit L as being the final design plans? I just need a clarification on --

(Pause.)

MR. LEDFORD: Because that's the only
drawings that I have been served with.

MR. MUNRO: That appears to be, yes.

MR. LEDFORD: Okay. That submittal has nothing in the way of pipelines other than a description. No other description.

MR. CARROLL: The cover letter associated with that submittal from Bibb & Associates, dated March 26, 2001, on the first page states, and I quote: The 24-inch diameter pipeline will convey raw State Water Project water from the existing Mojave River pipeline to the High Desert Power project for treatment."

I guess I'm not clear on what additional information Mr. Ledford is seeking in that pipeline. It's just a pipe 24 inches in diameter. There isn't too much more to say about it or show about it in a drawing. Just a 24-inch diameter pipe.

HEARING OFFICER GEFTER: Are you referring to your exhibit L to respondent's answer?

MR. CARROLL: Yes, it's included in exhibit L. And I apologize, the order is a little bit confusing in the exhibit, but if you pass by the drawings you come to a March 27th cover letter.
from High Desert to Mr. Munro transmitting the
information. And then immediately behind that was
the March 26th letter from Bibb and Associates to
Shirley Pearson at URS, consultants to the High
Desert Power project, explaining the contents of
the submittal.

So the submittal went from Bibb and
Associates, to Ms. Pearson. And then Ms. Pearson
passed it along to High Desert. And High Desert
submitted it to the Energy Commission.

PRESIDING MEMBER LAURIE: Okay, I want
to move on to condition 2. Condition 2 reads: The
project owner shall provide a copy of the storage
agreement between Mojave and Victor Valley prior
to the initiation of any groundwater banking. And
within 15 days of any amendment or renewal of the
storage agreement." And requires that a copy be
submitted to the project manager.

Banking, it is, I believe, stipulated,
will not begin until September of 2002. Mr.
Ledford, is it your allegation that condition 2 is
being violated?

MR. LEDFORD: Well, you sort of have the
cart before the horse, Commissioner Laurie.

PRESIDING MEMBER LAURIE: Okay.
MR. LEDFORD: It's a little difficult to
have a waste discharge permit when you don't have
a water storage agreement. In other words,
LaHanton is processing a waste discharge permit
based on what they think this application is.

They're attempting to do some type of
CEQA analysis based on what they think that this
application is, and the cumulative impacts on what
they think this is. They have no document.

You can't put the cart before the horse.

I would remind the Commission that we asked the
Mojave Water Agency to testify and they did not.
We attempted to have subpoenas issued, and we did
not get subpoenas.

What we did have, though, is we had Mr.
Caouette, who came to the Commission at the first
hearing and indicated that the water supply
agreement was forthcoming and would happen within
about two weeks after certification of the
project.

I would suspect that the reason the
Commission adopted this condition -- again we're
all speculating, only you know -- is because you
thought that the water supply agreement was going
to be forthcoming and would be a part of the
submittal. And it was only going to be amendments
to the agreement that you were really going to be
concerned about in condition 2, because condition
2 seems to reflect that.

At any rate, --

HEARING OFFICER GEFTER: One moment, Mr. Ledford.

MR. LEDFORD: -- that seems to be the problem.

HEARING OFFICER GEFTER: Are you confusing a will-serve letter with the water
storage agreement?

MR. LEDFORD: No. They don't have a will-serve letter, either.

HEARING OFFICER GEFTER: Mr. Caouette, are you still on the line?

MR. CAOUETTE: Yes.

HEARING OFFICER GEFTER: Do you have some information for us regarding the status of a water storage agreement?

MR. CAOUETTE: Yes. I don't exactly recall the -- after that particular hearing, however, we have gone through a couple iterations of a water storage agreement with Victor Valley Water District.
I believe that we're very close to having the final document prepared. In fact, we're going to present that storage agreement between Mojave Basin Area Watermaster and Victor Valley Water District at the Watermaster workshop this Wednesday. And I think however it might be modified; it's also scheduled for action by the Watermaster on the 23rd of this month.

HEARING OFFICER GEFTER: So do you expect after the 23rd of this month you would have the water storage agreement?

MR. CAOUETTE: It's quite possible.

PRESIDING MEMBER LAURIE: Okay, I'd like to move on to the next condition, which is condition 11, which requires the project owner to submit an approved waste discharge requirement prior to the start of groundwater banking. Unless Regional Water Quality Control Board decides to waive.

And then verification talks about approval of a copy of the waste discharge requirement within 60 days of the start of rough grading. That 60 days from the start of rough grading is probably inconsistent with filing the report prior to the start of any groundwater
Groundwater banking has, of course, not as yet started. So, Mr. Ledford, is it your position that because the verification requires the document to be filed within 60 days of the start of rough grading, that it had to be in at this point?

MR. LEDFORD: Yes. Not only that, but I mean this actually leads to -- and the conduct of the applicant would have indicated that the applicant believed that to be the case. My evidence will show that.

The applicant's -- we're going back now to exhibit L, and the applicant's filing of completed water supply plans. The applicant's submittal was for reverse osmosis water treatment plant, and all the relevant equipment that would go into it.

PRESIDING MEMBER LAURIE: Okay, let me interrupt for a moment. Let me ask a question of staff. When the condition makes reference to an approved waste discharge requirement, is that a piece of paper?

MR. MUNRO: Yes.
MR. KRAMER: Yes.

PRESIDING MEMBER LAURIE: Issued by what entity?

MR. KRAMER: The LaHanton Regional Board.

PRESIDING MEMBER LAURIE: So in order to determine whether or not there's compliance with this condition you would look for that piece of paper issued by LaHanton?

MR. MUNRO: Unless they were waiving it.

PRESIDING MEMBER LAURIE: Okay.

MR. KRAMER: But even a waiver would have a letter attached to it.

PRESIDING MEMBER LAURIE: Okay. To this date has that document been filed?

MR. KRAMER: No. In fact, we know from LaHanton that they're looking towards the first part of next month now to have their board consider it.

PRESIDING MEMBER LAURIE: And is it your position that the condition does not require that the document be filed until a time prior to banking?

MR. KRAMER: That's correct.

PRESIDING MEMBER LAURIE: What is your
position in regards to the inconsistency relating
to the verification?

MR. KRAMER: The rule interpretation we
apply is that when the verification conflicts with
the body of the condition, then the condition will
prevail to the extent of conflict.

Therefore, that's why we say that the
timing requirement is the start of groundwater
banking, not this within 60 days of start of rough
grading.

PRESIDING MEMBER LAURIE: Okay.

HEARING OFFICER GEFTER: And we have Ms.
Okun who represents LaHanton. Are you still on
the line?

MS. OKUN: Yes, I am.

HEARING OFFICER GEFTER: Could you
verify that the board will be considering a waiver
of the report of waste discharge in February?

MS. OKUN: Yes, I can. The board
meeting is scheduled for February 13th and 14th.

HEARING OFFICER GEFTER: And is there a
document that they would be looking at?

MS. OKUN: Yes, there is.

HEARING OFFICER GEFTER: Is that
available so that we could have a copy of it?
MS. OKUN: I don't know whether the
draft waiver has been issued to the public yet,
but I can check.

MR. KRAMER: Actually it's been attached
to High Desert's answer to the complaint as
exhibit, I forget the --

MS. OKUN: Okay.

MR. CARROLL: That's V, as in Victor.
It's a November 9th cover letter from the LaHanton
Regional Board with two attachments. The first
attachment being a proposed resolution. The
second attachment being an addendum that was
prepared by LaHanton pursuant to the California
Environmental Quality Act.

HEARING OFFICER GEFTER: The exhibit
that you have submitted, exhibit V, has that been
in any way amended since November before it will
be presented to the board in February?

MS. OKUN: I believe there will be some
changes, but those are not published yet. And
they will be relatively minor, I believe.

HEARING OFFICER GEFTER: Do you know
when they will be available to the public?

MS. OKUN: No, I don't. I can find out.

PRESIDING MEMBER LAURIE: Okay.
We'll move on to condition 12, which is a water treatment and monitoring plan that specifies the type and characteristics of the treatment process. And would identify any waste streams and disposal methods.

And then the verification talks about a statistical approach to analyzing water quality monitoring data and determining water treatment levels. And I think this is the one that has that language that we are concerned about, in terms of approaching background levels or meeting drinking water standards. There's been quite a bit of paperwork filed on this issue.

The verification requires this information 90 days prior to the banking of State Water Project water within the regional aquifer. So, as we understand, banking doesn't begin until September of 2002, so --

MR. LEDFORD: The issue is not prospective if the plant won't comply.

HEARING OFFICER GEFTER: What does that mean?

MR. LEDFORD: That means they're building a plant that doesn't comply with the
condition. That's the complaint.

And the plans they submitted and that were approved by the Commission call for reverse osmosis, including the descriptive analysis in the letter.

PRESIDING MEMBER LAURIE: Well, that appears to be contested.

MR. LEDFORD: Well, that would be, that would be -- that's the complaint, and what evidentiary material that we would propose.

PRESIDING MEMBER LAURIE: Okay, but I have no desire to, or frankly no intent -- and Commissioner Pernell and I will be discussing the matter -- to reopen the issue of what it is that we approved and what it is that we didn't -- did or did not approve. That will be determined by a review of the record.

And new evidence is not relevant in that regard. So if there's an allegation that there's a certain characteristic that was approved as part of the project then that would be included in the record of the decision. And we would conduct a review of that record.

We do not need a witness to read the record to us.
MR. LEDFORD: That's not my issue.

PRESIDING MEMBER LAURIE: I'm sorry?

MR. LEDFORD: That's not my issue. My issue is that they comply to a point, and then they've requested a change. And this is now a change, a change, and actually that's their testimony, that they are requesting a change. And I believe that the evidence amongst all of the parties that have something to say about this believe that it's a change.

HEARING OFFICER GEFTER: Is it a change from what the condition says?

MR. LEDFORD: It's a change from what was approved by the Commission based on the evidence in the record.

HEARING OFFICER GEFTER: Well, we're looking at the condition, and we don't see anything about reverse osmosis listed in the condition.

MR. LEDFORD: The applicant proposed what they were going to do. It's just like they proposed to build three power trains to make a 720 megawatt power plant.

They proposed to build a reverse osmosis plant. They submitted evidence. The evidence was
admitted into the record; it calls for a reverse osmosis plant.

Prior to the start of construction they submitted what they called approved plans, which I say are schematic drawings. Nevertheless, they say they're approved plans. There's even a description of the reverse osmosis process in, quote, their approved plans.

Since the time that they submitted the plans and you issued a will-proceed letter there has not been any letter from the Commission saying, by the way, you can change this water treatment process to ultrafiltration. At least I haven't found it. And they haven't submitted it.

We have what they say are approved plans. The approved plans call for reverse osmosis.

MR. CARROLL: If I may respond? First of all, with respect to the timing on this condition, as has been pointed out, the condition requires the water treatment and monitoring plan to be submitted 90 days prior to groundwater banking. We are outside of that timeframe. We have not yet reached that timeframe.

We stipulated earlier in the day that we
have not submitted the final water treatment and
monitoring plan to the CEC. But that,
notwithstanding, we don't believe that there's a
violation of the condition here, because that time
period has not -- the time for submitting that has
not come yet.

The Committee has indicated a desire to
take up the merits of this notwithstanding the
fact that it's not right, and we're prepared to do
that.

The fact of the matter is that the
decision and the conditions did not specify a
particular water treatment methodology. It
specified a performance standard.

A typical water treatment train was
included in the application for certification.
And that typical train did include reverse
osmosis.

Over the course of time, as the designs
for the project have been finalized, and we've
engaged in discussions with the water agency, it
was concluded that the typical train that was
included in the application for certification
would not have met the performance standards set
forth in condition 12.
And therefore, the proposed water treatment methodology was supplemented to include the current proposal which does meet the performance standard set forth in condition 12.

HEARING OFFICER GEFTER: So the new proposal was based on discussions with the LaHanton Board?

MR. CARROLL: And Victor Valley Water District. They also had the March 27th, the final design drawings that we've been referring to, the March 27th submittal has been supplemented twice. Once with the report of waste discharge, which was submitted to the LaHanton Regional Water Quality Control Board setting forth the current proposed treatment methodology. That document was also provided to the CEC.

And it was supplemented once again just recently on January 10th of 2002. So, it is true that there is a document in the record, the application for certification, and the March 27th submittal, that talks about reverse osmosis.

But, as I said, as the project plans have been finalized and based in part on discussions with the agencies, the proposed treatment methodology has moved away from reverse osmosis.
osmosis.

That doesn't mean that it doesn't comply with the condition 12. In fact, we believe that the current plan does comply with condition 12. And the previously proposed plan, as it turned out, would not have complied with the performance standards in condition 12.

MR. LEDFORD: With all due respect if that is the position, the record should be reopened. Those issues should be -- evidence should be provided. The public should have the right to submit evidence. And if the change is going to be made, it should be made in a public forum with appropriate notice and documents and witnesses to support a change.

PRESIDING MEMBER LAURIE: Does staff have a position on the issue of an alternative to the reverse osmosis process?

MR. KRAMER: Yes. Staff does not believe that reverse osmosis was strictly required by the condition. The condition instead set a performance standard, and therefore the issue is whether the current proposed treatment method meets the performance standard.

And we would encourage the Committee to
try to, even though technically the decision date
perhaps is not upon us, we don't think postponing
it on the grounds of ripeness will serve this
process well because we need guidance on this
point.

We need a decision as to what the
condition means so that we can either move on with
the current proposal or as we -- we don't believe
that if changes are necessary, then those can be
designed into the project so that it can keep on
the schedule and eventually provide power to the
people of California.

PRESIDING MEMBER LAURIE: Okay,
understand. Thank you.

HEARING OFFICER GEFTER: Ms. Okun, are
you still on the line?

MS. OKUN: Yes, I am.

HEARING OFFICER GEFTER: Yes. Do you
have any comment on the role of the LaHanton Board
with respect to the design for the treatment
facility?

MS. OKUN: Well, this is something that
they're considering in issuing the waiver of WDRs
which is on the February agenda. Obviously the
board hasn't taken any action yet. They'll be
considering a CEQA addendum which considers
environmental impacts of the ultrafiltration
system which weren't addressed in the CEC final
decision, and considering the waiver, itself, in
February.

PRESIDING MEMBER LAURIE: And so there
would be an environmental analysis of the process
to be utilized?

MS. OKUN: Yes. The LaHanton Regional
Board has prepared and circulated an addendum to
the CEC's functionally equivalent document that
the board will consider in the next meeting.

PRESIDING MEMBER LAURIE: And is that a
public document yet?

MS. OKUN: Yes, it has been circulated.
And I believe it was attached to Latham and
Watkins' submission, is that correct?

MR. CARROLL: Yes, that's right. It's
included as exhibit V, as in Victor, along with
the proposed resolution from the LaHanton Board to
the answer.

PRESIDING MEMBER LAURIE: Thank you.

HEARING OFFICER GEFTER: Also, is Mr.
Brill on the line? Are you still on the line, Mr.
Brill?
MR. BRILL: Yes, I am.

HEARING OFFICER GEFTER: Do you have any comment on the treatment facility, is your agency involved in any respect?

MR. BRILL: From a regulatory standpoint I don't believe so. The only position we have made, and that was part of our analysis when we looked at the environmental documentation, we came to the conclusion that the proposed ultrafiltration is appropriate to meet the water quality objectives from MWA's standpoint, recognizing, of course, that we look at things in a different light than the Regional Board does.

We basically use the -- we took a look at the analysis that was -- who conducted the analysis. So we basically benchmarked it against drinking water standards and the proximity to nearby wells.

I think using the same information that the Regional Board is looking at, and we came to the determination that there was no significant material impact from a water quality standpoint.

HEARING OFFICER GEFTER: Thank you.

MR. CARROLL: If I may just point out, this process that we've been talking about, in our
view, is exactly what was contemplated by
condition 12, which states: The project manager
shall prepare and submit to the CEC CPM, and if
applicable to the LaHanton Regional Water Quality
Control Board, for review and approval, a water
treatment and monitoring plan that specifies the
types and characteristics of the treatment
processes, and identify any waste streams in their
disposal methods."

Our view is that this process that we've
been discussing which has been underway, and we
believe moving forward, perhaps not as
expeditiously as we would have liked, but moving
forward in a way that makes sense, receiving input
from all of the agencies, is exactly what the
Commission intended when it adopted this
condition. Rather than specifying at that point
any particular treatment methodology, which it did
not do.

PRESIDING MEMBER LAURIE: Okay.

HEARING OFFICER GEFTER: We are then,
with respect to condition 13, Mr. Ledford has
indicated that he does not oppose severing this
issue from the complaint. Therefore we will not
be considering condition 13. And we will issue a
more formal ruling on that later.

Let's look at condition 17, section 1, where it says the project owner shall enter into an aquifer storage and recovery agreement with the Victor Valley Water District. And that it should be provided prior to commencing construction of the project.

We have a copy of this agreement that was submitted during the proceeding; it was submitted into the record on February 18, 2000. And we understand that respondent believes that is the appropriate document. Mr. Ledford, do you have any evidence to indicate that the respondent has not submitted this document into the record?

MR. LEDFORD: The testimony in the record was that that document was nullified by a unanimous vote of the Victor Valley Board of Directors.

HEARING OFFICER GEFTER: So you're saying that the document is not valid?

MR. LEDFORD: That's what the testimony by Mr. Hill and Mr. Welch was at the January 18th hearings.

PRESIDING MEMBER LAURIE: Well, it should be pretty easy to determine from the public
records of the entity whether or not that
agreement was ever approved by the agency.

Staff, what evidence do you have
indicating that the District took final action on
that agreement?

MR. KRAMER: Both parties subsequently
wrote to Mr. Munro and said that that was not the
case. And both of those letters are in the
respondent's exhibits, if Mr. Carroll could chime
in with the letters.

MR. CARROLL: Yes, respondent's exhibit
0 to its answer to the complaint is an October 16,
2001 letter to Mr. Munro from Mr. Hill of the
Victor Valley Water District, confirming that the
storage and recovery agreement was duly adopted,
is in full effect, and incorporates all of the
final conditions of certification applied by the
Commission.

And there's a corresponding letter from
Mr. Barnett of the High Desert Power project, that
also is to Mr. Munro, contains exhibit N, as in
Nancy, to the answer, stating in essence the same
thing.

MR. KRAMER: On that basis, we're
satisfied that the agreement remains in effect,
and incorporates the conditions that were
ultimately adopted by the Commission after it was
executed.

PRESIDING MEMBER LAURIE: So it is
staff's view that the conditions of the agreement,
as duly adopted by the District, do meet the
conditions of the project?

MR. KRAMER: Satisfies condition 17, yes.

MR. LEDFORD: There is at least a memo
in the file that some other people on your staff
have indicated that they disagreed at a date prior
to this time. I'm not sure what those people
would testify to today. It is contained as
exhibit B of the complaint.

MR. KRAMER: And I believe that letter
is what precipitated these responses that Mr.
Carroll read to you.

MR. CARROLL: That's exactly right.

There appeared to be some confusion among certain
members of the staff whether or not the document
incorporated the final conditions of
certification. And that confusion was what
precipitated the two letters that I just referred
to from High Desert and Victor Valley confirming
that yes, indeed, in their view, that it does
incorporate the final conditions of certification,
and they intend to be bound by the final
conditions of certification.

PRESIDING MEMBER LAURIE: And is that a
statement that staff is prepared to stipulate to?
MR. KRAMER: Yes.
PRESIDING MEMBER LAURIE: Do you have
anything else on that point, Susan?
HEARING OFFICER GEFTER: No, we'll move
on.
PRESIDING MEMBER LAURIE: Go ahead and
do 19.
HEARING OFFICER GEFTER: The last
condition that we will be looking at is condition
19. That the project owner shall limit any use of
the water treatment facilities by the Victor
Valley Water District for any other entity for
purposes other than providing water to the High
Desert Power Plant.
And then the verification requires again
a copy of the water storage agreement within 30
days of its execution, which incorporates these
restrictions.
At this point the parties have
stipulated there is no water storage agreement;
however, they also stipulated that they're not
banking water at this time. So is this condition,
is there any evidence that this condition has not
been -- has been violated?

MR. LEDFORD: Again, that question was
raised by Commissioner Laurie earlier in that the
issues relative to what LaHanton is conducting
today, in other words their CEQA analysis of the
water storage agreement. And the issues that
would be relative to a waiver, without having that
agreement, the specifics of that agreement in
place it is difficult to understand how LaHanton
can make a determination as to what they're
studying.

HEARING OFFICER GEFTER: Well, didn't
Mr. Caouette indicate that that water storage
agreement would be considered in January, January
23rd, I believe, is the date he indicated, which
is prior to the LaHanton Board's meeting in
February?

MR. LEDFORD: Well, the public has asked
for drafts of the agreement on a consistent basis.
From both Mojave Water Agency and from the Victor
Valley Water District. To date no draft
agreement, other than the one attached to my complaint, which demonstrates what Victor Valley Water District's ultimate desire to do has been forwarded for anybody's review.

So as of today, as I sit here today, I have not seen a water storage agreement. And to the best of my knowledge, LaHanton has not seen a water storage agreement other than exhibit A attached to my complaint.

HEARING OFFICER GEFTER: Do you have any evidence that condition 19 has been violated?

MR. LEDFORD: That's -- my reply is in absence of having the agreement I don't know how you can get a waiver, which -- I mean you can't just take a piece of the puzzle, you sort of have to take it all.

MR. KRAMER: Well, the Commission's role isn't to write data adequacy requirements for some other agency's process. And I think that's what he's saying here, is that he thinks the Commission needs to enforce his view of how LaHanton has to run its operation. That's way beyond the jurisdiction of this Commission.

MR. CARROLL: On behalf of the respondent we fail to understand how what LaHanton
is doing relates in any way frankly to condition 19, which talks about limitations on the Victor Valley Water District's use of the facilities.

So, frankly, the connection to what the LaHanton process, while I agree with what has just been said, is a red herring. This condition imposes limitations on what the Victor Valley Water District can do with the water treatment plant. As we stipulated, the water treatment plant hasn't been constructed yet, so there certainly is -- it's impossible for the project to be out of compliance with this condition at this time.

The verification for this is the water storage agreement, which we've discussed and stipulated has not been submitted yet, but will be.

But I would add that the aquifer storage and recovery agreement, which is not included as the verification here, in fact acts as an independent verification of these issues, because it is binding on VVWD, and as we just discussed it incorporates all the conditions of certification including condition 19.

So, we're actually ahead of the game on
this condition because we have an independent
contractual basis for enforcing these limitations
on VVWD even though the water storage agreement
hasn't been adopted yet, which is the specified
means of verification.

MR. LEDFORD: Well, we still haven't
talked about the water treatment capacity of the
plant, which is evidence that we intend to
provide. And we would find that both of those
agreements would be out of compliance if we didn't
know -- the aquifer storage agreement directly
says Victor Valley Water District can store water
in the aquifer. It says that. You agreed that
they could do that.

So, what we need to know is how much
water do they intend to store. I provided you
with an exhibit to my complaint that said they
intend to store 50,000 acrefeet a year with a
cumulative balance of 130,000 acrefeet.

That was a specific proposal that the
Victor Valley Water District made in April of last
year to the MWA Board. Ultimately they withdrew
it because there was a lot of controversy over
that.

But the issue is if that's what the
intent is, and if this water treatment plant can
supply some of that water, then somebody ought to
know about it. And you said, also, we're not
going to study anybody else's problems, we're not
going to look at the regional water management
plan, we're not going to deal with LaHanton or
MWA, that's for those folks to deal with. That's
my recollection of what you said, and I agree.

But what those folks are saying is, oh,
no, the Energy Commission issued an environmental
equivalent document and we're going to get to do
all these things, and we're just going to pretty
much ignore that.

What we have right now is that the
Mojave Water Agency approved a contract, the first
year's contract, for the City of Victorville to
purchase 4000 acrefeet of water for the power
plant.

And we have a lawsuit that was filed by
the City of Barstow on CEQA issues. You can
pretty much expect that the same thing is going to
happen relative to this water storage agreement.

It's just nobody wants to put their arms
around the whole puzzle. Somebody is going to, at
some point in time.
MR. CARROLL: If I may address those points. I think in large part what Mr. Ledford is referring to, what we just heard, and in many of the documents that have been submitted as proposed exhibits, are desires, plans, inquiries on the part of some of the agencies about the potential for utilization of the project's water supplies.

We certainly don't have any control over what plans or desires these agencies might have. But what I would say is that all of those plans and desires are subject to the conditions of certification imposed by the project.

So the fact that there may be an email out there where the Victor Valley Water District indicates some long-term desire to utilize some of the project facilities, or the MWA indicates some inquiry as to whether or not it would be able to use the project facilities doesn't change the fact that any such future use is subject to, again, not only the conditions of certification posed by the project, but for environmental review.

Anything that anybody plans that wasn't part of the Energy Commission's decision with respect to those facilities would be subject to its own review process, its own compliance with
the California Environmental Quality Act.

So, again, our view is that we've got a lot of red herrings out here, to the extent that an agency has talked about maybe using some of the project facilities in the future. Because, again, everyone, including those agencies, has acknowledged that any such use would need to be consistent with the conditions of certification and any other review process that might be applied to that proposed use.

MR. BRILL: This is Kirby Brill. I think I might be able to provide some clarification on this issue.

HEARING OFFICER GEFTER: Yes, please, go ahead.

MR. BRILL: The draft agreement that Mr. Ledford is referring to was part of an agreement that was intended to be a master storage agreement between the Watermaster of Victor Valley, was intended -- don't recall what the exact numbers are. I think more than 100,000 acrefeet or so, was, again, part of a master kind of --

HEARING OFFICER GEFTER: Thank you.

MR. CARROLL: If I might add one more thing. All of this was contemplated at the time
that condition 19 was adopted, which is the reason that it includes the statement that the project owner shall not allow VVWD or another entity to use the water treatment facility for treatment of water that's injected and then recovered by VVWD unless the Watermaster and VVWD have entered into a water storage agreement, and for which the appropriate lead agency has completed a CEQA review, as required by MWA or an assign.

So it was contemplated during the proceedings that there might be some desire in the future for one of these agencies to utilize the treatment facilities. And the Commission made it very clear that that could not be done unless that action was subject to its own review under CEQA.

So this is nothing new. This has been the situation since the very beginning.

HEARING OFFICER GEFTER: Thank you. Mr. Ledford, I'm not clear what evidence you expect to present that would indicate that the company is in violation of condition 19. This is the third time I've asked you the question, and I still am not clear.

MR. LEDFORD: The 24-inch pipeline is designed to handle considerably more than 5800
gallons per minute.

    Kirby, how about telling us what the
design capacity of the 24-inch line is?

    HEARING OFFICER GEFTER: Excuse me, Mr.
Ledford, I asked you the question. Give --
    MR. LEDFORD: Okay.

    HEARING OFFICER GEFTER: Give me your
response.
    MR. LEDFORD: I'm sorry.

    HEARING OFFICER GEFTER: Don't ask Mr.
Brill to answer your question.
    MR. LEDFORD: Well, you know, the
evidence is going to be that the 24-inch pipeline
will handle 24 to 25 cfs per minute. That's
something well in excess, more than double the
5800 gallons per minute that the project requires.

    And the evidence will go on to show that
the water treatment plant is larger than 5800
gallons per minute. And the evidence will go on
to show that there's a relatively good fight going
on between the City of Victorville and the Victor
Valley Water District as to who owns the
priorities, the excess capacity of the lines,
who's going to get what, when. And who's going to
issue what easements, and whether or not -- this
HEARING OFFICER GEFTER: How is that relevant to condition 19?

MR. LEDFORD: Oh, how is it relevant to condition 19? Well, I guess it's still prospective. But the issue is if you don't resolve it, if somehow you don't resolve it, if you don't resolve it, it's going to get litigated someplace else. It could be resolved, it potentially could be resolved right here. But the condition, as it is now, will not resolve it.

ASSOCIATE MEMBER PERNELL: Mr. Ledford, it appears that you're trying to draw us into somebody else's confrontation as it relates to water. And I'm just not seeing -- I would agree that I'm not seeing the relevance here.

If it's because the 24-inch pipe is larger and therefore there's a speculation that somebody's going to do something with the water other than the plant, and there's a condition that kind of covers that, that if any of this water is going to be used, that you have to do a CEQA analysis and all of those, --

MR. LEDFORD: Well, it was --

ASSOCIATE MEMBER PERNELL: -- types of
conditions, so I'm not, I'm just not seeing that
at this point.

MR. LEDFORD: Condition 1 and
condition -- I mean condition 1 in its entirety,
but condition 1E, we go back to that, was that the
facilities would only be sized for the project's
use. The facilities are oversized.

Condition 19 was kind of thrown in at
the end because we had this whole growth-inducing
issue, and staff said, boy, we haven't had time to
analyze the oversized capacity of the lines, and
we can take care of this growth-inducing issue
because we can issue a condition.

Well, it just isn't going to work. And
what is going to happen is instead of attempting
to resolve the issue, trying to find a way to
resolve either downsizing the utilities, having
MWA own the pipeline instead of the Victor Valley
Water District, taking the political control out
of it so you'll end up with a reliable plant,
whether they have to use two-for-one water
sometime down the road, those other issues.

PRESIDING MEMBER LAURIE: Okay, what
we're going to do is take a ten-minute break so
the Committee can confer. And we'll reconvene at
about three minutes of.

And we'll talk about what our next steps are going to be.

(Brief recess.)

PRESIDING MEMBER LAURIE: The meeting of the Siting Committee is hereby reconvened.

It is the intent of the Siting Committee to act as follows:

One, the Committee, at this time, does not see any benefit to its investigation of holding a testimonial hearing as previously scheduled.

Two, it is the Committee's intent to review the allegations and the documents currently submitted, and where a prima facie case has not been established, to dismiss those allegations.

Three, the Committee will conduct a review of the documents that have been submitted, as well as a review of the record, and determine at that point the necessity for formal testimony, if any.

Four, the Committee will consider those issues which, albeit may be not directly related to violation, but appropriate for clarification in the form of modification of language of the
conditions or verification, based upon the record of the proceedings, and the documents previously submitted.

Before the end of the day today we will issue an order regarding the above-stated matters.

Now, before I go to Commissioner Pernell, let me ask Ms. Gefter if clarification of my statements is consistent with our discussion.

HEARING OFFICER GEFTER: Yes, we are all in agreement with the statements of Commissioner Laurie.

PRESIDING MEMBER LAURIE: Commissioner Pernell, do you have any comment at this point?

ASSOCIATE MEMBER PERNELL: No comment. I would just agree with what's been stated, and the discussions that the Committee has had as of a couple of minutes ago.

PRESIDING MEMBER LAURIE: The Committee will, as noted, issue a clarifying order before the end of the day. And will communicate with you via telephone or fax, or the most propitious method.

Ms. Gefter, do you need any additional information from the parties at this time?

HEARING OFFICER GEFTER: Not at this
time. I did want to make it clear for everyone that the hearing that is currently scheduled on Wednesday and Thursday is canceled.

MS. OKUN: Okay, thank you.

HEARING OFFICER GEFTER: And a written order, as Commissioner Laurie indicates, will be served on all the parties by the end of the day, which would incorporate his ruling as he just expressed it.

MS. OKUN: And will you also send a copy of that to the LaHanton Board. We're not technically a party to this.

HEARING OFFICER GEFTER: Yes, LaHanton is on our proof of service.

MS. OKUN: Okay.

HEARING OFFICER GEFTER: All of the water agencies that are involved are on the proof, and they will get copies of the order.

MS. OKUN: Thank you.

MR. LEDFORD: Is the order that you anticipate issuing this afternoon an appealable order to the full Commission?

PRESIDING MEMBER LAURIE: Yes, sir.

MR. LEDFORD: Thank you.

PRESIDING MEMBER LAURIE: Well, let me
ask. Ms. Gefter, I assume that to be the case?

HEARING OFFICER GEFTER: Yes.

PRESIDING MEMBER LAURIE: The meeting is adjourned, thank you very much.

HEARING OFFICER GEFTER: Thank you.

(Whereupon, at 12:10 p.m., the conference was concluded.)
CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2002.

PETER PETTY

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345