

BEFORE THE
CALIFORNIA ENERGY COMMISSION

In the Matter of:) Docket No. 09-AFC-9
)
Application for Certification for)
the Ridgecrest Solar Power Project)

STATUS CONFERENCE

California Energy Commission
1516 Ninth Street
First Floor, Hearing Room A
Sacramento, CA 95814-5512

MONDAY, MAY 17, 2010

9:00 A.M.

Reported by:
Peter Petty

HEARING OFFICER

Kourtney Vaccaro

Siting Committee Members and Their Advisors Present

James D. Boyd, Vice Chair and Presiding Committee Member
Tim Olson, his Advisor

Anthony Eggert, Commissioner and Associate Member
Lorraine White, his Advisor

Staff Present:

Jared Babula, Staff Counsel
Eric Solorio, Project Manager
Roger Johnson

Applicant

Scott Galati, Esq., Galati & Glek
Billy Owens, Director, Project Development,
Solar Millennium, LLC

Intervenors (present via telephone)

Ileene Anderson, Center for Biological Diversity
Dan Burnett, Kerncrest Audubon Society
Sid Silliman, Desert Tortoise Council
Elizabeth Kleblaner, Adams, Broadwell, Joseph
& Cardozo, for CURE
Michael J. Conner, Western Watersheds Project

Government Agencies

Paul Rodriguez, BLM Ridgecrest

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1 P R O C E E D I N G S

2 MAY 17, 2010

9:08 a.m.

3 VICE CHAIR BOYD: Good morning, everybody. Pardon
4 the delay, it has taken us a few minutes to accumulate the
5 committee here. This is Commissioner Jim Boyd, the
6 Presiding Member of the Ridgecrest case, and I want to
7 welcome you all to this Status Conference, as the revised
8 Hearing Notice noted. As it has indicated, I am the
9 Presiding Member; two chairs to my left is Commissioner
10 Eggert, who is the Associate Member of this Committee; to my
11 immediate left is our Hearing Officer, Kourtney Vaccaro, who
12 will shortly take over the microphone for me; on my right is
13 my Advisor, Tim Olson; on Commissioner Eggert's left is
14 Lorraine White, his Advisor on this case.

15 And I think what we would like to do is have the
16 parties continue the introductions that we have started. I
17 would caution those of you on the phone to be cognizant of
18 background noise that does occur when you shuffle papers or
19 move something around, or speak to other folks. If you can
20 mute your phones, it would be helpful. If you cannot, just
21 be cognizant that any sounds that you make while we are
22 speaking or conducting business here gets broadcast through
23 this entire hearing room and sometimes can get a little
24 noisy, plus sometimes we hear things you are engaged in we
25 just assume not. So be aware of that. And with that, I

1 will now ask that the parties please introduce themselves
2 and we will start with the Applicant.

3 MR. RODRIGUEZ: Excuse me. You are breaking up,
4 turning in, turning on, and turning off, and I am only
5 getting words here and there, so I cannot hear all the
6 conversation. This is Paul Rodriguez.

7 VICE CHAIR BOYD: Well, folks are looking at our
8 audio system right now, but I hear myself in this room
9 booming quite loudly, so maybe we have a phone connection
10 problem. Do other people out there have the same
11 experience?

12 MR. BURNETT: This is Dan Burnett with Ridgecrest,
13 yeah, you are breaking up.

14 VICE CHAIR BOYD: Hmm.

15 MS. ANDERSON: Same for me, as well. This is
16 Ileene Anderson.

17 VICE CHAIR BOYD: I am going to ask all of you who
18 can to mute your phones if you have that function. We may
19 be getting some feedback in the system that we might
20 eliminate if more and more phones are muted. So if you will
21 do that, and I will wait a moment and then I will start
22 speaking some more to see if it changes anything. All
23 right, now if anybody has been able to mute their phones, is
24 there any difference? Or are you still having difficulty?

25 MS. KLEBANER: It is a little better.

1 VICE CHAIR BOYD: I must confess, we are having a
2 little trouble hearing you all, too. So there must be a bad
3 phone connection. Have they gone to try to find somebody?

4 HEARING OFFICER VACCARO: Yes.

5 VICE CHAIR BOYD: Okay. Well, we will try to
6 proceed slowly and carefully, with at least introductions
7 while someone tries to look into the phone connection and
8 see if it can be improved. My apologies for anything we are
9 doing. I cannot apologize for the phone companies, though,
10 and we will have to see what transpires. So, as I was
11 saying, if the Applicant, Mr. Galati, wants to try again?

12 MR. GALATI: Yes. Thank you, member of the
13 Committee, this is Scott Galati representing Solar
14 Millennium on the Ridgecrest Project.

15 MR. OWENS: Billy Owens, Ridgecrest Project.

16 VICE CHAIR BOYD: Staff.

17 MR. SOLORIO: Yes, good morning, this is Eric
18 Solorio, the Project Manager for the Energy Commission.

19 MR. BABULA: This is Jared Babula, Staff Counsel
20 for the Energy Commission.

21 VICE CHAIR BOYD: All right, now I will ask if we
22 have any Intervenors in the room or on the phone. And I
23 will ask first for CURE, California Unions for Reliable
24 Energy. Is there anyone representing them?

25 MS. KLEBLANER: Yes, good morning. This is

1 Elizabeth Kleblaner, for CURE.

2 VICE CHAIR BOYD: Thank you. It is difficult to
3 hear you folks, I must admit. There is a bad phone
4 connection. How about the Desert Tortoise Council?

5 MR. SILLIMAN: Yes, this is Sid Silliman, Desert
6 Tortoise Council.

7 VICE CHAIR BOYD: Thank you. Western Watersheds
8 Project? Hearing no one, I will turn to the Basin Range
9 Watch Group. Do you want to say something? I think we
10 heard something. Basin Range Watch? Okay, I am not hearing
11 anybody. The Kerncrest Audubon Society?

12 MR. BURNETT: This is Dan Burnett. I am with the
13 Kerncrest Audubon Society.

14 VICE CHAIR BOYD: Thank you. The Center for
15 Biological Diversity?

16 MS. ANDERSON: Good morning, this is Ileene
17 Anderson with the Center for Biological Diversity.

18 VICE CHAIR BOYD: Thank you, Ms. Anderson. Now,
19 that is all I have listed for Intervenors. I would like to
20 call upon any of the government agencies who might be
21 monitoring the call to identify themselves. I will just as
22 for Bureau of Land Management first. I take it there is no
23 representative - oh, Mr. Rodriguez, you are out there
24 somewhere.

25 MR. RODRIGUEZ: Yes, I am just - it is still

1 coming in and out quite a bit. This is Paul Rodriguez of
2 Ridgecrest.

3 VICE CHAIR BOYD: Thank you. And we have a bevy
4 of people standing over here at the audio system trying to
5 work on it for us. Fish and Wildlife Service? Bureau of
6 Reclamation? Any other federal agencies? How about state
7 agencies? Local officials? Representatives of other Boards
8 in the agencies in the local area? All right, I have run
9 the gamut on the agencies that I can recall that might play
10 a role in this. So with this, I am going to now ask our
11 Hearing Officer to take over and conduct the hearing, and
12 take us through the issues that we want to identify here
13 today, and try to chart a course for our immediate future on
14 this case. Ms. Vaccaro.

15 HEARING OFFICER VACCARO: Thank you. And, again,
16 I apologize to all of you on the telephone for having
17 difficulty hearing us. In particular, we have a number of
18 Intervenors with us today and I think people are going to
19 want to make some comments and chime in, and we are all just
20 going to do the best we can today and hopefully within a few
21 moments we will get this audio corrected.

22 I think one of the best places to start is pretty
23 much where we left off. I think at the last Status
24 Conference, everyone had this date originally scheduled as a
25 prehearing conference date, but since we have moved, as

1 everyone knows, the date of the hearing back to September,
2 what we decided to do is preserve this date to get a better
3 sense of what happened after the workshops. We knew the
4 workshops were coming up, two-day workshops, May 3rd and 4th,
5 specifically targeted to biological resources. And I made
6 sure that the Committee members did get a copy of the
7 agenda, just so that we could get a sense of what you were
8 looking at, and how those issues might be framed. I think
9 one of the things that we have noticed is that an entire day
10 was dedicated to the Desert Tortoise, and then the next day
11 it was proposed to cover a number of different issues. And
12 keeping in mind, this is not an evidentiary hearing at this
13 point, we are working towards them, and we really are not
14 interested in argument at status conferences either. We
15 just want to get a sense with these conferences of where we
16 are and where we are headed.

17 I think what we are hoping to accomplish this
18 morning is maybe to get a sense, if you have narrowed the
19 issues. It is one thing to say biological resources is a
20 topic where there is a lot of concern, it is another to be
21 able to say to us, "But here are our two, three, four
22 specific issues on Desert Tortoise that we are still trying
23 to work out." "Here are the specific issues with respect to
24 the ground squirrel." And I think, as we move forward, that
25 is going to make the hearing process more efficient, it is

1 going to make it easier for us to weigh the evidence, look
2 at the evidence, and it will help all of you understand
3 better what your burdens are in submitting evidence.

4 So I think, with that, the place we would like to
5 start is, you know, with the Applicant first. Can you give
6 us bullet points? Again, no argument, this is not a
7 hearing, but on the Desert Tortoise, what are the key issues
8 that are on the table right now?

9 VICE CHAIR BOYD: Can I interrupt and ask a
10 question? Do you want to make an inquiry as to the folks on
11 the phone, if there is any other Intervenors who may have
12 joined us since we started the hearing? There is a lot of
13 noise coming through our system here, folks out there, so -
14 are there any Intervenors who were not able to introduce
15 themselves during the round of introductions earlier in this
16 hearing, who now joined us? Or any other federal, state,
17 local agencies who have representatives who were not able to
18 introduce themselves earlier? Okay, failing that, I would
19 again urge you to be careful about shuffling papers and
20 moving things around. We are getting a lot of noise on this
21 end that is making it difficult for us to hear. Be careful
22 if you cannot mute your phone in moving things around on
23 your desk, or what have you. Thank you. Excuse the
24 interruption. Go ahead.

25 HEARING OFFICER VACCARO: Mr. Galati.

1 MR. GALATI: Okay, thank you. I appreciate it.
2 Let me take Desert Tortoise first. First of all, I want to
3 say that, as much as we talked about Desert Tortoise, now we
4 spent an entire day, and we spent an entire day on other
5 issues, I think the workshops were productive. It was the
6 first time, we believe, that we had everybody in the room
7 who had an interest, including U.S. Fish and Wildlife
8 Service. They had not yet been consulted, so their
9 participation, I think, was very good and we can commend Mr.
10 Solorio for taking a lot of high passion and opinions in the
11 room and helping to mediate it in a way that, we think, we
12 had a fruitful discussion. We did not get where we would
13 like to be which, from an Applicant's perspective, we wanted
14 to be in a place where what can we do to mitigate, or how
15 can we understand the impacts better. But I can tell you
16 what we did accomplish, and what we did accomplish is this
17 site has tortoises on the site, and there are levels of
18 discussion about whether or not the density of tortoise was
19 unique and different, or whether it was similar to other
20 sites. Certainly there are a lot of tortoises on this
21 particular site. There was quite a bit of talk about what
22 that means, why are the tortoises here. There were experts
23 in the room, how many juvenile tortoises -

24 MR. SILLIMAN: Mr. Galati, I apologize, but you
25 are really breaking up. This is Sid Silliman from Desert

1 Tortoise Council.

2 MR. RODRIGUEZ: This is Paul Rodriguez, I am
3 having the same problem. I am getting maybe one ever 20
4 words.

5 VICE CHAIR BOYD: All right, well, let's suspend
6 the hearing for a minute and see if we can do something. I
7 must say, just the same is true here. You are all coming
8 through very loud, broken up, all of you sound like you are
9 maybe a thousand feet under water or something. But, in any
10 event, there is something wrong with the system and we may
11 have to have people call back in. We may have to terminate
12 this connection and have folks call in. The Hearing Officer
13 is counseling with a crowd of people at the moment.

14 MR. BURNETT: This is Dan Burnett. I am going to
15 call in on another line.

16 VICE CHAIR BOYD: Well, we may have to -

17 (Off the record at 9:20 a.m.)

18 (Back on the record at 9:23 a.m.)

19 VICE CHAIR BOYD: We are - Mr. Galati is
20 discussing the Applicant's view on the Desert Tortoise, and
21 I will turn myself off and give it back to the Hearing
22 Officer again.

23 HEARING OFFICER VACCARO: Again, before you
24 proceed, Mr. Galati, thank you everyone for your patience
25 and the inconvenience this morning. It looks like we will

1 be able to move a little bit more quickly. Mr. Galati, I
2 would ask that you not repeat everything that you have said,
3 but if you could just sort of move forward because it sounds
4 like you just began on the substantive portions.

5 MR. GALATI: Yes. Scott Galati, representing
6 Solar Millennium. Again, we had a productive workshops. I
7 think one of the things that we spent a long time talking
8 about is how did the densities of Desert Tortoise on this
9 particular site compare to densities on other parts of the
10 desert. And then, I think what we did from my perspective
11 that was productive is we moved away from density and moved
12 into how does density identify as a factor to identify the
13 quality of the habitat of the site. And one of the things
14 that we would like to continue to explore would be breaking
15 the impacts into manageable chunks. We have got impacts for
16 translocation and moving tortoises, we have impacts that are
17 associated with taking habitat. And we have impacts that
18 were discussed on some level of connectivity, especially due
19 to future climate change and this being a northern portion
20 of the tortoise's range. So these are things that we had
21 good conversations about. We did not come to, I believe,
22 any agreement with staff, or others, that the project - what
23 the habitat compensation should be; we discussed it, and I
24 would like to continue those discussions on the Desert
25 Tortoise.

1 We talked about the in-lieu fee program. There
2 was some confusion on the in-lieu fee program, there was not
3 a real good handle on how it could be used. We talked about
4 possible enhancement mitigation on public lands and, as you
5 guys probably are already aware, there is a conflict between
6 state and federal law on doing enhancement programs, whether
7 they meet fully mitigated or in perpetuity standards. We
8 talked about those. We were hoping that by the next
9 workshop there would be some additional clarity at the state
10 level on the in-lieu fee program so that we would understand
11 what kind of mitigation opportunities there were through
12 that in-lieu fee program. As you may know, SB 348X provided
13 this in-lieu fee program for projects such as ours, and it
14 is sort of an advanced mitigation. So the way I understand
15 it is going to work is CDFG is going to identify some
16 enhancement and/or mitigation opportunities, it could
17 include land acquisition, it could include other things, and
18 that the Applicant could choose voluntarily to participate
19 in that program.

20 So I think those really covered the issues from
21 our perspective. Again, we would continue to work with
22 staff and with all the agencies to try to, again, break out
23 all the impacts into manageable chunks, so that we could
24 tell you, is it a connectivity problem we have, is it a
25 habitat compensation problem that we have, is it a

1 cumulative impact? And I think, right now from staff's
2 perspective, it is all of those, and we would like to
3 continue to work at winnowing those away.

4 Do you want me to go into the Desert Tortoise now?

5 HEARING OFFICER VACCARO: I do not think you need
6 to go any further. We will just stick with the tortoise
7 because I think other folks just might have a comment or
8 two. I think you very succinctly stated Applicant's point
9 of view, which to me sounds like it seems as though there is
10 still a little more understanding - understanding sort of
11 what the playing field is, to then figure out what the
12 appropriate mitigation might be. Mr. Solorio, maybe on
13 behalf of staff, and Mr. Babula, you might need to weigh in
14 if it looks like there really might be a legal issue
15 involved in terms of the recent legislation that was passed.
16 But is your perspective shared by the Applicant in terms of
17 what the issues seem to still be with respect to Desert
18 Tortoise and where you are headed?

19 MR. SOLORIO: Um, definitely on being able to
20 engage in a dialogue where you, you know, break the issues
21 into manageable pieces, so to speak, and be able to deal
22 with them one by one in terms of identifying an impact and
23 its related mitigation measure and/or whether it is not a
24 mitigation measure, and staff's - I think is the way to
25 attack it. I believe that is the way the agenda also was

1 laid out for the last workshop.

2 In terms of the in-lieu fee program, I will speak
3 to that briefly and then I will ask my manager, Roger
4 Johnson, to also speak to it. But I believe - it is my
5 understanding that that program is really going to be there
6 to implement mitigation that is developed by the agencies,
7 in this case the Energy Commission with CDFG. I do not
8 understand that program to be a "here is a menu of
9 mitigation measures and a price for each one," you know, "\$1
10 million buys you X acres of habitat." I believe it is
11 functionally a financial account and a program mechanism to
12 implement the mitigation measures that the agency develops.
13 And I do not know, Roger, if you want to speak to that
14 anymore?

15 MR. JOHNSON: Good morning, this is Roger Johnson,
16 Manager of the Siting Office at the Energy Commission.
17 First, I would like to remind everyone that SB 34 applies to
18 - is available to projects that are seeking ARRA funding,
19 and it is limited to solar projects that are seeking ARRA
20 funding. So, you know, I am not sure of the status of this
21 project. I understand that they were originally seeking the
22 Treasury Grant ARRA funding by the end of this year, but now
23 they have decided to not pursue that funding by the end of
24 the year, so I am not sure if SB 34X applies to the project
25 or not.

1 Secondly, the in-lieu fee mitigation program is
2 being developed by the agencies. We have not seen what the
3 strategy looks like that is required by law to be available,
4 I think, either this week or last week. I know Fish & Game
5 is working on it and the staff is working with the agencies
6 on this, so I do not have the details right now, and we will
7 not have that for probably a week or two.

8 VICE CHAIR BOYD: So that leaves us all kind of
9 hanging here, doesn't it?

10 MR. SOLORIO: Well, I guess I would like to add
11 another thing and, Jared, you can speak to this also. In
12 terms of Mr. Galati's suggested approach to trying to deal
13 with the impacts and the related mitigation measures, it
14 appeared from the dialogue at the workshop that staff has a
15 somewhat different approach and that it is aggregating the
16 impacts and aggregating the mitigation into one larger
17 package. And there was, I think, an attempt by the
18 Applicant to try to break out those - break the discussion
19 down into manageable pieces, if you will, but the discussion
20 did not go there. So I just wanted to point out there was
21 an attempt to do it.

22 MR. BABULA: Yeah, on that same vein, part of it,
23 too, is at least Fish & Game and our biology staff are
24 looking at this not so much as a numbers game where you say,
25 "Well, there are this many tortoises, so let's figure out a

1 way to offset their loss, or their impacts somewhere else."
2 This site has a more unique attributes in that it is able,
3 in staff's view, to maintain this higher density tortoise
4 population with a good ratio of juveniles to adults, despite
5 being relatively close to the developed area of Ridgecrest,
6 despite having a highway near it, there is some unique
7 stuff. Now, there has been dispute as to whether this
8 concentration is that much higher than other areas, or how
9 does it relate to the region as a whole, and that is some of
10 the areas that was part of the focus of the workshop, that
11 did not get resolved, but there was discussion on numbers
12 and what does it mean to say it is nine point this, or eight
13 point something. So that is part of the issue, is trying to
14 determine - is breaking it up into parts and saying, "Well,
15 if we mitigate this part, that part, this part, is that
16 really replacing the whole function of this site and this
17 ecosystem?"

18 HEARING OFFICER VACCARO: Thank you. I understand
19 there are a number of Intervenors that also participated in
20 the workshop, some of whom in their Petitions to Intervene
21 specifically indicated that the Desert Tortoise was the
22 reason for the intervention. So, again, very briefly, from
23 the perspective of the Intervenors, what issue is still
24 outstanding from your point of view? Again, this is not an
25 evidentiary hearing and we are not looking for argument,

1 just a very succinct statement of what you believe the
2 outstanding issue might still be, if it has not already been
3 addressed by the Applicant and staff this morning. Let's go
4 ahead and start with Desert Tortoise Council.

5 MR. SILLIMAN: Good morning. This is Sid
6 Silliman. I really disagree with Mr. Galati. I think there
7 is a whole series of bottom line kind of fundamental issues
8 that still need to be addressed. We have talked about
9 these, but they are unresolved. And I think we are a long
10 ways away from talking about mitigation. We certainly
11 differ on the quality of the site. This site, in our
12 opinion, is absolutely special in terms of biological
13 resources, I could argue that, but now is not the time. But
14 we differ here and I think that remains unresolved. The
15 second issue I think we have got on Desert Tortoise is we
16 have serious concerns about the viability of a translocation
17 program, that we are a long ways away from that one. And
18 then, very fundamentally, Desert Tortoise agrees with staff
19 recommendation on the no project/no action alternative.
20 There are, in fact, alternative sites in an adjacent area,
21 specifically former agricultural land. And for the whole
22 alternative question, it needs to be still resolved. So I
23 think we are a long ways away from talking about mitigation.

24 HEARING OFFICER VACCARO: Okay, thank you. Center
25 for Biological Diversity. Do you have anything to add or

1 contribute to this particular part of the discussion?

2 MS. ANDERSON: I do not have anything to add.

3 HEARING OFFICER: Okay, thank you. Kerncrest
4 Audubon Society?

5 MR. BURNETT: The only thing that I would add is
6 connectivity, genetic connectivity for the Desert Tortoise,
7 I think, is an issue that has not been mentioned, and it is
8 definitely on the table, too. Otherwise, we have nothing to
9 add.

10 HEARING OFFICER VACCARO: Thank you. Ms.
11 Kleblaner for CURE, do you have anything to add?

12 MS. KLEBLANER: Yes. I would like to echo the
13 concerns of the Desert Tortoise Council, that there are a
14 number of fundamental issues that remain unresolved,
15 starting with the baseline conditions on the site, I mean,
16 there is disagreement between staff and Applicant with
17 regard to how many Desert Tortoises would be affected. We
18 do not have results of ongoing surveys, it was represented
19 by the Applicant that those would be made available in June,
20 so it seems like, at this point, it is a little early to
21 jump to the topic of mitigation. A further workshop would
22 be useful to discuss any new information the Applicant might
23 have to provide on this issue.

24 HEARING OFFICER VACCARO: Okay, Mr. Conner, with
25 Western Watersheds Project, did you have anything to add to

1 this particular topic?

2 MR. CONNER: Good morning, yeah. I agree entirely
3 with what Desert Tortoise Council and what CURE just said.
4 I think there are still major issues here that have not been
5 dealt with. I am particularly concerned about exactly how
6 many tortoises there are actually on the site. I think we
7 still have a situation where we do not have basic
8 information that is really needed to actually determine what
9 the impacts are going to be. And without knowing what those
10 impacts are going to be, it becomes difficult to consider
11 any kind of mitigation measures, or develop mitigation
12 measures.

13 HEARING OFFICER VACCARO: Okay, I think we have
14 identified all of the Intervenors that are on the line and
15 heard from all of you. I think, after listening to what
16 everyone said, the Committee does have a follow-up question
17 or two, and I will really target Mr. Solorio with this one.
18 It sounds like what we are hearing is impacts still have yet
19 to be fully flushed out, at least in the minds of the
20 Intervenors, yet we do have an SA/DEIS that really does have
21 a quite extensive narrative identifying impacts, it has a
22 placeholder saying, "Yes, we know we still need some more
23 surveys, but here is what it looks like right now. And we
24 are concerned that there is not sufficient mitigation for
25 these impacts, but if the committee were to move forward,

1 here, at the very least, are all the things that would need
2 to be done."

3 From staff's perspective, have the impacts been
4 fully identified or adequately identified at this point? Or
5 do you believe staff still requires further information on
6 the impacts?

7 MR. SOLORIO: Well, there are two ways you can go
8 about it, and a short answer is the staff that are drafting
9 the Biological Resources Analysis would like to see the
10 Supplemental Surveys that are being conducted, now I believe
11 in process, and we do expect to get that data. I want to
12 point out that that is sort of an area that is approximately
13 15 percent of the project footprint, we do have the protocol
14 level survey data for the rest of that site. A secondary
15 approach that could be taken is to simply extrapolate the
16 data that is on the site, based on the habitat assessment
17 maps that are there, and simply assume how many tortoises
18 you are going to find. That does not necessarily, from my
19 perspective, affect the ability to actually workshop the
20 issue of whether or not a translocation plan is adequate.
21 Whether or not you have 40 tortoises or 55, you still need a
22 translocation plan with certain protocols for disease
23 testing and what season you are going to move them, etc. So
24 the bulk of the discussion, which was reflected by the
25 agenda for the workshop, I think, is ripe for discussion.

1 In terms of mitigation, you know, you have a
2 habitat assessment, you have acreages of various qualities
3 of habitat. We know what the footprint is. And we should
4 be able to engage in a reasonable discussion about
5 mitigation. Staff has asked the Applicant, or recommended a
6 5:1 ratio of 10,000 acres. I think it is reasonable to have
7 a dialogue where you explain what exactly 10,000 acres is
8 going to mitigate and what it is not going to mitigate. The
9 only thing outstanding here is the supplemental surveys for
10 about 15 percent more of the footprint. In terms of the
11 fundamental work to be done, I am not really sure what the
12 Intervenors are speaking about, outside of that survey data
13 that is being gathered.

14 HEARING OFFICER VACCARO: So, Mr. Galati, does it
15 sound pretty fair, then, that notwithstanding the surveys
16 that we are looking for, to having produced in fairly short
17 order, that the impacts have been identified? And really,
18 now you are looking at the qualitative aspects of
19 mitigation, and that that is what is left to move forward on
20 in these workshops that the committee has actually ordered,
21 that there are further workshops on biological resources. I
22 mean, do you see that those workshops are going to get us
23 past clarifying what issues are and actually seeing if there
24 is not some resolution on these outstanding issues of how
25 good is the mitigation? Is it good enough? Is it enough?

1 MR. GALATI: Yeah. I would agree with that
2 characterization and I also, too, believe that we should be
3 talking about mitigation, and should be talking about
4 whether the project site can be mitigated, additional
5 information about a particular tortoise or surveys. And
6 again, remember what promulgated that tortoise survey, the
7 additional tortoise surveys were promulgated by the
8 Applicant changing the project in order to get out of the
9 wash for the Mojave Ground Squirrel. And for drainage
10 related issues. And so there are areas of the footprint of
11 the project that changed further north. So we believe that
12 also moving in and out of the wash was going to actually
13 affect the tortoise numbers. But for purposes of having the
14 discussion, we have assumed the old footprint, which we
15 think is possibly an over-estimate. But, again, I think Mr.
16 Solorio is correct, and for purposes of determining whether
17 we can mitigate the site or not, a few more tortoises here
18 or there should not affect it. We all know that there are a
19 lot of tortoises on the site. We all know that there are
20 juveniles on the site. We all know generally, and we had
21 our expert do the Habitat Assessment of where the high
22 quality habitat is, where the lower quality habitat is on
23 the site. What I want to know is things like 5:1
24 mitigation, does that also mitigate the connectivity issue?
25 And if it does not, should we be targeting lands in a

1 location that would? I would like to know, we submitted a
2 draft translocation plan, not all the agencies had an
3 opportunity to review it and give feedback. U.S. Fish &
4 Wildlife Service came out with, just recently, additional
5 guidance on a translocation plan. So there were things that
6 we could continue to have dialogue and feedback from the
7 agencies on, for example, translocation specifically. And
8 we did hear some good things from the Intervenorers that I
9 think we are going to try and incorporate into our
10 Translocation Plan. So the other thing that is sort of an
11 outstanding issue is, it is one of, again, a discrepancy
12 between Fish & Game and the Federal agencies, and that is I
13 think all of the tortoise experts would agree that the
14 further you move a tortoise from its home range, the greater
15 chance that there is a problem during translocation. So one
16 of the ideas would be to move it outside its home range,
17 that now becomes public land, and the public land under Fish
18 & Game's view may not be suitable for translocation because
19 it is not a private piece of land put aside for in
20 perpetuity. So those are some issues at a very high level
21 that this project and others are grappling with, and there
22 needs to be a decision at a high level between Fish & Game,
23 U.S. Fish and Wildlife Service, and BLM, if that is a
24 possibility. For example, and I ask the question and there
25 is not a lot of good guidance, if there is public land in a

1 DWMA, a Desert Wildlife Management Area, set aside to
2 protect this Desert Tortoise, would that be a better
3 translocation site? Certainly, we all agree that private
4 land within the DWMA would be a good place, but maybe
5 spilling into the public land, as well. And is that
6 something that the in-lieu fee program could help supplant
7 for enhancement of those public lands? So there are a lot
8 of very, I think, higher policy, creative thinking decisions
9 that have not yet been made, but I think people are working
10 on them.

11 HEARING OFFICER VACCARO: Okay, that is fair
12 enough. Except for here is what we have going on, though.
13 We have a project that is moving forward, with some critical
14 path milestones that is headed towards a hearing, yet it
15 sounds as though, not only from a perspective of looking at
16 mitigation and trying to move through there, that that
17 question is not really something that is within the province
18 of Intervenors, staff, and Applicant, to be the only ones to
19 provide some input or feedback on that. So how are we
20 getting a sense of the policy direction from Fish & Game
21 and, you know, U.S. and BLM, and where are they? And when
22 are we going to hear from them? Because it sounds as though
23 they have some potentially outcome determinative information
24 for us.

25 MR. SOLORIO: They all participated in the

1 workshop, the BLM, CDFG, Fish and Wildlife Service, you
2 know, and the Applicant's experts, and our experts, as well.
3 Those issues, as Scott points out, are prevalent in other
4 projects, not just the Ridgecrest Project, in terms of
5 actual mitigation measures that are out there being
6 implemented, for instance, by the BLM if they have the PV
7 project. Those sort of mitigation measures would go into
8 the BO. But they are in conflict with the goals of CDFG,
9 which we implement here on our side. To answer your
10 question, I think Roger Johnson is better suited than I am
11 to speak to when the higher-ups are going to try to
12 reconcile that.

13 HEARING OFFICER VACCARO: And not to put you on
14 the spot, Mr. Johnson, but if you have any input, I mean,
15 that would be helpful because, if we do have a discrepancy
16 between what is happening on the Federal side, and what is
17 happening at the State level, that needs to be wrapped into
18 this process, and I think it would be helpful for the
19 Committee to understand that.

20 MR. BABULA: One other quick thing before he goes,
21 just on this part alone, BLM says the south half of this
22 project should be 5:1 because it is Mojave grounds for a
23 conservation area. North side is 1:1, so we are internally
24 trying to deal with that issue, as well, between the
25 different agencies on this one project.

1 MR. JOHNSON: This is Roger Johnson again. As far
2 as when the agencies will be able to come up with their
3 decisions or recommendations, we are working on all of these
4 ARRA projects on a case-by-case basis, evaluating each of
5 them individually, and are working collaboratively and
6 cooperatively with the agencies to assist us in developing
7 the staff's analysis and recommendations. So all I can say
8 is we continue to do that. The essay that was the draft
9 that was published was a result of that working together and
10 collaboration, and agreeing upon what the assessment would
11 be. But now that we are going to separate final documents
12 because of the need to have a separate FEIS and a Commission
13 Decision, we are still working together to try to have
14 consistent analysis and results, so that we will not have
15 two different Decisions on these projects. But for now, all
16 I can say is we continue to work together, and we will be
17 continuing to consult with those agencies as we develop our
18 analysis and publish the revised staff assessment.

19 HEARING OFFICER VACCARO: Thank you.

20 MR. GALATI: Ms. Vaccaro, I could add something,
21 too, is that the Renewable Energy Policy Group has, as you
22 know, conducted quite a few workshops. They are now meeting
23 more regularly, as well as have made Applicant Teams
24 available to the Renewable Energy Action Team to bring these
25 kind of policy issues to them, so that they can have that

1 conversation. I know that we participated last week with
2 other projects, as well, and for other Renewable Energy
3 Action Team. This issue was raised by one project applicant
4 to again put it on the top burner about how the Federal
5 mitigation and State mitigation could - how you reconcile
6 them since they have these different goals and objectives.
7 So I believe that the Renewable Energy Policy Group and the
8 Renewable Energy Action Team are working on this very issue.
9 And we hope to get some guidance. And I will tell you that
10 those have been helpful. There has been some guidance that
11 have come out of those, like the Translocation Plan guidance
12 out of U.S. Fish & Wildlife Service, I believe, was
13 promulgated by - excuse me, enforced and asked to come out
14 with new guidance from the U.S. Fish & Wildlife Service. I
15 think that was in response to the Renewable Energy Policy
16 Group. So I think the policy stuff is happening at a policy
17 level. It kind of gives us a few tools here. But that is
18 why, at these workshops, I would like to explore the realm
19 of possibilities, as I like to say, as all possibilities
20 would - all different kinds of mitigation, could we at least
21 put the ones in the bucket that nobody will agree to, the
22 ones in the bucket that people can agree to, and the ones in
23 the middle that need some policy guidance. And I think we
24 made some progress there, and I think we can continue to
25 make progress. I am an optimist.

1 COMMISSIONER EGGERT: Just a quick question. In
2 your opening comments, you had made mention of the conflict
3 being between State and Federal law, and I think that was in
4 relation to the enhancement programs. Is this in that same
5 general area that you are talking about? And, actually, I
6 am wondering if you could maybe even speak to sort of the
7 specifics that you see as the conflict. Is it the
8 mitigation ratios? Is it the assessment of impacts? Is -

9 MR. GALATI: I wish it were only the mitigation
10 ratios. Really, the conflict that I am seeing is on
11 selecting and getting a translocation site, or paying an
12 enhancement for mitigation for habitat compensation, whether
13 either of those could be done on Federal or public land.
14 The conflict is, under the fully mitigates standard, Fish &
15 Game has explained to us that they believe, since Federal
16 land can be re-designated for a different use, and will be
17 preserved in perpetuity, that BLM, through its planning
18 documents, could always change the designations, that you
19 need to engage in a mitigation program that requires private
20 land that is then dedicated and set aside in perpetuity,
21 either through purchase or conservation easement. We spoke
22 at earlier workshops and came up again fencing of, let's
23 say, highways so that Desert Tortoise are no longer crossing
24 at grade and getting killed. There is public land on both
25 sides, and there was a concern on Fish & Game's part of

1 whether or not that fencing would be maintained for
2 perpetuity because it is a public land that could be re-
3 designated for some other use. We talked about enhancing or
4 stopping illegal off-road vehicle access to places where
5 Desert Tortoises live, and that was another issue, both the
6 feasible issue from BLM about how you maintain that, and
7 then Fish & Game about how would you get any credit for that
8 if, in fact, the Federal agency in the future could
9 designate a different use on that land. So that is where
10 the primary conflict is, public vs. private land, that I see
11 needs to be resolved. Mitigation ratios, we always have
12 those issues, we tend to just get through them.

13 MR. SOLORIO: If I could just elaborate on that
14 briefly, the conflict actually begins with the difference
15 between the State - SESA, Endangered Species Act, vs. the
16 Federal, ESA, the State level will require full mitigation
17 for all the impacts; the Federal level, they do not require
18 full mitigation, they require avoidance and minimization
19 measures, as long as the impacts do not jeopardize recovery
20 of the species. So, really, you start with having different
21 standards to meet. And then, from there, once you start
22 talking about, as we did at the workshops, you know, you had
23 BLM present, saying, you know, "Here is a list of mitigation
24 measures we commonly use, however, none of them are
25 acceptable to CDFG because it is not on lands that are set

1 aside in perpetuity." Then you also have the difference
2 between the ratios that are required. So there is, as you
3 can see, a great deal of difficulty in trying to come up
4 with a solution, unless there is some mutual agreement. And
5 unless BLM is going to agree to set aside lands in
6 perpetuity, or the State level is going to agree these
7 mitigation measures are adequate for lands not set aside in
8 perpetuity, we are still going to have a problem.

9 HEARING OFFICER VACCARO: Okay, thank you.

10 VICE CHAIR BOYD: Excuse me. Is it contingent on
11 this case to solve all those problems? Or, as Mr. Galati
12 said, is the REPG or REAT Group, are they addressing that?
13 Some of us are so isolated from those processes, we are not
14 quite sure what they are doing.

15 MR. GALATI: Yeah, I think that it would be
16 difficult to handle it in individual cases because I think
17 it is global, and we are hoping that the REPG and REAT Group
18 actually resolve those, or at least provide some guidance on
19 how it should be resolved. But every project that I am
20 working on has Desert Tortoise mitigation, and some are
21 thousands of acres, and so we are - that solution affects
22 everybody to different degrees, you know. In this
23 particular project, the mitigation is 5:1 at 10,000 acres,
24 it is a different degree, but it is still the same issue,
25 where do you find private land? Or can you engage in some

1 other kinds of activities that actually enhance the species
2 and could be good for the species? And it depends on how
3 you are looking at it; is the fully mitigated standard one
4 that you could look at enhancement and saving tortoises'
5 lives elsewhere? Or is it just about what happens on this
6 site? So we have explored lots of things like, let's say
7 there are 62 tortoises on the site, are there activities
8 that we can engage in that save 62 other tortoises? So we
9 translocate these tortoises and, you know, that requires us
10 to think a little bit outside what we normally think because
11 it is usually, "How many acres do you have? What is the
12 mitigation ratio? Go get the acreage." And I do believe
13 that these issues are going to be resolved at the policy
14 level, and I am hoping that we get some guidance. In the
15 mean time, I think it is important for all of us and the
16 Intervenors to talk about the realm of the possible, whether
17 we can do them now, or we can do them in the future, I would
18 like to explore which are the good ones and which are the
19 bad ones.

20 VICE CHAIR BOYD: Mr. Johnson, rather than put Mr.
21 Solorio on the spot, since this seems like a universal
22 issue, not a case specific issue, what are your views on how
23 rapidly REPG and REAT Group are able to address this
24 question?

25 MR. JOHNSON: Well, as Mr. Galati mentioned, they

1 are working on it, we are meeting with developers regularly
2 to understand the issues and to understand what kinds of
3 solutions need to be developed, but we are essentially
4 implementing them on a case-by-case basis as the projects
5 move through. I do not know if there is going to be a
6 policy decision that affects all cases. It seems like each
7 case has its unique conditions that we require perhaps
8 special consideration, rather than them having, you know, a
9 desert-wide policy. But, as Scott mentioned, we are working
10 on it, we are having those discussions regularly. We have
11 meetings once a week to talk about the issues on these
12 projects and potential resolution. So that is what I can
13 offer now.

14 COMMISSIONER EGGERT: Maybe just a quick follow-up
15 as it relates to the issue of Federal land and the
16 permanence issue. Is that something currently under
17 discussion within those groups?

18 MR. JOHNSON: I believe it is. I believe BLM is
19 taking a look at that.

20 COMMISSIONER EGGERT: And is that something that
21 would be within the purview of BLM's current authority? Or
22 would they require new statutory authority at the Federal
23 level?

24 MR. JOHNSON: I cannot answer that, although they
25 are revising the Desert Plan as they go through these

1 projects. So I would have to get back to you on whether or
2 not they would need - I do not think they do, but I am not
3 sure.

4 MR. SOLORIO: If I may, what I understand is the
5 BLM can set aside areas of perpetuity such as wildlife
6 wilderness areas, for example. However, they would have to
7 go through environmental review process to take federal
8 action such as what we are doing now.

9 COMMISSIONER EGGERT: Thank you.

10 HEARING OFFICER VACCARO: Yeah, I think that
11 discussion on Desert Tortoise helps the committee understand
12 a few things, that the Intervenors, Applicant, and staff
13 really are moving forward in their discussions, and that the
14 discussions are not just at a generalized level. And it
15 sounds as though, that what is going on in discussions on
16 the Ground Squirrel and some of the other issues are likely
17 going to get that similar type of attention. So we do not
18 need to belabor it, we just wanted to get a sense of how you
19 were working through some of these issues. Again, we are
20 expecting to see another set of workshops on biological
21 resources happening some time during the month of June. One
22 thing that might also be helpful for the Committee at this
23 point is, we know biological resources is an issue on the
24 table, obviously. What else? I mean, we have got 20-22
25 technical areas; I do not imagine that every single one of

1 them you anticipate as you sit here today, as being an issue
2 item, or having issue items that cannot be resolved. But
3 can you give us a sense of, other than biological resources,
4 what other issues look like the ones that we really are
5 going to be hearing quite a bit about in the evidentiary
6 hearings? Mr. Solorio, if you could respond to that?

7 MR. SOLORIO: Uh, other than bio, I would just say
8 cultural resources. I think everything else will more than
9 likely be resolved and any issues related to the other
10 technical areas will likely be what I would characterize as
11 standard disagreements over the language in the COCs. But
12 nothing substantial in my mind. So outside of biological
13 resources, cultural. And not that there would be some
14 tremendous disagreement between staff and Applicant, but
15 just because there is a likely potential for conflict with
16 the BLM's process in developing mitigation for cultural
17 resources. The BLM is engaging in a programmatic agreement,
18 consultation with the Native American Tribes, and we were
19 previously going to be part of that effort. Now, with the
20 bifurcation of the Joint Environmental Review, the Joint
21 document, specifically, we need to develop and recommend our
22 own mitigation measures to comply with CEQA. So, in
23 essence, what you could end up with is staff recommending
24 one particular way to recover information from a cultural
25 resource, where the BLM could come up with a very different

1 way to recover that information from that resource, or
2 simply not recover it. So that will be the other area for
3 hearings.

4 HEARING OFFICER: Okay, it looks like Mr. Johnson
5 might want to add something there.

6 MR. JOHNSON: Just a point of clarification.
7 There is the opportunity for staff to do its own cultural
8 resources assessment and create its own conditions, but
9 currently our plan is to work cooperatively with the BLM to
10 participate in those programmatic agreements and to be able
11 to use those for our CEQA analysis, as well. So we are
12 underway with that process. We have had some meetings. The
13 problem is timing, it could be a long process, but we are
14 developing that on some of the other projects, and if we get
15 the template right, it should not be as long of a process
16 for the other projects. But that is our current hope, is
17 that we could use the programmatic consultation process to
18 cover these BLM lands.

19 COMMISSIONER EGGERT: Just a question. Do we know
20 when we might expect the first PA on perhaps not this
21 project, but another project, as a template?

22 MR. JOHNSON: We are getting close to having a
23 revised draft PA on the Imperial project, and that will be
24 the first one. And I am not sure of the timing, it might be
25 June, but that is the one they are working on, as hoping it

1 will be the template.

2 HEARING OFFICER VACCARO: Thank you. Mr. Galati,
3 other than biological resources and possibly cultural, given
4 Mr. Solorio's explanation, any other issues that you foresee
5 as you sit here today? And, of course, that might change.

6 MR. GALATI: Other than some disagreement on
7 standard condition certification, there still is an
8 outstanding issue on worker safety and fire protection, and
9 the amount of compensation necessary for Kern County. And
10 we are continuing to work on that very hard, ourselves. The
11 other issue that you are likely to hear members of the
12 public, because it has been a hot button issue in that
13 community, we believe we have solved it, we believe that we
14 have good agreement with staff, but you are likely to hear a
15 lot about it, and that is water. Lastly, with respect to
16 cultural resources, one of the things that we explored with
17 staff, and I think staff is considering, is when we think of
18 cultural resources, we think of what do we need to evaluate
19 impacts and mitigate under CEQA, and maybe even sort of the
20 same under NEPA, but there is also a separate Federal
21 consultation with the State Historic Preservation Office
22 under Section 106 of the National Historic Preservation Act,
23 I believe is what it is called. And that is a separate
24 process. That is kind of what is developing, this
25 programmatic agreement. And a programmatic agreement is a

1 list of ways that you would treat resources so that they
2 would be categorized into different groups. One of the
3 things that we have explored with staff is, and I think we
4 have gone a long way into agreeing how different classes of
5 resources should be grouped, so I think we have made some
6 pretty good inroads there. The other thing that we would
7 recommend is that the staff in its staff assessment make it
8 a Condition of Certification, there is a standard one called
9 the CRIMP, which is the Cultural Resources Mitigation
10 Implementation Monitoring Plan, that there be language in
11 that condition that says incorporate whatever is in the
12 programmatic agreement into this document, so that there
13 would be, for lack of a better term, we always use it, is a
14 Cultural Bible that is used, that is the document that
15 includes all the conditions in it. We do this at the
16 biological resources level with the Biological Opinion, that
17 has to be incorporated into a similar document. And so we
18 are hoping that, by crafting the condition that way, that
19 eventually they come together, even if they may not come
20 together seamlessly, by the time the decision in the Record
21 of Decision are issued, we would like them to come together
22 in the Compliance Plan. So that is what we would recommend.
23 And I think that we can be successful there.

24 HEARING OFFICER VACCARO: Okay, and we are going
25 to be moving forward to the Intervenors in a moment, but Mr.

1 Galati, you said the magic word of "water," and I think just
2 one thing, again, no arguments, it is not a hearing yet,
3 but, you know, the Committee is aware of the proposed
4 mitigation measures with respect to water resources, you had
5 a few interesting and sort of innovative approaches in
6 there, and it appears that Applicants have just received
7 some data requests, as well. So we understand you are going
8 to give more fully fleshed answers at a later time. But
9 between the publication of the SA/DEIS, and where we are
10 today, has there been some forward movement on the three
11 primary offset measures, which are the Cash for Grass, the
12 filing of the ag land which requires an agreement, as well
13 as the LA, you know, the water diversion from Los Angeles,
14 and has there been some forward movement? Because the way
15 it was addressed in the SA/DEIS was, "This looks like these
16 are offset measures that can mitigate the impacts, yet they
17 all seem to be contingent on some agreement or action that
18 is still needed to take place." And so, if you could very
19 briefly give us a sense of that?

20 MR. GALATI: Yes, certainly there has been some
21 forward movement. We have, you know, spoken to people about
22 filing, we have spoken to LADWP, but I do not want to give
23 the Committee the wrong impression that, by evidentiary
24 hearing, we would have those things in place. And let me
25 tell you why. Right now, we have got to know from staff, we

1 have intervention that do not want the project. And so we
2 crafted a Condition of Certification for proposal to staff,
3 they built upon that, we did an Offset Plan, and just like
4 as has been done in other projects, as long as the menu of
5 options are feasible and will get the mitigation, and the
6 mitigation has to be in place prior to using water, and that
7 is very similar to what our agreement is with the District,
8 that we believe that it will mitigate the impacts. But I do
9 not want to give you the impression that we are going to
10 come to you and say, "We have selected A, B, and X," and
11 that this is our mitigation. We have taken the approach
12 that any of those, in combination, or on their own, could
13 provide full mitigation, and full offset, and that will be
14 in place prior to any impacts. But we have certainly
15 explored those, but we are not going to commit the financial
16 resources at this time.

17 HEARING OFFICER VACCARO: Thank you. Okay, I
18 think so that we can exhaust the topic, let's just briefly,
19 Intervenors, starting with Desert Tortoise Council, we
20 understand biological resources is an issue. Any other
21 issue that you see at this point in time in terms of the
22 technical areas?

23 MR. SILLIMAN: I think one of the local issues,
24 and the local are a big concern, the impacts and possible
25 impact of Valley Fever, and the spread of Valley Fever from

1 construction, so I think that is one that is going to
2 continue to be a concern with the local population. Also,
3 one of the biological issues we have not talked about is the
4 Mojave Ground Squirrel connectivity. We just do not see how
5 that can be mitigated. I know that is biological, but it
6 has not been addressed this morning, and that remains a
7 significant outstanding issue. And unless I am wrong, and
8 unless staff has changed its position, staff still finds
9 visual impacts to be unmitigatable, and so that is one that
10 will come, I believe, before the Commission, unless it is
11 done very differently. This is Sid Silliman from Desert
12 Tortoise Council.

13 HEARING OFFICER VACCARO: Okay, thank you. Just a
14 couple of comments. You are right, we did not go into great
15 detail this morning on anything other than Desert Tortoise,
16 but that was really more an exemplar to get a sense of how
17 the discussions are going and how things are moving forward,
18 so we do anticipate that you will continue to workshop and
19 discuss the issue of the Ground Squirrel. The Valley Fever
20 issue, I am not sure, that would be, as I understand it, the
21 Worker Safety - I think that is really discussed there in
22 terms of the impacts on the workers. I am not sure if you
23 have taken a look at that section, but that might be a place
24 where, as you are formulating what your thoughts and
25 comments might be in presenting evidence on that topic, that

1 I see not in the public health section, but I think more so
2 in the worker safety section, is where we are going to see
3 that discussion and where it is addressed by staff.

4 MR. SILLIMAN: I think, again, to try to focus on
5 local concerns, maybe I am incorrect, but I do believe that
6 the local citizens are concerned, not just with worker
7 safety with Valley Fever, but the possible spread of Valley
8 Fever across the whole community. So I understand, it is
9 part of worker safety, but I think the locals see this
10 somewhat differently, and they have, in fact, weighed in on
11 this from what I have read.

12 HEARING OFFICER VACCARO: Yes, there have been a
13 number of comments received.

14 MR. GALATI: And we did workshop this issue
15 extensively and talked about how we want to water the
16 ground, talked about the prevailing winds, talked about Dr.
17 Greenberg, who is considering a different condition, and the
18 idea was that, if we protected the workers, that that would
19 be - those measures would be in place such that it would
20 reduce any public health impacts. But we did, we had quite
21 a bit of discussion and we had a fellow, I cannot remember
22 his name, from the public, who had gathered a lot of
23 information, submitted a lot of comments, he participated,
24 so did Dr. Greenberg. So I thought we had a framework
25 moving forward. I think if Mr. Silliman is referring to

1 there likely is to be some testimony on this subject, I
2 would agree with him.

3 HEARING OFFICER VACCARO: Okay, thank you. Mr.
4 Silliman, anything else that you wanted to add?

5 MR. SILLIMAN: No, that is fine. Thank you.

6 HEARING OFFICER VACCARO: Thank you. I do not
7 recall anyone being on the line from Basin and Range Lodge.
8 Is that still correct? Okay. Mr. Conner, was there any
9 other issue that you believe that has not already been
10 raised that will continue to be an issue for the purposes of
11 the evidentiary hearing?

12 MR. CONNER: Yeah, I think most of the issues have
13 been raised. We have considerable concerns related to water
14 issues, and impacts upon water flow across the project site.
15 We are in a situation still where there is some considerable
16 uncertainty associated with the changes in the project
17 boundary, and things like siting of the pond, the
18 evaporation pond and so on. There is a lot of uncertainty
19 from our perspective, of impacts over water flow across the
20 entire site. And we are also concerned that there is the
21 great uncertainty in the adequacy of the proposed water
22 mitigation.

23 HEARING OFFICER VACCARO: Okay, thank you. Center
24 for Biological Diversity, same question posed to you.

25 MS. ANDERSON: Uh, yes. We, of course, have

1 concerns over the biological issues, as well as the water
2 issues. I think another thing that we are going to be
3 concerned about is the full range of alternatives that were
4 proposed in the Staff Assessment, and in particular based on
5 the latest update of the Renewable Portfolio Standards and
6 the sort of downsizing, if you will, of the need for the
7 renewable energy with regards to how other technologies can
8 fill in those gaps, particularly distributed and renewable
9 energy, you know, that is one of our concerns.

10 HEARING OFFICER VACCARO: Okay, thank you. Ms.
11 Kleblaner, on behalf of CURE?

12 MS. KLEBLANER: Thank you. As the other
13 intervenors and the other parties have noted, the issues in
14 water, cultural resources, issues with the potential of
15 Valley Fever during breeding, as well as questions about
16 project alternatives. However, at this point we can
17 identify potential issues of concern, but it really is
18 premature to discuss these issues because, as it has been
19 said, the project is in flux. This project has been
20 redesigned, new project components have recently been added,
21 for instance, the evaporation ponds that were mentioned by
22 Western Watershed, as well as an additional fuel depot under
23 CEQA, the impact analysis begins with a project description
24 and that project description has changed repeatedly
25 throughout this process, so it is, in CURE's opinion, too

1 early to identify issues for the evidentiary hearing because
2 we are still at the stage where we are designing the project
3 and the baseline conditions at the site.

4 HEARING OFFICER VACCARO: Mr. Solorio, you gave me
5 a look, did you want to say something?

6 MR. SOLORIO: Yeah, sure. I just wanted to make a
7 quick comment that, when you asked me to identify issues, I
8 was focused on issues that I thought were between the
9 Applicant and staff, and I did not include general issues
10 that the public were interested in. I do want to echo that
11 water is a big issue down there, as well as Valley Fever. I
12 have had a number of conversations with Mr. Belmont Frisbee,
13 who lives in the area, and I have put him in touch with Dr.
14 Alvin Greenberg, who is writing several of our technical
15 analyses, and they have exchanged a number of different
16 resources to provide data on Valley Fever, and I think we
17 will be able to adequately address it. I agree, there have
18 been some changes in the project such as the addition of
19 evaporation ponds, but we have been aware of those for some
20 time, and I feel we can easily incorporate that, and we
21 already have a model, a template to address that, that we
22 developed with the Beacon Project, and we did that in
23 conjunction with the Regional Water Quality Control Board.
24 So I do not see it as an issue that we cannot easily pick up
25 and address.

1 HEARING OFFICER VACCARO: Thank you for the
2 clarification. Mr. Galati, before you go forward, I wanted
3 to go ahead and let Ms. Kleblaner finish whatever it is that
4 she - the point that she was raising, I will get to Western
5 Watersheds, and then you can get the last word on this. Ms.
6 Kleblaner, was there anything further, because I did
7 potentially interrupt you.

8 MS. KLEBLANER: Oh, thank you. My point basically
9 was that, yes, there are issues outside of biology such as
10 water, cultural resources, worker safety and health impacts,
11 on the project, that would likely be raised in a
12 testamentary evidentiary hearing, but that said, the project
13 has been redesigned, new project components have been added,
14 and it is too early from our perspective to be able to say
15 with any level of specificity what the Tribal issues would
16 be.

17 HEARING OFFICER VACCARO: Okay, fair enough.
18 Thank you. And I think we already did hear from you, didn't
19 we, Mr. Conner, on this?

20 MR. CONNER: You did, yes, thank you.

21 HEARING OFFICER VACCARO: And Kerncrest Audubon
22 Society, Mr. Burnett, was there anything you wanted to add?

23 MR. BURNETT: I do not think there is anything we
24 would add, but the visual impact of this on the valley is
25 quite significant, especially from people approaching from

1 the south. I am sure that will come up during the hearing.
2 But I think everything else is well stated by others.

3 HEARING OFFICER VACCARO: Thank you. And Mr.
4 Galati, you have the final word on that.

5 MR. GALATI: I just wanted to add to the
6 evaporation pond discussion. As you know, there was a
7 change in guidance. We were originally going to be able to
8 use our discharge for dust depression, and that is why we
9 did not have a waste disposal alternative, and the Regional
10 Board came out with a decision and said we could not do
11 that, it was not the first decision, the first decision was
12 we could. What we did when we put these evaporation ponds
13 together, we went and looked at the Beacon project which had
14 significant workshops and discussions over biological
15 issues, and we designed this evaporation pond to include
16 every one of the mitigation measures that was discussed and
17 incorporated into the Beacon project, so that we would be
18 producing something that was not going to cause the kind of
19 controversy and discussion that happened in other projects.
20 So I did want the Committee to understand and appreciate
21 that the Applicant from that perspective was responsible in
22 trying to minimize the amount of staff work and controversy
23 from the Intervenors. We are agreeing to net the ponds, we
24 are agreeing to have the net be a flexible size so that we
25 can determine and have an adaptive management plan if there

1 are birds that get caught in the netting. So the kinds of
2 things that took a lot of time on Beacon, we tried to cut
3 right to the chase and incorporate into the design. And if
4 there are additional ideas -- we had one surface at the
5 workshop on how to deal with bats -- if there are additional
6 ideas like that, we can easily, I think, address those. It
7 is the life of a project, it is what the California
8 Environmental Quality Act actually want you to do, they want
9 you to come in with a project and they want environmental
10 issues to cause that project to be redesigned. So it is not
11 a problem, it is encouraged to actually redesign the
12 project. We redesigned it to try to get out of the wash.
13 We redesigned it to try to minimize the footprint on the
14 wash portion of the Desert Tortoise. We have identified
15 evaporation ponds, we have incorporated mitigation into that
16 design. So, I do not think any of these changes caught
17 anybody by surprise, or are they fatal from the perspective
18 of somehow the public was not able to participate. And I
19 would suggest we put evaporation ponds and any other project
20 component back on the agenda for the next workshop to make
21 sure that it is continually publicly vetted.

22 MS. KLEBLANER: If I may add, this is Elizabeth,
23 we have yet to see a staff assessment that evaluates the
24 entire project, and while these issues can be raised at
25 workshops, among the Commission and regulation staff - well,

1 first of all, the burden of proof is on the Applicant to
2 show that the project is significant and environmental
3 impacts can be mitigated; secondly, staff does an
4 independent analysis. We have not seen that. We have not
5 seen it either from the Applicant or from staff, a full
6 analysis of the project and its impact. And further
7 workshops, I think, would be valuable to discuss the
8 project, but without a complete analysis, it would be
9 difficult for Intervenors or the public to really weigh in
10 and participate in the proceeding.

11 HEARING OFFICER VACCARO: Okay, well, thank you
12 for your comment. And I think, Ms. Kleblaner, you are aware
13 that a Part A and Part B will be coming out from the staff,
14 giving further analysis and discussion, I think, on many of
15 these points that have been raised this morning, and I am
16 certain on others, so that you will end up getting staff's
17 full objective analysis of this, as well as the Applicant's
18 perspective and responses. I think the workshops further
19 that process and, as we move towards the evidentiary
20 hearings, I think we will know all there is to know. And,
21 again, as you participate in the hearings, you will be able
22 to gather additional information. So I think, with that,
23 unless the committee has any other questions, we will go
24 ahead and move to public comment. Or if there is any other
25 topic that is burning, that anybody thinks needs to be

1 addressed, we will move forward to public comment.

2 MR. SOLORIO: Uh, yes, at this time I would like
3 to ask my manager, Roger Johnson, to speak towards a
4 schedule with respect to the committee's last order.

5 MR. JOHNSON: And I think this does fit in the
6 category of burning topic. As you are aware, the staff is
7 working diligently on multiple ARRA projects, and this is
8 just one of them, and I would like to advise the committee
9 that, because this project has determined that it will not
10 be able to take advantage of the December 31st Federal Grant
11 deadline for ARRA, that we consider a delayed schedule that
12 would allow staff to emphasize this work on those projects
13 that are still pursuing that deadline. Currently, you have
14 an order out there to have Staff Assessments A and B being
15 filed in June and July of this year. We also have four
16 revised Staff Assessments due in June for the other
17 projects, one in July and one in September. The staff is
18 working on Response to Comments on all projects since they
19 have been out for public comment, we need to respond to
20 those comments, and we are working with the BLM to attempt
21 to do a Joint Response to Comments, so that both documents
22 can rely on the same set of comments. We are also facing
23 project changes on some of these projects that are coming in
24 at the last minute for whatever reason. The staff is having
25 to quickly evaluate these proposed changes and include those

1 in those revised Staff Assessments. And then, finally, we
2 recently have received information from Southern California
3 Edison on multiple projects that have downstream facilities
4 associated with telecommunications for projects,
5 modification of existing Edison facilities that have to be
6 moved for projects. Ridgecrest is one of those that
7 currently has the need to move an existing transmission line
8 out of the project site, and also has telecommunication
9 facilities that we are becoming aware of. And we do not
10 permit those telecommunication facilities, nor do we
11 authorize the movement of those transmission projects, thus,
12 under the authority of the California Public Utilities
13 Commission. But the Energy Commission needs to understand
14 those related impacts and address those in our Staff
15 Analysis so the committee is aware of what additional
16 environmental effects could occur, associated with the
17 entirety of the project. So, having said all that, we
18 recommend that Ridgecrest have a further delayed schedule,
19 if you would, and staff would suggest that - I do not know
20 if we need to part at 1 and 2, but we would like to do a
21 revised Staff Assessment in September, which would then put
22 hearings later in the year, and a decision after that. But
23 to allow us time to address these issues that we have been
24 talking about this morning, and to essentially open up some
25 more time for us to complete the other projects, that would

1 be helpful with the staff.

2 COMMISSIONER EGGERT: Just a question of the
3 Applicant. I mean, if possible, can you speak to sort of
4 where you see yourself in the context of Federal Stimulus
5 Programs?

6 MR. GALATI: Yes, I think with the issues that
7 face the Ridgecrest projects, like we said at the last
8 status conference, we did not believe that we would be able
9 to move forward and get the ARRA funding by the end of the
10 year, the actual ITC grant. We are continuing with the DOE
11 Loan Guaranty Program and so I would like to be able to tell
12 you that I think we can do that, but we cannot. I do not
13 think we can, and I think it is only reasonable that we
14 adopt the schedule that allows us to work through the issues
15 on the project, and at the last workshop we liked the
16 schedule that we have, I cannot tell you that -- we
17 understand the burden that staff is under, and if staff can
18 commit to a revised Staff Assessment in the September
19 timeframe and allow us to continue to workshop, and continue
20 to work on the project, because we are in no way, shape, or
21 form wanting to slow down or stop work on the project, so we
22 do not want to go into a holding pattern because we are no
23 longer seeking that stimulus package. We still want to and
24 are pursuing the DOE Loan Guaranty and still are very much
25 committed to a project on the Ridgecrest area, and this

1 project, in particular. So we could agree to a Staff
2 Assessment, a revised Staff Assessment in September. I
3 would ask the committee to continue to ask for updates from
4 us, because I would like us to continue to make progress.
5 And if we did have another workshop or two to discuss the
6 issues, I would like them to continue to be productive.

7 COMMISSIONER EGGERT: What is the timing on that
8 loan guaranty? Or does that have a sunset?

9 MR. OWENS: Billy Owens. My understanding is the
10 sunset, I believe, is September of next year, 2011.

11 MR. GALATI: Yeah, so what we would like to look
12 for, again, is if the Staff Assessment is moved, we would
13 like to get a decision the early part of next year.

14 HEARING OFFICER VACCARO: Okay, thank you. Okay,
15 I think that was a burning issue, thank you for raising it.
16 That is new information, but it is always helpful, I mean,
17 that is the purpose of this status conference, is to be able
18 to get all of that information out on the table for the
19 committee to make scheduling decisions. I think, with that,
20 we will move to public comment. I see one unfamiliar face.
21 I do not know, is there a comment? Are you a public
22 commenter? Okay, thank you. Do we have any individuals on
23 the telephone who are interested in making a public comment?
24 Okay, I do not hear any, so I will turn it back over to
25 Commissioner Boyd to adjourn this conference.

1 MR. SILLIMAN: Ms. Vaccaro, my apologies, there is
2 one other burning issue. There is a request for an
3 extension on the deadline for data request -

4 HEARING OFFICER VACCARO: Is this Mr. Burnett?

5 MR. SILLIMAN: I am sorry, no, this is Sid
6 Silliman from Desert Tortoise Council. But I am referring
7 to a request that came in from Mr. Burnett. Can you give us
8 a sense of where we are on that request?

9 HEARING OFFICER VACCARO: Certainly. Where we are
10 is that it was received, as you know, and I sent an e-mail
11 to all parties, but specifically to Mr. Burnett, asking for
12 further information about the request because, in order for
13 the committee to make an informed decision, we did require
14 some additional information that was submitted, I believe,
15 to all parties by the end of last week, I think, on
16 Thursday, so now this is a matter for the Committee to
17 consider. But, of course, under our regulations, all of the
18 parties have the right and the ability to submit a response
19 and a comment with respect to what was raised in the
20 Petition. I am not asking for people to give us a sense
21 today, I think the Applicant might want to consider that. I
22 think they are the ones who are going to be most vociferous,
23 if in fact there is an objection. But there is a process
24 that we have where there is some time for the parties to
25 consider the request, see what it means to them, submit a

1 response to the committee so that the committee has a
2 totality of information before it makes a decision with
3 respect to an extension. But if you have not received the
4 supplemental information from Kerncrest, I believe it is now
5 docketed, and I think that should help to inform whatever
6 responses anyone might submit, and it will certainly inform
7 the decision of the committee.

8 MR. SILLIMAN: Thank you.

9 MR. GALLATI: Yes, we received the responses to
10 the Committee's question, and we have not had a chance to
11 really talk about them internal to our team, but we will
12 file a response in the next couple of days.

13 VICE CHAIR BOYD: Okay, thank you everybody.
14 Needless to say, there are many shared concerns, there is
15 fortunately maybe a low level of frustration, although maybe
16 some are hiding it well. It is obvious that this project,
17 and perhaps others, are - I do not want to be too cynical
18 here - but, you know, kind of at a crossroads, and colliding
19 with the need for more global guidance from those parties
20 who are meeting together to try to deal with questions that
21 generically affect all projects. And that is not to exclude
22 the idea that there are unique individual issues with
23 projects that will have to be dealt with in addition, but it
24 does seem that some of the other issues that we talked about
25 today that are being considered by the renewables groups do

1 need to be sped to conclusion, and I guess these two
2 Commissioners have talked about this a little bit up here,
3 and need to pursue that more. This project and others could
4 suddenly become the nexus of resolution of many issues.
5 While it is true that, as the discussion that just took
6 place indicates, this is not exactly an ARRA project any
7 longer, and I also would say that, with regard to the
8 scheduling, the committee is not going to act alone or
9 unilaterally to resolve that question of scheduling in a
10 vacuum, so we will consider it and will take into account
11 the staff's concerns. I appreciate the comments of the
12 applicant with regard to their recognition of the situation
13 of this agency and its staff and the workload issues. I,
14 too, appreciate your desire to allow moving things into the
15 future to have continuing status reports, of one form or
16 another, to not let it lapse into some soon to be forgotten
17 orbit, and I totally understand that. While it is no longer
18 possible to get ARRA dollars, it is still a project that may
19 meet California's renewable electricity needs, to get a fair
20 consideration for that question. The committee will take
21 into consideration what we have heard today with regard to
22 schedule and the other issues and try to put it in context
23 of all the activities that are going on, and it may or may
24 not in the not too distant future shed more and additional
25 light on several of the topics. I appreciate the desires of

1 the Applicant to keep the city process going, and I
2 appreciate the staff's willingness, particularly under the
3 workload they are under, to try to continue that process as
4 best they can. Everybody is being thrashed here these days,
5 the staff is perhaps the most thrashed, I do not know, being
6 pushed in multiple directions. I know the Commissioners
7 feel pressure and thrashed, and other folks who have to
8 solve some of these generic problems, I hope, are equally
9 feeling thrashed and are speeding to try to resolve that.
10 And I know applicants all over are probably feeling
11 thrashed, if not concerned and somewhat frustrated. So we
12 will keep this moving as best we can. We will give folks
13 the answers that they have asked to receive as speedily as
14 we can, and we do have to provide any scheduling types of
15 questions - we have to do it in the context of all else that
16 this agency is doing. So we will do that as rapidly as we
17 can and as soon as we are able to figure out all that we are
18 doing in some of these areas. So, Commissioner Eggert, if
19 you would like to say a word or two, and then we can adjourn
20 this hearing.

21 COMMISSIONER EGGERT: Thank you, Commissioner. I
22 just wanted to say a couple quick words. I found this
23 status conference to be quite informative and quite
24 efficient, and I want to thank the staff for their hard work
25 in preparing the SA on the issues before us, and thank the

1 Applicant for their contributions, their flexibility on
2 timing. I want to echo Commissioner Boyd's comment that,
3 you know, we do want to keep this thing moving forward, not
4 to just sort of put it on the shelf. If we do go forward
5 with a revised schedule that pushes it out into the future,
6 hopefully we will use that time to have addressed these
7 issues that have come before us, and not necessarily just
8 delay, I guess, avoid delay, continue forward with progress.
9 I also want to thank the Intervenors, I found them through
10 this Status Conference to be quite efficient, as well, very
11 professional in identifying their concerns, putting those on
12 the table in a very concise way and I look forward to their
13 participation in this hearing as it goes forward. So with
14 that, I am looking forward to the next meeting and -

15 MR. SOLORIO: Commissioner, if I may? I just
16 would like to ask for clarification in terms of, I
17 understand the Applicant is not going for the - that they
18 are not seeing the grant in lieu of the ITC, but they are
19 seeking the loan guaranty, and isn't the loan guaranty
20 authorized under the ARRA loan guarantee program?

21 MR. GALATI: Yeah, they certainly are linked. I
22 need to go back and read SB 28 - excuse me, 348X, because I
23 thought that it also would apply to projects seeking the
24 loan guarantee.

25 MR. SOLORIO: Yeah, and that was my point, just

1 for the record, you know, whether it is or is not an ARRA
2 project will affect the very core of the issues here under
3 biological resources, so -

4 VICE CHAIR BOYD: Well, thank you for that
5 clarification. It probably is something that we need to
6 research and resolve and is somewhat critical to people's
7 place in line, so to speak, or length of orbit around this
8 planet, or something.

9 MR. GALATI: I know I made that suggested revision
10 to SB 348X, but I do not know if I carried the day on that
11 one, but it was an "or" and not an "and" at one point.

12 VICE CHAIR BOYD: Okay, I want to echo
13 Commissioner Eggert's thanks to all parties involved here.
14 Some of us are suffering from greater degrees of frustration
15 than others and he is fresh and new and vigorous, and has a
16 better grip on some of these things. He has suffered the
17 wrath of my frustration, personally, here the last few
18 weeks. So, again, everyone is conducting themselves well,
19 everybody has learned a lot about this process and these
20 cases, and I just hope we continue to learn and grow and
21 understand the complexity of the world in which we live. So
22 with that, thank you everybody. This hearing is adjourned.

23 (Whereupon, at 10:36 a.m., the status conference
24 was adjourned.)

25 -o0o-