COMMITTEE MEMBERS PRESENT
Karen Douglas, Presiding Member

HEARING OFFICER, ADVISERS and STAFF PRESENT
Kenneth Celli, Hearing Officer
Galen Lemei, Adviser
Jared Babula, Senior Staff Counsel
Eric K. Solorio, Project Manager

PUBLIC ADVISER
Jim Davis

APPLICANT
Jane E. Luckhardt, Attorney
Downey Brand Attorneys, LLP
Scott Busa, Director
Kenneth Stein, Environmental Manager
Nextera Energy Resources
Sara J. Head, Project Manager
AECOM

INTERVENOR
Tanya Gulesserian, Attorney
Adams Broadwell Joseph and Cardozo
representing California Unions for Reliable Energy

ALSO PRESENT
Don Maben, Supervisor, Second District
Lorelei Oviatt, Acting Planning Director
County of Kern

Richard Booth
Lahontan Regional Water Quality Control Board
ALSO PRESENT

Julie Vance
California Department of Fish and Game

Judy Hohman
United States Fish and Wildlife Service

Bob Scherer, Vice President
Dennis LaMoreaux
Jack Stewart
Rosamond Community Services District

Mike Bevins, Public Works Director
City of California City
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PETERS SHORTHAND REPORTING CORPORATION
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P R O C E D I N G S

10:15 a.m.

PRESIDING MEMBER DOUGLAS: Good morning, everybody, we're beginning. Welcome to the Beacon Solar Energy Project evidentiary hearing. The Committee members assigned to this case are Commissioner Karen Douglas, which is me, I'm the Presiding Member of the Committee, and Commissioner Jeff Byron.

To my left is Hearing Officer Ken Celli, who will be running the proceeding. And to my right is my advisor, Galen Lemei.

At this point we'll take introductions from the parties beginning with Commission Staff.

MR. BABULA: My name is Jared Babula; I'm Staff Counsel. And I'm sitting next to Eric Solorio, who is the Project Manager.

PRESIDING MEMBER DOUGLAS: Thank you.

And applicant.

MS. LUCKHARDT: My name is Jane Luckhardt and I'm Project Counsel.

MR. BUSA: My name is Scott Busa; I'm with the Business Development Group of Nextera Energy. And I'm responsible for the overall development of the project.
MR. STEIN: Kenny Stein, Environmental Manager with the Beacon project.

PRESIDING MEMBER DOUGLAS: Thank you.

And are there intervenors?

MS. GULESSERIAN: Good morning. Tanya Gulesserian, Attorney for California Unions for Reliable Energy, intervenor in this proceeding.

Thank you.

HEARING OFFICER CELLI: Tanya, could you please introduce your --

MS. GULESSERIAN: Yes. This is Michael Bias, consultant for CURE.

PRESIDING MEMBER DOUGLAS: Thank you.

Are there any elected officials here today? Could you please --

SUPERVISOR MABEN: Sure. I'm Don Maben, Second District Supervisor, Kern County.

PRESIDING MEMBER DOUGLAS: Thank you.

Are there any governmental agencies here today?

DR. SCHERER: I'm Bob Scherer, Vice President, Rosamond Community Service District.

MS. OVIATT: Lorelei Oviatt, Acting Planning Director of Kern County.

PRESIDING MEMBER DOUGLAS: Thank you.

MR. LaMOREAUX: Dennis LaMoreaux,
Rosamond Community Services District.

HEARING OFFICER CELLI: I'm sorry, I didn't get your name, sir.

MR. STEWART: Jack Stewart, Rosamond Community Services District.

HEARING OFFICER CELLI: Got it, thank you.

MR. BEVINS: I'm Mike Bevins, Public Works Director for the City of California City.

MR. SPEAKER: Elected officials.

PRESIDING MEMBER DOUGLAS: No, we're on government agencies. Are there other government agencies here?

MR. BOOTH: I'm Richard Booth, I'm with Lahontan Water Board.

PRESIDING MEMBER DOUGLAS: Any more government agencies represented here today?

MS. VANCE: Julie Vance, Fish and Game out of Fresno.

MS. HOHMAN: Judy Hohman with Fish and Wildlife Service out of Ventura.

PRESIDING MEMBER DOUGLAS: Very good. And then Jim Davis, the Public Adviser representative, is in the back of the room. Jim, if you could wave your hand. He waved a hand with
a blue card in it, we'll have an opportunity in a
to talk about blue cards.

All right, at this point I'll turn over
the hearing to Hearing Officer Celli to begin the
proceeding.

HEARING OFFICER CELLI: Thank you,
Chairman. Good morning. Can everyone hear me
okay?

I wanted to just first say that we are
also simultaneously webcasting this hearing today.
And there are people who are on the phone who can
hear us, but we can't hear you because I have
muted you until the public comment period. So I
know you're there.

And if you need to you can send me a
chat message, if necessary. But I don't know if
I'm going to be able to get to it immediately.
But just so you know, you will have a chance to
make a public comment later on in the proceedings.

MR. BABULA: Actually, Ken, I have to
ask you. I was going to have the Air District
call in, and so they might be on the line now.
And then also Mark Hesters and Sudath were going
to call in at 10:00 so we could tell them when to
call back for transmission, because I believe we
weren't able to resolve that with CURE. So they're teed up to just have a short discussion on transmission.

HEARING OFFICER CELLI: Thank you, Mr. Babula. I just want you to know that right now I have an A. Brant, Elizabeth Klebanur, Klebanur, I'm sorry, K-l-e-b-a-n-u-r, Casey Box, Rachel Cos was on, but then is off.

And then I have four unnamed callers, which one of whom is probably Rachel, and one of them is Elizabeth Klebanur, because what happens is people hang up and then they call back.

Just so people are aware, it's a lot easier if you actually use the WebEx system, go online as explained in the notice. And then the system will call you, and you won't have to call in. And then we can see that you're on the line and you can raise your hand if you want to make a comment later.

So, all your witnesses will need to do is call in to WebEx -- well, I mean the WebEx will call them. They'll just be another, and they'll identify themselves. And we'll know that they're them.

As to the Public Adviser, Jim Davis, who
is standing in the back holding up these blue cards. If you wish to make a comment today, just go up to see Jim Davis and fill out a blue card. And at the public comment section of our hearings today we will call your names in the order that we receive them.

The evidentiary hearing is a formal adjudicatory proceeding to receive evidence into the formal evidentiary record from the parties. Only the parties, which are in this case the applicant, the intervenor CURE, California Unions for Reliable Energy, and Energy Commission Staff, may present evidence for introduction into the formal evidentiary record, which is the only evidence upon which the Commission may base its decision under the law.

Technical rules of evidence are generally followed. However any relevant, noncumulative evidence may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.

Testimony offered by the parties shall be under oath. Each party has the right to present and cross-examine witnesses, introduce
exhibits and to rebut evidence of another party.

Questions of relevance will be decided by the Committee. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient, in itself, to support a finding under our regulations section 1212, Title 20.

The Committee will rule on motions and objections. The Committee may take official notice of matters within the Energy Commission's field of competence, and of any fact that may be judicially noticed under the California courts.

The official record of this proceeding includes sworn testimony of the parties' witnesses, the reporter's transcript of the evidentiary hearing, the exhibits received into evidence, briefs, pleadings, orders, notices and comments submitted by members of the public.

The Committee's decision will be based solely on the record of competent evidence in order to determine whether the project complies with the applicable law.

Members of the public who are not parties are welcome and invited to observe these proceedings. There will also be an opportunity for the public to provide comment before we close.
this hearing later today, this evening.

Depending on the numbers of persons who
wish to speak the Committee may limit the time
allowed for each speaker. This public comment
period is intended to provide an opportunity for
persons who attend the hearing in person to
address the Committee.

It is not an opportunity to present
written, recorded or documentary materials.
However, such materials may be docketed and
submitted to the Energy Commission for inclusion
in the administrative record.

Members of the public who wish to speak
should fill out a blue card provided by the Public
Adviser. And if you would prefer not to speak
publicly, which you do not have to, but would like
to submit a written comment, the blue card has a
space to do so.

The witness list and the exhibit list
have been distributed to the parties
electronically. And the parties were asked to
bring copies for their use today. We will use
these lists to organize receipt of evidence into
the record.

There are several uncontested topics
identified in the topic and witness list. None of
the parties has filed any objection to submittal
of these topics by declaration.

First, the way that we will proceed is
that we will allow the applicant to offer into
evidence the relevant sections of the AFC, which
is the application for certification. You're
going to hear us talk about the AFC a lot today.
You may hear us talk about the FSA or the SA,
which is the final staff assessment or staff
assessment. So hopefully we'll keep you informed
of the acronyms as they fly by.

But the applicant's evidence is the AFC,
relevant supplements and testimony in support of
the uncontested topics.

Then we will ask staff to offer those
sections of the FSA, final staff assessment, and
supplemental testimony, which constitute their
testimony in support of the uncontested topics.

Finally, CURE. We refer to CURE as
CURE, which is California Unions for Reliable
Energy, C-U-R-E. CURE will offer their evidence
of the uncontested topics in the record.

After that parties may offer their
listed exhibits as to the contested topics into
the evidence.

We will proceed through the uncontested
topics at this time. And applicant and staff's
project managers will be sworn. Marlee, are you
going to swear them in? If you would, just have
Mr. Solorio and Mr. Busa, or is it Mr. Stein? If
you would please stand and be sworn at this time.
Whereupon,

ERIC SOLORIO and SCOTT BUSA
were called as witnesses herein, and after first
having been duly sworn, were examined and
testified as follows:

HEARING OFFICER CELLI: The parties
agree that the following topics set forth in the
application for certification and the final staff
analysis are undisputed; and that evidence and
testimony on these topics shall be solely entered
by declaration.

The order that I'm going to proceed in
is the order that they showed up in our witness
list that we provided at the prehearing
conference.

Executive summary; traffic and
transportation; transmission line safety and
nuisance; facility design; geology and
paleontology; power plant efficiency; air quality; public health; socioeconomic resources; noise and vibration; power plant reliability; worker safety and fire protection and land use.

So those are the topic areas that are uncontested by the parties, and we're going to accept that evidence by way of declaration.

We would move first with the applicant.

If I could just have a moment so I can get your list out. Applicant, do you wish to move evidence into the record at this time with regard to executive summary?

MS. LUCKHARDT: Applicant moves exhibit number 1, 58, 77, 93, 124, 125, 279, 289, 309 and 322 all on executive summary into the record at this time.

HEARING OFFICER CELLI: Any objection, staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Any objection from CURE?

MS. GULESSERIAN: No objection.

HEARING OFFICER CELLI: I'm just going to ask, please, Ms. Luckhardt, if you wouldn't mind, for the record saying exhibit 1 is AFC
section 1 executive summary. Exhibit 2 or exhibit 58 is slide presentation. And just a quick identifier so we know in the record what those exhibits are.

MS. LUCKHARDT: Trying to be efficient.

HEARING OFFICER CELLI: And I --

MS. LUCKHARDT: Would you like me to go back through that?

HEARING OFFICER CELLI: -- I'd greatly appreciate it, but that's how we should --

MS. LUCKHARDT: Do you want me to go back through that?

HEARING OFFICER CELLI: That's great.

MS. LUCKHARDT: Exhibit 1 is AFC section 1; exhibit 58 is the slide presentation from the informational hearing; exhibit 77 are the responses to questions from Rancho Seco residents set 1; exhibit 93 is responses to questions from Rancho Seco residents set 2; 124 is the PSA comments, the introduction.

Exhibit 125 are the PSA comments, executive summary; 279 is the declaration of Kenneth Stein; exhibit 289 is declaration of Meg Russell; exhibit 309 is the declaration of Scott Busa; and exhibit 322 is the declaration of
Kenneth Stein on overriding considerations.

HEARING OFFICER CELLI: Thank you.

Exhibit 1, 58, 77, 93, 124, 125, 279, 289, 209 and 309 for identification are received into evidence.

Next is traffic and transportation.

MS. LUCKHARDT: Are you going to move staff individually by subject area, or are you going to do it --

HEARING OFFICER CELLI: Staff has how many? You have about six exhibits?

MR. BABULA: Well, we've got those. Exhibit 500 would be the FSA. And then these other, it's going to be off now, 500 is the FSA, so that could just come in, because that's all declaration all at once, or for the components that aren't in contention.

HEARING OFFICER CELLI: I have 500 is the FSA; 501 is the soil and water; 502 is bio; 503 is cultural; 504 is HTF, fluid leak prevention.

MR. BABULA: Right, but that's --

HEARING OFFICER CELLI: And 505 is visual, correct?

MR. BABULA: Right. Well, the 504, I believe, is part of the HTF, which is contested,
so that wouldn't come in in this initial part here.

These other ones I have witnesses to sponsor, but these became post-FSA, so there's no -- I'm not sure how you wanted to do --

HEARING OFFICER CELLI: You have declarations?

MR. BABULA: Well, I do in the FSA, but these were supplemental. If you want to just use the same declaration for the parts that were modifications to the conditions of certification, then we can go ahead and just incorporate it through the declarations and the authors. I wasn't sure.

Now, 504 there is a declaration for Geoffrey Lesh, so that could come in. And then 505 has a declaration. So we're okay there. 506, I have the Cal City and Rosamond people here to sponsor exhibit 506.

So I was going to do it when we get to each section, since those people would be up here.

HEARING OFFICER CELLI: At this time is there any objection from staff to the receipt of exhibit 500 into the record, I'm sorry, from applicant?
MS. LUCKHARDT: Applicant has no objection.

HEARING OFFICER CELLI: CURE, any objection to 500?

MS. GULESSERIAN: CURE has no objection.

HEARING OFFICER CELLI: Okay, at this time 500 has been received into evidence. That is the final staff assessment received into evidence. Anything else we can take care of efficiently right now that's not contested and has a declaration supporting it?

MR. BABULA: Well, 501, 502, 503, which would be changes that we agreed to with the applicant and with the conditions of certification of those areas, there's been other more recent versions of them which we discussed at the prefiling conference. We would just kind of stipulate with the applicant when we agreed with. So I wasn't exactly sure how you wanted to handle those.

HEARING OFFICER CELLI: Here's what I'm thinking of doing. In the interests of time, then, is there a motion by staff to conditionally introduce exhibits 501 through 505. And what we will do then is I'm planning on receiving that...
evidence subject to objection later as we get into those topic areas.

So, is that your motion?

MR. BABULA: I could make that motion, yeah.

HEARING OFFICER CELLI: Please do.

MR. BABULA: Okay, I would make a motion to receive exhibits 501, 502, 503, 504, 505 and 506 into the record. And then --

HEARING OFFICER CELLI: What is exhibit 506?

MR. BABULA: That would be, 506 is the proposal from California City and the Rosamond. It's the docketed material that had been submitted to the dockets over the last year regarding the proposed cost and alignment of the different recycled water options.

HEARING OFFICER CELLI: Applicant, any objection to exhibits 501, 502, 503, 504, 505 and 506 being entered into evidence at this time?

MS. LUCKHARDT: We have no objection.

HEARING OFFICER CELLI: CURE, any objection to exhibits 501, 502, 503, 504, 505 and 506 being received into evidence at this time?

MS. GULESSERIAN: CURE has no objection.
HEARING OFFICER CELLI: Thank you. Exhibits 500, 501, 502, 503, 504, 505 and 506 will be received and are received into evidence. We are now on traffic and transportation. Applicant.

MS. LUCKHARDT: Applicant moves exhibit numbers 17, section 5.3 of the AFC; exhibit number 118, the preliminary PSA comments on traffic and transportation; exhibit number 143, the actual PSA comments on traffic and transportation; exhibit 173, section of the project design refinements, section 1.4.6. Exhibit 180, project design refinements, section 4.2.4.

Exhibit 252, declaration of Duane McCloud; exhibit 267, declaration of Jared Foster; exhibit 278, declaration of John Wilson.

HEARING OFFICER CELLI: CURE, any objection to exhibits 17, 118, 143, 173, 180, 252, 267 and 278 being admitted into evidence?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Staff, any objection to 17, 118, 143, --

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you.
Exhibits 17, 118, 143, 173, 180, 252, 267 and 278 for identification are received into evidence under the topic of traffic and transportation. Thank you.

Transmission line safety and nuisance.

MS. LUCKHARDT: The applicant moves exhibit 18, AFC section 514; exhibit 44, AFC appendix K-2; exhibit 67, response to CEC data requests 50 through 53; exhibit 76, supplemental response to data requests 50 to 52, with attachment DR-50.

Exhibit 192, the project design refinements, figure 6; exhibit 255, declaration of Duane McCloud; exhibit 313, declaration of Scott Busa; exhibit 320, declaration of Steve Richards; exhibit 334, I think we will probably bring in under transmission system engineering unless there's no objection to bringing that in at this time.

HEARING OFFICER CELLI: CURE, any objection to 334 coming in at this time?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Very good. And 18, 44, 67, 76, 192, 255, 313 and 320, any
objection by CURE?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Staff, any objection to those?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you, at this time 18, 44, 67, 76, 192, 255, 313, 320 and 334, marked for identification, are now received into evidence as exhibits 18, 44, 67, 76, 192, 255, 313, 320 and 334.

Facility design.

MS. LUCKHARDT: In the area of facility design, applicant moves exhibit number 26, the AFC appendix C-1; exhibit 27, AFC appendix C-2; exhibit 28, AFC appendix C-3; exhibit 29, AFC appendix C-4; exhibit 30, AFC appendix C-5; exhibit 31, AFC appendix C-6.

Exhibit 95, email from Kenny Stein; exhibit 98, email from Kenny Stein dated 12/22/08; exhibit 101 is another email from Kenny Stein dated 1/13/09.

Exhibit 147, the PSA comments on engineering; exhibit 149, the PSA comments on general conditions; exhibit 154, the project
design refinement section 1 and section 5; exhibit 155, the project design refinement section 2.1.

Exhibit 157, project design refinement section 2.1.2; exhibit 158, project design refinement section 2.1.3; exhibit 159, project design refinement section 2.1.5; exhibit 160, project design refinement section 2.1.6.

Exhibit 161, project design refinement section 2.1.7; exhibit 162, project design refinement section 2.1.8; exhibit 165, project design refinement section 2.2.

Exhibit 190, project design refinement figure 3; exhibit 191, project design refinement figure 5; exhibit 196, project design refinement attachment 2; exhibit 197, project design refinements attachment 3.

Exhibit 239, declaration of Bob Anders; exhibit 244, declaration of Dan Sampson; exhibit 256, declaration of Duane McCloud; exhibit 264, declaration of Janine Forrest; exhibit 270, declaration of Jared Foster; exhibit 286, declaration of Kenneth Stein.

Exhibit 311, declaration of Scott Busa on facility design. And exhibit 316, which is another declaration of, or declaration of Scott
Stern on facility design; exhibit 319, declaration of Steve Richards on facility design.

HEARING OFFICER CELLI: Thank you. Any objection to any of those exhibits marked for identification by CURE?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Any objection from staff on the exhibits for facility design?

MR. BABULA: No, no objections. I would like to make a suggestion. Staff and the applicant have resolved all our issues. And I would accept all these things coming in, instead of doing one by one. Can we just --

HEARING OFFICER CELLI: I just need to get it and have them in the record so we can stamp them.

MR. BABULA: Can we just submit the exhibit list and say they were all admitted, unless CURE has a specific objection to one?

HEARING OFFICER CELLI: Actually, you know, I have to make the transcript. So it's got to be in the transcript.

MR. BABULA: Okay.

HEARING OFFICER CELLI: So, my
apologies. And everyone, your patience is noted.

I have to put it in the record.

So, with that, the exhibits marked for identification 26, 27, 28, 29, 30, 31, 95, 98, 101, 147, 149, 154, 155, 157, 158, 159, 160, 161, 162, 165, 190, 191, 196, 197, 239, 244, 256, 264, 270, 286, 311, 316 and 319 are received into evidence.

Geology and paleontology.

MS. LUCKHARDT: Applicant moves exhibit 9, AFC section 5.5; exhibit 24, AFC appendix B.1; exhibit 25, AFC appendix B.2; exhibit 54, the data adequacy supplement on geological hazards; exhibit 236, declaration of Bob Anders; exhibit 293, the declaration of Mike Flack. And that should be, on 293, one of the corrections that we found on Friday was it should say geology, not geoarchaeology. It's just simply a typographical error.

HEARING OFFICER CELLI: Okay. And then we have paleontology on page 8 of your last --

MS. LUCKHARDT: In the area of paleontology, applicant moves exhibit number 13, AFC section 5.9; exhibit number 39, AFC section H, or appendix H; exhibit 148, the PSA comments on
geology and paleontology; exhibit 201, the project
design refinements, attachment 4-D; exhibit 241,
declaration of Kara Pasetti; exhibit 284,
declaration of Kenneth Stein.

HEARING OFFICER CELLI: Any objection to
these exhibits by CURE?

MS. GULESSERIAN: CURE has no
objections.

HEARING OFFICER CELLI: Any objection by
staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Exhibits marked
for identification 9, 24, 25, 54, 236, 293, 13,
39, 148, 201, 241, 284 are received into evidence.

Power plant efficiency.

MS. LUCKHARDT: For power plant
efficiency applicants' exhibits in this area are
contained within project description and facility
design.

HEARING OFFICER CELLI: Okay. So that
means that when we get to, we've already received
facility project description. Or not project
description if there was an issue but executive
summary. So those were received in the executive
summary. And then there's going to be others
under project description?

MS. LUCKHARDT: Correct.

HEARING OFFICER CELLI: Air quality.

MS. LUCKHARDT: Okay, under air quality applicant moves exhibit 6, AFC section 5-2; exhibit 33, AFC appendix E; exhibit 34, AFC appendix E-4; exhibit 50, the application for the final determination of compliance.

Exhibit 51, the data adequacy supplement on air quality; exhibit 60, responses to CEC data requests 1 through 3 and 7 through 12; exhibit 61, responses to CEC data request, attachment DR-10; exhibit 72, supplemental responses to CEC data request 4, 5, 6 and 12, and attachment DR-5.

Exhibit 96, the email from Sara Head to Will Walters, dated 12/12/08; exhibit 99, construction greenhouse gas calculations; exhibit 113, the preliminary PSA comments on air quality; exhibit 128, the PSA comments on air quality.

Exhibit 163, the project design refinements section 2.1.9; exhibit 170, project design refinements section 4.1.1; exhibit 176, project design refinements section 4.2.1; exhibit 204, project design refinements attachment 7-A; exhibit 205, project design refinements attachment
7-B; exhibit 206, project design refinements attachment 7-C; exhibit 207, project design refinements attachment 7-D.

Exhibit 209, air modeling files; exhibit 211, revised application for final determination of compliance; exhibit 212 is something that was not filed in the proceeding, so we are not offering it into evidence.

Exhibit 214, response to air quality questions from a workshop; exhibit 232 is the Kern County Air Pollution Control District revised final determination of compliance.

Exhibit 247, a declaration of Duane McCloud on air quality; exhibit 259, the declaration of Glenn King in air resources; exhibit 261, the declaration of Howard Valentine; exhibit 281, the declaration of Kenneth Stein in air quality; exhibit 301, the declaration of Russ Kingsley. There are two of these, this is the first one on air quality. Exhibit 302 is another declaration of Russ Kingsley on air quality.

We also have two from Sara Head, 305 is the first declaration of Sara Head on air quality. And exhibit 306 is the second declaration from Sara Head on air quality.
HEARING OFFICER CELLI: Thank you. Any objection to these exhibits from CURE?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Any objection from staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Very well, exhibits marked for identification 6, 33, 34, 50, 51, 60, 61, 72, 96, 99, 113, 128, 163, 170, 176, 204, 205, 206, 207, 209, 211, 214, 232, 247, 259, 261, 281, 301, 302, 305 and 306 will be admitted into evidence.

And 212 was withdrawn by the applicant.

Public health.

MS. LUCKHARDT: In public health, applicant offers exhibit 14, AFC section 5-10; exhibit 138, the PSA comments on public health; exhibit 139, the PSA comments, attachment public health-1, which is the health risk assessment.

Exhibit 177, the project design refinements section 4.2.1.2; exhibit 260, the declaration of Greg Wolf; and exhibit 307, the declaration of Sara Head on public health.

HEARING OFFICER CELLI: Any objection to
these exhibits, CURE?

MS. GULESSERIAN: CURE has no objection.

HEARING OFFICER CELLI: Staff, any objection?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Exhibits marked for identification 14, 138, 139, 177, 260 and 307 will be received into evidence.

Socioeconomic resources.

MS. LUCKHARDT: In the area of socioeconomics, applicant offers exhibit number 15, AFC section 511; exhibit number 56, data adequacy supplement on socioeconomics; exhibit number 65, responses to CEC data requests 36 through 42; exhibit 81, responses to CEC data requests 81 through 92; and exhibit 234, the declaration of Addie Olazabal on socioeconomics.

HEARING OFFICER CELLI: Any objection to these exhibits, CURE?

MS. GULESSERIAN: CURE has no objection.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you. At this time exhibits marked for identification 15, 56, 65, 81 and 234 will be received into evidence.
Next we have --

MS. LUCKHARDT: Noise and vibration.

HEARING OFFICER CELLI: Noise and vibration.

MS. LUCKHARDT: Applicant offers in the area of noise and vibration exhibit 12, AFC section 5.8; exhibit 117, the preliminary PSA comments section 2-E; exhibit 137, the PSA comments on noise; and exhibit 250, the declaration of Duane McCloud on noise.

HEARING OFFICER CELLI: Any objection, CURE?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Exhibits marked for identification 12, 117, 137 and 250 will be received into evidence.

Power plant reliability.

MS. LUCKHARDT: In the area of power plant reliability those areas are covered within applicant's testimony on facility design and project description.

HEARING OFFICER CELLI: Okay. Worker
safety and fire protection.

MS. LUCKHARDT: In the area of worker safety the applicant offers exhibit number 22, AFC section 5-18; exhibit number 146, the PSA comments; exhibit number 183, the project design refinements section 4.2.7; exhibit number 228, the PSA comments, attachment worker safety-1; exhibit 254, the declaration of Duane McCloud on worker safety; exhibit number 269, the declaration of Jared Foster on worker safety; and exhibit number 292, the declaration of Mike Arvidson on worker safety.

HEARING OFFICER CELLI: CURE, any objection to the exhibits?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Staff, any objection?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Very well, exhibits marked for identification 22, 146, 183, 228, 254, 269 and 292 are received into evidence.

Land use.

MS. LUCKHARDT: Applicant offers the following exhibits in the area of land use.
Exhibit number 11, AFC section 5.7; exhibit number 46, AFC appendix K-4; exhibit number 47, AFC appendix K-5; exhibit number 55, the data adequacy supplement on land use.

Exhibit number 57, correspondence from Kern County Planning Department, dated 5/1/08; exhibit 111, the boundary survey sheets; exhibit 122, the Kern County Resolutions approving the land use applications; exhibit 136, the PSA comments on land use.

Exhibit 213, the application for lot line adjustment; exhibit 223, the response to letter from John Musak.

Exhibit 249, the declaration of Duane McCloud on land use; exhibit 275, the declaration of Jerry McLees on land use; exhibit 283, the declaration of Kenneth Stein on land use; exhibit 312, the declaration of Scott Busa on land use.

HEARING OFFICER CELLI: Thank you. Any objection to these land use exhibits from CURE?

MS. GULESSERIAN: CURE has no objection.

HEARING OFFICER CELLI: From staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Thank you.

Exhibits marked for identification 11, 46, 47, 55,
are received into evidence at this time.

Now, folks, what we just did was we took
in a whole lot of evidence without having to hear
people testify about it. That was hugely
efficient and I appreciate your sitting through
that.

And you also have to appreciate, just in
listening to the titles of some of these exhibits,
just how complicated this process is and what
needs to be done in order to get a power plant put
in, even a solar power plant in California.

I have a question, since those were the
uncontested topics as of the time of our
prehearing conference a week ago. Are there any
new uncontested topics that were worked out or
resolved in the meanwhile? Applicant?

MS. LUCKHARDT: Yes. Per your direction
we met with staff and resolved outstanding
concerns on conditions of certification regarding
cultural resources. And we believe that that can
be taken by declaration at this time.

HEARING OFFICER CELLI: Any objection,
CURE?

MS. GULESSERIAN: CURE has no objection.
HEARING OFFICER CELLI: Staff, any objection to taking cultural by declaration?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Thank you. With that then, the applicant, please introduce your exhibits with regard to cultural.

MS. LUCKHARDT: The applicant moves exhibit number 8, AFC section 5.4; exhibit number 37, AFC appendix G.1; exhibit number 38, AFC appendix G.2; exhibit number 53, the data adequacy supplement on cultural resources; exhibit 64, responses to CEC data requests 26 through 35 with attachments; exhibit 74, supplemental response to data requests 30, 32, 34 and 35 with attachments DR-34 and DR-35.

Exhibit 80, responses to CEC data requests 79 through 80; exhibit 85, supplemental response to data requests 30, 32 and 34 with attachment DR-35; exhibit 91, and this is the confidential workshop response to data request 34.

Exhibit 104, the geoarcheology trenching plan; exhibit 107, preliminary results from the geoarcheology study, supplemental response to data request 34; exhibit 112, the email response to request for clarification on resource evaluations.
Exhibit 115, the preliminary PSA comments, section 2-C; exhibit 123, land form structure and archeological sensitivity in the Beacon Solar Energy Project area. That's a report.

Exhibit 132, the PSA comments on cultural resources; exhibit 133, the PSA comments attachment Cul-1; exhibit 134, the PSA comments attachment Cul-2; exhibit 200, the project design refinements attachment 4-C; exhibit 215, response to request regarding Beacon Solar Energy Project subsurface investigations dated 7/22/09.

Exhibit 242, the declaration of Craig Young; exhibit 300, the declaration of Rebecca Apple; exhibit 329, the rebuttal testimony of Rebecca Apple; exhibit 330, the rebuttal testimony of Kevin Stein; exhibit 331, the rebuttal testimony of Duane McCloud.

Applicant would also like to offer exhibit 339, which is the revised recommended conditions for certification that were agreed upon with Commission Staff, with one correction. And the correction, there's one additional sentence that needs to be added.

That sentence needs to be added to
If you turn to page cultural-21, at the bottom of the first full paragraph. The first full paragraph begins with "Full-time archeological monitoring".

At the end of the underline, the underlined sentence reads, "Where scrapers are used for excavation, full-time archeological monitoring shall require one monitor to observe the placement of and inspect dump material for every four monitors observing excavation."

The new sentence should read, "For excavation areas where scrapers are not used for excavation, one monitor shall both observe the location of active excavation and inspect the dumped material."

Would you like me to read that a second time?

HEARING OFFICER CELLI: Please.

MS. LUCKHARDT: "For excavation areas where scrapers are not used for excavation, one monitor shall both observe the location of active excavation and inspect the dumped material."

Would you like me to read that a second time?
HEARING OFFICER CELLI: Please.

MS. LUCKHARDT: "For excavation areas where scrapers are not used for excavation, one monitor shall both observe the location of active excavation and inspect the dumped material."

HEARING OFFICER CELLI: Thank you.

MS. LUCKHARDT: Period. I'm sorry.

HEARING OFFICER CELLI: Is that all for cultural?

MS. LUCKHARDT: That is everything we have for cultural.

HEARING OFFICER CELLI: Any objection, CURE?

MS. GULESSERIAN: CURE has no objection.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Very well. You know, you may need to keep the metal away from that thing. So keep your metal pen away from that mic, please.

MR. BABULA: It's probably plastic.

(Laughter.)

HEARING OFFICER CELLI: Maybe it's your cuff links or watch.

MR. BABULA: Yeah.
HEARING OFFICER CELLI: I don't know.

MR. BABULA: It's my Rolex.

(Laughter.)

MR. BABULA: My plastic one.

HEARING OFFICER CELLI: Cultural resources. So this is now an uncontested area. Exhibits marked for identification 8, 37, 38, 53, 64, 74, 80, 85, 91, 104, 107, 112, 115, 123, 132, 133, 134, 200, 215, 242, 300, 329, 330 and 331 will be received into evidence.

MS. LUCKHARDT: Will 339 also be received?

HEARING OFFICER CELLI: And 339 will be received into evidence.

MS. LUCKHARDT: Thank you.

HEARING OFFICER CELLI: So, thank you very much. We do appreciate that. Is there anything else that we can take in that's uncontested?

MS. LUCKHARDT: The other two areas where we were able to resolve conditions of certification were in water resources and biological resources. Both of which, we understand, are contested and so should probably appropriately be brought in at that time.
HEARING OFFICER CELLI: Thank you.
CURE, did you have any uncontested evidence to
bring in at this time?

MS. GULESSERIAN: We do not. At your
direction we did attempt to meet with the parties
on the issue areas you addressed in the prehearing
conference. We were not able to reach resolution
on those issues.

HEARING OFFICER CELLI: Thank you very
much. So, with that, now we've received all the
evidence from applicant, staff and CURE on
uncontested matters.

We are now going to move to disputed
topics. The following topics were considered and
disputed at the prehearing conference. The
Committee will receive evidence in the form of
written and live testimony, cross-examination and
documentary evidence now, unless the parties are
prepared to stipulate to testimony by declaration.

The order that we would proceed in
today, let me find my note on that, was biology
would go first. There was a request that we
insert transmission systems engineering right
after biology so that we can make sure everybody's
witnesses are here. Yes, that's uncontested by
CURE.

And then we would go with soil and water. Is that what you --

MR. BABULA: That would be soil and water after bio.

HEARING OFFICER CELLI: I'm sorry, say again?

MS. LUCKHARDT: We have -- go ahead.

MR. BABULA: Okay, well, we were going to do bio first, and then go to soil and water.

HEARING OFFICER CELLI: That was the plan.

MR. BABULA: Right.

HEARING OFFICER CELLI: There was a request by applicant to insert visual because there was a problem with your witnesses actually.

MS. LUCKHARDT: Yeah, we have witness availability issues today with visual resources. And we moved that witness from Tuesday at the request of the Hearing Officer to see if we could hear all topics today. But there are constraints because he must fly out from LAX at 6:00 tonight.

MR. BABULA: I think Mark Hamblin will be here, but probably more like around 12:00. I think he took the eight, so he'll get in at ten.
and drive here.

HEARING OFFICER CELLI: That's fine.

Biology's going to take a little time. And we took up almost an hour just getting in the uncontested evidence. And so it seems like that will probably work if there's no objection to taking visual between soil and water and biology.

CURE?

MS. GULESSERIAN: There's no objection to taking visual. I think I misunderstood that transmission system engineering --

HEARING OFFICER CELLI: I'm sorry.

MS. GULESSERIAN: Okay. Thank you.

HEARING OFFICER CELLI: Keep me honest, I might be thinking one thing and saying another. I meant visual.

MS. GULESSERIAN: CURE has no objection to that.

HEARING OFFICER CELLI: And if need be, what I would do then is receive the applicant's testimony on visual and then if staff's witness isn't here yet we'll take other evidence and reopen visual for your purposes and proceed out.

MR. BABULA: Okay, actually our biologist just got called to do, I think she's on
the phone with Ivanpah right now.

HEARING OFFICER CELLI:  Okay.

MR. BABULA:  So, --

MS. LUCKHARDT:  Do you want us to start

with visual?

HEARING OFFICER CELLI:  Do you need to

have your biologist here right now or is she

testifying on the phone right now?

MR. BABULA:  I think so.  What exactly

did you --

PRESIDING MEMBER DOUGLAS:  She just got
called for cross-examination for some issue in

Ivanpah so she had to step out.

HEARING OFFICER CELLI:  Well, staff,

what's your feeling?  I'm ready to proceed, I'd

like to proceed on biology.  Do you think you're

okay to proceed without your biologist sitting

here for the applicant's presentation?

MR. BABULA:  I think she wanted to hear

the applicant's presentation.  So what about soil

and water?

HEARING OFFICER CELLI:  Does anyone have

a problem if we start with soil and water instead?

MS. LUCKHARDT:  The only problem is then

we'll have to do visual before we get into
biology, because we'll run out of time.

HEARING OFFICER CELLI: Tell you what --

MR. BABULA: Do you want to do --

HEARING OFFICER CELLI: Visual isn't
even contested by CURE, so why don't you put on
your visual guy right now.

MR. BABULA: Yeah, let's do visual right
now.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: And then we
can --

MR. BABULA: When Mark gets here he
could do his part.

HEARING OFFICER CELLI: Okay. You know
what also, Jared, you have brass buttons.

MR. BABULA: And we do have a --

(Pause.)

HEARING OFFICER CELLI: Okay, so we're
going to proceed with visual resources, which is a
disputed topic area.

Before we proceed with visual I'm going
to ask the applicant if you're going to move any
documentary evidence in, that we do so. Or
actually, let's just take the testimony.

MS. LUCKHARDT: Yeah, it'll go with the
HEARING OFFICER CELLI: Okay, very well.

MS. LUCKHARDT: Applicant calls Merlyn Paulson to testify on visual resources. We would also like to have Kenny Stein sworn at this time, since Kenny was responsible for the environmental analysis done on this project and may be needed to call to testify at any point today.

HEARING OFFICER CELLI: Thank you. Please rise and raise your right hand.

Whereupon, MERLYN PAULSON and KENNETH STEIN were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

HEARING OFFICER CELLI: Please proceed with your first witness.

MS. LUCKHARDT: Okay.

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q Mr. Paulson, are your qualifications included in the record at exhibit 209?

MR. PAULSON: Yes.

MS. LUCKHARDT: And are you sponsoring today exhibits numbered 19, AFC section 515; 119,
MR. PAULSON: Yes.

MS. LUCKHARDT: In addition, applicant is requesting that the following exhibits be entered by declaration. That would be exhibit 233, which is an email from BLM; exhibit 240, which is the declaration of Brian Storm on visual; exhibit 285, which is the declaration by Kenny Stein; and exhibit 323, which is the declaration of Jody Salamacha-Hollier, who took the photographs. It explains how she took the photographs.

I don't believe any of those issues are issues of contention at this time where we need the individuals present. So I believe we can
enter those by declaration.

HEARING OFFICER CELLI: Any objection, CURE?

MS. GULESSERIAN: CURE has no objections.

HEARING OFFICER CELLI: Staff, any objection?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Okay, let me make sure I have this right. Exhibits for identification marked 19, 119, 144, 164, 174, 181, 233, 240, 285, 290 and 323 are moved in by applicant at this time. And will be received into evidence. Did I get it right?

MS. LUCKHARDT: In addition to 119, the preliminary PSA comments, and 324, the rebuttal testimony of Merlyn Paulson.

HEARING OFFICER CELLI: And any objection, CURE, to 119 and 324?

MS. GULESSERIAN: No objections.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Very well, exhibits marked for identification as 119 and 324 are received into evidence.
MS. LUCKHARDT: Mr. Paulson, do you have any corrections to your testimony at this time?

MR. PAULSON: No.

HEARING OFFICER CELLI: Mr. Paulson, I'm going to ask you to slide your mic closer to you so you can speak right into it, okay.

MS. LUCKHARDT: And, Mr. Paulson, where your testimony includes opinion, is it your best professional judgment?

MR. PAULSON: Yes, it is.

MS. LUCKHARDT: And where your testimony includes facts, are they true and correct?

MR. PAULSON: Yes.

MS. LUCKHARDT: And can you please briefly describe your qualifications in the area of visual resources?

MR. PAULSON: Yes.

HEARING OFFICER CELLI: Before he does, I'm just wondering if that evidence is already in the declaration somewhere. And I wonder if the parties will be willing to stipulate?

MS. LUCKHARDT: It is.

HEARING OFFICER CELLI: Visual actually.

MS. LUCKHARDT: It is already in the there.
HEARING OFFICER CELLI: In which exhibit?

MS. LUCKHARDT: It would be in exhibit 290.

HEARING OFFICER CELLI: So in light of the fact that Mr. Paulson's qualifications are contained completely in exhibit 290, does CURE have any objection to this witness? Would you be willing to stipulate to his expertise?

MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: And, staff, would you be willing to so stipulate?

MR. BABULA: Yeah, that's fine. We'll stipulate.

HEARING OFFICER CELLI: Thank you. So with that, I would appreciate it if we can just move into the heart of the matter.

MS. LUCKHARDT: Okay. Mr. Paulson, can you please provide the Committee with an understanding of the physical setting of the project, the project impacts, and how you reached your conclusion that Beacon will not cause a significant adverse impact?

MR. PAULSON: I intend to show, to demonstrate that the visual environment of KOPs,
or key observation points 2 and 6, and you see 6 right there and 2 right there.

Two is the Jawbone Canyon Visitors Center. Six is a trail in the, on BLM lands.

HEARING OFFICER CELLI: And for the record, you are pointing to a map which has been marked as exhibit what?

MS. LUCKHARDT: Exhibit 324.

HEARING OFFICER CELLI: Thank you. So, when you say there, if you wouldn't mind saying on exhibit 324 that which is marked, you know, Jawbone Canyon.

MR. PAULSON: And say that again now?

HEARING OFFICER CELLI: That's fine. I just, when you state "there" in the record and people are reading the transcript later, it doesn't mean anything because they don't know what "there" is.

MR. PAULSON: Okay.

HEARING OFFICER CELLI: So, now we know that "there" is exhibit 324, which appears to be what, a map?

MR. PAULSON: Exhibit 324 is an aerial photograph with the project and key observation points superimposed.
HEARING OFFICER CELLI: Thank you very much.

MS. LUCKHARDT: And just for the record, I guess I would clarify that these are PowerPoint slides that are included in 324 that he will be going through. And he can reference slide number as a way to indicate which slide he's on.

HEARING OFFICER CELLI: Perfect. Thank you very much. Please proceed.

MR. PAULSON: Okay. I intend to demonstrate the visual environment of KOPs 2 and 6; and to show the extensive development, large-scale development and geometric patterns on the earth.

Next slide, please. This is a slide, the slide is number 3, even though it isn't for some reason on this slide now.

MR. STEIN: It's up there; in the lower left.

MR. PAULSON: Oh, it's in black, I see, I'm sorry. And this is from Pine Tree Canyon Road, and it is one of the ways to get to KOP-6. This is the transfer station that exists out there now.

Next slide, please. This is obviously
the road and the Los Angeles Aqueduct Pipeline
that crosses all of the roads and trails leading
into BLM land.

Next slide, please. The pipeline,
again, the transmission line. And what's more
important is this is Chuckwalla Mountain, the
large mountain that is approximately two miles
west of KOP-6, which is a ways off the slide here
to the right.

Next slide, please. The road near the
trailhead has this view. First of all of the
transfer station in the foreground, the
transmission lines. And then the disturbed area
that you see is the project area, the project
site.

The band of green in the background is
the Honda Proving Center Test Track. The project
site is identifiable from the ground and from the
air because of its disturbance pattern and the
fact that it's essentially just sand out there.

Next slide, please. This is an
abandoned homestead foundation. A tree on the
left that casts a shadow just off the slide. And
it's representative of the character of the
trailhead.
Next slide, please. This is representative of the very large amount of dumping that's gone on on those BLM roads and trails. And this is a very large tank that someone just sort of stashed here rather than taking it to the landfill.

Next slide, please.

HEARING OFFICER CELLI: Mr. Paulson, I'm sorry, I may have missed this, but is there a name to this trailhead?

MR. PAULSON: No, there isn't. None of the trails are named in that area.

HEARING OFFICER CELLI: Thank you.

MR. PAULSON: More of the same. This is accompanied -- things like this are accompanied by hundreds and thousands of shell casings along the trails.

Next slide, please. Same for this.

This is slide 10, and it shows, in this case, a bedspring that someone thought would be easier to put here than in the local dump.

Again, the project area. You see that the project area is this rectangle, this geometric pattern. Again, highly visible. It's a landmark in the area from both the ground and the air.
Next slide, please. In this case the slide 12, the Honda Proving Center Track and the project area in the foreground. That corner that you see will be a common identifying element in the later slides. And you can see the graded and drained land removed of vegetation in the project area.

Next slide, please. There are a significant number of sort of random offroad vehicle trails that are not sanctioned by BLM. And those exist in many places throughout the foothills.

Next slide, please. Another example of that on slide 14.

Next slide. Thank you. This is that foundation, again, at the trailhead. And it is opportunity for people to park at this particular trailhead. You can see that it isn't just a hiking trail, that it also includes access to those multiple off-highway vehicles.

In this case, slide 16 shows -- this slide is -- it's not quite dark enough in the room to see well. The transfer station, a community in the background, and then California -- thank you -- and then California City is in the far
background here. The project site is just off to the left. This is part of the experience on the way to the project,

Next slide, please. Again, the project area. You can see how different it is than the surrounding desert, in the foreground and on the right-hand side, the Honda Proving Track in the background. And, again, you will see later in KOP-6 that this is where the array goes in this most disturbed area.

Next slide, please. This is part of the visual environment between KOP-6 and KOP-2. There are numerous instances of abandoned homesteads and so on.

This is the Jawbone Canyon Store obviously from just on the west edge of highway 14, very close to KOP-2.

Next slide, please. This is, slide 20 is the existing environment from KOP-2, the Jawbone Canyon Visitors Center, BLM site. And back here, if you sort of squint your eyes, is that same corner and a ranch that's sort of behind it, disturbed right and left.

Next slide, please. This is the AFC photo of the existing environment from KOP-2. And
the transfer station is back here. That corner is
over on this side. And you can see in the
foreground there highway 14, the railroad. And on
the left-hand side is the corner of the Honda Test
Track.

Next slide, please. This is a
simulation of the project from the engineering
drawings from the project. And, again, it isn't
quite dark enough, but you see a little bit of a
series of roads right here. And then, of course,
the lighter area here. The power block is right
there.

And this is morning sunlight. The sun
has already passed by these arrays, as it would be
seen from KOP-2. And all of this is sort of
fleeting. It's ephemeral. The colors that you
see there are reflected from the sky. And, again,
the sun has passed by this area and eventually
it's going to pass by this area.

And this exact view is sort of a
fleeting moment in time because it's a slide,
because of the requirements of the AFC, this exact
view would maybe last for a half hour at the most.

Next slide, please. This is KOP-6. The
trail that comes up toward KOP-6 is on the side of
this ridge line, on the left-hand side of the ridge line, slide 23. And you can see again the project area, the project site.

There are existing ranch buildings here. There are numerous irrigation equipment just kind of abandoned out on the site, it looks like. And then the desert around the outside. This is identifiable as a geometric pattern, as well as the Honda test track, both from the ground and from the air. I've flown several times now from Inyo-Kern to Los Angeles, and this is identifiable uniquely.

Next slide, please. This is the project superimposed in that rectangular pattern. It's approximately 1200 acres. And by the way, the test track is approximately 2500 acres. So two of these projects would fit inside the test track.

Just off to the left of this is Cohen Lake, and it is right now, because of the color of the sky, the same color as the arrays would be. The sun is now at our back and that's why we see the blue. Up until the time that the sun is at our back, the arrays would be tan in color, and the same color as the desert around it. So it would blend into this rectangular pattern around
Again, this is the power block. The color and texture of the project from this distance is very similar to the colors of the disturbed desert around it.

In terms of the overall look at all of this, and I'll read this quickly for the record, slide 25: Existing views in the general area already have many geometric features and industrial facilities, such as the highway, railroad, storage buildings, transmission lines, aqueduct and Honda Test Track.

Trails to nearby mountains are mostly used by off-highway, offroad vehicles and very few hikers. The FSA's analysis of existing conditions include visual quality, viewer concern, visibility, number of viewers and duration of view. Except for visibility the remaining factors are in the low range from KOP-2 and KOP-6. And the low range of a possible range of low, moderate and high.

The FSA's analysis of the project involves visual contrast, dominance, view blockage and visual change. All of these factors are in the low range from KOP-2 and KOP-6 because of the
disturbance in the area.

In conclusion the Beacon Solar Energy Project should not be considered to have a significant impact to visual resources, based on the criteria presented in the FSA.

Thank you.

MS. LUCKHARDT: And I have two quick follow-up questions.

HEARING OFFICER CELLI: Before you do, can I just ask that the lights go back up.

MS. LUCKHARDT: Two quick follow-up questions. Is this project somewhat unique in that the backs of the arrays will be painted sand color?

MR. PAULSON: Yes, it is.

MS. LUCKHARDT: And did you take the photos that are in the AFC, including the one from the hiking trail?

MR. PAULSON: Yes, I did.

MS. LUCKHARDT: Thank you. I have no further questions.

HEARING OFFICER CELLI: Thank you. This was not a contested area by CURE, but, CURE, do you have any cross-examination of this witness?

MS. GULESSERIAN: No, we do not.
HEARING OFFICER CELLI: Thank you.

Staff, cross?

MR. BABULA: I do have a few questions here.

CROSS-EXAMINATION

BY MR. BABULA:

Q I'm not clear what the relevance is of the garbage in your slides, because the whole issue is from a distance, the contrast of the field.

So the slides showing garbage, to me, are a little misleading. Can you just explain what the purpose is of the very close-up shots? Because you can go to any pristine area and find a can and take a picture of it.

HEARING OFFICER CELLI: I'm just going to ask the attorneys, watch the compound questions. That was about four questions.

MR. BABULA: Right. What's the point of taking pictures of garbage?

MR. PAULSON: One is when one hikes in the area, especially at that slow speed, one is subject to extensive human interactions, interventions with what is otherwise sometimes portrayed as pristine desert. It simply isn't.
MR. BABULA: Okay. And my last question. In your testimony you stated, while the project, itself, would create a substantial visual contrast for a portion of the day. And I take it that was the half-hour slide? Isn't that the problem, though? I mean you have a substantial visual contrast for even if it's a short period. Someone could be out there and it looks completely different.

MR. PAULSON: Yes, those slides represent the worst case --

MR. BABULA: Okay.

MR. PAULSON: -- regardless of how little time.

MR. BABULA: Okay. So if you say that it is a substantial visual contrast isn't that a little contradictory to then conclude that there is no impact?

MR. PAULSON: There are many projects over the last 37 years of work that have a substantial visual contrast, but aren't necessarily significant. There's a difference between contrast and significant.

Every indicator doesn't automatically determine significance if it's in the moderate to
high category.

MR. BABULA: Okay.

MR. PAULSON: So there's a difference between significant and high contrast.

MR. BABULA: Okay. Well, I don't have any further questions.

HEARING OFFICER CELLI: Okay. Chairman Douglas, did you have any questions?

PRESIDING MEMBER DOUGLAS: No.

HEARING OFFICER CELLI: I have a question. I just wanted to make sure that I understood.

Presumably all that trash and debris is a temporary condition, it could be cleaned up if anybody ever decided to do so.

Are you suggesting that it is that condition that reduces this impact to less than significant?

MR. PAULSON: Not just that. No, no. It's on a scale of one-to-ten, I'll just throw out a number, it might be a two or a three. It's part of the environment.

What does reduce the impact to less than significant are the large-scale, intensive geometric patterns that exist out there. And
they're going to exist with or without the project
so then the project kind of blends in to those.

HEARING OFFICER CELLI: Thank you. I
just have another question if it's acceptable to
the parties. I just wanted to, it's been awhile
since I read the visual section. And I do recall
reading that it was from these two KOPs, what was
it 4 and 6?

MR. BABULA: Two and 6.

HEARING OFFICER CELLI: Two and 6, but
for 2 and 6 there would be no visual impacts. But
it was from these KOPs that staff determined that
there were unmitigable impacts. And those are
those grand views that you showed us up there.

What is it in the staff's evidence that
you differ with?

MR. PAULSON: Simply that a moderate-to-
high contrast automatically equates to significant
impact.

HEARING OFFICER CELLI: You feel that it
does not?

MR. PAULSON: In this case I feel that
it does not. And if it was out in pristine desert
I wouldn't feel that way. But we have these
gerometric patterns there that predate the project.
And they're going to be there with or without the project. And that, in my opinion, is cause for saying it's not significant.

HEARING OFFICER CELLI: Thank you. Any rehabilitation?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Any recross, CURE?

MS. GULESSERIAN: No.

HEARING OFFICER CELLI: Recross, staff?

MR. BABULA: No.

HEARING OFFICER CELLI: Since I asked questions it gives you the opportunity to clean up any mess I made.

MR. BABULA: Okay.

HEARING OFFICER CELLI: Applicant, anything further?

MS. LUCKHARDT: We have nothing further.

HEARING OFFICER CELLI: I believe at this time we’ve received all of your evidence with regard to visual?

MS. LUCKHARDT: Can we double-check that exhibit 105 was entered into the record. I thought it was; I'd just like to confirm that.

HEARING OFFICER CELLI: What has now
been received is 19, 105, 119, 144, 164, 174, 181, 233, 240, 285, 290, 323 and 324.

MS. LUCKHARDT: Thank you.

HEARING OFFICER CELLI: Anything further of this witness?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Okay, very good.

Thank you, Mr. Paulson, for your testimony.

MR. PAULSON: Thank you.

HEARING OFFICER CELLI: We are going to leave visual open then until we hear from Mr. Hamblin. Is he here, Mark Hamblin?

MR. BABULA: I don't see him now. I'm also seeing if Susan's here.

HEARING OFFICER CELLI: Did you have another witness on visual?

MR. BABULA: No. I meant Susan Sanders for bio.

HEARING OFFICER CELLI: Oh.

MR. BABULA: So maybe we can move to soil and water.

HEARING OFFICER CELLI: Well, I really wanted to see if we can get to bio. It's 11:20. We've made good progress in that we've taken care of cultural and part of visual.
How much time do you think Mr. Hamblin is going to need?

MR. BABULA: Oh, five, ten minutes. We don't have a slide presentation.

HEARING OFFICER CELLI: Chairman Douglas, do you want to just proceed with soil and water, then? Let's move on to soil and water.

Ladies and gentlemen, just so you're aware, the applicant has the burden of proof, so the applicant goes first. The applicant being Nextera. This is their project, so it's incumbent upon them to explain to us what their information is, what their design is. So they go first.

Soil and water.

(Pause.)

HEARING OFFICER CELLI: Are we doing anything special here with a panel or anything like that?

MS. LUCKHARDT: We have, I believe that we can enter Mr. Busa's testimony by declaration so we could begin with Mike Flack. And then if there are engineering questions, since Mr. McCloud is still in the air, Jared Foster is available if we need to do engineering questions on water at this time.
HEARING OFFICER CELLI: Well, just for the sake of clarity, I have soil and water split into three sections and the amended applicant's exhibit list.

I've got hydrology, I've got soils and I've got water. Are all of these in dispute, soil and water and hydrology?

MR. BABULA: I'm actually not clear why you're having the applicant go first. I believe CURE has the burden, because they have issues with the use of recycled water, or not using recycled water for the construction portion of this. And so they want additional information.

And so I think under 1748 it's their burden.

HEARING OFFICER CELLI: It would be if we have established that there's no controversy between staff and applicant with regard to soil.

MR. BABULA: There isn't any.

MS. LUCKHARDT: There is no conflict.

HEARING OFFICER CELLI: Soil, water or hydrology?

MR. BABULA: No.

MS. LUCKHARDT: No.

MR. BABULA: We've resolved all issues
with the applicant on soil and water.

HEARING OFFICER CELLI: Very good.

Ms. Gulesserian, do you have any objection to, I'm interested in seeing what exhibits I can receive into evidence now that are not controverted of the soils, of the hydrology of the water evidence that applicant's putting in at this time.

MS. LUCKHARDT: I would assume that we could enter in the, at least the exhibits on hydrology and hydraulics. And we may have a separate soil section, as well.

HEARING OFFICER CELLI: Does that ring true for you, Ms. Gulesserian.

MS. GULESSERIAN: Yes. Excuse me. CURE has no objection to entering those documents into the record.

HEARING OFFICER CELLI: When you say, those documents, you're talking about hydrology?

MS. GULESSERIAN: Soil and water and hydrology.

HEARING OFFICER CELLI: Okay, so then what I'm going to do at this time is first go to hydrology and hydraulics. CURE, there's no objection to the receipt of exhibits 63, 75, 82, 150, 152, 156, 194, 210, 217, 218, 237, 257, 273,
Is there any objection from staff?

MR. BABULA: No objection as to those.

HEARING OFFICER CELLI: So, with that is there a motion by applicant?

MS. LUCKHARDT: Applicant moves exhibit 63, the responses to CEC data requests 17 and 43 through 44; exhibit 75, the supplemental responses to CEC data requests 44 and 45 with attachments DR-44 and DR-45; exhibit 82, responses to CEC data requests 93 through 95.

Exhibit 150, materials from the Clumar meeting; exhibit 152, the rerouted wash electronics support files; exhibit 156, project design refinements section 2.1.1; exhibit 194, project design refinements attachment 1-A.

Exhibit 210, email from Jen Guigliano with the electronic support file; exhibit 217, the response to the rerouted wash information request; exhibit 218, the email from Jen Guigliano on the flow 2D models.

Exhibit 237, the declaration of Bob Anders on hydrology and hydraulics; exhibit 257, the declaration of Gerard DiDeo (phonetic) on hydrology and hydraulics; exhibit 273, the
declaration of Jennifer Guigliano on hydrology and hydraulics; exhibit 318, the declaration of Sirkan Momatoglu (phonetic) — hopefully I haven't killed that one — on hydrology and hydraulics. And exhibit 321, the 60 percent hydrology and hydraulic analysis of the rerouted wash.

HEARING OFFICER CELLI: Thank you. And in the absence of objections from any parties, exhibits marked for identification 63, 75, 82, 150, 152, 156, 194, 210, 217, 218, 237, 257, 273, 318 and 321 are received into evidence.

Next we'll go to the soil section.

MS. LUCKHARDT: In the area of soils the applicant moves exhibit number 16, AFC section 5-12; exhibit 49, AFC appendix L; exhibit 66, responses to CEC data requests 45 through 49 and attachment DR-47; exhibit 238, declaration of Bob Anders on soils; exhibit 251, declaration of Duane McCloud on soils; and exhibit 294, the declaration of Mike Flack on soils.

HEARING OFFICER CELLI: Any objection to those exhibits from CURE?

MS. GULESSERIAN: No objection.

HEARING OFFICER CELLI: Any objection from staff?
MR. BABULA: No objection.

HEARING OFFICER CELLI: Thank you. With that, exhibits marked for identification as 16, 49, 66, 238, 251 and 294 will be received into evidence.

And next we go on to water, page 11.

MS. LUCKHARDT: Okay, applicant, would you like me to move our exhibits at this time on water?

HEARING OFFICER CELLI: Please.

MS. LUCKHARDT: Exhibit 21, AFC section 5-17; exhibit 41, AFC appendix J; exhibit 42, AFC appendix J-3-D; exhibit 69, responses to CEC data requests 58 through 70; exhibit 70, responses to CEC data requests attachment DR-63; exhibit 83, responses to CEC data requests 96 through 127; exhibit with the accompanying figures and tables.

Exhibit 84, response to data request 113 and attachment DR-113, the mod flow files; exhibit 86, supplemental responses to CEC data requests 101 through 103, 106 through 109, 112, 114 through 115, 117 through 123 with the attached tables and figures.

Exhibit 94, supplemental data response, workshop responses to CEC data requests 96, 101,
112, 114, 118 and 121 with attachments; exhibit 102, an email responding to CEC request regarding high TDS water dated 1/16/09.

Exhibit 106, a summary of conference call with Lahontan; exhibit 108, a response to the Regional Water Quality Control Board comments on the draft report of waste discharge application.

Exhibit 109, an email dated 2/23/09 with a response to Eric Solorio regarding the sources of groundwater data with an updated J-4 database.

Exhibit 120, the preliminary PSA comments, section 3A; exhibit 140, the PSA comments on soil and water.

Exhibit 141, the PSA comments, the attachment soil and water-1; exhibit 142, the PSA comments with attachment soil and water-2; exhibit 188, the project design refinements, figure 1, attachment 202 project design refinements, attachment 5.

Exhibit 203, project design refinements attachment 6; exhibit 216, response to request for predictive sensitivity groundwater analysis; exhibit 225, it's an email dated 9/11/09 regarding updated construction water impacts.

Exhibit 226, the LADWP's draft initial
study proposed negative declaration on the SAMDA Water Exploration Fremont Valley Ranch Water Management Project; exhibit 227, the Stetson groundwater study; exhibit 231, the DWR well data. Exhibit 243, the declaration of Dan Sampson on water; exhibit 274, the declaration of Jen Guigliano on water; exhibit 295, the declaration of Michael Flack, this is exhibit 1 on water or declaration 1 for Mike Flack. Exhibit 296 is the second declaration from Mike Flack. Exhibit 315, the declaration of Scott Stern on water; exhibit 335, the rebuttal testimony of Michael Flack on water resources; exhibit 336, the rebuttal testimony of Scott Busa on water resources. And exhibit 337 is the revised and recommended condition of certification soil and water-1, and appendix I that were agreed to between the parties last week. Copies were sent out via email. And I believe we also have copies here today if anyone does not have them.

HEARING OFFICER CELLI: Any objection to those exhibits, CURE?

MS. GULESSERIAN: No objection.

HEARING OFFICER CELLI: Any objection,
staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Thank you.

Exhibits marked for identification as 21, 41, 42 to 69, 70, 83, 84, 86, 94, 102, 106, 108, 109, 120, 140, 141, 142, 188, 202, 203, 216, 225, 226, 227, 231, 243, 274, 295, 296, 315, 335, 336 and 337 are received into evidence at this time.

Applicant, call your first witness.

MS. LUCKHARDT: The only witness we believe we need to present today in response to the concerns expressed by CURE is Mr. Flack.

HEARING OFFICER CELLI: Actually, CURE, never mind, we have received your evidence. CURE, the burden is on you at this time because you're challenging its admission. So if you wouldn't mind calling your first witness and having him or her be sworn.

MS. GULESSERIAN: Sure. In the interest of moving things along I could. I don't think that there is a dispute regarding our exhibits being entered into the record. Could we do that ahead of time?

HEARING OFFICER CELLI: Which numbers are those?

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MS. GULESSERIAN: That is --

HEARING OFFICER CELLI: I have 600.

MS. GULESSERIAN: CURE would move to enter into the record 616, testimony of, okay.

HEARING OFFICER CELLI: Let's go back.

MS. GULESSERIAN: Sure.

HEARING OFFICER CELLI: Soil, 612, is it appropriate to enter that at this time? Because we entered applicant's soil already.

MS. GULESSERIAN: Right, we could do that now and --

HEARING OFFICER CELLI: So, let's take it from soil, and then take your soil and water. Before we do, let me just ask this. Applicant, you reviewed all of CURE's exhibits, their seconded amended exhibit list. Do you have any objections to any particular exhibits coming in at all?

MS. LUCKHARDT: We have no objections to CURE's second amended exhibit list. We do have objections to CURE's third amended exhibit list. We have objections to exhibit number 638 and 639, I believe, are the two that deal with soil and water.

HEARING OFFICER CELLI: I have only
CURE's second amended list. And before we move into any new exhibits, are there any objections from the staff as to any of the exhibits listed by CURE in their second amended exhibit list?

MR. BABULA: The second amended one, --

HEARING OFFICER CELLI: And that would include 600 through 631.

MR. BABULA: Okay. If it just goes to 631, that was what they had already presented at the --

HEARING OFFICER CELLI: At the prehearing conference.

MR. BABULA: Yeah, that's fine. We don't object to those.

HEARING OFFICER CELLI: With that, then, I think in the interest of time what I might just do is to have CURE move those exhibits in, and then we'll talk about the subsequent ones, which I don't have.

MS. LUCKHARDT: Are you moving in hazardous materials and biology at this time, as well, or simply water?

HEARING OFFICER CELLI: I'm thinking we might as well enter all of the exhibits now, and this way we're not wondering later whether we
admitted this or that exhibit.

I mean if the parties don't want us to
do that, then I can piecemeal it.

MS. LUCKHARDT: That's fine. You're
going through to 631?

HEARING OFFICER CELLI: Yes.

MS. LUCKHARDT: We have no objection
through 631.

MS. GULESSERIAN: CURE's second amended
exhibit list went through 637.

HEARING OFFICER CELLI: I'm on page 5.

Now this is, oh, I see, 636 and 637 on page 4.

MS. LUCKHARDT: We object to the
admission of 637, the confidential appendix C.

MS. GULESSERIAN: And we haven't moved
to enter that into the record at this time.

HEARING OFFICER CELLI: So, is there,
from applicant, any objection to receipt of
evidence through 636?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Is there any
objection from staff?

MR. BABULA: No.

HEARING OFFICER CELLI: Okay, what I
think we should do in the interest of time, then,
is if you would please, as the applicant just did, identify and give us the exhibit number, what it is. Let's just get them all in and then you got all your documents.

MS. GULESSERIAN: Okay. I'll note that we have additional exhibits, but we can start with these ones and then go on.

HEARING OFFICER CELLI: So we're taking it through 636, please.

MS. GULESSERIAN: Thank you. CURE moves to enter into the record exhibit 600, testimony of Scott Cashen on biological resources; 601, declaration of Scott Cashen; 602, exhibit 1, résumé of Scott Cashen; 603, exhibit 2, California Department of Fish and Game Mojave Ground Squirrel Survey Guidelines.

Exhibit 604, exhibit 3, Gustafson, Jr., State of California, Department of Fish and Game; exhibit 605, exhibit 4, conference call agenda for May 21, 2008 BSEPCEC proceeding; exhibit 606, exhibit 5, AFC bio tech report, figure 11.

Exhibit 607, exhibit 6, the California Burrowing Owl Consortium, burrowing owl survey protocol and mitigation guidelines; exhibit 608, exhibit 7, State of California, Department of Fish...
and Game, Staff report on burrowing owl mitigation.

Exhibit 609, exhibit 8, AFC figure BR-78-1; exhibit 610, exhibit 9, applicant's response to select CURE's comments at CEC's request; exhibit 611, exhibit 10, memorandum from California Department of Fish and Game to California Energy Commission, subject Beacon Solar Energy Project, application for certification.

Exhibit 612, testimony of Matt Hagemann on soil resources and waste management; exhibit 613, declaration of Matt Hagemann; exhibit 614, attachment 1, résumé of Matt Hagemann; exhibit 615, attachment 2, spill reports sites 3 through 7.

Exhibit 616, testimony of David Marcus on transmission engineering and water resources and alternatives. Exhibit 617, declaration of David Marcus; exhibit 618, exhibit 1, résumé of David Marcus; exhibit 619, exhibit 2, LADWP Barren Ridge Renewable Transmission Project.

Exhibit 620, exhibit 3, projection engineering statement of qualifications; exhibit 621, exhibit 4, NRG SCE filing, Exhibit 622, exhibit 5, siting cases; exhibit 623, exhibit 6,
Worley-Parsons, FPLE, Beacon Solar Energy Project
dry cooling evaluation; exhibit 624, exhibit 7,
CPUC 33 percent renewable portfolio standard
implementation analysis, preliminary results.

Exhibit 625, rebuttal testimony of Matt
Hagemann on hazardous materials and waste
management; exhibit 626, declaration of Matt
Hagemann; exhibit 627, attachment 1, hazardous
materials business plan February 23, 2009, LUZ
Solar Partners 3 through 7.

Exhibit 628, attachment 2, material
safety data sheet for Thermal VP-1, May 16, 2009;
exhibit 629, attachment 3, letter from FPL Energy
to RWQCB re: SEGS, 3 HTF spill October 21, 2005.

Exhibit 630, attachment 4, notice of
violation issued by San Bernardino County Fire
Department to FPL Energy; exhibit 631, attachment
5, recycled materials reports FPL Energy to San
Bernardino County Fire Department 2004 to 2005 and
2006 to 2007.

Exhibit 632, rebuttal testimony of
Michael A. Bias on biological resources; exhibit
633, declaration of Michael A. Bias; exhibit 634,
adopted declaration; exhibit 635, exhibit 1,
résumé of Michael A. Bias; exhibit 636, BESP FSA
soil and water resources and alternatives.

HEARING OFFICER CELLI: So at this time
exhibits, there being no objection from any party,
intervenor CURE's exhibits 600 through 636 are
admitted.

Now, did you intend to withdraw 637
today and not admit it?

MS. GULESSERIAN: I'm not prepared to
withdraw it at this time.

HEARING OFFICER CELLI: Maybe we'll hold
off on that. Are there any other exhibits beyond
637 that I'm not aware of at this time?

MS. GULESSERIAN: Yes, there are. These
exhibits were provided to the parties last week
and served on the docket list, service list. I'm
trying to, shall I go through all of them, or
maybe save the biological resources for those --

HEARING OFFICER CELLI: How many
exhibits are we talking about?

MS. GULESSERIAN: We're talking about
exhibit 638, Office of Governor for the State of
California, 2009 comprehensive water package,
special session policy bills and bond, and summary
and a declaration.

Exhibit 39 (sic).
MR. BABULA: It's like 20.

HEARING OFFICER CELLI: Pardon me?

MR. BABULA: Around 20 extra exhibits.

MS. GULESSERIAN: Yes.

MS. LUCKHARDT: When printed out it looks like this.

HEARING OFFICER CELLI: And this is apparently after the prehearing conference?

MS. GULESSERIAN: That's correct. These were documents relied upon; they're cited in testimony that's already been submitted and there shouldn't be any surprises.

These 638 and 639, which have to do with water resources, are exhibits that you could take judicial notice of. They're State of California website pages summarizing water issues in the State of California, which is relevant to the Commission's decision on water conservation consistency with LORS.

MS. LUCKHARDT: We would object to those. If she would like to cite the actual law, she can do that. We don't need a summary from the Governor's website that is a summary of the adopted water settlement on the Bay Delta.

So, we --
HEARING OFFICER CELLI: It does.

Anything on staff? Before I get to that I just want to say it does seem needlessly cumulative, and I'll tell you why.

We have the law. If there's a particular slant, I guess, on that law from the Governor's Office, I'm not so sure that that is anything that we could take judicial count, official notice of, per se, other than its existence.

MS. GULESSERIAN: We would like to have these into the record. They are the Governor's intent on why he has signed a bill that is authorizing a bond to address water issues in the State of California.

We can certainly cite to the legislation, but the reasons for signing that legislation are set forth just on the State of California's website, the Governor's website.

HEARING OFFICER CELLI: You know, part of the reason we have a prehearing conference, in fact the only reason we have a prehearing conference is so that we don't have this circumstance pop up where new exhibits come after the prehearing conference that the parties are
objecting to.

I mean if there were going to be an objection to these exhibits, we could have haggled it out at the prehearing conference. That's the whole reason we have a prehearing conference. To find out what you want to bring in; find out what their objections are, and move on.

But this comes a little late in the game.

MS. GULESSERIAN: These exhibits were served last week.

HEARING OFFICER CELLI: But after the prehearing conference, do I have that right?

MS. LUCKHARDT: I would like to clarify. We received an email with an exhibit list on Thursday sometime between 4:00 and 5:00.

HEARING OFFICER CELLI: Hold that thought. Marlee, this is clicking, the tape recorder sitting right here is clicking.

Folks, just so you know, everything that's being said is being recorded. And we will have a transcript out. Just want to make sure that we don't have holes in the transcript, so.

THE REPORTER: Normal backup, thank you.

HEARING OFFICER CELLI: Before we go on,
so, Ms. Luckhardt, go ahead.

MS. LUCKHARDT: We received an exhibit list, an email with an exhibit list, on Thursday, sometime between 4:00 and 5:00, listing these exhibits. We did not actually receive the exhibits. These were hard copies sent to us until Friday.

And when we received them we then had to go through and proceed to scan them to get them to our witnesses in time to allow anyone to even have an opportunity to see what they are, let alone digest what's said inside them and what they relate to.

So these are late, and extremely late, given that we've had not even one complete working day before today to review these exhibits.

And it wasn't just one small thing. I mean I'm looking at three inches of paper. And, you know, especially when you're going to bring up things like the Governor's website, as opposed to just citing directly to the law. There are political overtones that are a part of any political office.

And we object, and would object to taking official notice of those documents as being...
the truth of the matter asserted.

So, other than the fact that they exist, and that's what's on the Governor's website, we would object to what is said inside those. Because they are essentially an interpretation of the law that was passed.

MS. GULESSERIAN: These exhibits were served last week, and when the, when it was sent out by email both of these two documents were identified with a hyperlink, as was, you know, staff's exhibits that they identified with hyperlinks, yet didn't provide in hard copy.

So, --

HEARING OFFICER CELLI: What date did that email go out? Or what day of last week? Because we had our prehearing conference on Monday of last week, correct?

MS. GULESSERIAN: Yes. Correct.

MS. LUCKHARDT: Yes.

HEARING OFFICER CELLI: So what day did the email go out?

MS. GULESSERIAN: I apologize, I'm going to try and --

HEARING OFFICER CELLI: Last week was, the 15th was Monday.
MS. GULESSERIAN: One moment, please.

HEARING OFFICER CELLI: And do you have a copy of that email, Ms. Luckhardt? Do you have the date and time on that email?

MS. LUCKHARDT: I would have to look it up.

HEARING OFFICER CELLI: That's okay, Ms. Gulesserian --

MS. GULESSERIAN: March 18th.

HEARING OFFICER CELLI: Well, March 18th the email went out with, do I have it right, 20 additional exhibits? Where you left off at 637, including that confidential --

MS. GULESSERIAN: Nineteen.

HEARING OFFICER CELLI: So, 19 exhibits on the 18th. And when did --

MS. GULESSERIAN: And thereafter we sent two more, so there's 21, in a separate document. And a separate email to the service list.

HEARING OFFICER CELLI: And were you aware of the existence of these exhibits on the 15th at our prehearing conference?

MS. GULESSERIAN: I was not aware of them.

HEARING OFFICER CELLI: And how was
their existence brought to your attention subsequent?

MS. GULESSERIAN: In preparing testimony my witnesses identified documents that they relied upon in preparing their testimony that would be useful for the Commissioners to be able to verify the truth of the matters stated in their testimony.

HEARING OFFICER CELLI: I'm going to first hear from staff. And then I'm going to make a ruling and move on. Staff.

MR. BABULA: Yeah, I actually never looked at, I didn't see these documents until I got here today. I received the emails on the 18th at 4:44. And then it just --

HEARING OFFICER CELLI: What day of the week was the 18th?

MR. BABULA: Thursday. And then -- but there was no documents attached. And then Friday was problematic because of the furlough. So I was working from home, but I never received any hard copies of anything. And my staff hasn't seen these exhibits whatsoever.

And I'd have to agree with the applicant on their objections, that the Governor's website,
it exists but it may or may not, I don't know what
the content and I haven't looked at that
particular document, so I'm not even sure what
they're trying to pull from that.

HEARING OFFICER CELLI: So, although you agree with the applicant's objection, does staff object to the --

MR. BABULA: Yeah, I would object to the admission of all those documents. They're late and we haven't had a chance to review them. They don't even seem particularly relevant.

HEARING OFFICER CELLI: What I would say is this, Ms. Gulesserian. As we are aware, your experts may rely on hearsay, and they may testify as to hearsay. But we don't necessarily need the hearsay documents supporting their testimony to come in.

I find that there is a, the parties are prejudiced by this late offering of 19 exhibits. I will not admit, will not receive exhibits now. Those are exhibits 638 through what is the last number?

MS. GULESSERIAN: Well, 638 and 639 are the ones that we just discussed counsels' objections to. And those are the two State of...
California websites.

HEARING OFFICER CELLI: I'll tell you, the basis of the objection to be clear for the record, is that this is late, after filed. I'm sure you didn't mean to ambush anyone. I'm sure there were efforts to have a complete record and to support your evidence, that you wanted to put these last-minute things in.

But there's a point at which we have to say no. And that point is the prehearing conference. When the parties come into the prehearing conference, that's the state of the evidence. And unless there was some compelling evidence later-found information based upon somebody perhaps hiding or playing hide-the-ball, or something like that, that's different.

But this is an awful lot that I'm looking at. We will take official notice that that's a good three inches of paper. And that's an awful lot of evidence to hit the other parties with after the prehearing conference.

And so with that, I would not admit exhibits 638. What was the last number?

MS. GULESSERIAN: May I get some clarification before you make your ruling?
HEARING OFFICER CELLI: Please.

MS. GULESSERIAN: I'd like to hear the objection, I mean if they're all being based on it late is my understanding, but the record is open until the close of the evidentiary period. And these documents were provided next week (sic).

I also understand that people can submit documentary evidence even today before the evidentiary record closes.

HEARING OFFICER CELLI: Certainly, but that's in the case of, let's say, rebuttal testimony or really it's in cross-examination. There's no limitation on what documents the parties want to use to cross-examine.

But as the proponent of evidence of direct testimony, which is what you're putting in, that's final. That's known and that came in at the prehearing conference.

So, I'm sorry if there were additional information that you'd like to get in, I think that we have an adequate record, as it is. I've read the testimony and the rebuttal testimony.

So, --

MS. GULESSERIAN: There are a few exhibits that we would be, we could discuss in
cross-examination of other witnesses. We're talking about them in a lump sum, but some of them are related to other issues that we're not talking about right now.

For example, transmission system engineering. We could, during cross, enter those exhibits into the record if that witness --

HEARING OFFICER CELLI: Certainly, if that witness is aware of that document, you cross him on the document, certainly you can make that motion then.

But at this time, the Committee is ruling that exhibits 630, so the additional new exhibits after the prehearing conference would have been marked for identification as 638 through what number?

MS. GULESSERIAN: Through 658.

HEARING OFFICER CELLI: -- 658. Very well. Exhibits 638 and 658, the objection is sustained. They're late-filed and therefore the Committee finds that those exhibits will not be included into the record, without prejudice to their use, perhaps, on cross-examination for impeachment, if necessary. And only as relevant.

So, with that, let's move on.
And, please, let's have your first witness, who has not been sworn yet I don't believe. Or has he?

Whereupon,

DAVID MARCUS

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

HEARING OFFICER CELLI: Thank you.

Please state your name and spell it for the record.

MR. MARCUS: My name is David Marcus, M-a-r-c-u-s.

HEARING OFFICER CELLI: Thank you, Mr. Marcus. You may proceed, Ms. Gulesserian.

DIRECT EXAMINATION

BY MS. GULESSERIAN:

Q Mr. Marcus, whose testimony are you sponsoring today?

A I'm sponsoring my testimony on behalf of CURE on transmission engineering and water resources and alternatives of the Beacon Solar Project, dated November 12, 2009.

MS. GULESSERIAN: And let the record note that those are marked as exhibits 616 through
HEARING OFFICER CELLI: Thank you. The record will so reflect.

BY MS. GULESSERIAN:

Q Are there any changes to your sworn testimony, Mr. Marcus?

A Yes, there are. In the portion of my testimony dealing with water use, in footnote 33, there is a preliminary phrase that ends in the word "equals" followed by a comma. Between the "equals" and the comma, it should also say "593 acre feet."

I also have one correction to the portion of exhibit 616, which deals with transmission and system engineering. I don't know if I should make that correction now or wait on that.

HEARING OFFICER CELLI: You might as well go ahead. That last change to footnote 33 was an exhibit, which exhibit?

THE WITNESS: 616.

HEARING OFFICER CELLI: That was exhibit 616? I'm talking about the footnote to insert 593 acre feet.

MS. GULESSERIAN: Oh, excuse me, that is
the direct, exhibit 616.

HEARING OFFICER CELLI: 616 was dealing
with water, correct?

THE WITNESS: 616 deals with both water
and transmission engineering.

HEARING OFFICER CELLI: Okay, so 616
does have, okay, that's my confusion. I'm sorry,
go ahead.

THE WITNESS: So I had one correction to
the portion of 616 dealing with water. That was
footnote 33. And an earlier portion of exhibit
616 in the last paragraph of the section on
transmission engineering.

HEARING OFFICER CELLI: Is there a page
number?

THE WITNESS: It's page 3 in my copy.
I'm not sure, it's the end of section Roman II.
The paragraph, the second sentence
starts, "Given the uncertainty regarding the
deliverability of the full Beacon output" and then
goes on to say, "condition TSE-5 should be revised
to clarify that a signed interconnection agreement
as a necessary precondition to the start of
construction."

For clarity it should say, "to the start
of power plant construction." So adding the one word power plant.

BY MS. GULESSERIAN:

Q Do you have any other changes to your testimony?

A No, I do not.

Q Are the opinions in your testimony your own?

A Yes, they are.

Q Are they based on your professional judgment?

A Yes, they are.

Q And are they based on your facts?

A Yes, they are.

Q Can you please summarize your testimony and the basis for your conclusions.

HEARING OFFICER CELLI: Before you do I just want to make clear that the parties stipulate to this witness' expertise as it relates to soil and water. Any objection, applicant, that he's an expert on water and soil?

MS. LUCKHARDT: Well, I don't object to his qualifications as an expert on different water systems for cooling for construction. I would object if he were to testify in the area of water,
groundwater, water policy or related subject areas. If it is related to water use and the specific confines of his testimony, I do not have an objection of his previously written testimony.

HEARING OFFICER CELLI: We have his résumé on file as exhibit what, Ms. Gulesserian?

MS. GULESSERIAN: That would be exhibit 618.

HEARING OFFICER CELLI: 618. And is there any objection to this expert testifying as an expert, staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you. The reason I'm doing this is so that we don't need to get into your qualifications. We have that in the record, so let's just get to the testimony, please. You qualify as an expert.

THE WITNESS: Thank you. Was the question regarding the portion of my testimony about water use or are we doing the whole of my testimony now?

HEARING OFFICER CELLI: At this time we're talking about water.

BY MS. GULESSERIAN:

Q Can you please just summarize your
A finding, your testimony on construction water use.

My testimony shows that based on data in the FSA there are inconsistencies in the FSA regarding the amount of water required for preconstruction use.

It shows that if the proposed reclaimed water pipeline, specifically the RCSD pipeline, but the conclusion would apply to California City, as well, if the reclaimed water pipeline were built prior to construction start on the project, then reclaimed water could be used in lieu of groundwater during construction, as well as during operation. And it then quantifies how much of the planned preconstruction water use could be met with reclaimed water rather than groundwater.

It then has some additional sections dealing with the economics of the proposals that were identified in the FSA for use of reclaimed water and use of dry cooling respectively.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: Anything further?

MS. GULESSERIAN: No, thank you very much.

HEARING OFFICER CELLI: Staff, cross?
MR. BABULA: Well, I'm going to object that they even shifted the burden. I don't see anything in there about, in his testimony, either what was submitted or what he just said, that deals with the feasibility of a construction schedule that would require the acquisition of the recycled water first. And completely finish that part, and then get on to construction of the project.

HEARING OFFICER CELLI: I recall reading the testimony that supported the use of water, recycled water during construction. I'm not sure that he talked about any timeline, per se.

MR. BABULA: Right. Well, all he said is that well, you should use it for construction. There's a -- where it's page 4 of his testimony, mitigation for water use during construction.

I don't see anything that indicates that it's feasible to develop a project in a manner where you would hook up into all the recycled water first. I mean there's --

HEARING OFFICER CELLI: That sounds like something that we're all going to end up reading briefs, and I have the feeling.

MR. BABULA: Well, I think it's a
factual issue that hopefully the applicant,
they'll talk to. I know my people will speak to
that, too. But they haven't addressed it at all.
But, --
HEARING OFFICER CELLI: So really, I
just --
MR. BABULA: Okay, I will --
HEARING OFFICER CELLI: -- keep it to
the factual level in his testimony, and we can
talk about the bigger picture.
MR. BABULA: Okay.
CROSS-EXAMINATION
BY MR. BABULA:
Q Well, then, my one question then would
be what did you look at to determine that it's
feasible for the applicant to acquire the recycled
water first?
A I didn't testify as to feasibility. I
have, in fact, attended workshops where I've heard
representatives of RCSD and California City talk
about feasibility and timing questions. But
that's not my testimony, and presumably that will
be briefed based on their testimony.
MS. GULESSERIAN: And as we've noted, we
intend to cross-examine the witnesses that staff
has identified and the applicant has identified on
this issue.

HEARING OFFICER CELLI: Okay, so further
cross?

MR. BABULA: That's all I have.

HEARING OFFICER CELLI: Applicant, cross
of this witness, please?

MS. LUCKHARDT: No cross.

HEARING OFFICER CELLI: Thank you, Mr.
Marcus. Is there any redirect of this witness?

MS. GULESSERIAN: There is none.

HEARING OFFICER CELLI: Thank you. Then
please call your next witness.

We're dealing with water. Before you do
let me just, let's go off the record for a second.

(Off the record.)

HEARING OFFICER CELLI: Okay, with that
then I'm going to shift to applicant because I
just want to hear again for the record that
applicant has no further witnesses as to water at
this time?

MS. LUCKHARDT: That is correct.

HEARING OFFICER CELLI: Okay. And we've
received all of your water exhibits?

MS. LUCKHARDT: Right.
HEARING OFFICER CELLI: Okay. Yes, we have. I start getting confused at this point. Near lunch, you know. So, staff, at this time you're going to call two witnesses.

MR. BABULA: Well, first I've got my staff here just to address the specific issues that CURE brought up regarding the construction water. So if they could be sworn in, then we can --

HEARING OFFICER CELLI: How long are they going to take?

MR. BABULA: Maybe three minutes, five, something like that.

HEARING OFFICER CELLI: Okay, then I think we can do this --

MR. BABULA: I think we should get this done.

HEARING OFFICER CELLI: Well, let's do that. Marlee, if you wouldn't mind. Please rise and be sworn.

Whereupon,

CASEY WEAVER and JOHN FIO were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:
HEARING OFFICER CELLI: Please state your name and spell it for the record.

MR. WEAVER: My name's Casey Weaver, C-a-s-e-y W-e-a-v-e-r.

HEARING OFFICER CELLI: You're from?

MR. WEAVER: I'm in the water unit with the Energy Commission.

HEARING OFFICER CELLI: Thank you.

MR. FIO: And I'm John Fio, F-i-o. And I'm a contractor to the Water Commission, I mean the Energy Commission.

(Laughter.)

HEARING OFFICER CELLI: Thank you, go ahead, Mr. Babula.

DIRECT EXAMINATION

BY MR. BABULA:

Q  Okay, first I just want to establish that the two of you were the primary authors on the soil and water sections in both the FSA, the supplemental section we submitted as exhibits, and the final supplemental version that the applicant has in their exhibit, which is the final condition of certification that we had agreed with last week.

MR. WEAVER: Yes, I was an author of the
MR. FIO: Yes, and I was, too.

HEARING OFFICER CELLI: And when you speak, since we're going to do this by way of panel, I'm going to, after every question and whoever you address it to, you're going to have to identify yourself as the speaker each time for the benefit of the transcript. Thank you.

MR. BABULA: Okay, you've already submitted extensive testimony in the FSA, both of you regarding water resources, so there's no need to repeat any of that testimony.

CURE has submitted testimony from David Marcus, both written and you just heard it in the oral format. Have you reviewed the previously submitted written testimony?

MR. WEAVER: This is Casey Weaver. Yes, I have.

MR. FIO: This is John Fio, and yes, I have.

MR. BABULA: Okay. Do you have any response to CURE's suggestion here that recycled water should be used for construction, and response to what Mr. Marcus just testified to?

MR. WEAVER: Yes. Again, this is Casey.
The availability of recycled water is present in both California City and Rosamond. However, there is no delivery system readily available for use in construction on the property.

Additionally, the volumes available from both those facilities are really insignificant compared to the volumes of water required for the construction.

My calculations show that California City could potentially produce 1.4 percent of the construction water by trucking that water in 10,000-gallon trucks at a rate of one truck every 53 minutes. So that would be two trucks on the road 24/7 for five months.

Additionally, for Rosamond, that's a, you know, 42-mile run for trucks. They would be more frequent than the California City one, the longer distance. But also they could provide up to 3.4 percent of the construction water.

Looking at the volumes, that's really insignificant. And I would say not really reasonably available for that use.

MR. BABULA: Now for the, in your analysis of the use of construction water, is there, do you find that there's appropriate
HEARING OFFICER CELLI: I just wanted to, when you say that water, what water are we talking about?

MR. BABULA: Talking about the use of the onsite potable water for construction.

HEARING OFFICER CELLI: Okay, thank you.

MR. WEAVER: Yeah, we've, this is Casey Weaver again. We looked at the amount of water that would be used. We ran different models using the estimated volume of water required for construction.

Looked at what kind of drawdowns we'd expect, what impacts could possibly occur in the area. Determined that there really wouldn't be significant impacts to other users of groundwater in the vicinity during that period of time.

And set up conditions of certification to measure groundwater declines or water levels dropping during the construction period. And developed mitigation measures in the event that declines did occur enough to significantly impact neighboring wells.

HEARING OFFICER CELLI: And that data is in a condition right now? There's a condition
that says what must have, and if there is one, there's a condition that says what is the significant drawdown, and two, what measures must be implemented in the event if that threshold of significance is met?

MR. WEAVER: Yes, that's correct. That's in soil and water condition, well, condition of certification soil and water-1.

HEARING OFFICER CELLI: Thank you.

(Pause.)

MR. WEAVER: In summary, I'd like to throw a little thing together here that I drafted up.

For construction Beacon proposes to use up to 8086 acre feet of onsite groundwater. This number equates to approximately 7.6 million gallons per day.

I'd like to emphasize that the construction water use is temporary. The majority of the water use will occur in the first five months of construction.

Groundwater modeling indicates there will not be a long-term impact to water supply or significantly impact neighboring wells. And the groundwater well monitoring program and mitigation
measures provided in the conditions of certification will track site groundwater conditions and provide measures to mitigate groundwater impacts to neighboring wells if they develop.

MR. BABULA: I don't have any further questions.

HEARING OFFICER CELLI: Cross by applicant, please.

MS. LUCKHARDT: No cross.

HEARING OFFICER CELLI: Cross by CURE, please.

MS. GULESSERIAN: Thank you.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Mr. Weaver, what drives the need for large amounts of water at the start of construction?

MR. WEAVER: This is Casey Weaver. The project plan is to excavate as much as 8 million cubic yards of soil during the construction phase. The schedule is, I'm not real clear on the exact schedule. Initially I thought they were going to do the drainage channel first. They may not be obligated to do that.
However, the construction program is designed to occur during the first five months of construction. Moving 8 million cubic yards of soil is going to require a significant amount of water for dust suppression, for compaction, for use in building materials, concrete, soil conditioning for compaction, different construction needs.

MS. GULESSERIAN: Okay. So you said you're not aware of the construction schedule?

MR. WEAVER: Well, the schedule is going to be in five months. I'm talking about the sequence. Whether they're going to build the channel first, or do grading and channel -- well, they won't do the channel construction -- they need to maintain the flow across the site for the 100-year flood through Pine Tree Creek.

So, there's options that they can use in their sequencing. I don't know what that procedure is.

MS. GULESSERIAN: Okay, so if there are options in how to phase in project construction. Is it possible that they could be phased in to smooth out the water demand so that the bulk of it would not occur within the first five months?
MS. LUCKHARDT: Objection. I'm not sure that this is relevant or correct for this witness, and maybe I'm jumping all over Jared's --

HEARING OFFICER CELLI: Overruled. It's relevant.

MR. BABULA: The sequence of construction.

MS. LUCKHARDT: Yeah.

MR. BABULA: I think that might be more of an engineering question. We know what's going to happen, but if it's A, B, C or D, C, K.

HEARING OFFICER CELLI: If you know, Mr. Weaver.

MR. WEAVER: I don't know the sequencing. Their program is to do this mass grading within the first five months. The mass grading is going to be to level the site to a particular slope, approximately 1 percent.

HEARING OFFICER CELLI: Oh, mass grading?

MR. WEAVER: Grading.

HEARING OFFICER CELLI: I thought you were saying masquerading.

(Laughter.)

HEARING OFFICER CELLI: Just to get back
MR. WEAVER: Mass grading.

HEARING OFFICER CELLI: Just to get back to the question, the question was, Ken, in your opinion, is it possible to change the sequence of, I guess the water intensive construction needs to a different time and sequence? Do I have that right?

MS. GULESSERIAN: Right.

MS. LUCKHARDT: I'm just not sure if that's an appropriate question for this witness. This is a water expert. And it's my understanding that he takes the water numbers that are presented by others and then looks at them to see whether he thinks they're appropriate to cover the work that's being done. But isn't necessarily testifying as an expert on construction methods or moving the construction sequence from one time period to another.

So I'm just not sure that this is within his areas of expertise.

HEARING OFFICER CELLI: That's reasonable. I think that that may go a little beyond the pale of what we're trying to accomplish here. So, I think you'd better --
MS. GULESSERIAN: I can move on. Did you evaluate different phases, different options for phasing in construction?

MR. WEAVER: No. I looked at the time of mass grading of the initial construction, the amount of soil to be moved, and the amount of water that was going to be required to suppress the dust and manage the soils onsite.

MS. GULESSERIAN: Okay, so if you were provided with different options for phasing construction, such as would occur if, you know, evaluations to cultural resources on part of the site was deferred to a later time, was to not allow construction on that part of the site, and then you had different numbers regarding the amount of soil that needs to be moved during the first five months, would that change your analysis of how much water needs to occur within the first five months?

MS. LUCKHARDT: Objection, I'd like to clarify that this is a hypothetical, because I don't believe it reflects the facts in evidence on cultural resources at this time.

HEARING OFFICER CELLI: I think it's clear that it's hypothetical. You may answer that.
question.

MR. WEAVER: I didn't evaluate that. I looked at the schedule, which is intense. It's a very aggressive construction schedule. Phasing sequencing didn't fit into the overall requirements.

You know, the five-month construction period for moving 8 million cubic yards is moving a lot of soil. And in order to keep the dust suppressed and to properly condition the soils, that was my focus. Not on a phased approach of any particular months, other than what they provided in the AFC.

MS. GULESSERIAN: Okay, thank you. The FSA states that water use during construction will be 6574 acre feet on page 4.9-16, and then 8080 acre feet on page 6-4. And then it says that it's going to exceed 8086 on page 4.9-55.

Then we have a condition of certification that says up to 8086 acre feet is going to be permitted.

Have you determined which number is the right number? What number will actually be used during construction?

MR. WEAVER: We have limited the volume
for what they can use in construction to 8086 acre feet. They may use less. We hope they use less.

We've conditioned them to use no more than 8086.

HEARING OFFICER CELLI: Maximum use is how much?

MR. WEAVER: 8086 acre feet for the construction period.

HEARING OFFICER CELLI: 8-0-8-6. Thank you.

MS. GULESSERIAN: And what is the -- can you summarize what the 8086 is based on?

MR. WEAVER: Yes. Initially in the AFC the applicant provided a volume of water required for construction. Looking at that amount of water, that amount of soil, I used the same ratio of soil to water that they had come up with. They had 4,000 or 3370 acre feet of water.

Adding into that the -- it didn't appear in the information that they provided that they had accounted for the 3 million cubic yards for the diversion channel. So I included that same ratio into that other 3 million cubic yards of soil and came up with 6574 acre feet required for the 8 million cubic yards of soil to be excavated, recompacted, and organized onsite.
Further, I went through it. The initial estimate of silt content, was 7.5 percent. Looking through the boring logs and the sample results, it varied between 5 and 7.79 percent silt content.

I averaged that; looked at the difference between what they had submitted initially -- excuse me, the difference between 7.5 percent and the average was 22.9. I rounded that to 23 percent and increased the amount of water required by that 23 percent, which is multiplied 6574 by 23 percent, which yields 1512 acre feet. Added to the 6574, comes to 8086.

MS. GULESSERIAN: Thank you.

MR. WEAVER: You're welcome.

MS. GULESSERIAN: Have you reviewed the applicant's rebuttal testimony, that of Michael Flack, exhibit 335?

MR. WEAVER: I'm sure I have. I don't know it by number.

MS. GULESSERIAN: In that rebuttal the applicant claims that they have calculated the impacts on water tables of pumping 8000 acre feet in five months. And that those are not significant. Does staff agree with those
findings?

MS. LUCKHARDT: I guess I -- if that's all she's asking, that's fine.

MR. FIO: Yes, this is John Fio. And in terms of analysis in modeling the construction scenario, there was no exceedances of the thresholds that were used in the final staff assessment. So our conclusion was that there would be no impact.

And furthermore, we felt that the monitoring program that was in place that would actually be measuring what really goes on out there would be even more effective than the modeling, itself.

MS. GULESSERIAN: Is staff's analysis of those impacts from 8086 acre feet that are in the applicant's rebuttal testimony somewhere in the FSA?

MR. BABULA: Well, the rebuttal testimony came out after the FSA. Are you asking whether there's any analysis on groundwater for construction?

MR. FIO: There is.

HEARING OFFICER CELLI: For the record, Ms. Gulessarian nodded in the affirmative.
MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: And you may answer the question.

MR. FIO: This is John Fio. What we did do was we actually looked at a worst case scenario where we looked at the higher construction water use of the 8086 acre feet. Based it on with the project using groundwater.

And so this would represent a substantially greater amount of groundwater being used. And our determination was that there was not a significant change in the impact analysis.

HEARING OFFICER CELLI: Any further cross?

MS. GULESSERIAN: Does staff -- have you had an opportunity -- asking Mr. Weaver -- to review Mr. Marcus' calculations in his testimony regarding the rate of water use during construction?

MR. WEAVER: What I thought I saw was the rate of use of recycled water delivered of 27 percent of construction water requirements for recycled water. And I didn't bother with that
because I don't think it's a viable alternative.

I don't believe that the recycled water is readily available.

MS. GULESSERIAN: So do you disagree with the testimony?

MR. WEAVER: Excuse me, for construction. We know it was going to be available for operation.

MS. GULESSERIAN: So do you disagree with the conclusion that 27 percent of the water would be available for construction?

MR. WEAVER: If the water's not available to use, then it doesn't matter what number that is if it's not going to be available.

MS. GULESSERIAN: Assuming that a pipeline is constructed prior to construction of the project, would you disagree with that number?

MR. WEAVER: I didn't evaluate the number because I didn't think that it was a viable element of the project.

HEARING OFFICER CELLI: So your question was a hypothetical, assuming that there was a construction pipeline in place --

MS. GULESSERIAN: Prior to construction.

HEARING OFFICER CELLI: -- let's say
from Rosamond or California City to the --

MR. BABULA: Right, and there's no
evidence in the record that it would be available
before.

HEARING OFFICER CELLI: I understand.

That's a hypothetical question. Please, Ms.
Gulessarian, go ahead.

MS. GULESSERIAN: Thank you. I don't
have any further questions.

HEARING OFFICER CELLI: Thank you. Any
cross from applicant?

MS. GULESSERIAN: Oh, sorry, I need to
clarify who is sponsoring exhibit 337. Yeah, this
is -- if you wouldn't mind I have a few more
questions regarding the revised conditions that
were sent out on Friday night.

HEARING OFFICER CELLI: 339?

MS. LUCKHARDT: This is the revised
conditions of certification for soil and water-1
and appendix I. It was discussed in the parties
pursuant to a conference all upon which CURE was
given an opportunity to attend. I can't remember
how much of it they actually participated in. And
that is the result that was discussed on that
call, what is in exhibit 337.
HEARING OFFICER CELLI: This is stipulated settled conditions of certification?

MS. LUCKHARDT: Correct.

HEARING OFFICER CELLI: Thank you. Who will be sponsoring that?

MS. LUCKHARDT: We have offered it into evidence under -- we can have Mr. Flack sponsor it. We offered it into evidence as a stipulated settlement document between -- or stipulated resolution to --

HEARING OFFICER CELLI: That's correct.

At the prehearing conference --

MS. LUCKHARDT: -- issues --

HEARING OFFICER CELLI: -- we asked the parties to stipulate to --

MR. BABULA: Right.

MS. LUCKHARDT: Yeah.

MS. GULESSERIAN: I'm going to --

MR. BABULA: But the authors are right here.

HEARING OFFICER CELLI: Okay. Well, then, do you want to just, we'd be willing to take a stipulation.

MS. GULESSERIAN: Would you mind if I just asked a few more questions regarding exhibit
337 of these witnesses?

HEARING OFFICER CELLI: Okay. I thought it was 339. It's 337 you're talking about?

MS. GULESSERIAN: It's -- sorry, I might have the number wrong.

MS. LUCKHARDT: I believe it's 337.

HEARING OFFICER CELLI: Okay. So revised soil and water conditions of certification.

MS. GULESSERIAN: Thank you. Looking to the table provided in this condition what determines when the California City collection system construction year starts?

MR. WEAVER: That would be the year in which they begin construction.

MS. GULESSERIAN: When do you expect them to begin construction? What is it based on?

MR. WEAVER: You know, the project will have to be improved. Couldn't put a schedule in. It's not based on that, it's based on when it will be constructed, assuming that it will be before the beginning of operation. That's what this table's based on.

MS. GULESSERIAN: So what determines when that starts? Is it the approval of this
project?

MR. WEAVER: You'd have to talk to California City.

MS. GULESSERIAN: Okay. Could construction of the collection system start before power plant operation?

MR. WEAVER: That's part of the construction; that's the California City, the collection system. Again, you'd --

MS. GULESSERIAN: So, just in your --

MR. WEAVER: -- have to talk to California City for the sequence.

MS. GULESSERIAN: -- that the construction of the collection system could start before power plant operation because it's California City's construction project?

MR. WEAVER: It's California City's construction project. What their schedule is I don't know. I don't know what date they're going to start. This table indicates what they can do per year once construction starts. So --

MS. GULESSERIAN: Okay, I'm trying to determine who has control over this condition of certification as to timing. Is it the applicant? Is it the Energy Commission's approval of the
project? Or is it California City?

MR. BABULA: Well, this is a condition of certification. And we only have authority over the applicant, so this condition of certification is on the applicant.

If, for some reason, the water isn't available or a different thing, then the applicant's stuck. That's what they can get. They can get up to, as it lifts out, how much acre feet of onsite water they can use.

MS. GULESSERIAN: You just said that -- are you testifying?

MR. BABULA: Well, I --

MS. GULESSERIAN: I'm sorry, --

MR. BABULA: -- the condition of certification is a legal issue --

MS. GULESSERIAN: -- I'm confused what witness --

MR. BABULA: It's a legal issue --

(Parties speaking simultaneously.)

MR. BABULA: -- the conditions can be on. It can only be on the applicant.

HEARING OFFICER CELLI: Right. In other words, if there's a condition precedent in the condition of certification, and that has not been
fulfilled, then applicant can't go forward. And that is a risk that the applicant assumes.

MS. GULESSERIAN: Is there, Mr. Weaver, is there a condition of certification that prohibits construction of the power plant until it is verified that California City will be delivering water?

MR. WEAVER: No. California City is one of two options. They've agreed to use recycled water for power plant cooling. And the alternative has not yet been selected.

MS. GULESSERIAN: Is there a condition of certification prohibiting construction of the project without -- let me make sure I'm phrasing this right.

Is there a condition of certification prohibiting construction if there's no guaranteed recycle water alternative?

MR. WEAVER: The only way that they can use groundwater for power plant cooling is with the California City option. If they select a different alternative they can't use groundwater for cooling. They're limited to 153 acre feet per year of groundwater use for balance of plant use.

MS. GULESSERIAN: Okay. So, if the
applicant selects California City recycled water alternative, and California City does not construct the pipeline, the collection system, excuse me, the collection system until after operations, would that be -- well, then what happens?

MR. WEAVER: They wouldn't be allowed to operate.

MS. GULESSERIAN: Which condition sets forth these parameters for not allowing operation in the event that the recycled water alternatives, or the recycled facilities are not upgraded and the pipelines are not constructed?

HEARING OFFICER CELLI: I might be able to short-circuit --

MS. LUCKHARDT: I'd just direct your attention to --

HEARING OFFICER CELLI: If I may, just --


HEARING OFFICER CELLI: In our general conditions if there's any failure of conditions there's no license. And so, there isn't necessarily a needed explicit condition on that point.
But the fact is if there's noncompliance there's no operation. And so if the water options are California City or Rosamond City, these are your options for cooling water, and they want to go to a third option, they either have to amend or not. But there will be no operation without full compliance with our conditions.

MS. GULESSERIAN: Excuse me a moment.

HEARING OFFICER CELLI: I'd just note for the record it's 12:35, and we're going to be done through this in about five minutes about 20 minutes ago.

MR. BABULA: I was.

MR. WEAVER: To resolve that last question, soil and water condition 18 satisfies that requirement.

HEARING OFFICER CELLI: Did you hear that, Ms. Gulesserian? 18?

MR. WEAVER: Soil and water-18.

MS. GULESSERIAN: Thank you. What's the latest possible date that California City collection system construction year one can begin in order to provide these numbers that are listed here?

MR. WEAVER: Again, we didn't select a
date. And that's a contractual thing with the
terms that are going to do the construction.

MS. GULESSERIAN: Right. I mean so how
do you know -- can it occur after commercial
operation of the project?

MR. WEAVER: No. They're limited within
60 days. They have to have -- what's the number
there -- 14? Within 60 days prior to the
connection of the recycled water pipeline the
owner shall submit two copies of an executed
agreement to supply 1424 acre feet of water.

MS. GULESSERIAN: So you just stated
within 60 days prior to connection to the system
they have to provide a letter of intent?

MR. WEAVER: No, that would be for --
no, that they -- more than the intent, that they
have an executed agreement for the supply.

MS. GULESSERIAN: Okay, so -- but I
guess that doesn't answer the question. If the --
what happens if the pipeline does not -- is not
constructed?

MR. WEAVER: They wouldn't be able to
operate. They wouldn't have the water supply --

MS. GULESSERIAN: Okay, thank you.

MR. WEAVER: -- to the site.
HEARING OFFICER CELLI: Anything further? Any further cross, Ms. Gulessarian?

MS. GULESSERIAN: No, no further cross.

HEARING OFFICER CELLI: Thank you.

Applicant, any cross of these witnesses?

MS. LUCKHARDT: No cross.

HEARING OFFICER CELLI: Redirect by staff of your witnesses?

MR. BABULA: No.

HEARING OFFICER CELLI: Any other witnesses that staff wanted to call in rebuttal regarding water?

MR. BABULA: Well, you have Cal City and Rosamond folks to sponsor the exhibit, if this is an appropriate time for that.

HEARING OFFICER CELLI: What we're going to do is we're going to take a lunch break. It's 20 of one. I think if we break until 1:00, we can resume at 1:00. But when we resume I want to know what you're going to be doing. You're calling --

MR. BABULA: Well, I would like to try to finish water now. I mean, I just want them to, you know. Really the question is what does CURE have to cross on, because what I --

HEARING OFFICER CELLI: They're finished
with their water people at this time.

MS. GULESSERIAN: We have cross for
Rosamond Community Services District and
California City.

HEARING OFFICER CELLI: Okay. So I
think we can call that witness after lunch. And
that should take about ten minutes tops. And ask
your questions of the Rosamond water person.
And so you're going to have them sponsor
testimony, ask a couple questions, I imagine;
apPLICANT to ask questions. CURE will be able to
cross-examine. Then you can redirect. And then I
believe that's the end of water.

MS. GULESSERIAN: I also have --

HEARING OFFICER CELLI: Would that --

MS. GULESSERIAN: Sorry. I also have a
few questions for the applicant's witness.

HEARING OFFICER CELLI: But the
applicant doesn't have a witness.

MS. GULESSERIAN: They have somebody
sponsoring water testimony.

HEARING OFFICER CELLI: Which witness is
that?

MS. GULESSERIAN: Duane McCloud.

HEARING OFFICER CELLI: Okay. And is he
here?

MS. LUCKHARDT: He will not be here until about 1:30. That's the engineer. I'm not sure what questions she had; that wasn't indicated in the information on --

HEARING OFFICER CELLI: I think we had like --

MS. LUCKHARDT: -- who she wanted to cross-examine in this area. So, we have Mike Flack is here, if she has questions on the testimony he has sponsored.

If she has water questions of Mr. McCloud he won't be here until about 1:30.

HEARING OFFICER CELLI: Here's what we're going to do. We're going to take a 20-minute break. We're going to resume at 1:00.

Now, folks, by now we should have finished water and biology. And we haven't even gotten to bio yet. So I'm going to ask the parties to limit your inquiries.

If you're just calling witnesses to sponsor testimony that's coming in that should take all of about two minutes. And then cross on these witnesses. How many questions do you have, Ms. Gulesserian, for Mr., the gentleman from
Rosamond?

MS. GULESSERIAN: I have eight.

HEARING OFFICER CELLI: Questions for --

MS. GULESSERIAN: About eight to ten questions.

HEARING OFFICER CELLI: Okay. And then how many questions do you have for --

MS. GULESSERIAN: That is for the Rosamond person --

HEARING OFFICER CELLI: -- Duane McCloud that you wanted to ask?

MS. GULESSERIAN: And for the California City representative, it's the same questions.

HEARING OFFICER CELLI: Okay. Well, we'll call them as a panel. But we need to move with alacrity. What about your questions for applicant's witness?

MS. GULESSERIAN: Those I have 13 questions.

HEARING OFFICER CELLI: Okay. We'll do this. Okay, five minutes when we resume at 1:00, we'll take five minutes for the gentlemen from Rosamond and California City as a panel. And then we'll give you another five, maybe ten minutes on Duane McCloud when he comes. I guess you'll have
to hold that in abeyance until he arrives.

And then we need to move on. And that's it on water, is that correct? Do I have that right?

MS. GULESSERIAN: Yes. I also have a suggestion that we fit transmission system engineering into that short amount of time, because we have just a little bit of time on that issue. And then we could dismiss our witness for the remainder of the hearing.

HEARING OFFICER CELLI: That's fine, too. If we end up having to wait for Mr. McCloud, maybe we can insert a little transmission --

MS. LUCKHARDT: Yeah, the only problem is that our witness on transmission system engineering is Duane McCloud.

(Laughter.)

MS. LUCKHARDT: We were supposed to start with biology.

HEARING OFFICER CELLI: Better to be a specialist these days.

Let's break now and then we will resolve these issues when we get back. And when we resume we're going to take testimony from the gentlemen from Rosamond and California City.
(Whereupon, at 12:39 p.m., the hearing was adjourned, to reconvene at 1:00 p.m., this same day.)

--o0o--
AFTERNOON SESSION

1:02 p.m.

HEARING OFFICER CELLI: All right. The record should reflect it's about 1:02 in the afternoon, March 22, 2010. Beacon Solar Energy Project, evidentiary hearing. We are in the middle of taking evidence on the topic area of soils and water.

And where we're going to proceed to this point is staff is going to call their witnesses, sponsor evidence. And then we will allow the parties to cross. And then CURE had a request to do cross one last witness, and then we will finish up with soil and water at that point.

So with that, Mr. Babula, go ahead.

MR. BABULA: Could we have them sworn in?

HEARING OFFICER CELLI: Yes, thank you. If I may have the witnesses sworn.

Whereupon,

MICHAEL BEVINS and DENNIS LaMOREAUX were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

HEARING OFFICER CELLI: Please state
your name and spell it for the record.

MR BEVINS: Michael Bevins, Public Works Director, City of California City. B-e-v-i-n-s.

MR. LaMOREAUX: I'm Dennis LaMoreaux representing Rosamond Community Services District. Last name is spelled L-a-M-o-r-e-a-u-x.

HEARING OFFICER CELLI: Thank you. And when you testify please remember to state your name each time before you start because we're going to let the parties ask you jointly questions. So before you answer state your name. Go ahead.

MR. BABULA: Okay, thank you.

DIRECT EXAMINATION

BY MR. BABULA:

Q The primary reason you're here is to sponsor exhibit 506, which exhibit 506 is, was previously submitted to the docket. It contained a proposed plan by both Rosamond and California City to provide the project with tertiary treated recycled water.

And so what I want you to do is just confirm that, in fact, this is a proposal from your respective locations. And just to briefly summarize the main content of the proposal so we
can get that in the record.

And I'll start with Rosamond, and

Dennis, thank you.

MR. LaMOREAUX: Dennis LaMoreaux with
Rosamond Community Services District. The
District did submit a letter of intent dated
August 14, 2009.

The three major components of that were
additional treatment to bring existing wastewater
flows to tertiary level, transmission facilities
to move the water to the project site, and
seasonal storage at the project site to handle
peak flows needed during the summer.

The additional treatment facilities at
Rosamond would be handled by Rosamond with a
contribution by Beacon of the transmission
facilities and storage facility were proposed to
be constructed by Beacon.

MR. BABULA: Has there been any changes
to storage?

MR. LaMOREAUX: Based on discussions at
earlier hearings the District has reworked a
proposal to move that storage back to the Rosamond
site, and re-size the transmission line to have
capacity for handling peak flows.
But the three major components are still the same, it's just a matter of shuffling them around a little bit.

MR. BABULA: Thank you. Now for California City.

MR. BEVINS: California City's proposal essentially is the same as Rosamond's. We proposed a transmission main and a wastewater treatment plant expansion from our current 1.5 million gallons a day to 3 million gallons a day.

We also are proposing a sewer main expansion which would bring an additional almost 2500 septic tanks on to the line to be able to provide the additional flow necessary.

MR. BABULA: Is that it?

MR. BEVINS: That's it.

MR. BABULA: One question for California City. Is there a benefit to pulling homes off of the septic system that this project can assist?

MR. BEVINS: California City has a 1989 contract, letter of understanding, with the Lahontan Regional Water Quality Control Board which limits our ability to build facilities, residential homes to two homes per acre.

We have a large number of already-
platted lots which will be impacted by this. And so the benefit to us is that it will allow our city to grow in --

MS. GULESSERIAN: Objection, this is new testimony that we've never -- excuse me, this is new testimony that hasn't been submitted in this proceeding. And that is what they're trying to put in right now is some sort of analysis of benefits of upgrading their facilities.

HEARING OFFICER CELLI: We did hear this as comment, I'm trying to remember when.

MS. LUCKHARDT: At the December 1st status conference.

HEARING OFFICER CELLI: That's right. There was comment at that time. So this isn't the first we've heard of it. I think we can just get a good summary of it.

MR BEVINS: That's actually the end of the summary.

MR. BABULA: Okay.

HEARING OFFICER CELLI: So that -- the exhibit --

MR. BABULA: 506.

HEARING OFFICER CELLI: -- 506 does contain a discussion of the benefits to California
City. Because I remember in your comments, Mr. Bevins, you were talking about sort of a toxic state in which the septic systems were, your population had risen to the point that there was some danger to the groundwater.

MR BEVINS: Our principal problem here is that California City was a preplanned community, as we told you in December. And in that lots were created. In the '60s, early '60s when this was done there was no particular problem with that.

However, federal law has changed and Lahontan required us in '89 to sign a letter of intent which said that we would only allow a certain building ratio.

That will eliminate about a third of the already platted building lots from their ability to grow and develop. Because to exceed that would create a groundwater problem. With too much density, a saturation problem with too much septic density.

HEARING OFFICER CELLI: Thank you. And that's contained in 506, is that correct?

MR. BABULA: I think the raw data information and costs are in 506.
HEARING OFFICER CELLI: Thank you. Do you have anything further --

MR. BABULA: I have no further questions.

MS. LUCKHARDT: I have three questions starting with Rosamond.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q There are two expansions, it's my understanding. The one is already under construction at this time. And are there other projects for the second expansion to your facility, are there other projects that are also looking to obtain tertiary treated water from you, as well?

MR. LaMOREAUX: This is Dennis LaMoreaux. Yes, there's expansion to half-a-million gallons a day of tertiary treatment is essentially complete other than permitting. And beyond that, to go to a greater level of tertiary level or treatment, there are other customers that that will occur for. There's other solar projects that are interested, and a mining operation that is interested.

MS. LUCKHARDT: Thank you. And,
Mr. Bevins, turning to you, is California City required to make the changes that we've been discussing with septic and upgrading your treatment plant regardless of whether the Beacon project goes forward?

MR BEVINS: Yes. And we are moving forward in that direction regardless of the status with Beacon.

MS. LUCKHARDT: And does the limitation, the current limitation on houses -- for better words, I'm just going to say per block, would that in any way limit the number of houses you could build within California City?

MR BEVINS: The restriction would limit the density by which they could be built. It restricts us to two homes per acre, which is not consistent with the already platted lots for the city.

MS. LUCKHARDT: But are you going to run out of lots anytime soon? If people couldn't build, if you could build six on a block --

MR BEVINS: I have --

MS. LUCKHARDT: -- do you have plenty of lots?

MR BEVINS: I have 23,000 currently
platted residential unbuilt-on lots. We're not likely to run out in the near future of unplatted lots.

However, if I may, the problem is that by being compliant with Lahontan's requirements, I come into violation with planning areas for carbon footprint reductions. Because my city winds up being -- it doesn't allow me to consolidate my city in a dense enough fashion to comply with carbon footprint reduction requirements.

MS. LUCKHARDT: Thank you. I have nothing further.

HEARING OFFICER CELLI: CURE?

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q This is a question for Rosamond first. From the time you get notice to proceed from Beacon, can you supply any water immediately to the project?

MR. LaMOREAUX: By notice to proceed do you -- this is Dennis LaMoreaux --

MS. GULESSERIAN: That they are going with the --

(Parties speaking simultaneously.)

MR. LaMOREAUX: -- do you mean a --
MS. GULESSERIAN: -- Rosamond --

MR. LaMOREAUX: -- a signed contract?

MS. GULESSERIAN: Um-hum.

MR. LaMOREAUX: We will have half a million gallons a day of tertiary water available at the site, but there is no current way to move that to the Beacon project site.

MS. GULESSERIAN: Okay. And how long will it take to construct the pipeline?

MR. LaMOREAUX: Estimate would be probably a year, maybe a little bit less. It depends on how the construction contract is put together. How many crews would work on that project at the same time.

MS. GULESSERIAN: Okay. So when you get a notice, or -- Beacon, how much will you be able to supply in 12 months then?

MR. LaMOREAUX: Well, as far as the District, what it has available in the way of tertiary, that would not change in 12 months. It would still be half a million gallons a day.

What would be changing is construction would be well underway on the treatment plan expansion that would be able to take the rest of our 1.3-million-gallons-a-day flow and bring it up
to a tertiary level.

MS. GULESSERIAN: And has the
construction upgrades began on the wastewater
treatment plant?

MR. LaMOREAUX: Those would begin upon
execution of a contract with a customer.

MS. GULESSERIAN: Are you going to
upgrade your wastewater treatment facility if
Beacon does not select Rosamond as its recycled
water alternative?

MR. LaMOREAUX: Yes, I believe it will
happen. There are other interested parties in
that water in the desert.

MS. GULESSERIAN: Do you have plans to
do that anyways?

MR. LaMOREAUX: Not without a customer,
no.

HEARING OFFICER CELLI: Anything
further?

MS. GULESSERIAN: Assuming you have a
letter of intent, how long is it going to take to
reach the maximum amount of 1500 acre feet per
year?

MR. LaMOREAUX: A proposal that we've
received shows a construction period of two years
from the notice of intent.

MS. GULESSERIAN: And is that limit of what your construction upgrades are going to provide? What is the actual maximum that you can supply once your construction is complete?

MR. LaMOREAUX: The tentative plans would be to have a 2 mgd expansion which would provide treatment for all the existing flow and room for future growth.

MS. GULESSERIAN: Have you conducted an environmental review for your upgrades to your wastewater treatment system?

MR. LaMOREAUX: Which upgrades?

MS. GULESSERIAN: For the 1.3 million gallon upgrade.

HEARING OFFICER CELLI: You know, Ms. Gulesserian, excuse me but I just am going to observe that this is something that really doesn't have any relevance to our proceeding whether there has been an environmental reviews of their upgrades. That exceeds our jurisdiction.

MS. GULESSERIAN: I'm trying to establish whether they are already proceeding with the 1.3 or are going to be proceeding with 2.0.

Based on the evidence in the record, they are
moving forward already with the 1.3. And this is the first time I'm hearing that they're going to be at 2.0.

So I need the opportunity to --

HEARING OFFICER CELLI: But whether they're having an EIR --

MS. GULESSERIAN: -- explore that.

HEARING OFFICER CELLI: -- is irrelevant to our, the volumes are relevant. Whether they're having an environmental review of it doesn't apply to what we're doing.

MS. GULESSERIAN: Well, it is relevant to, I would say it is relevant to the Commission's environmental review process, since the Commission, as lead agency, needs to analyze the whole of the project and can't piecemeal.

So depending on --

HEARING OFFICER CELLI: It's not part of our project. It is beyond our point of interconnection. It's not a part of our project so it's not relevant.

So I'm going to ask that you, I don't mind you asking him what the volumes are and that sort of thing. But the environmental review isn't relevant after the point of your intention.
MS. GULESSERIAN: The FSA has in it that it has the responsibility to analyze those projects that are part of the project, including those that are not within the licensing authority of the Energy Commission.

HEARING OFFICER CELLI: I don't understand what you're suggesting.

MS. GULESSERIAN: I'm just --

HEARING OFFICER CELLI: Perhaps you're talking about some sort of a cumulative analysis or something?

MR. BABULA: You kind of get into the alternatives, which we've already submitted stuff on that.

HEARING OFFICER CELLI: Yeah. So, anyway, I'm asking that you move on.

MS. GULESSERIAN: Okay. Is the pipeline the critical path item, or is the upgrades to your facility the critical item to providing water to the Beacon Energy Project?

MR. LaMOREAUX: To provide water --

MS. GULESSERIAN: Which one would be ready first?

MR. LaMOREAUX: -- for the operation or for the --
MS. GULESSERIAN: The --

MR. LaMOREAUX: For the operation?

MS. GULESSERIAN: For the Beacon Solar Energy Project. What would you be done first with, the upgrade to 1.3 or the pipeline?

MR. LaMOREAUX: Let me clarify what the 1.3 number is. That's the current inflow of wastewater to our facilities. That isn't directly related to Beacon.

MS. GULESSERIAN: Do you mean --

MR. LaMOREAUX: As I've stated earlier, the anticipated construction of the pipeline and facilities would be roughly one year after contract. And the completion of the treatment upgrade would be another year after that. It's a two-year process.

MS. GULESSERIAN: Okay, thank you. What was the purpose of your upgrade of your recycled treatment facility?

MR. LaMOREAUX: The existing one?

MS. GULESSERIAN: Um-hum.

MR. LaMOREAUX: Was to provide service within the community of Rosamond in accordance with the planning document that we prepared.

MS. GULESSERIAN: And what did that
planning document say? What was the purpose?

MR. LaMOREAUX: Mostly for urban

irrigation, potential for future recharge

operations.

MS. GULESSERIAN: Thank you. For

California City. Once you have a letter of intent
to proceed with Beacon, how much water can you
supply immediately?

MR BEVINS: Trucks or pipes?

MS. GULESSERIAN: Either one. Piped.

MR BEVINS: It depends on the actual
time of the year. Currently my current recycled
water demand in August basically uses most of it.

If, however, they wanted to start construction in
January, they could truck to their heart's content
probably.

I'm saying maybe 500 acre feet if it was

trucked.

MS. GULESSERIAN: Okay, and how much
could you supply in six months?

MR BEVINS: Again, depending on the
timeframe it would still be the same because our
plan is to be able to deliver water for the first,
I believe, it's 18 months, which is what we
submitted I think in December, was an 18-month
plan. I don't have it in front of me, so I --

MS. GULESSERIAN: Okay, so there's 500 acre feet available immediately and --

MR. BABULA: Are you talking for operation?

MS. GULESSERIAN: I'm talking about --

MR. BABULA: Because the --

MS. GULESSERIAN: -- when they have a letter of intent to proceed with getting water from California City, how long is it going to take them to provide water to the Beacon Project.

Not asking for what purpose.

MR. BABULA: Okay, I mean, because it's laid out in conditions of certification soil and water-1. It lays out how much. It staggers, the first year, second year, third year. So it's already laid out of what the applicant will be receiving.

MS. GULESSERIAN: I understand what the condition of certification says. I want to know what California City is able to provide.

MR. BEVINS: What we provided in the certification. That is our plan provision.

There are some minor changes. I mean a small amount like 500 acre feet really isn't
significant, I don't think, in any of the issues.

MS. GULESSERIAN: How long would it take
to reach the maximum amount that you're going to
supply?

MR BEVINS: May I ask you just one
question to make sure, because Eric just brought
up a suggestion. I'm thinking broad scale; I'm
not thinking on a daily basis.

MS. GULESSERIAN: I was just going to
ask you. A point made here is what's the rate?
You can deliver 500 acre feet per how often?

MR BEVINS: Well, that would be probably
in a six-month period of time over the winter. If
that were the timing, the way things worked out.

Our current discharge permit would allow
that, I believe.

MS. GULESSERIAN: Thank you. And how
long would it take to reach the maximum amount
that you would be able to provide?

MR BEVINS: I believe it's five years.

MS. GULESSERIAN: How long is
construction of your upgrades to your facility
going to take?

MR BEVINS: To the wastewater plant?

MS. GULESSERIAN: Um-hum.
MR BEVINS: Or to the piping?

MS. GULESSERIAN: To the wastewater plant.

MR BEVINS: The wastewater plant will take us about 18 months.

MS. GULESSERIAN: Eighteen months. Will you be doing the upgrades to the plant concurrently with the construction of the pipeline?

MR BEVINS: I would think that that could happen.

MS. GULESSERIAN: So within 18 month the constructions to the treatment plant and the pipeline could be done?

MR BEVINS: Right. Well, remember, there's actually two pipelines. You got the sewer system and the pipeline. The pipeline, you asked earlier about the critical path element. The pipeline is not the critical path element. The critical path element here is, the number one is the upgrade of the wastewater treatment plant, followed by the expansion of the sewer system. Those are the two critical path elements.

MS. GULESSERIAN: Thank you for clarifying that. And how long will that take, the
expansion of the sewer system?

MR BEVINS: That's the part that takes roughly three years.

MS. GULESSERIAN: Okay.

MR BEVINS: Actually, we have it broken down into five phases, which is why you come up with five years total plan. And we would start that simultaneous with everything else.

HEARING OFFICER CELLI: It's now 1:25; I'm going to ask --

MS. GULESSERIAN: And how long will it -- sorry.

HEARING OFFICER CELLI: -- that we move on.

MS. GULESSERIAN: Okay. Just another question, one more question. What was it? How long will it take? He answered that. Is it correct that -- how long will it take to construct the delivery pipeline to Beacon?

MR BEVINS: That would happen, I would think, relatively soon. I can't imagine that being longer than a year. It's the least, it's the least of the elements.

MS. GULESSERIAN: Okay. Are you going to proceed with -- you said you're going to
proceed with the upgrades whether or not Beacon --

MR. BEVINS: We are going to proceed
with the wastewater treatment upgrades consistent
with our prior dialogue with Lahontan.

MS. GULESSERIAN: Okay.

MR. BEVINS: And we already have an RFP
out right now soliciting the upgrade feasibility
so we can begin the, all processes with that.

MS. GULESSERIAN: Okay, and if Beacon
does not use that water what will be the purpose
of that, what will you use that water for?

MR BEVINS: I really want to tell you
I'm going to pour it on the ground. We're going
to use it for irrigation inside the city if it's
not used by Beacon.

MS. GULESSERIAN: Do you have a date for
the California City collection system construction
year?

MR BEVINS: That's dependent --

MS. GULESSERIAN: Start date?

MR BEVINS: That's totally dependent on
the whole process and the signing of an agreement
with Beacon.

MS. GULESSERIAN: Okay, once the
applicant decides how long will it take for you to
start construction?

MR BEVINS: It will probably take us about -- by construction are you meaning shovel in the ground or you're talking about the engineering process and starting to move forward with that?

MS. GULESSERIAN: The process that you previously described would take.

MR BEVINS: The process we previously described would take about five years -- will take five years to complete. It will probably take us about four months to start.

HEARING OFFICER CELLI: Is that --

MS. GULESSERIAN: Thank you very much. I have no further questions.

HEARING OFFICER CELLI: Thank you.

Applicant, any questions of these witnesses?

MS. LUCKHARDT: No further questions.

HEARING OFFICER CELLI: Redirect?

MR. BABULA: Nothing.

HEARING OFFICER CELLI: Thank you.

Thank you both for your testimony today.

It's now 1:30. We have about five minutes to go before we get off of water. What else do we need to do in order to get to complete the record in water? Applicant?
MS. LUCKHARDT: We're still waiting for Duane McCloud, who is en route.

HEARING OFFICER CELLI: Marlee, okay. Have you heard from him? Do you know where he is?

MS. LUCKHARDT: I was just asking the -- we just tried to call him and he's not answering, so he must be in a cell point where it's not receiving.

HEARING OFFICER CELLI: Is he in a plane right now, or is he on the road or something?

MS. LUCKHARDT: No, he's on the road.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: We know he's landed; we've talked to him. He's en route.

HEARING OFFICER CELLI: Well, then, Ms. Gulessarian, your only -- you have no further witnesses at this point. You just wanted to ask about five minutes of Mr. McCloud. What about staff on water?

MR. BABULA: I'm done with water.

HEARING OFFICER CELLI: You're done with water, okay. Now, this might be our opportunity to, you wanted to insert TSE, transmission system engineering --

MS. LUCKHARDT: We need Duane McCloud to

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do that.

   HEARING OFFICER CELLI: Oh, that's right. Well, what is it that -- what are we going to do with the transmission systems engineering? You're just calling Duane McCloud, or do you have your own witness on that?

   MS. GULESSERIAN: I have my witness to call.

   HEARING OFFICER CELLI: And who would that be? Mr. Marcus?

   MS. GULESSERIAN: Mr. Marcus is ready and available. And I have --

   MS. LUCKHARDT: Do we want to finish visual?

   MR. BABULA: All right.

   HEARING OFFICER CELLI: What happened with visual?

   MR. BABULA: Mark's here. We could do --

   HEARING OFFICER CELLI: Let's finish visual.

   (Laughter.)

   HEARING OFFICER CELLI: Welcome. Mr. Hamblin, if you could come on over, stand up, raise your hand and be sworn.
Whereupon,

MARK HAMBLIN

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

HEARING OFFICER CELLI: Please state and
spell your name for the record.

MR. HAMBLIN: Mark, M-a-r-k, Hamblin,
H-a-m-b-l-i-n.

HEARING OFFICER CELLI: Thank you.

Staff, your witness. This is on the question of
visual, ladies and gentlemen. You'll recall we
had a nice little, a little slide show showing a
little trash here and there along the trails,
along the road.

Now we're going to talk about the visual
impacts. And this will, and this will finish up
the whole topic, will it not? Yes, okay.

I appreciate the parties' willingness to
be flexible in the order that we call witnesses.

(Pause.)

HEARING OFFICER CELLI: Are we ready to
go on visual?

MR. SPEAKER: Two seconds.

MR. BABULA: Jane, do you happen to have
the PowerPoint, so we could put up the one --

MS. LUCKHARDT: Mine?

MR. HAMBLIN: Yeah, so I can figure out

what went on.

MS. LUCKHARDT: My witness and AV

operator over there.

HEARING OFFICER CELLI: Now, with regard
to visual, at the prehearing conference we did
talk about a need to put in any evidence for an
override if that's the direction the applicant
wants to go in.

MS. LUCKHARDT: That came in under the
executive summary testimony sponsored by Kenneth
Stein.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: So we had originally
designated it as executive summary testimony
because it was more of an overview of the whole
project, as opposed to focus just on visual.

HEARING OFFICER CELLI: I probably would
be wise to get you to state on the record what
that exhibit is so when it comes time to start
writing this we know.

MS. LUCKHARDT: And that exhibit is 322.

HEARING OFFICER CELLI: 322, thank you
very much.

MS. LUCKHARDT: It's the rebuttal testimony of Kenneth Stein on overriding considerations.

HEARING OFFICER CELLI: And that goes to override; thank you very much.

MR. BABULA: We also have put in a declaration from Terry O'Brien regarding --

HEARING OFFICER CELLI: I have that.

That was from staff.

MR. BABULA: Right.

MR. HAMBLIN: Okay, let me just kind of lead off here. On both those KOPs there are two questions on --

MS. LUCKHARDT: Should he be sworn in?

HEARING OFFICER CELLI: He has been sworn but there's no question pending.

(Laughter.)

MR. BABULA: Can you put up the KOP-6, which was --

MR. FLACK: As soon as I know which one's KOP-6.

MS. LUCKHARDT: Can you --

MR. FLACK: I'll do my best --

HEARING OFFICER CELLI: I think it's
slide 23.

MR. FLACK: I think you're right.

HEARING OFFICER CELLI: And if we can have this be an examination rather than a narrative.

MR. BABULA: All right, --

MR. FLACK: Is that the one you guys want?

MR. HAMBLIN: Go back to the one previous. We'll go with the simulation.

MR. FLACK: Do you want that one first?

MR. HAMBLIN: Yeah, let's go with that one.

MR. BABULA: All right, let me start. Okay, we are ready.

HEARING OFFICER CELLI: We're on the record. Let's move on to visual here.

MR. BABULA: Okay, thank you. This is visual resources.

DIRECT EXAMINATION

BY MR. BABULA:

Q Have you had a chance to review the applicant's rebuttal testimony and testimony regarding visual resources?

A I have.
Q Okay. And I know you weren't present here earlier when they went, but you've seen the testimony. Do you have any response to the applicant's, their position that the visual impacts are not significant and that they're not mitigable?

A Let me explain. The physical environment that was described, yes, that could be -- I'm not going to dispute that.

But there's a context in which staff works within, and this is visual resources diagram 1 in the FSA. We have a whole listing of categories that we go through.

Now, to merely see certain trash or debris doesn't, you know, we're looking at a bigger picture issue, such as items like visual quality, viewer concern, visibility, number of viewers, duration of view. Then we get into contrast, dominance, view blockage.

It's not just limited to one particular, I mean a focus shot. I'm not going to dispute that it's not out there, that there is debris. It is an OHV area. There's also some other debris, I've also identified the fact that the ranch is a deteriorating facility, as well.
But one of the concerns that came --
that I've had to look at in the wake of all of
these new solar facilities, and this is new stuff
that we're dealing with and having to contemplate,
is when I come under the category of contrast.

Now in the back of the FSA you'll see an
explanation of the various terms that I've used,
that's the final staff assessment, this document.
And we've worked with this over a number of years
to establish these definitions. Of course,
largely they were based on natural gas facilities,
and now we're introducing having to see new things
introduced over the solar facilities.

And one of them under contrast is
brightness. Now, when I'm talking about
brightness to the area, and this is why I've
identified under -- I highlighted the parabolic
trough. I made the statement, the glittering from
the parabolic troughs would be seen at various
locations. The degree of contrast introduced by
the amount of light or brightness that is given
off from the surface of the parabolic trough would
accentuate the contrast in the surrounding
landscape.

This is a new area, frankly, is
increased brightness to a specific area. And I'm giving it a whirlwind of a name calling it ambient brightness intensity.

And what I would look -- kind of reckon it to is I was with my -- babysitting my friend's daughter a number of months ago. And the light bulb in her bedroom went out. There was a 20-watt light bulb in there. And this is during the daytime, we were reading, or I was reading to her.

We went in, could not find another 20-watt bulb, but we found a 120-watt bulb. And so I went in and replaced the 20-watt bulb with the 120-watt bulb in the bedroom. And we turned it on and she says, oh, my god, it's too bright.

So I started thinking about it. The analogy would be think of the Fremont Valley as being the bedroom. Think of the proposed power plant being the 120-watt bulb that's currently going in there. And that increase in intensity of light, a brightness, I want to say not light, but brightness.

Now, is there an impact there? Well, under CEQA, yeah, there's some type of impact. Is it significant? I don't know. We don't have studies that can tell me what the ambient light is
for an area that might make it significant, non-
significant, it's an unknown to me at this point.

    So, and there's other stuff coming on
solar fields, folks. I'm getting deluged with it
every day.

    But anyway, so this is an unknown that I
had to kind of think about when I was considering
those two KOPs. What is this introduction? Is
this so bright? It is a physical change, but is
it so bright that it's a significant impact? At
least from the context of contrast under those
seven or eight categories.

    Q    So your professional opinion is based on
what, the state of what we know now and the
information is that it is a significant impact on
contrast?

    A    I have to say it's a significant impact
because there's no information to dismiss it, that
there may be an impact. And CEQA requires us to
err on the side of being most environmentally
protective, conservative.

    HEARING OFFICER CELLI: Anything
further?

    MR. BABULA: Okay, I am done.

    HEARING OFFICER CELLI: Applicant
questions, please.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q I've just got to ask, did you hike to KOP-6, I think it is?
A No, I didn't. Unfortunately, I've got one hip that's been replaced, and the other one's going pretty quick. So my technical climbing, even simple hiking -- and this is only a class 1 hike -- at the time limited, well, limits me from how far up I can go.

Q Is a class 1 hike a fairly simple hike?
A Very simple.

Q Is that the hike that is described to go to the top of Chuckwalla Mountain?
A I did describe the -- yeah, yeah, actually the first one. These are based on some of the trails from the -- actually, the map that's in the FSA is based on the BLM's mapping, which is their area of critical environmental concern

trails map.

It would be Jawbone. It's actually only a portion of it. We didn't put the entire map in.

Q Do you think it could be the case that the trail that you're describing there is the

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trail to Chuckwalla Mountain and not the trail to KOP-6?

A That could be the case.

Q The figures that, looking at some of the figures in the FSA, you included a figure, I think it's number 23, that shows, I believe it's pictures from Chuckwalla Mountain?

A Correct. I believe those are the ones from the Sierra Club?

Q Correct. And can you see Cone Lake in one of those? You probably need to look at the FSA.

HEARING OFFICER CELLI: And if you have the picture, you might want to walk over and show it to him, so he'll have the proper --

MS. LUCKHARDT: It's figure 23, the east view -- does somebody have it in color? Okay, Sara has it in color in case.

THE WITNESS: I have it, yeah.

HEARING OFFICER CELLI: Do you remember what the question was, Mr. Hamblin?

THE WITNESS: Can I see Calm Lake.

MR. SPEAKER: Cone Lake.

THE WITNESS: Or Cone Lake, yes, I can.

BY MS. LUCKHARDT:

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Q And isn't the color of Cone Lake similar to the color from the solar array?

A In the --

Q In vis-

A In vis-, it's a simulation.

Q The simulation.

A Okay, as in --

Q From say KOP-6?

A We can go back to 6 --

MR. SPEAKER: Which one is --


MR. BABULA: 23?

(Pause.)

THE WITNESS: Okay, that's the existing that was taken.

MR. FLACK: Do you want the next one?

MS. LUCKHARDT: Yeah. There we go.

THE WITNESS: And that is at some time during the day.

BY MS. LUCKHARDT:

Q Correct. And isn't it the case that the time at which you're going to see that particular reflection will be limited?

A It will shift during the day, as we've indicated. Actually, even as your consultant
indicated. That there will be a substantial
contrast at certain points during the day, and
then it will diminish and change as the movement
of the sun occurs, and the tracking occurs.

Q And it's correct that the backs of this
particular array field will be painted a sand
color, that's correct?

A That's, from what I understand, and that
follows with what was done also at Harper Lake.

Q When you were doing your analysis in the
FSA and you were evaluating KOP-6, you also stated
that the view includes manmade modifications,
didn't you?

A Correct.

Q And those would include the Honda Test
Track, --

A The existing deteriorating structures,
the ranch; pole lines; the street; the highway.

Q And don't these features diminish at
least the natural perception of that view?

A Those would get considered under -- if
we go back to diagram 1, under the visual
sensitivity, we would take those into
consideration, yes.

Now, what we're not, or at least the
framing of your questioning is not taking in the
bottom part proposed condition. The proposed
condition introduces the lighting issue, the
brightness issue that I mentioned.

That has to be equated along with the
proposed structures that you're --

Q And did you take into account the
existing contrast that's out there now for this
site?

A Yes. Yes, thanks to the previous
picture, and the fact that I was also out there.
I just didn't make it up -- I made it to all the
other KOPs, I just didn't climb.

If we notice the different texture,
even, the difference in the soil change, even the
background, those were considered.

(Pause.)

BY MS. LUCKHARDT:

Q Do you consider any contrast to be an
adverse impact?

A Any, wow, any contrast. Well, let's go
back to the back of the document, I explain what
contrast is. And I'm not going to say any because
there's also the ability in which if structures
are more uniform to the -- well, here, let's, let

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me go back and find one of those. Actually I have
it here.

HEARING OFFICER CELLI: How many more
questions do you have, Ms. Luckhardt?

MS. LUCKHARDT: Just a couple more.

HEARING OFFICER CELLI: Okay. The clock
is running.

MR. BABULA: He's actually looking at
the FSA.

(Pause.)

HEARING OFFICER CELLI: So the question
has to do with contrast, what is contrast --

THE WITNESS: Okay.

HEARING OFFICER CELLI: -- any contrast
constitutes a significant impact.

THE WITNESS: Well, contrast concerns
the degree to which the proposed project's visual
characteristics or elements of form, line, color
and texture differ from form, line, color and
texture existing in the landscape.

So if there is a similarity between the
design of the project with the form, line, texture
within the natural environment, it would be
limited contrast.

So I wouldn't be -- there would be some
contrast, but I wouldn't say it would be a
significant -- I couldn't just rule that it's
automatically an impact. A substantial impact.
Or substantial degrading, let me say it that way.

HEARING OFFICER CELLI: You might want
to move those metal things.

THE WITNESS: Clips, yes.

HEARING OFFICER CELLI: Those clips away
from that mic, please. It might help. So, I'm
sorry, your answer got interrupted and we're
interested in that answer. You said that if
there's low contrast then there's no impact. And
if there's high --

THE WITNESS: What you're -- all right,
what you're looking at is the ability of the new
elements being introduced to be absorbed within
the landscape.

Now, if you have extensive introduction
of forms, lines, colors and textures that are not
in, let's say, rhythm or consistent with the
physical condition, then you're going to have a
significant contrast.

HEARING OFFICER CELLI: Now, is --

THE WITNESS: So now what you'd like to
see is maybe facilities designed that flow as best
as they can with the existing physical condition.

HEARING OFFICER CELLI: So, if I may,

and I'll let the parties cross on this if they
need to, but instead of mirrors being introduced
there was a lake introduced there.

THE WITNESS: Okay.

HEARING OFFICER CELLI: A lake

presumably has a similar impact to these mirrors
in that it's going to reflect sunlight, it's going
to reflect the sky, it's going to be blue density,
mostly yellowish --

THE WITNESS: Correct.

HEARING OFFICER CELLI: -- background.

THE WITNESS: A change in the existing

physical condition.

HEARING OFFICER CELLI: Right.

THE WITNESS: Introduced by something

other than structure.

HEARING OFFICER CELLI: And it's an

impact. It's a significant impact under those
criteria. The question is it a significant

adverse impact.

My question is does that constitute a

significant adverse impact?

THE WITNESS: Well, the question could
be contingent on size. We have a two-square-mile industrial facility. Is that a significant impact for the Fremont Valley of light reflected, brightness?

HEARING OFFICER CELLI: So size is a factor?

THE WITNESS: Size could be a factor.

HEARING OFFICER CELLI: But I'm --

THE WITNESS: Now, but let me go back also and say what I was saying, too. We have this increased brightness occurring. When does that become a significant impact? And I don't have data on that.

HEARING OFFICER CELLI: Okay. I mean it seems to me that when you're driving down the 14 and you get blasted and you can't see because the sun is now in your face --

THE WITNESS: True.

HEARING OFFICER CELLI: -- like a mirror, that would be significant. And that would be adverse.

THE WITNESS: True.

HEARING OFFICER CELLI: Okay.

THE WITNESS: And I've been in a plane flying over a couple of lakes where I've seen the
light come up at me.

HEARING OFFICER CELLI: So this is admittedly kind of a new area.

THE WITNESS: Yes.

HEARING OFFICER CELLI: And you had sort of indicated earlier in your testimony, you said something to the effect of you can't state whether this is a significant impact, but you have no evidence to dispute that brightness, the brightness factor is significant.

THE WITNESS: I don't have a scientific level that says, okay, we're now 50 percent increase in the current area where this project is going to be an increase in brightness. Therefore, it's an impact.

Now I'm going to conclude there is an effect that's occurring. That's why I'm here today to say that.

Now, if somebody were to ask well, at what point, what percentage, what candle power, what lumen, I can't tell you at this time.

Now, Madam Chair, you'll be seeing me probably later in the summer, because we are looking at doing some in-depth studying on this.

Just a footnote.
HEARING OFFICER CELLI: But when it comes to this Committee's going to have to resolve this problem of unmitigable impact based upon this KOP, these two KOPs.

THE WITNESS: Right.

HEARING OFFICER CELLI: And no pun intended, but any light you could shed --

(Laughter.)

HEARING OFFICER CELLI: -- would be useful.

THE WITNESS: Well, this goes back to a meeting which Madam Chair was present for where there was a gentleman in the back of the room that said something about a shot in the dark. I was the guy that said that. We're taking some shots in the dark within our professional expertise. And this was one of those thought processes that I was undergoing, and continue to undergo during the course of this.

We would have an effect -- we have an effect occurring. We have a change in the existing condition. I have to err on the side of advising you that I think it's a significant impact because I don't have any information that will allow me to say it's not an impact.
HEARING OFFICER CELLI: Okay.

THE WITNESS: I can't just sit there, and then knowing that I need to err on the side of being more environmentally protective. Now the analogy you even just mentioned, we start getting into another category, which is the glint and glare, the traffic safety issue. And that's another kind of subset that we'd be dealing with at some point, as well.

Retina damage. Do we go to that extreme or do we go to a flash blindness situation. Again, these are all areas which we're looking at at our end, at the technical staff's end.

But we don't have anything definitive to give you at this time.

HEARING OFFICER CELLI: Okay, fair enough. I'll give it back to you, Ms. Luckhardt, you may follow up.

BY MS. LUCKHARDT:

Q Mr. Hamblin, based on your analysis --

MS. LUCKHARDT: Am I cross-examining the Committee?

HEARING OFFICER CELLI: This is cross.

(Laughter.)

HEARING OFFICER CELLI: Mr. Hamblin,
you're being asked a question on cross.

BY MS. LUCKHARDT:

Q Mr. Hamblin, based on what you just discussed, would you find the existing condition, which clearly delineates the previous agricultural activity to be a significant impact?

A Well, say that again? I'm not --

Q Would you find the existing condition, and maybe go to the previous slide --

A Actually the impact isn't based on the significance. The change to the existing condition.

Q Hypothetically, if it was --

A Pristine desert?

Q Pristine desert, and then you looked at the existing condition, would that be potentially a significant adverse impact?

A It would be a concern, yes. I would say that there's definitely a physical effect that has happened. From pristine, if we're looking at like a wilderness classification by the U.S. Fish and Wildlife Service? Wilderness scenic, something in those areas, to going to, well, going to this, yeah, there's an impact.

Q And then isn't the overall geometric
shape of the project similar to what's out there now?

A  Well, okay. You're introducing structures, as well, that aren't out there. Administration building, mirrors that aren't out there. You know, this is a roadway system. I mean I would say some, at least at this angle there's some form that's added to it. But I think I say that even in the staff report, there's a comment I make, that some people may think this is visually pleasing.

MS. LUCKHARDT: Okay. I have nothing further.

HEARING OFFICER CELLI: Nothing further? Ms. Gulesserian, I know that you didn't have a dog in this fight but did you want to ask any questions?

MS. GULESSERIAN: No, we have no questions, thank you.

HEARING OFFICER CELLI: Thank you.

Redirect please, Mr. Babula?

(Pause.)

MR. BABULA: Just one clarifying question to redirect him on.
REDIRECT EXAMINATION

BY MR. BABULA:

Q Was there -- besides the brightness component, was there another component of KOP-6 that you had put in your testimony that you'd like to address?

A Sure. We focused a lot of this discussion on brightness, but again, it's structures that are also being introduced into an area that doesn't currently have them. And, again, at this type and design, you know, two square miles of them.

So I do want to add, you know, I mean my future concern also becomes this brightness issue, because I'm looking technically, but there's also still, and I've already discussed the structure issue. So I won't belabor the point.

HEARING OFFICER CELLI: Chairman Douglas, you had a question.

PRESIDING MEMBER DOUGLAS: Mr. Hamblin, a brief question. There doesn't seem to be any dispute that there will be a change to the physical environment, and that it will be visible certainly under certain circumstances maybe more than others.
I wanted to ask you directly what is it that makes it adverse? Is the brightness, is it something else?

THE WITNESS: Well, at this elevated angle I'm going to say brightness. If you -- also, again, it's structures introduced to an area that -- significant types of structures for a long distance.

If this had been a natural gas-fired facility, my view would be a lot different because it would have been on a smaller footprint. But I'm also considering the fact that we've got a large area of mirrors, administration building, et cetera, spread out over a large, well, field of view.

PRESIDING MEMBER DOUGLAS: So you're looking at the size of the facility, you're looking at brightness, and you're looking at structures.

THE WITNESS: I'm looking at all of the items that were in diagram 1.

PRESIDING MEMBER DOUGLAS: Now, this is, as has been noted to some degree, an issue of first impression here at the Commission. We don't have a lot of cases that have been decided on the
visual impacts of large solar facilities.

THE WITNESS: I'm well aware of that.

PRESIDING MEMBER DOUGLAS: We're moving towards having a number, hopefully. You mentioned that in your mind there's no set or understood criteria for assessing the significance of the visual impact. And I wanted to ask you --

THE WITNESS: I did say that.

PRESIDING MEMBER DOUGLAS: -- to break that down a little bit. There's brightness, there's structures, there's size of the facility.

THE WITNESS: Okay, my question was based, at that point, on the brightness issue. This is something that I haven't been able, again, to grab my hands around. And we, upstairs on the fourth floor, have been talking about and we're seeing some of these issues, also, with the power towers.

All I can say is we're working through it. We have an illumination engineer, an illumination specialist on board. He has offered some tremendous advice and counsel to us on this matter.

There is just this point that, at least when this report was done back in September, I
know more now than what I did then. And I kind of have an idea of where we maybe go, some idea of where we may be going.

But, yes, the component of structures is also. I just didn't dwell on the structures as much as I did on the brightness.

PRESIDING MEMBER DOUGLAS: And in terms of the brightness, for our benefit and for the benefit of any members of the public who may be here, can you describe it or compare it to any reference point?

THE WITNESS: Reference point?

PRESIDING MEMBER DOUGLAS: That might be --

THE WITNESS: Like incident ray or refractive ray or escaped ray?

PRESIDING MEMBER DOUGLAS: How bright.

THE WITNESS: How bright. No, actually I don't have anything. See, that's part of going from the 20-watt bulb to the 120, it was purely an analogy. I don't know if that is actually the example that I would -- that's an analogy. I don't know if that's the scientific percentage of increase that would take place.

PRESIDING MEMBER DOUGLAS: All right,
thank you.

HEARING OFFICER CELLI: Okay, I think that -- are we finished with visual then?

MS. LUCKHARDT: Well, I'm just -- if I could just, based on the discussion that you just had about what other factors besides brightness were taken into account for these KOPs.

RECROSS EXAMINATION

BY MS. LUCKHARDT:

Q It was my understanding that you created an estimate of the number of hikers that you thought might go up that trail?

A Correct.

Q Was that based on any numbers that you could get from BLM or from anyone else?

A BLM didn't have a count. They made an assumption. So I went with a number that -- that was purely a number that I put forth. Now the number of hikers that I used was also considered low by the diagram 7 -- diagram 1 categories.

So, yeah, the number wasn't so much.

Now granted, hikers tend to be more passive recreation. They tend to be more observant. Increased brightness, the structures, the view may impact them much more than if you went down the
mountain to the OHV area, the offroad riders who tend to be more active recreationists. And they not care; they're going to be worried about what's in front of them, jumping, that type of activity. Or worrying about the hole in front of them which I missed when I was doing it.

MS. LUCKHARDT: I have nothing further.

HEARING OFFICER CELLI: Anything further, staff?

MR. BABULA: Nothing further.

HEARING OFFICER CELLI: Thank you. With that, we finish visual then.

Let me see, now we were in the midst.

MS. LUCKHARDT: Do you want to complete water?

HEARING OFFICER CELLI: Yes. We were in the midst of water --

MS. LUCKHARDT: We can bring up Mr. McCloud.

HEARING OFFICER CELLI: Do you have him here? Oh, good.

MS. LUCKHARDT: He's here.

HEARING OFFICER CELLI: Thank you, Mr. McCloud. So where are we now? Let me see.

MS. LUCKHARDT: He needs to be sworn.
And then actually I'm concerned about us getting to biology because we do not have all of the folks here any longer than today.

HEARING OFFICER CELLI: Well, we're going to get to it. And we will finish today, so, with that, let's have Mr. McCloud sworn.

MS. GULESSERIAN: I'm going to make a suggestion that since both Mr. McCloud and David are transmission system engineering, we could get them done in like ten minutes, five minutes.

HEARING OFFICER CELLI: I think that's a fine suggestion. Let's get Mr. McCloud sworn.

Whereupon,

DUANE McCLOUD
was called as a witness herein, and after first having been duly sworn, was examined and testified as follows:

MS. LUCKHARDT: Yeah, I'd like just to swear in Mr. Flack just in case.

MS. GULESSERIAN: I actually narrowed down my questions so it shouldn't take too long.

MS. LUCKHARDT: Okay.

Whereupon,

MICHAEL FLACK
was called as a witness herein, and after first
having been duly sworn, was examined and testified as follows:

HEARING OFFICER CELLI: Please state your name and spell it for the record. And if we're going to have a panel then I am going to need both of them to state their name and spell it for the record.

MR. McCLOUD: Duane McCloud, D-u-a-n-e M-c-C-l-o-u-d.

MR. BUSA: Depending on the questions, this is Scott Busa, B-u-s-a.

Whereupon,

SCOTT BUSA was recalled as a witness herein, and having been previously duly sworn, was examined and testified as follows:

MR. FLACK: Michael Flack, F-l-a-c-k.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Duane, I'll ask you since you came all this way. But apologies, you didn't have the benefit of hearing the earlier testimony of Rosamond.

We heard this morning that, or this afternoon, that the Rosamond Community Services
District, from that representative, that it was going to take two years to upgrade the plant and build the pipeline from the time that they have an agreement with Beacon.

Is it correct that construction of the Beacon project will take approximately 25 months?

MR. McCLOUD: That is correct.

MS. GULESSERIAN: So, are you familiar with soil and water condition 1.

HEARING OFFICER CELLI: And I'm going to need each of your witnesses to state who they are before they speak so the record's clear which witness is speaking.

MR. McCLOUD: Yes. This is McCloud. And I'm familiar with the condition, although I may need to refresh specific parts --

MS. GULESSERIAN: Oh, sure, I just have one question about it. It's that Rosamond will take two years to construct the plant and pipeline, and it's going to take two years for the plant, the Beacon plant, to be constructed.

So in order to comply with condition 1 don't you have to make a decision on whether to use Rosamond recycled water within one to two months after the start of construction?
MR. McCLOUD: That would be reasonable, yes. That would be one of the first decisions we'd have to make.

MS. GULESSERIAN: Okay, thank you.

HEARING OFFICER CELLI: Any further questioning from CURE?

MS. GULESSERIAN: We have no further questions.

HEARING OFFICER CELLI: Staff?

MR. BABULA: Nothing.

HEARING OFFICER CELLI: Applicant?

MS. LUCKHARDT: Nothing.

HEARING OFFICER CELLI: Thank you. Does this mean that we are finished with water, soils and water and hydrology at this time? Applicant?

MS. LUCKHARDT: I believe so.

HEARING OFFICER CELLI: CURE, nothing further on soils, water and hydrology?

MS. GULESSERIAN: Nothing further.

HEARING OFFICER CELLI: Staff?

MR. BABULA: Nothing further.

HEARING OFFICER CELLI: Thank you. So that record's closed.

Now, let me just go back to my outline and see where we are. So we have handled -- now
alternatives, we've received all of the evidence
on alternatives in written form from CURE,
applicant and staff. And we aren't calling any
witnesses.

Bio we're going to call next. Cultural,
we're finished with. Soil and water we're
finished with. And visual we're finished with.
The only things remaining is the hazmat,
waste. There were some questions on project
description.

And then there's transmission systems
engineering. And is it that I need to take care
of transmission systems engineering now? How long
is that going to take, because we need to get to
bio.

MS. GULESSERIAN: Five --
HEARING OFFICER CELLI: We were going to
start with bio.

MS. GULESSERIAN: We have about five or
ten minutes, really, it's going to be quick.
HEARING OFFICER CELLI: Okay. Is that a
reasonable estimate, five to ten minutes on TSE?
Applicant?

MS. LUCKHARDT: I have a few questions
on, cross questions for CURE. But I'm not
remembering, off the top of my head, how many there are.

HEARING OFFICER CELLI: Staff?

MR. BABULA: Yeah, I don't have any.

I'm trying to find out if Mark is on the line. Do you know? Can you see?

HEARING OFFICER CELLI: Let me look.

MS. LUCKHARDT: In addition, if you've got folks on the line, if you could open up the line for Steve Richards, as well, that would be great.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: If we're going to go to transmission.

HEARING OFFICER CELLI: Steven Richards, I just un-muted your line. Can you hear me?

Steven Richards, can you hear me?

MR. RICHARDS: Yes, I can. Yes, I can.

HEARING OFFICER CELLI: Okay. Give me a minute, I need to put a mic closer to the phone so that if you wouldn't mind saying your name again. Mr. Richards?

MR. RICHARDS: Steven Richards.

HEARING OFFICER CELLI: Can you all hear that okay? Okay. So, we have Steven Richards on
the line, thank you.

MS. LUCKHARDT: Why don't we have him sworn while he's --

HEARING OFFICER CELLI: Just before I do there was another -- who else did I need.

(Telephone interference.)

HEARING OFFICER CELLI: Okay, I've got -- Mr. Richards, I think you have a gobbler that needs --

(Laughter.)

HEARING OFFICER CELLI: -- management.

Okay. I'm going to open, ladies and gentlemen on the phone, I want you to understand that I have three or four callers here who are not identified, because I think you called in without using the internet and so you're not identified.

I'm going to open your line one at a time, and ask you to speak. That means everybody's going to speak, and I'm only going to hear one of you, and then I'll know who's on the line. So I hope that's clear.

I'm opening up the line right now to call-in user number 1. I'm going to un-mute it. And now, call-in user 1 -- or all callers on the phone, please state your name.
Okay, nobody is calling on the phone.

Say again, please?

MR. RICHARDS: I'm not sure what caller number I am, but this is Steve Richards.

HEARING OFFICER CELLI: Steve Richards, okay. I've got you in there. That's good. But caller user number 1, we don't know who that is. I'm going to open up the line for caller user number 10. And now, call-in user number 10, if you're on the line, could you --

MR. HESTERS: Mark and Sudath are on the line. I don't know whether that is 10 or not.

HEARING OFFICER CELLI: That's who I need. So this is Mark Hesters?

MR. HESTERS: Mark Hesters.

MR. ARACHCHIGE: And Sudath Arachchige.

HEARING OFFICER CELLI: We'll have you spell that in a minute.

So I now have those three, Mark, Sudath and Steve Richards on the line. Do I need anyone else from this particular topic?

MR. BABULA: Not from us.

HEARING OFFICER CELLI: Okay. So, Steven and Sudath and Mark, we're going to have you sworn in at this time.
You can just do it right on the phone.
They can hear you.
Whereupon,

STEVEN RICHARDS, MARK HESTERS
and SUDATH ARACHCHIGE
were called as witnesses herein, and after first
having been duly sworn, were examined and
testified as follows:

HEARING OFFICER CELLI: Thank you.
You're sworn. Whose section is this? Is this
CURE?

MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: Go ahead,
please, Ms. Gulesserian.

MS. GULESSERIAN: Thank you.

DIRECT EXAMINATION

BY MS. GULESSERIAN:

Q Mr. Marcus, can you state your name for
the record.

MR. MARCUS: David Marcus, M-a-r-c-u-s.

MS. GULESSERIAN: And are you sponsoring
your testimony that has already been entered into
the record, exhibit 616 through 624?

MR. MARCUS: Yes, I am.

MS. GULESSERIAN: Any changes to that
sworn testimony other than the ones made this morning?

MR. MARCUS: No.

MS. GULESSERIAN: Are the opinions in your testimony your own?

MR. MARCUS: Yes, they are.

MS. GULESSERIAN: Can you please summarize your testimony and the basis for your conclusions.

MR. MARCUS: Talking now about the transmission engineering part of my testimony, I first identified a discrepancy between the LADWP description of the Barren Ridge Rinaldi Line in the system impact study, which I believe is exhibit 76, and the LADWP website describing the Barren Ridge renewable transmission project. And recommended that this should be clarified, something which I think has since happened in an email from staff late last week.

I then identified that even taking exhibit 76 as accurate, it implies that in order to deliver the full output of the Beacon project onto the grid, there would be times when LADWP generation from hydro plants would have to be curtailed.
And recommended that rather than licensing a project for 250 megawatts that would not be producing a net contribution of 250 megawatts, the FSA condition TSE-5 should be amended in three different ways.

First, that it should be amended to require there be a signed larger generator interconnection agreement prior to the start of power plant construction. That would resolve any question about have all the numbers properly looked at.

Second, that the LGIA V1 that allows for the full output of Beacon to be delivered to the project under N-0 conditions. It's understood and it's often been the case that under contingencies there may be project curtailments. But you shouldn't have a project being connected to the system that under normal conditions could ever, say at peak load, not be able to deliver its full output.

And that third, even if LA was willing to interconnect Beacon and accept Beacon's full output, if the condition for doing that was that LA would curtail its generation, that that shouldn't be allowed either. That the system, as
a whole, if it's been promised 250 megawatts, should be able to accept 250 megawatts under N-0 conditions.

That was my testimony.

MS. GULESSERIAN: Can you clarify just for the record what you mean by N-0 conditions?

MR. MARCUS: Yes, N-0 is a term of art used in transmission planning to refer to the condition where all facilities are in service or capable of being in service, not all power plants run all the time. But every facility that you want to run is either running or capable of running.

And by contrast if any one facility not specified in advance is assumed out of service, that would be N-1. And then there's subdivisions. if you're talking only about generators that would be a G-1. If you're talking only about transformers that would be T-1. N-1 is the generic term for one facility out of service.

MS. GULESSERIAN: Thank you. Do you have anything further to add?

MR. MARCUS: No, I do not.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: Thank you.
Staff, please, cross.

CROSS-EXAMINATION

BY MR. BABULA:

Q How do you propose that we have a condition that regulates what LADWP does?

MR. MARCUS: That the permit would say that construction is conditional on obtaining an LGIA with the following constraints on it. That an LGIA that says you can connect but you can't generate more than 50 megawatts would clearly be unacceptable and no one's proposing that here.

But they are contemplating, based on the SIS, a scenario where you would be interconnecting 250, but you wouldn't be able to deliver the full 250.

And then they're contemplating -- sorry, based on the SIS they're contemplating a situation where you could interconnect 250, but you could only deliver the full 250 if 65 to 70 megawatts of LA generation were curtailed to make room for it.

In the email from LA to the staff from last Wednesday that was forwarded on to me at the end of last week, that email contemplates a condition where 250 megawatts would be allowed to interconnect, but not all 250 megawatts would be
deliverable.

It's unclear right now from either the SIS or the LADWP email, since neither of them is an LGIA, whether those proposed constraints are constraints under N-0 conditions or N-1 conditions.

What I'm saying is even if somebody is willing to enter into an LGIA that allows curtailments under N-0 conditions, the Commission, as a matter of policy, shouldn't be licensing power plants with those kind of conditions. Because it means that California's not going to get what it's paying for. It's not going to get 250 reliable megawatts if you can have N-0 curtailments.

MR. BABULA: But isn't that ultimately how LADWP runs their grid? Or if something comes up and they need to shift resources, that's up to them? We don't really have jurisdiction on that?

MR. MARCUS: You have jurisdiction as to what conditions you're willing to allow this plant to be built under. And if you say an LGIA that contemplates N-0 curtailments is not an LGIA that is allowing full delivery of the project to the grid, I believe you can do that.
MR. BABULA: Okay, well, I'll let our technical people address the other issues that you brought up. I have no further questions.

HEARING OFFICER CELLI: Thank you.

Applicant, cross?

MS. LUCKHARDT: Yes.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q Mr. Marcus, where in the Energy Commission regulations is the requirement that you're stating stated?

MR. MARCUS: I'm not a lawyer and I couldn't tell you.

MS. LUCKHARDT: Are you aware that it's there anywhere? Are you aware that that's a legal requirement?

MR. MARCUS: I am not aware whether it's a legal requirement or not. My testimony, as a matter of policy, is that the Commission shouldn't want to accept projects that are not capable of delivering their full output to the grid when the grid is in operation.

N-1 is a totally different situation. But under N-0 conditions it's not a real full interconnection if it's subject to curtailment.
under N-0 conditions.

MS. LUCKHARDT: Are you familiar with special protection schemes or RAS schemes? Those are remedial action schemes.

MR. MARCUS: Yes, I am. Special protection schemes are SPSs and remedial action schemes, RASs, are two names for the same kind of thing.

MS. LUCKHARDT: And isn't it true that a RAS or an SPS scheme is included in many many interconnection agreements?

MR. MARCUS: Yes, it's quite common to have a RAS or an SPS to deal with contingency conditions, that is N-1 or N-2 conditions. I don't believe it's common at all to have a RAS for N-0 conditions.

MS. LUCKHARDT: And when you're looking at the SIS, where does it say that a RAS or an RAS scheme is required for N-0?

MR. MARCUS: I think there -- well, first of all, nowhere does it say when it's required, but the SAS is not the interconnection agreement. It's simply a study of what might happen were this project to be connected.

But there are references to a proposed
SPS on page 8 of exhibit 76.

MS. LUCKHARDT: And where on page 8?

MR. MARCUS: Under the category of transient stability analysis at the top of the page. It then describes cases that are going to be studied; and items 6, 7, 8, 9, 10, 11, 12 and 13 all refer to with an SPS.

HEARING OFFICER CELLI: For the record --

MR. MARCUS: And then under double contingencies, those are all under the subcategory of single contingencies --

HEARING OFFICER CELLI: Were are --

MS. LUCKHARDT: What are you looking at?

HEARING OFFICER CELLI: I want to know, for the record, what exhibit we're in and --

MR. MARCUS: 76.

HEARING OFFICER CELLI: Exhibit 76, thank you. Page 8 of exhibit 76?

MR. MARCUS: Apparently not.

MS. LUCKHARDT: No.

MR. MARCUS: Oh, it's page 8 of the system impact study plan, which is, itself, which is appendix A, follows page 20.

MS. LUCKHARDT: Isn't it true that the
study plan was prepared prior to the system impact study, and that it's a document that's prepared prior to the system impact study?

MR. MARCUS: Yes, and then becomes part of it because it describes what was going to be studied.

MS. LUCKHARDT: But it --

MR. MARCUS: In the system impact study, itself, on page 19, there's a reference to a proposed SPS.

MS. LUCKHARDT: Isn't that reference referring to the N-1 and N-2 contingency conditions?

MR. MARCUS: I don't see how you follow that. It occurs in a sentence. It says, system performance meets all the applicable NERC liability standards under normal, that would be N-0, N-1 and N-2 contingency conditions with the proposed SPS for the primary point of interconnection.

I don't see anything there that says that either what the proposed SPS is, or what would trigger it.

HEARING OFFICER CELLI: Again, I don't know, I just looked up exhibit 76; they're
supplemental responses to data requests. So I'm not sure what exhibit we're talking about.

MS. LUCKHARDT: Exhibit 76 includes an attachment. The attachment is DR-50 to exhibit 76, which is the system impact study.

HEARING OFFICER CELLI: The system impact study, I got you. Thank you. So that's in appendix A?

MR. MARCUS: No. I was referring to appendix A of the -- page 8 of appendix A. And then I was subsequently referring to page 19 of the SPS, itself.

I believe it also is referenced on page 7. Perhaps not.

MS. LUCKHARDT: Referring you to page 7, isn't it true that that's required with an outage? That's indicating that an SPS would be required only with an outage?

MR. MARCUS: Yes. Page 7 is a list of particular outages under which an SPS would be required.

MS. LUCKHARDT: So you can point to no specific place where it says that an SPS would be required under normal or N-0 conditions?

MR. MARCUS: No. And I'm hoping that
there would not be one in the final LGIA. And all
I'm proposing is that there shouldn't be one. I'm
not saying that they have proposed one here. I'm
saying that they shouldn't propose one, or that
there shouldn't be one that would be associated
with an Energy Commission-approved project.

MS. LUCKHARDT: Isn't it true that the
SPS states that there's no adverse system impacts
were found with the VSP interconnection at Barren
Ridge in terms of transient, post-transient
stability analysis?

MR. MARCUS: Yes. And those are all
transmission system impacts. That's saying the
wires, themselves, are going to be intact. The
wires are not going to burn down under various
transient conditions with an SPS to make sure that
they don't.

That doesn't address the issue raised in
my testimony, and for that matter, conceded in
applicant's rebuttal testimony, that you wouldn't
necessarily get the full 250 megawatts of output
of the plant if there were curtailments triggered
by an SPS.

MS. LUCKHARDT: But isn't that something
that is required for almost every interconnection
MR. MARCUS: I'm sorry, isn't what required for almost every interconnection?

MS. LUCKHARDT: Under outage conditions, is it unusual under outage conditions to have to turn something down?

MR. MARCUS: Under outage conditions there's --

MS. LUCKHARDT: To back off a power plant.

MR. MARCUS: Under outage conditions it is not unusual to have to back off a power plant. I'm not sure it's the norm, but it's not unusual.

MS. LUCKHARDT: Okay, I have nothing further.

HEARING OFFICER CELLI: Staff, any cross?

MR. BABULA: I have no more cross.

HEARING OFFICER CELLI: Okay. Any redirect, Ms. Gulesserian?

MS. GULESSERIAN: Yes.

REDIRECT EXAMINATION

BY MS. GULESSERIAN:

Q David, when you testify about the LADWP stating that they may need to curtail megawatts of
the Beacon Power Plant, is that under normal conditions or under outage conditions?

We moved to enter into the record an exhibit which is exhibit -- it was 655. This is an email sent from CEC Staff, and they said, please forward this to David Marcus. It is a LADWP's --

HEARING OFFICER CELLI: Let's do this because --

MS. GULESSERIAN: So I can do it on cross, because it's theirs.

HEARING OFFICER CELLI: Maybe what we can do is --

MS. GULESSERIAN: I think we'll stipulate it.

HEARING OFFICER CELLI: -- if there's any objection to stipulating this one in, because we've already ruled that this document can come in as late filed. What is the document?

MS. GULESSERIAN: This is -- we had a conference call at your suggestion to try and work out TSE issues --

HEARING OFFICER CELLI: Yes.

MS. GULESSERIAN: -- last week. And we received on March 17th, which is on Wednesday,
this email from Energy Commission Staff, Sudath --
sorry, pronounced that wrong -- saying please
forward this information from LADWP.

HEARING OFFICER CELLI: I'm holding it
right now. Any objection to this document coming
in, applicant, Ms. Luckhardt?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: No objection.

Staff, any objection?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Okay, so this
document is CURE's next in order. And CURE left
off at -- we've accepted -- we've received
everything from 600 to 636. There is 637 out
there, which --

MS. GULESSERIAN: We would like to just
leave it as a placeholder if that --

HEARING OFFICER CELLI: I'll just leave
that there. So this document, which is the
3/16/2010 email from Sudath Arachchige to docket
optical system, signed by Li Lee, would be marked
for identification as CURE's 638, for
identification.

Do you have a motion at this time? Do
you want to move it into the record so it can be
received, Ms. Gulesserian?

MS. GULESSERIAN: Yes, we move to enter exhibit 638 into the record.

HEARING OFFICER CELLI: 638 is received into evidence.

MS. GULESSERIAN: Thank you. Mr. Marcus, can you answer the question now?

MR. MARCUS: Yes, you asked me whether in what we now know as exhibit 638 the proposed curtailment of BSP was under normal or contingency conditions.

And that's addressed in the paragraph numbered two on page 1 of exhibit 638, where it says that, LADWP, quote, "will consider a remedial action scheme, RAS, that will mitigate possible overload of the Barren Ridge Rinaldi 230 kV line prior to the construction of Barren Ridge Renewable Transmission Project."

"This RAS would include ramping down VSP generation or tripping VSP and would be temporarily in place until the completion of the Barren Ridge Renewable Transmission Project."

It does not say one way or the other whether the ramping down or tripping of Beacon would be occurring under normal conditions or N-1
or N-2 conditions. It doesn't say what the proposed triggering events are, whether they are high load, high generation, a combination of high load and high generation, or some combination of load and generation together with the transmission outage.

HEARING OFFICER CELLI: Well, I have a feeling we're going to hear about that, because they're online.

Where are we now? Are we on cross?

MS. GULESSERIAN: Yes -- no, that was redirect.

HEARING OFFICER CELLI: Okay, so that was redirect.

MS. GULESSERIAN: I don't have any other --

HEARING OFFICER CELLI: Any recross?

MR. BABULA: No.

HEARING OFFICER CELLI: Recross?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Any further witnesses from CURE with regard to transmission system engineering?

MS. GULESSERIAN: No.

HEARING OFFICER CELLI: Okay. At this
time CURE, we did take in, it was exhibit 638, received.

We'll turn to staff. Do you have a witness?

DIRECT EXAMINATION

BY MR. BABULA:

Q Mark, are you on the line?

MR. HESTERS: Yeah, we're both on the line.

MR. BABULA: Did you hear Mr. Marcus' testimony?

MR. HESTERS: Yes.

MR. BABULA: Great. Would you like to address what he said? I know you've gone through this. You've already reviewed his rebuttal testimony that was submitted. So if you can just briefly address what he stated regarding concerns with the line and the LGA and so forth.

MR. HESTERS: Yeah, one of the main concerns -- again, this is Mark Hesters, last name spelled H-e-s-t-e-r-s. I guess the main point of the testimony of Dave Marcus' testimony was on normal conditions. You don't usually run remedial action schemes under normal conditions. Those are usually reserved just for contingencies.
So we were talking about normal conditions with all elements, with everything working. The backdown or the tripping of generation would usually fall under something called congestion management.

In this case for these lines we're talking about essentially three types of generators on the line. You've got a wind generator, a solar generator and then LA has some hydroelectric generation.

The rare condition where the line would be overloaded under normal conditions would be when the wind and the solar were operating together at pretty much their maximum output. And that doesn't happen very often.

To basically back down some generation under that condition isn't sort of an outrageous idea. And LA proposed in some cases that they would back down the hydroelectric generation under that condition. Partly I'm inferring that from one of the SPSs that shows up in the system impact study.

That's a pretty reasonable solution to this because the hydroelectric can often be stored. On the rare chance that the wind and the...
solar are generating at the same time, you just
have them for the moment that the wind is blowing
and the sun is shining. They may not be doing
that tomorrow and you may be able to get -- you
may save the hydro event for another hour, another
day, another week. You can't really save the sun
or the wind.

So I'm not -- I guess that's my comment
on the David Marcus testimony. It's pretty
reasonable that you would back down something and
that you would try and build a transmission system
that operated under most of the time, under most
conditions.

And, you know, if you actually built the
transmission system so that it could take all the
wind and all the solar and all the hydro, you'd be
almost over-building the system because you don't
have all three of those together very often.

So, that's it.

MR. BABULA: Okay, I have no further
questions.

HEARING OFFICER CELLI: Any questions on
cross by applicant of Mr. Hesters?

MS. LUCKHARDT: We have no additional
questions for Mr. Hesters.
HEARING OFFICER CELLI: Cross-
examination of Mr. Hesters by CURE?

MS. GULESSERIAN: We have no cross.

HEARING OFFICER CELLI: At some point, applicant or staff, are you going to address the three suggested inclusions into the condition of certification from Mr. Marcus? Is that something you need to hear from the witnesses on? I just want to know what to do with this.

MR. BABULA: Well, I don't have --

HEARING OFFICER CELLI: It's an outstanding question.

(Parties speaking simultaneously.)

MR. BABULA: His changes to have the condition of certification read, you need to have the agreement before construction of the project, I don't think they shifted the burden in the sense of what exactly is the problem.

HEARING OFFICER CELLI: Well, it is their burden.

MR. BABULA: Right.

HEARING OFFICER CELLI: The burden is he's made three suggestions and I just, without getting into it too deeply, I just wanted to know whether you anticipated responding to any of those
three conditions.

MR. BABULA: No, it's in our FSA testimony, it's there. It stands. I don't believe they shifted the burden to even have us have to address that.

MR. HESTERS: We did have one response to the first condition change.

HEARING OFFICER CELLI: Mr. Hesters, can you hear me?

MR. HESTERS: This is Mark Hesters.

HEARING OFFICER CELLI: Mark, could you hold on for a minute.

MR. HESTERS: The first condition change that is proposed by --

HEARING OFFICER CELLI: No, there is no question pending.

MR. HESTERS: -- CURE was that we require that --

HEARING OFFICER CELLI: This is why works.

MR. HESTERS: -- the large generator --

(Parties speaking simultaneously.)

(Laughter.)

MR. HESTERS: -- agreement be submitted prior to the start of construction of the power
HEARING OFFICER CELLI: Actually, Mr. Hesters, can you hear me?

MR. HESTERS: Yes.

HEARING OFFICER CELLI: There's no question pending. I'm just going to ask you to hold off for a moment.

MR. HESTERS: Okay.

HEARING OFFICER CELLI: Thank you.

Applicant, are you going to -- I just want to know whether --

MS. GULESSERIAN: We move to strike that what was -- whatever was said --

HEARING OFFICER CELLI: Motion granted.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: Applicant.

MS. LUCKHARDT: Would you like us to respond as to whether the project accepts the requested changes or the requested additions to the condition --

HEARING OFFICER CELLI: I think the --

MS. LUCKHARDT: -- proposed by Mr. Marcus? I can have Mr. McCloud respond to that.

HEARING OFFICER CELLI: Here's what I'm going to do instead, actually. When it comes time
to drafting the briefs I'm going to need the
departies to point me to where this is or is not
addressed. That's all. I'm not asking that you
give us any particular testimony at this time. I
just need to know whether and where the Committee
can look to see whether those three issues were
addressed. That's all.

MS. LUCKHARDT: Okay, and the issues
that he brought up as being issues, or -- the
issues that he brought up, is that true?

HEARING OFFICER CELLI: That's it, he
brought up three conditions, wanted to change the
condition in three ways.

MS. LUCKHARDT: Yeah. We've got
responses to the -- I think I'll just have
Mr. McCloud respond right here just to be sure
that we haven't missed anything as to whether he'd
be willing to accept the conditions proposed by
Mr. Marcus. And then we don't have to worry about
whether that's on or not on the record.

HEARING OFFICER CELLI: But, you know
what, we're in the middle of Mr. Hesters.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: The reason I was
asking is I thought if anyone, this was going to
be the witness who was going to talk about it. In any event, --

MR. BABULA: Do you want -- I mean I

don't want to bog this process. If you want him
to address it, --

HEARING OFFICER CELLI: That's okay.

MS. LUCKHARDT: I believe that Mr.

Hesters is going to address this as to whether he

would recommend it.

HEARING OFFICER CELLI: Okay, then the

questioning, I guess, of Mr. Hesters is with

applicant at this time?

MS. LUCKHARDT: Sure.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q Mr. Hesters, do you --

HEARING OFFICER CELLI: I'm sorry, I may

have lost track.

MS. LUCKHARDT: I'm just trying to make

sure that you're getting -- if that's the question

you want to ask.

HEARING OFFICER CELLI: Any further

cross of Mr. Hesters?

MS. LUCKHARDT: I guess the question --

Mr. Hesters, this is Jane Luckhardt. I just have
a question for you.

Do you feel the need to include the requested changes to the conditions of certification from Mr. Marcus into your condition of certification?

MR. HESTERS: I have to say you cut out for a brief second there. This is Mark Hesters. I'm assuming you're asking me about the conditions of certification changes proposed by David Marcus, is that right?

MS. LUCKHARDT: Yes, and whether you feel the need to include his request that we have a signed large generator interconnection agreement prior to, I think prior to construction, if I'm paraphrasing it correctly.

MR. HESTERS: It's not a simple answer. It's a little more complicated. We generally require the large generator interconnection agreement prior to the start of construction of transmission facilities. And we would agree to that change.

We would not agree to a change that it be submitted prior to the start of the facility, itself.

MS. LUCKHARDT: Thank you. I have
nothing further.

HEARING OFFICER CELLI: Cross, CURE, of Mr. Hesters?

MS. GULESSERIAN: I don't have anything further.

HEARING OFFICER CELLI: Redirect of Mr. Hesters?

MR. BABULA: I don't have anything further.

HEARING OFFICER CELLI: Okay. Did you want to call Mr. Arachchige?

MR. BABULA: No, I just wanted -- Mark took care of it.

HEARING OFFICER CELLI: Okay. Did anyone want to cross Mr. Arachchige?

MR. BABULA: Just call him Sudath.

HEARING OFFICER CELLI: Sudath.

MS. LUCKHARDT: No.

MS. GULESSERIAN: No.

HEARING OFFICER CELLI: No cross, okay. And then did we hear -- we heard from Mr. McCloud.

MS. LUCKHARDT: We haven't heard from Mr. McCloud based upon the information provided by Mr. Hesters.

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DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q And in an effort not to be repetitive, I would only ask Mr. McCloud whether he thinks it's necessary to include the requested additional requirements that Mr. Marcus has presented.

MR. McCLOUD: And no, I do not.

HEARING OFFICER CELLI: Thank you.

MS. LUCKHARDT: And then I think there's one potential exhibit, if I can get to the bottom of everything that's here, that we may not have entered when we entered transmission line safety and nuisance. And that would be exhibit 334. And if that has not been entered, I would like to have that -- or we would offer that into evidence at this time. That's the rebuttal testimony.

HEARING OFFICER CELLI: 334 is already in.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: Transmission line safety and engineering.

MS. LUCKHARDT: Great, as long as --

HEARING OFFICER CELLI: Oh, you withheld it. So you're introducing it now.

MS. LUCKHARDT: Yeah.
HEARING OFFICER CELLI: Any objection, CURE, to exhibit 334, rebuttal testimony of Duane McCloud on transmission systems engineering?

MS. GULESSERIAN: No.

HEARING OFFICER CELLI: Any objection by staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Okay. On applicant's motion exhibit 334 will be received into evidence as 334, exhibit 334.

With that are we finished with transmission system engineering.

MS. GULESSERIAN: I have a couple questions for Mr. McCloud.

HEARING OFFICER CELLI: Okay, CURE, please.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q In your rebuttal testimony, which is exhibit 334, I believe, there's a discrepancy in LADWP's public statements regarding the Barren Ridge Rinaldi transmission line capacity and current usage, between the SIS and LADWP's Barren Ridge Renewable Transmission Project. What --

MS. LUCKHARDT: I would object to that
question as presuming that there was a

discrepancy. And I don't believe that we agree

with that.

HEARING OFFICER CELLI: Okay, so the

objection is sustained in that there's a

conclusion.

MS. GULESSERIAN: Let me read from the

rebuttal testimony. It states that --

HEARING OFFICER CELLI: What are you

reading from, exhibit 334?

MS. GULESSERIAN: I'm reading from

exhibit 334.

HEARING OFFICER CELLI: Line or page?

MS. GULESSERIAN: Page 1, answer 6. It

says in the sentence that begins, If you simply

look at the value, and at the end it says, there

does appear to be a discrepancy. Okay.

"If you simply look at the value

assigned to Barren Ridge Rinaldi line by LADWP and

the document referenced by Mr. Marcus for the

rating of the Owens Gorge Rinaldi line, there does

appear to be a discrepancy."

That's the discrepancy I'm referring to.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: And I would again say
that based upon the way that sentence is phrased, we are not agreeing that there is a discrepancy. We are simply stating the way it was presented.

HEARING OFFICER CELLI: I understand that. But, as a question, it's a fair question. Or I'm going to allow the question.

MS. GULESSERIAN: Thank you. Okay, so in your rebuttal it states that there does appear to be a discrepancy. But then you go on to argue, the apparent discrepancy may be because the website is addressing a different part of the Owens Gorge Rinaldi line than the SIS. Is that correct?

MR. McCLOUD: That's correct.

MS. GULESSERIAN: Okay. Did you review the LADWP website, itself, to see what it says?

MR. McCLOUD: I reviewed only the testimony from Mr. Marcus.

MS. GULESSERIAN: Then which attached to that testimony was the LADWP website.

MS. LUCKHARDT: I'm not sure that that's the case. I think the LADWP website may be in the additional exhibits, the ones that were presented on Monday -- on Friday, as opposed to exhibits that were presented earlier.
And I would just like to be sure that we are referring to exhibits that were originally attached to his testimony and not later-filed exhibits.

MS. GULESSERIAN: Yes. We would like to refer him to the original, the LADWP website on the original testimony. And --

MS. LUCKHARDT: Which is located where?

MS. GULESSERIAN: Located at 619.

MR. BABULA: I'm kind of losing track about what we're arguing about here.

MR. McCLOUD: Let me --

MS. GULESSERIAN: Really, --

MR. McCLOUD: What we're talking about right now is exhibit 2, LADWP, Barren Ridge Renewable Transmission Project. This was received into evidence already. It was sponsored by David Marcus, exhibit --

MR. BABULA: I thought the email that was just put into exhibits was what Mr. Marcus said resolved some of these questions about ratings. I thought that we were past that.

HEARING OFFICER CELLI: That may be the case, but right now there was a question about discrepancies that were pointed out in Mr.
McCloud's testimony, in his rebuttal testimony.

CURE was asking a question. Applicant interrupted the question based on the idea that the question was predicated on some exhibits that were not received into testimony, which isn't really necessary if he's read, whatever. Maybe you just need to find out whether he read and knows what they're talking about.

MS. LUCKHARDT: He already said that he had not.

HEARING OFFICER CELLI: Let's let Mr. McCloud answer this question.

MS. LUCKHARDT: Do we remember what the question was?

MS. GULESSERIAN: I just want to make sure that he has been able to look at that website that was attached to the testimony because we are talking about the discrepancy between what the LADWP website says.

HEARING OFFICER CELLI: So, Mr. McCloud, have you read -- have you seen the website that Ms. Guesslerian is asking about?

MS. LUCKHARDT: I think I would not want it to be the website, in general.

MS. GULESSERIAN: Sorry, excuse me, --
MS. LUCKHARDT: I would want it to be those pages that are --

MS. GULESSERIAN: -- exhibit 619.

MS. LUCKHARDT: -- attached.

MS. GULESSERIAN: I apologize.

MR. McCLOUD: Yes, I have.

HEARING OFFICER CELLI: Exhibit 619, you're familiar with 619?

MR. McCLOUD: I have read through it, yes.

HEARING OFFICER CELLI: Thank you. Go ahead, Ms. Gulesserian.

MS. GULESSERIAN: Thank you. Isn't it correct that you stated any one of the segments of the longer transmission path identified by Mr. Marcus along the Owens Gorge Rinaldi line could be the segment that limits the overall transmission capacity of a longer path to 400 megawatts? You have that in your testimony at the top of page 2.

MR. McCLOUD: Yes, yes.

MS. GULESSERIAN: Okay. Have you seen the revised website from LADWP correcting these -- adjusting these numbers?

MS. LUCKHARDT: Is that different from
what's in the --

MS. GULESSERIAN: Yes, this is what we talked about earlier. CURE was going to identify it as an exhibit. It's an update, so we cannot be relying on the old 619 --

HEARING OFFICER CELLI: But the question is has Mr. McCloud seen it.

MS. LUCKHARDT: Has Mr. McCloud seen it?

MS. GULESSERIAN: Has Mr. McCloud seen this, the revised LADWP website --

MR. McCLOUD: No.

MS. GULESSERIAN: -- that we discussed on the phone last week?

MR. McCLOUD: No, I have not.

MS. GULESSERIAN: Okay. I would like to -- do you recall discussing it during our phone conversation last week?

MR. McCLOUD: I do not recall discussing it.

MS. GULESSERIAN: Okay. I'd like to move to enter into the record an exhibit that we discussed during our --

HEARING OFFICER CELLI: What is the exhibit, please?

MS. GULESSERIAN: The exhibit is the
same thing as exhibit 619, but LADWP has revised its numbers on the Barren Ridge Renewable Transmission Project so it's the most up-to-date information.

HEARING OFFICER CELLI: Let me ask you this.

MS. LUCKHARDT: And this --

HEARING OFFICER CELLI: If I may. Do you have a date, Ms. Gulesserian? So what is the date of the document?

MS. GULESSERIAN: It was obtained from downloading it from the website on March 17, 2009.

HEARING OFFICER CELLI: What is the date of the updated information?


Our original testimony was submitted in November 2010 (sic). This would be the -- 2009, excuse me.

HEARING OFFICER CELLI: So, the LADWP updated the information on their website in January of this year. And the only real relevant question, Mr. McCloud, is whether you were aware of that change, and if you're familiar with those changes?

MR. MCCLOUD: And, no, I'm not. I'm not familiar with the document that she's referring.
HEARING OFFICER CELLI: So you didn't look at the website, and you haven't seen it at least since January of 2010?

MR. McCLOUD: No, I have not.

HEARING OFFICER CELLI: Okay. Then it's limited relevance at this point if he hasn't looked at it.

MS. GULESSERIAN: And, no, it's very relevant. The testimony was recently submitted by the applicant, and it doesn't rely on the most recent updated information regarding the --

HEARING OFFICER CELLI: That point is made. I mean that's a point that you've got. But here's the point I would -- I'm trying to decide whether I need to bring this document into the record. Why does the Committee need to read this, other than to know that it's not a part of Mr. McCloud's --

MS. LUCKHARDT: And I actually would object to this. There was an opportunity for filing rebuttal testimony. They did not take advantage of that opportunity.

They did so with Mr. Hagemann's testimony where he had found additional
HEARING OFFICER CELLI: Yeah, I think --

MS. LUCKHARDT: They supplemented his testimony. This showed up the Friday before. If they were aware of it and wanted to bring it to all of our attention, they should have and had plenty of opportunity to do so.

HEARING OFFICER CELLI: I think that the point is this.

MS. GULESSERIAN: We were --

HEARING OFFICER CELLI: They're bringing it in on cross, which is okay if Mr. McCloud was aware of it. But since he's not aware of it, it's sort of a nullity at this point.

MS. GULESSERIAN: We discussed this, the updated website, during our phone call last week at the direction of you to try and resolve the issue. Everybody was directed to --

MS. LUCKHARDT: At this point I would --

MS. GULESSERIAN: -- the new information that LADWP has regarding the Barren Ridge Renewable Transmission Project, so that we would all be on the same page.

HEARING OFFICER CELLI: Can you just get to the bottom line of this, please.
MS. LUCKHARDT: We were directed to the email from LADWP, not to the website, LA's website on their Barren Ridge Transmission Project.

HEARING OFFICER CELLI: Here's what I'm trying to figure out at five minutes to 3:00 and we're still talking about transmission system engineering. What I'm trying to figure out is what is the relevance, what does this thing say, what is the point.

You've got a website out there. It says what, I presume, the capacities are of these lines. And there was an upgrade in January 2010 that says there's been a change.

If you could just give me what's the change?

MS. GULESSERIAN: The modification from LADWP shows that the part of the transmission line with a 400 megawatt rating that Mr. McCloud is referring to, which was previously identified in exhibit 619 as the Owens Gorge Rinaldi is now identified as the Barren Ridge Rinaldi line.

HEARING OFFICER CELLI: So it's just a change in the name, okay.

MS. GULESSERIAN: It is not -- it is no longer any one of the segments of the longer
transmission path that Mr. McCloud is referring
to. It is specifically the Barren Ridge Rinaldi.

HEARING OFFICER CELLI: If he was armed
with that information. But since this is a change
in nomenclature that occurred outside of his
awareness, then it isn't -- I don't know that you
can -- I think that in order to appropriately
ascibe the information that he's putting into the
record, we have to deal with whatever his state of
awareness was at the time that he stated it.

And if the testimony is he wasn't aware
of this change in nomenclature of the lines then
it really shouldn't have any effect on his
testimony.

MS. GULESSERIAN: This is --

MS. LUCKHARDT: I would also object --

MS. GULESSERIAN: -- recross of his --

this is addressing his rebuttal testimony that was
filed. We would like to know whether his opinions
have changed today.

HEARING OFFICER CELLI: That's fair and
you can ask that question.

MS. LUCKHARDT: But at some point --

HEARING OFFICER CELLI: I'm just not
sure I want to bring this thing into the record.
MS. LUCKHARDT: I'm just not sure at some point that this is relevant. What we're talking about is the website talking about a renewable energy project transmission upgrade. And we have in front of us a system impact study on this particular facility. We have a confirming email from LADWP. And I'm not sure why we are looking at a transmission project as opposed to looking at an analysis that was done by LA for this specific project.

I'm just not sure that it makes good sense of our time to be spending hours looking at something like LA's website, as opposed to looking at the analysis that was done on this specific project by LADWP, who is the transmission owner and operator of that system.

HEARING OFFICER CELLI: So this goes in.

MS. GULESSERIAN: Mr. McCloud refers to the LADWP website in his rebuttal testimony, and refers to the information that I just spoke about regarding that segments of the longer transmission path, he says, could be any one of the segments.

And the LADWP website, at the time that this rebuttal testimony was filed, does not show that.
MS. LUCKHARDT: And that's because he based it on the analysis that was included in Mr. Marcus' testimony. It was rebuttal to Mr. Marcus' testimony and the attachments included thereto.

HEARING OFFICER CELLI: I kind of, my sense is that this is, it isn't as much of that. Let me put it this way: I don't think this document does anything more than impeaches Mr. McCloud if he was aware of the existence of the document and the change of the nomenclature of the line.

And since the testimony already is that he was not aware of it, it is of questionable value. And I'm disinclined to bring it in right now, because all I think it's going to do is confuse the issue. We'll be bringing in a change he wasn't aware of, and didn't rely on, and isn't using so far in his rebuttal testimony.

His rebuttal testimony, if I have this right, Mr. McCloud, your rebuttal testimony is based upon what you already said in your previous testimony. And if it was relying on that transmission, was it your understanding of the way it was when you last visited it sometime before January 2010?
MR. McCLOUD: That is correct.

HEARING OFFICER CELLI: Okay, I mean if I'm understanding this correctly, I just don't think that it does anything more than cloud the issue.

MS. GULESSERIAN: The testimony specifically states that he's referring to LADWP's information on the transmission line and Mr. Marcus' testimony. And he has rebuttal testimony to my witness that has incorrect information in it. And the LADWP website that is referred in there says something else.

So we believe that it should be entered into the record. It's not going to confuse the issue. It's evidence related to the case that people would normally rely on, the most updated information regarding the Barren Ridge Renewable Transmission Project from a agency, the Los Angeles --

HEARING OFFICER CELLI: If you can lay a foundation using Mr. McCloud right now to say that he was aware of that document as it exists now, the way that you want to put it in as a new document, then you've got yourself a foundation.

MS. LUCKHARDT: And I would --
HEARING OFFICER CELLI: But if not, then there is no foundation.

MS. LUCKHARDT: And I would object that anyone would do a transmission study based on another transmission owner's website. So I just don't understand the absolute relevance of this document when you're looking at an interconnection study for a facility.

HEARING OFFICER CELLI: Let me just put it this way. I'm not sure she's going to be able to lay a foundation. But I'm going to give Ms. Gulesserian an opportunity to lay a foundation. If she can lay the foundation, and the foundation needed is he was aware of this incarnation of the website and that he relied on this incarnation of the website in making his conclusion, and that it would be relevant.

But if he wasn't aware of it, I don't know how relevant it is. So, Ms. Gulesserian, I think you need to lay a foundation. You need to make that showing or else it has no relevance.

MS. GULESSERIAN: I was going to try and ask one simple question that maybe would end this all.

HEARING OFFICER CELLI: Well, let's go
for that.

MS. GULESSERIAN: Rather than going for
the -- laying the foundation.

If you knew that the existing Barren
Ridge, if I can ask a question correctly. If you
knew that the existing Barren Ridge Rinaldi 230 kV
transmission line is the line that is referred to
in the LADWP website instead of the Owens Gorge
Rinaldi Line, would that change your testimony in
any way?

MS. LUCKHARDT: And you're saying if you
knew, based upon information that was contained in
a website?

MS. GULESSERIAN: Based on LADWP's
project description. This is their project.

MS. LUCKHARDT: Based on something
that's in a website?

HEARING OFFICER CELLI: Your question
was if you knew that the Barren Ridge Rinaldi 230
kV line was what, Ms. Gulesserian?

MS. GULESSERIAN: If you knew that the
Barren Ridge Rinaldi transmission line, which has
a 400 megawatt transfer capacity currently is
loaded with 160 megawatts of electrical load,
leaving only 240 megawatts of excess capacity. If
you knew that it was the Barren Ridge Rinaldi Line
and not the Owens Gorge Rinaldi Line, as
referenced in that testimony, would it change your
opinion that any one of the segments of the longer
transmission path identified by Mr. Marcus along
that line could be the segment?

MR. McCLOUD: Let me make sure I
understand your question here.

MS. GULESSERIAN: Okay.

MR. McCLOUD: The question is if I knew
the name of the line was changed --

MS. GULESSERIAN: Right. If you knew
that it said Barren Ridge instead of Owens --

MR. McCLOUD: -- and nothing else,
would it change my opinion of it?

MS. GULESSERIAN: Right. If you knew
that it said Barren Ridge transmission line
instead of Owens Gorge transmission line, would
you still be saying it could be any one of the
segments?

MR. McCLOUD: I'm going to answer the
question with clarification. If the only change
that I was aware of was that the name of the line
had changed, it would not have changed my
conclusions about the opinion in the testimony.
MS. GULESSERIAN: It's not the name of a line, it's the name of the segment that has that limit.

MS. LUCKHARDT: I'm sorry, but you are assuming -- so you're asking him to -- you are stating that that is a fact, that the name of the segment has changed. And I believe that that is a fact that is not in evidence at this time.

HEARING OFFICER CELLI: It's a hypothetical question. What I'm going to do is I'm going to ask it this way, because Mr. McCloud has already testified that his opinion would not change if the name of the lines changed.

Now you wanted to change the question to a segment.

MS. GULESSERIAN: The question is whether the segment. I mean it is a segment, Barren Ridge Rinaldi segment.

HEARING OFFICER CELLI: Okay, Barren Ridge Rinaldi segment --

MS. GULESSERIAN: And it's one sentence at the top of line 2 on your testimony that says any one of the segments along the Owens Gorge Rinaldi line could be the segment.

HEARING OFFICER CELLI: Do you see what
she's pointing to --

MR. McCLOUD: Yes, I do.

HEARING OFFICER CELLI: So he sees the testimony. Now the question is?

MS. GULESSERIAN: Now the question is if you knew that it was specifically the Barren Ridge Rinaldi transmission line segment, which has a 400 megawatt transfer capacity, currently loaded with 160 megawatts of electrical load, leaving only 240 megawatts of excess capacity, would you still be saying it's any one of the segments?

MR. McCLOUD: Okay, the question you just asked is inconsistent with the transmission maps in the SIS, and it's inconsistent with the previous exhibits, so I cannot answer that question. It's a question that doesn't make sense to me.

MR. BABULA: Let's go on to bio.

(Laughter.)

HEARING OFFICER CELLI: I'd like to.

(Parties speaking simultaneously.)

MS. GULESSERIAN: We're going to -- I have no further questions for this witness.

HEARING OFFICER CELLI: Okay. Well, this is the last witness on TSE. This was -- and,
Ms. Gulesserian, you had called this witness so I have to give staff an opportunity to cross.

MR. BABULA: No, I'm done with transmission.

HEARING OFFICER CELLI: And, applicant, any, applicant, any questions?

MS. LUCKHARDT: On transmission, no.

HEARING OFFICER CELLI: Okay. Then we have no further witnesses, Ms. Gulesserian, on transmission?

MS. GULESSERIAN: No, we do not.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No further witnesses.

HEARING OFFICER CELLI: Applicant?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Very good. Then I want to thank Mark Hesters and Sudath for your testimony today. You're dismissed and you're muted.

(Laughter.)

MS. LUCKHARDT: Do you want to mute Steve Richards, as well, he's --

HEARING OFFICER CELLI: Mr. Richards, thank you for your testimony. We are going to mute you as well.
We're going to take a break until 3:15. When we return from the break at 3:15 we are going to deal with biology.

(Brief recess.)

HEARING OFFICER CELLI: Resume. Now, I may need to -- so we will have an opportunity for the public to comment when we are finished with biology, and hopefully biology won't take that long. The parties --

MR. BABULA: There's hazardous, waste and material, too.

HEARING OFFICER CELLI: Pardon me?

MR. BABULA: We've got hazardous, HTS.

HEARING OFFICER CELLI: Okay, okay. Just because the way you were at the mic all I heard was waste, and I thought this is a fine way to talk.

(Laughter.)

HEARING OFFICER CELLI: Okay, now, so we're going to have public comment probably this evening. The parties estimated an hour and 40 minutes at the prehearing conference on biology. At the rate we're going, it's 20 after 3:00, we may go until 4:45 or 5:00 before we can get to public comment.
So I hope that's helpful to the members of the public who have hung out and listened and want to make public comment. We will give you that opportunity at the close of the biological resources evidence.

So we're now waiting for Ms. Gulesserian. She'll be here in a moment. That hour and 40 minutes, I know, was an ambitious goal. But I'd like to see what we can do to try to stick to that.

Did we take in, applicant, I have received the executive summary. I haven't received project description, which may not -- I was just talking to Ms. Gulesserian, and project description may not be at issue.

I've received air quality, I'm about to receive biological. We've received all cultural, I believe. Geology. We haven't received hazardous material. We've received hydrology; we've received land use; and we've received noise.

Yes, noise; paleontology. Public health was received; socioeconomics; soils; traffic and transportation; transmission line safety and engineering; visual.

We have not received waste. We have
received water. I don't remember if we took worker safety. We did receive worker safety; facility design. We have not taken in alternatives yet because that was disputed, but we're just going to take that evidence in a moment.

And then, staff, we've received 500 through 506, which is the sum total of all your exhibits.

MR. BABULA: Correct.

HEARING OFFICER CELLI: And, CURE, I've received 600 through 638, not including 637, that's pending resolution of that issue. And so that's where we stand with regard to evidence.

We're about to begin biology. I received at the beginning, let me just say that at the prehearing conference the Committee ordered the parties to confirm, we asked them to have a telephone conversation to hammer out any stipulations, changes to conditions of certification that they could come up with.

And today at the beginning of the day I received this document.

MR. BABULA: Is the tape recorder clicking again?
MR. SPEAKER: Yes, it is clicking, but your tape recorder's going.

HEARING OFFICER CELLI: But you have another tape recorder going, right? So we're on the air.

THE REPORTER: This is backup backup.

HEARING OFFICER CELLI: So I have conditions for biological resources that I received this morning. And presumably applicant and staff, because I don't think CURE was involved in any of the disputes with regard to the conditions, worked out some --

MR. BABULA: Right, that's the conditions of certification, and that's the final version that we worked out between the staff and the applicant.

HEARING OFFICER CELLI: Do you have remaining, are there issues?

MR. BABULA: We have no other issues with the applicant.

HEARING OFFICER CELLI: With regard to the staff and the applicant, as it relates to conditions of certification for biology?

MR. BABULA: Correct.

MS. LUCKHARDT: That is correct.
HEARING OFFICER CELLI: And this, what exhibit number is this?

MS. LUCKHARDT: That one we've marked or had that one listed as 338.

HEARING OFFICER CELLI: 338. Okay. And at this time, Ms. Luckhardt, did you want to put in all of your biological documentary evidence, including exhibit 338, so --

MS. LUCKHARDT: Right. At this time applicant moves exhibit 7, AFC section 5.3; exhibit 35, AFC appendix F; exhibit 36, AFC appendix F, the supporting documentation including attachment G, which is the Mojave Desert Tortoise and Mojave ground squirrel habitat assessment reports.

Exhibit 52, the data adequacy supplement; exhibit 59, the summary of pre-application field meeting; exhibit 62, the response to CEC data requests 13 through 16 and 18 through 25.

Exhibit 71, the streambed alteration agreement; exhibit 73, supplemental responses to CEC data requests 17, 18, and 20, with attachment DR-17. Exhibit 78, revised response to data request 14.
Exhibit 79, responses to CEC data requests 71 through 78; exhibit 87, the botanical and wildlife special status species spring survey report. Exhibit 88, the response to California Department of Fish and Game letter on the Beacon Solar Energy project streambed alteration notification.

Exhibit 90, supplemental workshop responses to data requests 14, 17 and 20. Exhibit 92 is the application for the incidental take or threatened endangered species section 2081 permit. Exhibit 110, which is the application for low effects habitat conservation plan.

Exhibit 114, the preliminary PSA comments, section 2B; exhibit 129, the PSA comments regarding biological resources; exhibit 130, the PSA comments attachment bio-1, the desert tortoise removal plan.

Exhibit 131, the PSA comments attachment bio-2, the burrowing owl relocation plan; exhibit 151, the common raven monitoring, management and control plan; exhibit 171, the project design refinement section 4.1.2. Correction, that's section 4.1.2.

Exhibit 178, the project design
refinement section 4.2.2. Exhibit 195, the project design refinements attachment 1-B for the re-routed wash mitigation plan; exhibit 198, project design refinements attachment 4-A. Exhibit 199, project design refinements attachment 4B, which is the desert tortoise survey; exhibit 219 is the 8/1/09 email regarding the Red Rock Poppy from Kenny Stein; exhibit 220, habitat conservation plan.

Exhibit 235 is the declaration of Alice Karl on biological resources; exhibit 272, the declaration of Jennifer Guigliano on biological resources; exhibit 277, the declaration of Jim Prine on biological resources; exhibit 282, the declaration of Kenneth Stein on biological resources.

Exhibit 288, the declaration of Lyndon Quon on biological resources; exhibit 299, the declaration of Philip Leitner on biological resources; exhibit 325, the rebuttal testimony of Jennifer Guigliano on biological resources; exhibit 326, the rebuttal testimony of Alice Karl on biological resources.

Exhibit 327, rebuttal testimony of Philip Leitner on biological resources; exhibit 328,
rebuttal testimony of Kenneth Stein on biological resources; and exhibit 338, which is the revised biological conditions of certification, which were agreed to with Commission Staff last week.

HEARING OFFICER CELLI: Any objection from CURE?

MS. GULESSERIAN: No objections.

HEARING OFFICER CELLI: Any objection from staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you. With that the following exhibits marked for identification as 7, 35, 36, 52, 59, 62, 71, 73, 78, 79, 87, 88, 90, 92, 110, 114, 129, 130, 131, 151, 171, 178, 195, 198, 199, 219, 220, 235, 272, 277, 282, 288, 299, 325, 326, 327, 328 and 338 are received into evidence.

Please call your first witness.

MS. LUCKHARDT: Okay, we have a panel of four witnesses.

HEARING OFFICER CELLI: Please stand and be sworn.

MS. LUCKHARDT: Some of whom need to be sworn.

HEARING OFFICER CELLI: Yes. All of
you, please.

MS. LUCKHARDT: Mr. Stein has been previously sworn.

Whereupon,

KENNETH STEIN was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:

Whereupon,

JENNIFER GUIGLIANO, ALICE KARL, and PHILIP LEITNER were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

HEARING OFFICER CELLI: I'm going to ask that you state and spell your name for the record, working this way, with you, ma'am, first.

MS. GUIGLIANO: Jennifer Guigliano, G-u-i-g-l-i-a-n-o.

DR. KARL: Alice Karl, K-a-r-l.

MR. STEIN: Kenny Stein, S-t-e-i-n.

DR. LEITNER: Philip Leitner, Philip with one "l", L-e-i-t-n-e-r. Otherwise known as Phil.

HEARING OFFICER CELLI: Thank you.
MR. BABULA: Would you like to have our witnesses sworn in, too just to get that out of the way?

HEARING OFFICER CELLI: Okay, let's.

These are staff's witnesses to be sworn.

Whereupon,

JULIE VANCE, SUSAN SANDERS

and JUDY HOHMAN

were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

HEARING OFFICER CELLI: And I'm going to ask you to identify and spell your name for the record, working in the opposite direction. Please go ahead.

MS. VANCE: Julie Vance, J-u-l-i-e V-a-n-c-e.

HEARING OFFICER CELLI: And you're with?

MS. VANCE: Department of Fish and Game.

HEARING OFFICER CELLI: Okay.

DR. SANDERS: Susan Sanders,

S-a-n-d-e-r-s, with the Energy Commission.

MS. HOHMAN: Judy Hohman, H-o-h-m-a-n;

I'm with the U.S. Fish and Wildlife Service.

HEARING OFFICER CELLI: Thank you.
Okay, this is applicant -- or, no, this is CURE.
I'm trying to remember where we're at.

MR. BABULA: It's CURE's burden,
actually, because we've agreed with that.

HEARING OFFICER CELLI: It's CURE's,
that's right. And, CURE, you have a witness who
needs to be sworn, so let's swear in another
witness. Please stand and raise your hand.

Whereupon,

MICHAEL BIAS
was called as a witness herein, and after first
having been duly sworn, was examined and testified
as follows:

HEARING OFFICER CELLI: Please state and
spell your name.

DR. BIAS: Michael Bias, B-i-a-s.

HEARING OFFICER CELLI: Okay. Now in
light of the fact that all of the conditions are
settled between applicant and staff, what we're
dealing with now are challenges to the FSA from
CURE. Do I have this right? So, with that, CURE,
you'll begin. Call your first witness.

MS. GULESSERIAN: Thank you. We call
Michael Bias.

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DIRECT EXAMINATION

BY MS. GULESSERIAN:

Q Can you please state your name for the record.

DR. BIAS: Michael Bias.

MS. GULESSERIAN: And whose testimony are you sponsoring today?

DR. BIAS: I'm sponsoring Scott Cashen's testimony and my own.

MS. GULESSERIAN: Did you, with respect to Scott Cashen's testimony did you independently review all information and documents referenced in Mr. Cashen's sworn testimony?

DR. BIAS: Yes.

MS. GULESSERIAN: What did you conclude?

DR. BIAS: I agree with his findings.

MS. GULESSERIAN: Is it based on your own professional judgment? Is your opinion based on your own professional judgment?

DR. BIAS: It is.

MS. GULESSERIAN: Is it based on facts?

DR. BIAS: It is.

MS. GULESSERIAN: You're also adopting testimony that is your own today?

DR. BIAS: I am.
MS. GULESSERIAN: Do you have any changes to your sworn testimony?

DR. BIAS: I do. On the second-to-last page -- my page numbers aren't numbered.

HEARING OFFICER CELLI: What exhibit are we talking about?

MS. GULESSERIAN: We are talking about --

HEARING OFFICER CELLI: Also, Mr. Bias, if you could get that mic closer to you. Please give me the exhibit number and the page where --

MS. GULESSERIAN: Exhibit 632.

DR. BIAS: And it's the second-to-last page, I don't have page numbers on mine. Second full paragraph, first sentence. It reads:

Although the Rosamond pipeline alignment study area encompasses 5,987 acres, project impact to the plant communities was estimated only to be 92.36 acres. I mis-wrote that. The 92.36 should be 11.2.

HEARING OFFICER CELLI: 92.36 should be changed to 11.2.

DR. BIAS: 11.2, yes, sir.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: Okay, I wanted to see
if we can stipulate so I don't need to go through
his qualifications?

HEARING OFFICER CELLI: Now, Mr. Bias
has, what is the exhibit that has Mr. Bias'
qualifications on it?

MS. GULESSERIAN: That is exhibit 635.

HEARING OFFICER CELLI: So, since 637 --
635 is already in the record, I wonder if we can
have a stipulation from the parties that Mr. Bias
is qualified as an expert pursuant to that
exhibit. Applicant?

MS. LUCKHARDT: I would like to better
understand Mr. Bias' experience in the desert and
with the species at issue in this proceeding.

HEARING OFFICER CELLI: You know, I
really didn't want to get into this when we had
our prehearing conference, I really wanted
everybody -- if we had a problem with somebody's
expertise, I wanted to hear about that.

We have his evidence is in, including
his résumé. And I think that the understanding
would be that the parties would stipulate that he
can testify to areas within the expertise as laid
out in his résumé.

Is that acceptable to you?
MS. LUCKHARDT: If that is the preference that is acceptable.

HEARING OFFICER CELLI: Well, I appreciate that. So stipulated. And, staff?

MR. BABULA: That'll be acceptable.

HEARING OFFICER CELLI: Okay, thank you. So there is no need to take testimony on it. You are an expert on the areas mentioned in your résumé and so we don't need to cover that ground. And thank you for bringing that up, appreciate it. Anything we can do to economize we appreciate.

MS. GULESSERIAN: Okay. Mr. Bias, can you please summarize your principal findings.

DR. BIAS: First the FSA assumes the presence of desert tortoise, Mojave ground squirrel and burrowing owls along portions of the 23 miles of the Rosamond pipeline alignment. And then based on reconnaissance level surveys of habitat, that's what this assumed presence was based on. However, the FSA's 33-acre compensation requirement is inconsistent with the nearly 4700 acres of potential habitat impacted by the project.

HEARING OFFICER CELLI: Speak into that mic, if you would, please.
DR. BIAS: However, the FSA's 33-acre compensation requirement is inconsistent with the nearly 4700 acres potentially impacted by that project, identified by staff.

The FSA fails to provide mitigation for potentially significant impact to burrowing owls along the 23 miles of the Rosamond pipeline alignment.

For Mojave ground squirrels on the project site, the baseline levels for presence of Mojave ground squirrels was not met. Therefore, the impact analysis was flawed, such that the mitigation compensation is inadequate with the project site.

The same issues apply with desert tortoise, that surveys less than 100 percent protocol surveys were less than adequate to establish baseline. The impact analysis was then flawed. And therefore, mitigation and compensation habitat requirements were inadequate for desert tortoise, as well as burrowing owls.

For the project site surveys across three years '07, '08 -- well, three surveys across two years, '07 and '08, detected as many as nine individual owls from the FSA. And the mitigation
and compensation ratios are -- the mitigation and
compensation is based on two owl pairs.

Therefore, the baseline assessment of
the number of burrowing owls across the project
site is inadequate. The impact analysis then is
flawed. And also the mitigation and compensation
is inadequate.

MS. GULESSERIAN: Have you reviewed the
FSA's biological resources conditions of
certification?

DR. BIAS: I have.

MS. GULESSERIAN: Have you reviewed the
revisions to the conditions that we received on
Friday?

DR. BIAS: I have.

MS. GULESSERIAN: Would you briefly
summarize your understanding of those conditions?

DR. BIAS: Overall the biological
resource conditions require 115 acres of
compensation land for desert tortoise and Mojave
ground squirrel; 20 acres of compensation land for
burrowing owls.

This 20 acres may be included within the
desert tortoise and Mojave ground squirrel
compensation lands.
It requires preconstruction clearance surveys. The mitigation and implementation and monitoring program which it requires has not yet been prepared. And 33 acres of compensation land for desert tortoise and Mojave ground squirrel as part of the Rosamond pipeline, is required under the COCs and other measures, such as designated biologists and biological monitoring and the like.

HEARING OFFICER CELLI: You said is or is not required?

DR. BIAS: They are required.

HEARING OFFICER CELLI: Okay. The conditions of certification require the mitigation for the pipeline?

DR. BIAS: Correct.

HEARING OFFICER CELLI: Okay.

MS. GULESSERIAN: Based on your final conclusions you've just articulated, and your understanding of those conditions, would the conditions address your findings and your conclusion?

DR. BIAS: No.

MS. GULESSERIAN: Can you explain to us why?

DR. BIAS: Yeah. Bio-11, desert
tortoise and Mojave ground squirrel compensatory mitigation. Under the California Endangered Species Act the mitigation compensation is required to fully mitigate for habitat loss and potential take.

The amount of potential habitat for Mojave ground squirrel on the project site, as calculated by the applicant, is 429.5 acres of desert shrub scrub, vegetation types.

For Mojave ground squirrel also simply the only habitat assessment that was conducted, although not required, was essentially two one-day surveys; one conducted in August and one conducted in November. Outside, in fact, the appropriate recommended time for visual surveys for Mojave ground squirrels, which is 15 March to April 15.

And finally, under bio-11, for the project site the 115 acres for Mojave ground squirrel and desert tortoise is essentially one quarter of the 429.5 acres of desert scrub that will be lost.

For desert tortoise on the project site, the FSA, less than protocol level surveys were conducted for desert tortoise. They, -- in fact, the applicant, in an FSA, detected, in fact,
juvenile carcasses, deteriorated adult burrow.
And at least two other sets of bones and carapace
fragments, indicating the presence of at least
three desert tortoise onsite, showing presence.
And mitigation and compensation
requirements under bio-11 stipulated for only two
desert tortoise.

Bio-17, which is the impact, avoidance,
minimization and compensation requirements,
requires that the owner follow measures to avoid
and offset impacts to burrowing owls.

Three surveys across two years, well,
two surveys across two years and incidental
observation showed on the project site that at
least nine individual owls were detected.

As such, under the COC compensation is
requiring compensation for only two pairs of
burrowing owls, and it's therefore insufficient
mitigation to offset the impacts to burrowing owls
to a less than significant level.

Bio-21 is the Rosamond pipeline
mitigation. For this the desert tortoise and
Mojave ground squirrel presence was assumed. But
the habitat analysis along the line shows that
only 11 acres of impact would occur when nearly
over 4700 acres of potentially -- of habitat can be potentially impacted.

According to the applicant's biotechnical report, especially in deserts, indirect impacts can often be considered permanent because of the long time that it takes desert ecosystems to recover.

Finally, I think bio-21 does not adequately address the loss of burrowing owls or their habitat based simply on clearance surveys as mitigation.

MS. GULESSERIAN: Can you clarify when you referred to condition of certification bio-21, Rosamond pipeline mitigation. Does that condition apply to the 40-mile pipeline, or to something different?

DR. BIAS: The bio-21 applies to the 23-mile segment of the Rosamond pipeline alignment.

MS. GULESSERIAN: Okay, thank you. I have no further questions.

HEARING OFFICER CELLI: Staff, cross?

MR. BABULA: Just a couple questions. We won't get into mitochondrial DNA of tortoises.

CROSS-EXAMINATION

BY MR. BABULA:
Q Have you been to where the pipeline routes, vis-a-vis driven the routes where the pipeline, proposed pipelines are going to be?

DR. BIAS: I saw where they were.

MR. BABULA: Okay.

DR. BIAS: In other words, driving around near the project site.

MR. BABULA: And can you describe how it looks from a habitat perspective, for the actual pipeline on the road shoulder?

DR. BIAS: Well, the road shoulders are essentially gravels and weeds. And then sloped toes.

MR. BABULA: Would you consider that habitat?

DR. BIAS: Well, it's habitat for something. Is it habitat for Mojave ground squirrels or desert tortoise? If the action area for a linear project is the alignment plus 2400 feet on either side, you have to consider all impacts and all habitat.

So, probably the immediate road shoulder would not be desert tortoise habitat. However, I can't say if they don't burrow in roadsides. Certainly burrowing owls burrow in roadside. We
haven't looked for Mojave ground squirrels or desert tortoise along that alignment.

MR. BABULA: Okay. I have a question that's a little baffling. Now, you described the project site as having a juvenile carcass, some bone fragments. Okay, so that is --

DR. BIAS: I didn't --

MR. BABULA: -- that's what the --

DR. BIAS: -- describe the site as that.

MR. BABULA: That was the testimony from the applicant in their surveys.

DR. BIAS: Correct.

MR. BABULA: Okay. And I want to ask you, and I note in your testimony and in Scott Cashen's testimony there's some issue between your feeling of the habitat, sort of what the level of habitat on the site versus what the applicant, how they may characterize it.

So giving you a hypothetical here, look at the Ridgecrest Project.

MS. GULESSERIAN: Objection, we're not working on the Ridgecrest Project right now.

MR. BABULA: Well, it's a hypothetical to try to juxtapose --

HEARING OFFICER CELLI: It's a
hypothetical. Let's just, one thing, let's
everyone be conscious of the fact that only one
person --

MR. BABULA: This is my last question.
(Laughter.)

HEARING OFFICER CELLI: Only one person
can talk at a time. Because if two people are
talking --

MR. BABULA: Right.

HEARING OFFICER CELLI: -- we can't get
a good transcript. So that's one thing I'm going
to ask you to be conscious of.

The other thing is we'll allow a
hypothetical question.

MR. BABULA: Okay. Ridgecrest, the same
company that's doing the surveys here, they went
out to Ridgecrest and 50 tortoises were found, 40
on the project site, similar acreage.

If the habitat on the Beacon site is
tortoise habitat to some extent, where are the
tortoises? It's not like they scatter when you
show up.

DR. BIAS: Yeah, that's a good question.

However, that's not what the protocol surveys are
meant to figure out. In fact, my feeling on what
habitat for desert tortoise looks like or is, doesn't enter into the question.

My assessment on habitat quality or whether it's good or whether it's bad is not a question. The question that protocol level surveys in projects like this are meant to address is, is that habitat potentially, can desert tortoises occur within that habitat. Protocol level surveys attempt to answer that.

And then from those surveys we derive a number. And as far as sign, you know, burrows, scat, fragments of animals is all sign, carcasses. Whether it's dead or alive it's still present onsite.

HEARING OFFICER CELLI: Mr. Bias, if you wouldn't mind just turning the mic right at your mouth. Yes, thank you.

MR. BABULA: I've got one more question.

What do you mean by 4,000 acres of impact are along the pipeline?

DR. BIAS: In the FSA, I'm trying to recall the map alignments and the table numbers. They did a fix with transect at 1,000 feet and identified vegetation types from the pipeline alignment out 1000 feet entirely along the 23
miles.

And there's a table in the analysis that quantifies those vegetation types. And then there's a following table, so this is a 2000-foot, 23-mile long map that essentially comes out to 4784 acres of those scrub habitat types.

It was atroplex shrub scrub and creosote shrub scrub and the like. Which actually the 1000 foot is about 1400 foot off what it should have been for a linear habitat assessment for desert tortoise, which is 2400 feet.

So essentially that banded width transect, that 23 miles, if protocol level surveys were followed, should have been 4800 feet wide and 23 miles long, which is nearly 10,000 acres.

MR. BABULA: Okay, thank you. I'll let our staff deal with that on direct. No further questions.

HEARING OFFICER CELLI: Anything further? Thank you. Applicant, questions of this witness?

MS. LUCKHARDT: Sure.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q You started off your discussion today

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talking about the requirements that are contained
in the California Endangered Species Act. Isn't
it true that the California Endangered Species Act
requires mitigation for take of species and not
habitat?

DR. BIAS: Depends on which animal. If
we're talking desert tortoise it's requiring it
for the tortoise. If we're talking --

MS. LUCKHARDT: I'm referring to the
California Endangered Species Act.

DR. BIAS: And that's what I'm referring
to.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: So the testimony
is that the California Endangered Species Act
requires take of habitat for, you said, tortoise?

DR. BIAS: Well, any threatened --

MS. GULESSERIAN: This is -- I would
just object because this is a legal question that,
you know, this is not a lawyer, he's a biologist.

MS. LUCKHARDT: Well, had he not
tested to it initially I would not have asked
the question. But he presented it in some of his
opening remarks and so I think that opens him up.

HEARING OFFICER CELLI: It's a fair area
for cross. And all I was trying to do was get a
clarification on his answer.

DR. BIAS: Bio.

HEARING OFFICER CELLI: And I'm going to
ask you again to take that mic and put it right in
front of you like this. See how I have it, like
I'm talking right now.

DR. BIAS: I can, yeah.

HEARING OFFICER CELLI: That's what you
want to do.

MS. LUCKHARDT: And, Mr. Bias, is it
your testimony that the 23-mile pipeline between
the project site and Rosamond has not been subject
to protocol surveys?

DR. BIAS: Yes.

MS. LUCKHARDT: And is it your testimony
that the project site, itself, has not been
subject to protocol desert tortoise surveys?

DR. BIAS: Yes.

MS. LUCKHARDT: And, Mr. Bias, when was
the first time you visited the site?

DR. BIAS: Yesterday.

MS. LUCKHARDT: And did you drive around
the site?

DR. BIAS: I drove along the highway and
the frontage road. Because it's private land.

MS. LUCKHARDT: So you haven't walked
along the site, across the site, --

DR. BIAS: No.

MS. LUCKHARDT: -- in the different
areas? So is your analysis essentially that you
prefiled based solely on reading the evaluations
that were conducted?

DR. BIAS: No. I looked at -- I've been
working with -- I've been working on Beacon since
December '08. And looking at all the data
requests, the application for certification. And
also satellite images, Google Earth, goes back in
time now to, I think their earliest satellite
image was '94. So I looked at aerial imagery at
the site.

MS. LUCKHARDT: Dr. Bias, you quote
reports from authors on food preferences of the
Mojave ground squirrel, correct?

DR. BIAS: Correct. Well, no. I quote
author studies on food habits and some dietary
analyses. Food preferences are another level
beyond just deciding what the animal happens to be
eating at a particular time.

MS. LUCKHARDT: Okay, so it's dietary
analysis for the Mojave ground squirrel, is that a better --

DR. BIAS: The only dietary --

MS. LUCKHARDT: -- way to put it?

DR. BIAS: The only dietary analyses that was done was Leitner's work. Dietary analyses involves detailed looking at what the animal's eaten and what you can detect on what comes out, whether it's fecal analysis, pellet analysis for owls, things like that.

And dietary analyses that were done have within them their own flaws such as depending on the cell wall of the plant, might not make it completely through the gut. So if you're trying to decide what the animal's eaten based on fecal analysis your results will be biased because only certain plants pass completely through the gut based on cell walls and how rigid the cells are.

MS. LUCKHARDT: Okay, on the bottom of page 2 of your testimony you refer to a study of Zembal and Gall, 1980. Showed that Mojave ground squirrels preferred seeds from Joshua trees.

DR. BIAS: Right. That was their work.

And they looked at that.

MS. LUCKHARDT: Are there Joshua trees
on this site?

DR. BIAS: I don't think so. But wasn't there a report somewhere there might be an occurrence -- one or two of them in the wash, along the wash?

MS. LUCKHARDT: You can't ask me questions.

(Laughter.)

DR. BIAS: Well, I don't know for sure.

MS. LUCKHARDT: Okay. Okay. Isn't it your contention that the Mojave ground squirrel does not need a variety of plant species?

DR. BIAS: For what?

MS. LUCKHARDT: For it's lifecycle.

DR. BIAS: I can't answer that. Depends on where you're at. Some of the areas that Phil Leitner looked at had squirrels occurring and even eating in areas that only had a couple plants.

So food that they're eating, they might -- the can and have been eating only one or two plants. But they might be living in areas where more than two, but only eating two.

MS. LUCKHARDT: You quote on page 2 a study by -- and I may totally mispronounce this name, it's R-e-c-h-t, Recht?
DR. BIAS: Right.


DR. BIAS: That's right.

MS. LUCKHARDT: And isn't it true, and based on your testimony you're saying that it reported that the species of plant selected by the squirrel change throughout the season?

DR. BIAS: Correct. It was a -- Recht showed a dietary shift, that they were switching from one plant that they were eating solely, to another plant later on in the season.

MS. LUCKHARDT: And on page 3 you reference a study by Dr. Leitner. And you said that fecal samples were dominated by a single food source, is that correct?

DR. BIAS: I just cited his study. He said that.

MS. LUCKHARDT: Then maybe I'm misunderstanding your testimony.

DR. BIAS: I'm saying in that section that Dr. Leitner studied food habits of Mojave ground squirrel and found some that ate only a single item of food.

HEARING OFFICER CELLI: And what exhibit and page number was that?
MS. LUCKHARDT: I'm looking at exhibit, I'm looking at Dr. Bias' testimony exhibit 632, page 3.

HEARING OFFICER CELLI: Thank you.

MS. LUCKHARDT: Isn't it correct that a fecal sample would show what one squirrel ate for one day?

DR. BIAS: I don't know the passage rates of the Mojave ground squirrels that he looked at. Diets based on fecal analyses can be pretty detailed. And there's a lot that needs to be considered. How much they're eating; how quickly they pass; water content of the material they're eating; and how often they defecate.

MS. LUCKHARDT: But you're not saying that you have, that you have your own knowledge about how that happens --

DR. BIAS: No.

MS. LUCKHARDT: -- in a Mojave ground squirrel?

DR. BIAS: No.

MS. LUCKHARDT: Okay. On pages 7 and 8 of your testimony you criticize reliance upon trapping data, is that a correct understanding of what you're saying there?
DR. BIAS: Yes, ma'am.

HEARING OFFICER CELLI: I'm just going to make an observation that it's about almost five minutes after 4:00. We've got a few witnesses to go through it appears, so do you have any more questions you have?

MS. LUCKHARDT: You know what, I think I'll stop there. Thank you.

HEARING OFFICER CELLI: Thank you. And staff's already crossed. So any redirect now of Mr. Bias by CURE?

REDIRECT EXAMINATION

BY MS. GULESSERIAN:

Q When you were summarizing the staff's conditions of certification and you referred to their, and you referred to their language regarding fully -- they are required to fully mitigate for Mojave ground squirrel and desert tortoise. Were you referring to the requirements in the California Department of Fish and Game Code which include the California Endangered Species Act?

DR. BIAS: I was referring to the bio-11 condition, itself, that quotes project fully mitigate for habitat loss and potential take of

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desert tortoise and MGS.

MS. GULESSERIAN: Thank you.

DR. BIAS: And then Mojave ground squirrel.

MS. GULESSERIAN: No further questions.

HEARING OFFICER CELLI: Recross by staff?

MR. BABULA: No further.

HEARING OFFICER CELLI: Recross by applicant?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Thank you, Mr. Bias. Your next witness, Ms. Gulesserian.

MS. GULESSERIAN: No further witnesses.

HEARING OFFICER CELLI: Thank you. I guess we'll go with the staff next. Okay, he's pointing over to applicant so I guess we'll go to the applicant.

(Laughter.)

HEARING OFFICER CELLI: Okay.

Ms. Luckhardt.

MS. LUCKHARDT: Effectively pass the buck.

HEARING OFFICER CELLI: Did you want to proceed as a panel? Whatever makes most sense to
you. Obviously it's clearer on the record if we're asking one witness one question and everybody's going back and forth to one witness. Unless you think it would be more efficient to go by way of a panel.

MS. LUCKHARDT: I have them as a panel. There was some cross-over work between some of the witnesses, and so it may be important to have them go as a panel, just because of the work that was done --

HEARING OFFICER CELLI: That's fine.

MS. LUCKHARDT: And how it was done.

HEARING OFFICER CELLI: We can do that. And my request to you and to -- so each of the panel members, please remember to state your name prior to any answer that you give.

And then, attorneys, if you would please direct specific questions to specific witnesses. In this way we can keep the record clear as to who's saying what, who's responding to what question.

So, with that, go ahead, Ms. Luckhardt.

MS. LUCKHARDT: Okay, and at this point I'm going to generally dispense with the usual formalities of are your qualifications attached to
an exhibit, or do you want me to go through that?

HEARING OFFICER CELLI: You don't need
to. I think that we had the discussion here about
the qualifications of these witnesses. We have
everybody's résumé on file, do we not? They're
all in the record.

MS. LUCKHARDT: Yes, you do.

HEARING OFFICER CELLI: It's been
received. So, everybody is an expert in whatever
they're an expert in.

MS. LUCKHARDT: Okay. Then what I'd
like to do is have Mr. Stein provide just a quick
overview of the project and its components, since
there's been some discussion about water pipelines
and different things like that, to get you
oriented on the project and the different areas.
So that when we talk about surveys you'll
understand where we're talking about.

HEARING OFFICER CELLI: So this is a
brief overview?

MS. LUCKHARDT: This is a --

MR. STEIN: Extremely brief.

HEARING OFFICER CELLI: Very good.

MS. LUCKHARDT: Brief overview. And
what you are looking at is, Mike, is that --
HEARING OFFICER CELLI: I know I've seen this before.

MS. LUCKHARDT: It is, it's the --

HEARING OFFICER CELLI: In the AFC.

MS. LUCKHARDT: It's from a spring survey report. Okay, it's exhibit 87, and the figure number -- figure 2.

DIRECT EXAMINATION

MR. STEIN: Okay, well, Kenny Stein. I agree, we shouldn't really have to spend too much time on biology. We think that there really aren't any biological issues with the project.

A reminder that here's the outline of the plant site. The entire 2012-acre site is highly disturbed from previous farming activities. You all saw some of the photographs from the earlier visual presentation.

And it's also got quite a bit of disturbance in the general area. You've got the Honda Test Track over here. You've got Highway 14 coming along here. And you've got a transmission line corridor here. Just generally speaking, so that we're all oriented to the site, again the plant site's here; the transmission line runs down here. This
is the interconnection to the Barren Ridge Substation.

Here is, you can't see the whole thing, but this is where we had surveyed for a gas pipeline, but it's now where the water pipeline to California City would come from.

If you could, Mike, go to the next figure. Just, again, --

MS. LUCKHARDT: And when you say survey, are you referring to protocol desert tortoise surveys?

MR. STEIN: Yes, all protocol desert tortoise surveys. It's not a pristine desert environment. You've heard that before. It's exactly the type of site that the resource agencies have been encouraging solar development on.

As we put in the record, we've got preeminent experts here that you'll hear from, that have concluded that the entire plant site is not suitable habitat for any listed species, including desert tortoise or the Mojave ground squirrel. And the resource agencies have done their own independent analysis and have concurred with that.
I'd like to point out that in the two years of these proceedings there hasn't been a single environmental group that has commented that the assessment for biological resources has been in any way inadequate, or the mitigation proposed in inadequate.

So, with that, I'll turn it back over.

MS. LUCKHARDT: Okay, great, thank you very much. And turning to Dr. Leitner. Your role in this project has been to focus on the impacts to the Mojave ground squirrel, is that correct?

DR. LEITNER: Yes, that's correct. Have I got this close enough?

HEARING OFFICER CELLI: Yes, you do.

(Laughter.)

DR. LEITNER: Okay.

MS. LUCKHARDT: Excellent. And just quickly, how long have you been studying the Mojave ground squirrel?

DR. LEITNER: Well, the best I can recollect, in May it will be 31 years.

MS. LUCKHARDT: Thank you. And you're --

HEARING OFFICER CELLI: That's about as much as we need to know about this expert's
expertise.

DR. LEITNER: Okay.

HEARING OFFICER CELLI: Let's move on.

MS. LUCKHARDT: Can you describe the basic biology and lifecycle of the Mojave ground squirrel?

DR. LEITNER: Yeah, I'll try to keep this brief, but it's an unusual animal and some of the features of its lifecycle, I think, are relevant to understanding why the plant site is not suitable habitat for it.

They spend about half of the year underground sleeping. They come out in early spring, February. Mate in late February. The young are born end of March, early April. The females are lactating and supporting the young until about early May. The young become independent toward the end of May. And many of them actually disperse, go off to seek their fortune elsewhere, and can move some distance, up to several kilometers from where they're born.

At that point everybody has to start putting on weight. They may double their body weight so that they have enough fat stored up to get through the next six months. By the middle of
summer most of them are asleep, underground in
their burrows.

And one of the reasons, only one of the
reasons that this plant site, even areas where
there are some saltbush plants that have regrown
after the alfalfa farming was discontinued, even
in those areas where there are some shrubs, the
habitat does not really provide the food resources
that the animals need.

Since they're coming out in early
spring, in February, the herbaceous plants are not
up yet. And they're not available as food. And
so shrub foliage, particular species of shrubs are
important to get the animals going.

After a good rainfall winter the annuals
begin coming up later in March; and they reach a
peak in April. And at that time when the females
are supporting the young, lactating, they have
maximum caloric needs and needs for moisture.
They rely on these herbaceous plants, native
plants that, you know, we think of as the desert
wildflowers.

In May, as it gets hotter, those annual
plants begin to dry up and the squirrels have to
go back to feeding on shrub foliage and the seeds
that they can obtain.

So in order for a site to support a population it's got to have a variety of different plants that will provide for the squirrels through the season.

And the study, for example, by Dr. Recht, where he observed them feeding on shrub leaf early in the season, then turning to wildflowers, basically corroborates my view. His study was based on watching squirrels and seeing what they ate. And may have missed something, but the basic pattern is the same that I've found through these microscopic studies of what comes through after the squirrels have eaten.

So, that's the basic features of the lifecycle and kind of indicates why you need a site to support these animals that has a variety of native plant species.

Even the shrub area on the Beacon site has got one species of saltbush and a couple of invasive exotic annual plants, biliary and Mediterranean grass, and it really does not provide the variety of food resources that would be needed to support a population.

On the other hand, we saw the map that
showed the transmission line corridor west of highway 14. And that area is creosote bush scrub, relatively undisturbed. And it supports a variety of shrubs and native herbaceous plants.

And when I did my habitat assessment I found the features there that would support the species; and I recommended that the applicant assume that the species was present there.

On the plant site, itself, my evaluation was that it did not have the resources necessary to support the species.

MS. LUCKHARDT: Thank you. And Dr. Bias mentions a requirement that is based upon a 2003 California Department of Fish and Game document for conducting Mojave ground squirrel surveys and the habitat definitions.

You didn't recommend surveys for this site. Is it required under that 2003 California Department of Fish and Game?

DR. LEITNER: Again, I think it's important to consider the transmission line corridor portion of the project site that's west of 14. In that situation the habitat there was Mojave creosote bush scrub. If the applicant had not chosen to assume presence, then surveys would
have been required.

However, the plant site, most of it is barren. There's no vegetation to speak of at all. There's a part that supports some saltbush plants, and that is not a natural community. It's not the Mojave saltbush scrub as described in the guidelines. And it's simply not a natural community and would not require surveys.

MS. LUCKHARDT: And those guidelines refer to habitat definitions. Does the plant site meet that habitat definition?

DR. LEITNER: No, it does not. Even the part that has regrowth of saltbush, if you look at the publication by Holland 1986 that's cited in the guidelines, you look at the way that Holland describes Mojave saltbush scrub, this says, okay, maybe strongly dominated by saltbush species, but then lists a large number of other native species that would be expected to occur, they aren't there on the plant site in that saltbush area.

MS. LUCKHARDT: So it's your conclusion that the habitat that's described by Holland and referenced in the 2003 guidelines is not present on the plant site?

DR. LEITNER: That's correct. I've been
a member of the Technical Advisory Group that makes recommendations to the Department of Fish and Game regarding the species since the Technical Advisory Group was formed about ten years ago. I was involved in the 2003 revision of the guidelines, and we've never had any concept that anybody would try to describe vegetation such as occurs on the plant site as being native desert scrub that would need to be surveyed.

MS. LUCKHARDT: And are you aware of trapping studies on abandoned ag land?

DR. LEITNER: Yes. The sort of saltbush regrowth that you find on part of the Beacon site is pretty typical for areas in the western Mojave that have been used for production of alfalfa and then abandoned.

And there have been some protocol trapping studies for Mojave ground squirrel in these areas. I'm aware of at least three areas where that has been done. In all three cases Mojave ground squirrel are known to occur within a few miles of those sites in native scrub vegetation. But no one has yet trapped a Mojave ground squirrel in that kind of vegetation.

MS. LUCKHARDT: And what about the
studies that Dr. Bias refers to from Ardal and Roush and Westman to demonstrate that the Mojave ground squirrel have been found in areas dominated by atroplex?

DR. LEITNER: Yeah, atroplex or saltbush. Yeah, those trapping studies, some of them were conducted on sites that were described as saltbush scrub. And Mojave ground squirrels were trapped.

However, for example I've been, within the last month, I think it was March 2nd, I was at two of the Ardal and Roush saltbush sites in Superior Valley north of Barstow taking some people from USGS out to look at habitat where Mojave ground squirrels occur.

We got out of the truck, walked around. And within five minutes we had found at least half a dozen other species of native shrubs, including ones winterfat and spiny hop-sage that are favored by Mojave ground squirrels.

So, although the site was described as saltbush scrub, it was, in fact, a diverse community dominated by saltbush. And you do find Mojave ground squirrels in those areas.

But that has nothing to do with this
vegetation that occurs on the site.

By the way, I also trapped the same Ardal and Roush sites in 2002, caught Mojave ground squirrels there. But that's real native, undisturbed saltbush scrub.

MS. LUCKHARDT: And, Dr. Leitner, in your opinion from the perspective of Mojave ground squirrel conservation, is this a good site for solar development in the desert?

DR. LEITNER: Well, as some of the folks in this room know, for several years I have been attempting to persuade anyone who would listen, and even if they don't listen I'll still say it, persuade folks that the most appropriate places for solar development in the Mojave Desert are sites like the Beacon site that have been previously disturbed.

There's a lot of former ag land like this. I think this is really, you know, we need solar energy. But we also need to minimize the impact to native species, native ecosystems. And this is the ideal way to do it, in my opinion.

MS. LUCKHARDT: And in your opinion is the proposed 100 acres for the plant site, not the whole 115 including the transmission line, but the
100 acres for the plant site sufficient to mitigate for plant site impacts to Mojave ground squirrel?

DR. LEITNER: Yes, I believe it's quite a generous approach to mitigation. Because I mentioned that young ground squirrels can disperse from where they're born, they can wind up in places where they're just passing through; they're transient.

And because there is habitat adjoining the site that could possibly support a population, you could have young animals temporarily moving through the site. And there's a very small possibility that take could occur.

So while we could have said, well, this is not habitat, doesn't support Mojave ground squirrels, therefore no mitigation is required. Instead we decided to take account of the possibility that there could be a small amount of incidental take. And then tried to work out a way to mitigate for that.

And so I believe it's reasonable to assume that those 100 acres could support actual reproductive population, not just transients, but could actually benefit the species to a great
extent, and more than fully compensate for loss of
one or two individuals.

  MS. LUCKHARDT: Thank you. And turning
to Dr. Karl --

  HEARING OFFICER CELLI: You know, I
wonder if it's appropriate to give the parties an
opportunity to cross Dr. Leitner at this time
or --

  MS. LUCKHARDT: That's fine.

  HEARING OFFICER CELLI: Just to kind of
put closure on that testimony, I just think --

  MS. LUCKHARDT: The Mojave ground
squirrel? Good.

  HEARING OFFICER CELLI: Yeah. Ms.
Gulesserian, any cross of Dr. Leitner?

  MS. GULESSERIAN: Yes, I have cross, and
just contemplating the presentation of the panel
while crossing them individually.

  HEARING OFFICER CELLI: I thought since
he's spoken at such length that I would, before we
lose it.

  MS. GULESSERIAN: Yeah, it's true. I
think I will not be able to conclude my cross. I
might have an additional question after I hear
from their --
HEARING OFFICER CELLI: We'll come around.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Dr. Leitner, is it true that the California Department of Fish and Game Mojave ground squirrel guidelines require a survey to be undertaken for Mojave ground squirrel on a project site if the proposed site has potential habitat of this species, and the presence of the species on the site is unknown?

MS. LUCKHARDT: Can you please refer to the exhibit number of that document so he can have it in front of him.

HEARING OFFICER CELLI: Also you may want to break that up into bite-size pieces. There were about three questions there.

MS. GULESSERIAN: He has testified about the Mojave ground squirrel guidelines and when they require --

MS. LUCKHARDT: And I believe that you've got it in one of your exhibits and I just would like to have that out in front of him.

HEARING OFFICER CELLI: We have a representative from CDFG who can probably blurt it
right out.

MS. GULESSERIAN: Exhibit 603.

HEARING OFFICER CELLI: We're looking for the guidelines?

MS. GULESSERIAN: It's exhibit 603.

MS. LUCKHARDT: Okay, we've got it, thank you.

MS. GULESSERIAN: Okay.

MS. LUCKHARDT: It's exhibit 603.

MS. GULESSERIAN: Is it true?

DR. LEITNER: Could you restate the question, please.

MS. GULESSERIAN: Sure. Do the guidelines require surveys to be undertaken for Mojave ground squirrel if there's potential habitat on the site?

DR. LEITNER: If there is potential habitat and it's within the range of the squirrel, then surveys are required. However, the applicant has the option of assuming presence.

MS. GULESSERIAN: Okay. And in this case did the applicant assume presence?

DR. LEITNER: The applicant assumed presence on the area, the transmission west of Highway 14, where there was potential habitat.
MS. GULESSERIAN: So did they assume presence on the project site?

DR. LEITNER: No.

MS. GULESSERIAN: Okay, so is it also true that potential habitat it defined as land supporting desert shrub vegetation within or adjacent to the geographic range of the species?

DR. LEITNER: Yes.

MS. GULESSERIAN: Is it true that a project is an action that results in temporary or permanent removal or degradation of potential habitat?

DR. LEITNER: That's what it says.

MS. GULESSERIAN: Okay. Is it true that no surveys were done because you've suggested the site has no potential habitat?

DR. LEITNER: The site, that is correct, the site does not have potential habitat for the species.

MS. GULESSERIAN: Okay, so surveys were just --

DR. LEITNER: That's the power plant site.

MS. GULESSERIAN: We've eliminated surveys from this project site based on just
saying there's no potential habitat on the site? That's what happened?

DR. LEITNER: Based upon habitat assessment.

MS. GULESSERIAN: Okay. You talked about, in your presentation, that potential habitat is defined by Fish and Game as land supporting desert shrub vegetation within or adjacent to the geographic range of the species.

And then you went on to further define what desert shrub vegetation by referring to Holland and Knight?

DR. LEITNER: Yes. In the guidelines there's a footnote --

MS. GULESSERIAN: Um-hum.

DR. LEITNER: -- that gives the names of three different desert scrub communities, and refers to Holland, 1986, as the source. So if you want to know what those are then you need to look in Holland.

MS. GULESSERIAN: Okay. And what did you -- can you refresh our memory on what you said that Holland said about the desert shrub vegetation.

DR. LEITNER: Well, the footnote in the
guidelines mentions Mojave saltbush scrub vegetation. And if you look in Holland the description, it gives the soils, et cetera, et cetera, and then lists a number of species of plants that typically occur in that vegetation, in that community type. Okay?

MS. GULESSERIAN: Um-hum. Okay, and is it your conclusion that based on that further definition of desert shrub vegetation that there is no desert shrub vegetation on the site?

DR. LEITNER: There is no native -- there is one species of saltbush that occurs on the site. The other species that you would expect to find in a natural desert saltbush scrub community are not present on the power plant site.

MS. GULESSERIAN: Did the Mojave ground squirrel guidelines distinguish between natural and unnatural?

DR. LEITNER: Well, the description --

MS. GULESSERIAN: I'm asking this witness --

DR. LEITNER: Yeah, yeah, they --

MS. GULESSERIAN: -- Mr. Leitner, please.

DR. LEITNER: The description, the
footnote indicates that if you want to know whether you're dealing with one of these native plant communities, designated plant communities, you should look at the description in Holland and see if it fits.

And as I say, when we were drafting this revision it never occurred to any of us on the Technical Advisory Group that regrowth, a stand of one species that's known to -- one species of native shrub that's known to grow on the sites that are disturbed, that that could be considered a natural community. It just doesn't make sense.

A community consists of a number of species of plants and animals that occur together. This doesn't answer that. The areas with saltbush on the site don't fit that definition.

MS. GULESSERIAN: Okay, so we're talking about community now, but isn't it true that the Mojave ground squirrel guidelines say potential habitat is the desert shrub vegetation.

MS. LUCKHARDT: I think this has been asked and answered. I think he's clearly explained --

HEARING OFFICER CELLI: Sustained.

MS. GULESSERIAN: Are you aware that the
Holland publication describes the desert saltbush scrub community as having low total groundcover with much bare ground between the widely spaced shrubs?

DR. LEITNER: Yes.

MS. GULESSERIAN: Are you -- okay, thank you. Are you aware that staff found the project site contains 429.5 acres of Mojave Desert wash scrub and atroplex scrub?

MS. LUCKHARDT: Are you asking about the final staff assessment or his assessment?

MS. GULESSERIAN: I'm asking him whether he's aware that the final staff assessment finds that the project site contains 429.5 acres of Mojave Desert wash scrub and agricultural disturbed atroplex scrub.

MS. LUCKHARDT: Can you cite to the final staff assessment so we can have him look at where that appears?

MS. GULESSERIAN: I don't have a computer.

HEARING OFFICER CELLI: Well, the question is is he aware of that.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: And so I think
that's fair enough. The witness can testify as to whether he's aware of the FSA's statement, if there is, of how many acres of, what is it, atroplex and the other kind? What was the other part of that question? It was really two.

MS. GULESSERIAN: It's 429.5 acres of Mojave Desert wash scrub and agricultural dispersed atroplex scrub on the site.

HEARING OFFICER CELLI: And we determined that the atroplex is really saltbush scrub.

MS. SPEAKER: Synonymous.

HEARING OFFICER CELLI: It's the same thing, thank you.

(Pause.)

HEARING OFFICER CELLI: So the question remains whether Dr. Leitner is aware that the FSA contains --

DR. LEITNER: Yes, I am aware --

HEARING OFFICER CELLI: Okay.

DR. LEITNER: -- of that.

MS. GULESSERIAN: Did you do a quantitative assessment of this vegetation?

DR. LEITNER: No, I did not do a quantitative assessment, if by that you mean
counting the number of saltbush individuals that
were present on the site.

MS. GULESSERIAN: Did you map general
areas or do anything other, any other type of
quantitative assessment of the vegetation?

DR. LEITNER: Maps of the vegetation
types were prepared, and I had input into the
boundaries to try to get them correct.

MS. GULESSERIAN: And where are your
maps that we can refer to?

DR. LEITNER: The maps that were
produced, I'm not sure what, what exhibit that
would be.

HEARING OFFICER CELLI: Would those be
the maps in the FSA we're talking about or the
AFC?

MR. SOLORIO: Both. They're cited in
the FSA as part of the AFC.

HEARING OFFICER CELLI: Okay. So,
Ms. Gulesserian, do you know what we're talking
about here? The maps that contain, you know,
little points of what bushes and where things are
and what density.

(Parties speaking simultaneously.)

MS. GULESSERIAN: Okay, we can just move

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HEARING OFFICER CELLI: Thank you. I'm noticing it's 20 to 5:00.

(Parties speaking simultaneously.)

MS. GULESSERIAN: When you say shrub communities do not have, when you say shrub communities do no have appropriate variety of native shrubs in cores needed to support Mojave ground squirrel, did you do a quantitative assessment so that your assessment can be reviewed or verified?

DR. LEITNER: Anyone can go to the site. I was there a few days ago. And you can walk through the site and you will see all scale saltbush shrubs; you will also see that almost the entire herbaceous component consisting of plants about half an inch tall, are these two invasive species, the grass, Mediterranean grass and the biliary or erodium.

So there is no problem. Anyone with eyes can go to the site and see what plants are there. So it's repeatable.

MS. GULESSERIAN: Is the site public or private property?

DR. LEITNER: It's private.
MS. GULESSERIAN: Okay. So when you are -- so is the answer it's based on visual surveys and your testimony today, rather than a quantitative assessment of the native shrubs?

DR. LEITNER: That's correct. There's only one species of shrub there. And there are a couple of species of invasive herbaceous weeds. Not to be derogatory.

MS. GULESSERIAN: In your testimony -- sorry, excuse me. In doing your analysis isn't it true that your one-day site visit occurred in August, and another one-day site visit in October?

DR. LEITNER: That's correct.

MS. GULESSERIAN: And excuse me one moment. Is it correct that these dates are outside of the timeframe for visually surveying for Mojave ground squirrel?

DR. LEITNER: My objective in visiting the site was not to look for Mojave ground squirrels. For one thing, visual surveys are, even in the season when the animals are active, are almost never effective. You don't see them because they see you before you see them and get away.

My purpose in going to the site on those
two occasions was to assess the habitat.

MS. GULESERRIAN: Are you familiar with California Department of Fish and Game guidelines which state that if a survey is conducted according to these guidelines resulting in no capture or observation of Mojave ground squirrel that is not necessarily evidence that Mojave ground squirrels do not exist, or that the site is not actual or potential habitat?

DR. LEITNER: I'm aware of that, but it's only a partial quote. You left out the rest of it which states that however, the Department will stipulate, for our purposes, that there ain't any squirrels there.

Well, not exactly that language, but.

MS. LUCKHARDT: If you'd like the exact language if you could point me to where your original quote is, we can read it into the record.

HEARING OFFICER CELLI: Or you'll brief it later.

MS. GULESERRIAN: In your rebuttal you state that there is no document in relationship between percent shrub cover and presence, absence of Mojave ground squirrel, is that correct?

DR. LEITNER: That is correct.
MS. GULESSERIAN: You state that the relevant habitat variable is evidently not shrub cover, but the right combination of suitable native plant species.

DR. LEITNER: Yes, that's correct, I've said that.

MS. GULESSERIAN: Are you familiar with Scott Cashen's testimony that plant species common in squirrels' diets were detected on the project site, and that four of them comprised major food sources for Mojave ground squirrel?

MS. LUCKHARDT: And can you point to where that is in Mr. Cashen's testimony so we can have that available for him to review?

(Pause.)

HEARING OFFICER CELLI: While he's looking that up, Ms. Gulesserian, let's seen what you can do to shorten your list.

MS. LUCKHARDT: Okay, we've got it.

MS. GULESSERIAN: You found it? Okay.

DR. LEITNER: Okay, yes, I'm looking at it.

MS. GULESSERIAN: You're familiar with that?

DR. LEITNER: Yes. I am, however, could
I --

MS. GULESSERIAN: Right, you said in your rebuttal that you responded that the presence of certain plant species is irrelevant to any evaluation of habitat suitability, is that correct?

MS. LUCKHARDT: Where is that exactly in his testimony?

MS. GULESSERIAN: In his rebuttal testimony?

MS. LUCKHARDT: Yeah, if you're going to quote from it, I want to have it in front of him.

HEARING OFFICER CELLI: You know, as a general rule when you're going to cross-examine someone and you're going to use the transcripts or whatever, you should have that at the ready. That does make for a smoother hearing.

(Pause.)

MS. GULESSERIAN: It's page 5 of your rebuttal testimony, answer 13.

HEARING OFFICER CELLI: And what exhibit is that?

MS. GULESSERIAN: Exhibit 27, 327.

HEARING OFFICER CELLI: 327, page?

HEARING OFFICER CELLI: Thank you.

DR. LEITNER: Counsel, with your permission could I attempt to clarify something however.

You quoted the statement that goes for plant species that were found by Recht to form food resource, were found on the project site, is that correct? I'm just asking for clarification.

MS. GULESSERIAN: Yes. I said are you familiar with Scott Cashen's testimony that plant species common in squirrels' diets were detected on the project site, and that four of them comprised major food sources.

DR. LEITNER: Yes, okay. So, I'm aware of that, but if I could point out the project site includes the transmission corridors, which are natural habitat and have a great variety of plant species.

So what we're really talking about is habitat conditions on the plant site where the number of plant species present is very small. And, for example, one of the shrub species mentioned by Recht, (indiscernible), I did not see that. I've been all over the plant site, I did not see that species there.
When I was at the plant site a few days ago I did not see coreopsis there. So there may be some confusion. Those species may occur to the west of 14, which is clearly potential Mojave ground squirrel habitat.

HEARING OFFICER CELLI: Do you have more cross?

MS. GULESSERIAN: Yes. I need my expert here.

So in your response to Mr. Cashen's testimony that's been adopted by Dr. Bias, you state that the presence of plant species is irrelevant to any evaluation of habitat suitability, is that correct? In answer number 13.

DR. LEITNER: Thirteen, okay.

MS. GULESSERIAN: There is no evidence that such vegetation could support the Mojave ground squirrel population. The conclusions of Recht were based on visual observations of feeding behavior and not on actual quantitative analysis of the complete diet. In any event, the presence of certain plant species within the project survey area is irrelevant to any evaluation of habitat suitability on the plant site. Is that what you
said?

DR. LEITNER: That is correct.

MS. GULESSERIAN: Okay.

DR. LEITNER: Can I give an explanation or would that be okay? What I was getting at was the fact that a particular plant, an individual plant, might have been found, is not the issue. The question is the availability of adequate amounts of different plant species that are required.

So that fact that you've got one individual of coreopsis doesn't make it habitat.

MS. GULESSERIAN: Is it true that, okay, we're going to move on to bio, condition bio-11, which is in the final staff assessment. Requires compensation for five acres of lost desert shrub vegetation at a three-to-one ratio or 15 acres of compensation land for the transmission line.

MS. LUCKHARDT: Now where are you looking at in bio-11 so I can get him to the right spot? These are really long conditions.


HEARING OFFICER CELLI: I'm looking at the new, the latest, which was exhibit 338, which contains bio-11 desert tortoise and Mojave ground
squirrel compensatory mitigation. And it's referring to 115 acres of land. Is that what we're talking about? That's at page --

  MS. LUCKHARDT: Yeah, I have the condition. I'm just not sure which portion of it she is referring to with her question.

  MS. GULESSERIAN: Okay, let me rephrase. Is it your understanding that the final staff assessment is requiring compensation for five acres of lost desert shrub vegetation on the transmission line?

  DR. LEITNER: Yes, that's my understanding.

  MS. GULESSERIAN: Okay, and it's requiring compensation at a three-to-one ratio for five acres of lost desert shrub vegetation?

  DR. LEITNER: On the transmission line corridors, yes, that's my understanding.

  MS. GULESSERIAN: In your testimony you stated, according to the best dietary information available Mojave ground squirrels require forage from a variety of native shrubs and herbaceous species to sustain them through the active season.

  MS. LUCKHARDT: Again, where are you reading from? Rebuttal?
MS. GULESSERIAN: In his testimony.

Sorry about the page, I apologize.

HEARING OFFICER CELLI: Is that exhibit 327?

MS. LUCKHARDT: I've got 327.

MS. GULESSERIAN: Do you agree that according to the best dietary information available Mojave ground squirrels require forage from a variety of native shrub and herbaceous species to sustain them through their active season?

DR. LEITNER: Yes, I would agree with that.

MS. GULESSERIAN: What would you mean by the word sustain?

DR. LEITNER: Provide sufficient calories, nutrients, moisture so that they could survive, produce young and put on enough fat to get through the dormant period.

MS. GULESSERIAN: And when you say a variety of native shrub, what do you mean by variety?

MS. LUCKHARDT: I think that's been asked and answered.

HEARING OFFICER CELLI: I agree. I
think that I'll sustain that objection.

MS. GULESSERIAN: Has there ever been a study that scientifically tested whether a variety of shrubs and herbaceous species are required to sustain Mojave ground squirrel?

DR. LEITNER: I'm not sure that I understand your question. What type of study are you -- what sort of study are you envisioning?

MS. GULESSERIAN: Okay, maybe we need to find your statement in your testimony, because according to your testimony you stated, according to the best dietary information available, Mojave ground squirrels require forage from a variety. I'm wondering if you are referring to some sort of scientifically tested study, or what the basis is for that statement.

DR. LEITNER: The basis for that statement is, well, there's several things. But the main basis for that statement would be the study that was conducted at four sites in the Coso range over a period from 1998 to '96 (sic) where samples were taken and analyzed to determine what males and females, adults and juveniles were feeding on in wet years, dry years, spring, summer.

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So a picture of -- this is the best in the sense that it covers multiple years, covers different seasons, different groups of animals, different study sites.

So, yeah, that's --

MS. GULESSERIAN: Can you tell me where the -- sorry, were you finished?

DR. LEITNER: Yes, I had.

MS. GULESSERIAN: -- where the Coso Range is in relation to the geographic range of the Mojave ground squirrel?

DR. LEITNER: It's toward the northern edge of the range. It's in Inyo County about 30 miles north of Ridgecrest.

MS. GULESSERIAN: Did you conduct or participate in the five-year status review for the Mojave ground squirrel in 2008?

DR. LEITNER: Five-year status review in 2008?

MS. GULESSERIAN: Have you done any status reviews for the Mojave ground squirrels?

DR. LEITNER: Are you -- this is -- you're referring to a document that was produced by -- status review -- I'm not sure what document you're talking about. Or if it is a document or
MR. BABULA: We're only at squirrels. Is there a way we could move this a little bit forward?

HEARING OFFICER CELLI: Yeah, it's now 5:00. And I wonder, Ms. Gulesserian, how much more cross do you have on the squirrels?

MS. GULESSERIAN: The squirrels are important. I just have one --

HEARING OFFICER CELLI: I don't question that.

MS. GULESSERIAN: -- question based on this study. And I do apologize for not citing throughout my questions. I thought we'd be more readily familiar, but --

HEARING OFFICER CELLI: You know, a status review that you're looking, you're looking for a status review.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: If you can just give him exactly what it is.


DR. LEITNER: Oh, that status review. I thought perhaps Fish and Game had produced a
status review. Okay, I'm familiar with that.

MS. GULESSERIAN: Familiar with that --

DR. LEITNER: Yes.

MS. GULESSERIAN: -- status review?  

DR. LEITNER: Right, yes.

MS. GULESSERIAN: Okay. In that status review did you state, it is clear that additional field surveys are urgently needed to provide a more comprehensive picture of Mojave ground squirrel occurrence and status throughout its range.

It is also clear that surveys to date have been seriously inadequate in documenting patterns of Mojave ground squirrel distribution because trapping sites have, for the most part, not been selected according to a randomized scheme.

In the absence of a randomized sampling procedure the results of such surveys apply only to the trapping site and cannot be extrapolated to the general region.

Is that what you wrote in your status review?

MS. LUCKHARDT: Would you like to see the document and the location of where that is
before you respond? Or do you --

DR. LEITNER: No.

MS. LUCKHARDT: Okay.

DR. LEITNER: It sounds very familiar.

In other words, my answer is yes, I am familiar with that.

MS. GULESSERIAN: So by using that Coso data to support your conclusion that the Beacon site does not provide food sources, not just necessary to sustain Mojave ground squirrel, aren't you doing the thing that you cautioned against in the status review?

DR. LEITNER: Well, no. In the status review I was not talking about diet. I was rather talking about getting a complete picture of the distribution and abundance of the squirrel throughout its range.

What I said about the dietary data that we have from the Coso study is that it's the best available.

And it's interesting, I have had analysis done on more fecal samples from a site just north of Red Rock Canyon. And I got the preliminary results back, and again, sure enough, in the spring they're eating mostly foliage of
(indiscernible) shrub, spiny hop-sage. And as you go into April they're eating mostly native wildflowers.

So that's a site, you know, another site. And so, I'm sorry to spring that, but I just got the results.

MS. GULESSEERIAN: Do you agree that certain plant species do not show up in fecal matter from the Mojave ground squirrel, based on published literature?

DR. LEITNER: As your witness has stated, there are difficulties with the fecal analysis in that there are some food items that are readily digestible and may not be able to pick up under the microscope any fragments.

However, considering that we can't take stomach samples from this listed animal, the fecal analysis is probably the best we can do.

And I can give an example, although we observed --

HEARING OFFICER CELLI: I actually believe --

MS. GULESSEERIAN: That's okay, thank you.

HEARING OFFICER CELLI: -- that the
question was answered.

MS. GULESSERIAN: Yes, thank you.

DR. LEITNER: Oh, I -- sorry.

HEARING OFFICER CELLI: I appreciate your insight. Is there any further cross from CURE?

MS. GULESSERIAN: There is not, thank you very much.

HEARING OFFICER CELLI: Any cross by the staff?

MR. BABULA: Just a quick question.

CROSS-EXAMINATION

BY MR. BABULA:

Q I think I need a clarification. My understanding was that you're mitigating for ground squirrel on the project site and on the transmission. So you are presuming presence in both places. I mean isn't that -- you may not think there are any there, but you're mitigating or you're acquiring habitat.

So in the end there is mitigation regardless of if there's two or zero or there's no habitat. Is that the case?

DR. LEITNER: Well, that is true. I think that the mitigation for loss of habitat on

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the transmission area, that's loss of habitat. Whereas, we're looking at compensation for some minimal take on the plant site.

MR. BABULA: Right.

DR. LEITNER: Okay. But there is substantial mitigation in my opinion.

MS. VANCE: Just to clarify, Fish and Game was not willing to concede that the species was not absent with no trapping surveys. And so there was a series of meetings and discussions where the applicant conceded and gave us some reasonably supported information, based on biological considerations, that there could be animals present in low densities, at least during part of their lifecycle.

And we concurred with that determination but we did not concur that it's not habitat or that they're not there. And I just want to be clear on that. And the FSA reflects that agreement.

HEARING OFFICER CELLI: That's fabulous. And there's no question pending.

MR. BABULA: Was that your understanding?

HEARING OFFICER CELLI: And so I'm just
going to ask the witnesses. I know everybody is
so enthusiastic to testify.

(Laughter.)

HEARING OFFICER CELLI: But I'm going to
request you wait for a question from your attorney
first and answer that question.

(Laughter.)

HEARING OFFICER CELLI: Not what you
want to speak to specifically. So where we're at
now is with staff, right.

MR. BABULA: Okay. So given that, so
that's your understanding, is there is some sort
of mitigation because there was a feeling that
there may be some transients or there's some
ground squirrels on the project site that could be
impacted.

So the mitigation that's being proposed
is to address loss of those two individuals?

DR. LEITNER: That's my understanding.

MR. BABULA: Okay. No further
questions.

HEARING OFFICER CELLI: Thank you. Any
redirect?

MS. LUCKHARDT: No.

(Laughter.)
HEARING OFFICER CELLI: Your next witness.

MS. LUCKHARDT: Okay, my next witness is Dr. Karl. And this will be shorter.

HEARING OFFICER CELLI: Thank you.

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q One question, or actually I have two questions. How many -- or maybe three --

(Laughter.)

MS. LUCKHARDT: I need to lay some kind of foundation. So your role on this project has been to analyze impacts to the desert tortoise, is that correct?

DR. KARL: That's correct.

MS. LUCKHARDT: And how many years have you been studying the desert tortoise?

DR. KARL: Thirty-two.

MS. LUCKHARDT: And can you give us --

HEARING OFFICER CELLI: So we will determine that she's an expert in the desert tortoise; for 32 years she's done that.

MS. LUCKHARDT: That's right.

Can you provide your overall thoughts on the development of the Beacon site for solar
generation and its impact on the desert tortoise?

DR. KARL: Yes, thank you. From the perspective of desert biology and impacts to native wildlife species it would be really hard to find a site that's more suitable for development of a solar project in the desert than the Beacon site.

And this is because this site is highly degraded. It has no natural communities on it. Second, it's been highly degraded for decades. It has been out of use or of little to no use by terrestrial vertebrates because of farming and because it was abandoned.

It is near or adjacent to other anthropogenic development, including a highway that goes north/south from southern California to the Owens Valley.

And fourth, the project will not result in any further impacts to terrestrial wildlife species.

Those are the overarching considerations that make this a truly excellent site for solar development in the Mojave Desert.

For desert tortoises in particular, there were comprehensive U.S. Fish and Wildlife
Service protocol level surveys conducted on the project in 2007 and 2008. The surveys were approved by the Service at Fish and Game. No tortoises were found to occupy the site.

During those same surveys tortoises were found to occupy the immediately adjacent area. I'm talking about the plant site. They were found to occupy the immediately adjacent area even up to the border of the plant site. They stop short of using the plant site. Why? Because there is no tortoise habitat on the plant site.

Despite the fact that there is no tortoise habitat on the plant site, Beacon LLC has agreed to purchase 100 acres of usable desert tortoise habitat that will be protected and managed in perpetuity in an area that's targeted for desert tortoise conservation and recovery. And this area will either expand or consolidate these conservation areas.

And this will assist in desert tortoise persistence and recovery during the same time -- at the same time the Beacon project will not diminish desert tortoise persistence or recovery. So there is a net benefit to desert tortoises from the Beacon project. And that just
about does it. That's about as good as it gets for a solar site in the Mojave Desert.

MS. LUCKHARDT: And just to clarify one point, were protocol desert tortoise surveys conducted along the gas pipeline route when the gas pipeline was proposed for the project?

DR. KARL: It's my understanding they were, in 2008.

MS. LUCKHARDT: Thank you. Dr. Karl is available for cross if you want to do desert tortoise at this point.

HEARING OFFICIAL CELLI: Ms. Gulesserian, do you have a very focused cross?

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Did you survey around the perimeter of the project site?

DR. KARL: I did not survey the project site at all, other than doing a habitat evaluation. The surveys were conducted by --

MS. LUCKHARDT: What we may need to do at this point in time is take Ms. Guigliano's testimony, as well, so that the questions, if they go to the surveys, can be taken by her at the same time, so we can do the --
HEARING OFFICER CELLI: Well, if we're going to do that then rather than go into cross, let's just take her direct right now, if it's a quick one.

MS. LUCKHARDT: Yeah.

HEARING OFFICER CELLI: And then, Ms. Gulessarian, we'll let you cross both witnesses. So go ahead -- is it Guigliano or Guigliano?

MS. GUIGLIANO: Guigliano.

HEARING OFFICER CELLI: Okay, you spell it G-i-u?

MS. GUIGLIANO: G-u-i.

(Laughter.)

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q And, Ms. Guigliano, I understand that you have one correction to your testimony. Could you point that out and refer to the exhibit number.

MS. GUIGLIANO: Yes. Yeah, it's exhibit 325. In exhibit 325, on page 9, paragraph number 4 should actually say one western burrowing owl was observed outside of the project, as opposed to no western burrowing owls were observed. So this was during the groundwater pump testing.
MS. LUCKHARDT: Did everyone get that?

HEARING OFFICER CELLI: Yes.

MS. LUCKHARDT: Okay, thank you. And then could you please, in a short summary, provide your response to the concerns expressed by Mr. Cashen in his testimony regarding impacts to the western burrowing owl?

MS. GUIGLIANO: Sure. Mr. Cashen claims or stated that appropriate western burrowing owl surveys, protocol surveys guidelines were not conducted for the project.

And, in fact, there are four phases to western burrowing owl surveys. I don't think I need to get into the details of the four phases but all four phases were conducted for all areas of the project site.

They were conducted in 2007 for the plant site, and a transmission area. They were conducted in 2008 for what we call the supplemental survey area, and included an 80-acre parcel in the north, a 14-acre parcel north of the access road, and the transmission corridor space on the centerline that was more accurately mapped. And, in addition, protocol surveys were conducted along the natural gas pipeline.
In 2009 surveys were conducted for the emergency access road which was added from the northeast corner of the project site to the road. And in 2009 no western burrowing owls were found. And so that's the only survey that required winter surveys, which were conducted in January of 2010.

All the results from all of the surveys for western burrowing owls were provided in survey reports in accordance with phase four of the guidelines.

In 2007 there were only two western burrowing owls detected within the plant site. In 2008 there was one burrowing owl detected in the buffer of the plant site, two detected in the buffer to the gasline. And in 2009 and 2010 for the access road no western burrowing owls were detected.

Mitigation was proposed in accordance with CBOC and CDFG guidelines for two individuals, because in any year no more than two individuals were ever found within the project site limits. You cannot assume that the individuals that were detected in different years during different survey protocols were independent sightings and individual owls.
MS. LUCKHARDT: And then I believe you've covered this a little bit, but do you agree with Dr. Bias' testimony that proper surveys were not conducted of the natural gas pipeline route?

MS. GUIGLIANO: No, that's not correct. He didn't reference the 2008 spring report. And in 2008 a full survey, protocol surveys were conducted for rare plant, burrowing owl, desert tortoise within the natural gas pipeline when that pipeline was added. It was added after the spring surveys for '07, so they were conducted independently and reported in the 2008 spring survey report.

MS. LUCKHARDT: And why does that pipeline corridor matter for the way the project is currently configured?

MS. GUIGLIANO: The natural gas pipeline was originally surveyed for the purpose of installation of natural gas pipeline, but the same pipeline route is being used for the water pipeline. So basically it's a utility pipeline corridor now, and the survey still applies to the same area.

From the point where the surveys were stopped for the natural gas pipeline, the pipeline
to California City proceeds in California City Boulevard. So no additional surveys were conducted.

MS. LUCKHARDT: And that would be the section of the waterline from the plant site to?

MS. GUIGLIANO: To California City.

MS. LUCKHARDT: Thank you. Both witnesses are available for cross.

HEARING OFFICER CELLI: Thank you. Now, if you're going to cross a witness or the other, please call them by name so we know who needs to answer the question. CURE.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q I was asking about the desert tortoise earlier, so I was asking Ms. Karl if you surveyed the perimeter of the project site. Is that question to Ms. -- sorry?

MS. GUIGLIANO: Guigliano.

MS. GULESSERIAN: -- Guigliano.

MS. GUIGLIANO: Full protocol surveys were conducted in the plant site and transmission lines and in the associated buffers which would include adjacent areas, as required by the agencies in the protocol survey guideline.
MS. GULESSERIAN: Okay. Did you find an intact -- so this is back to Ms. Karl. Did you find an intact juvenile carcass on the project site?

DR. KARL: Actually that would be Dr. Karl.

MS. GULESSERIAN: Excuse me, thank you.

DR. KARL: And (inaudible) did find two juvenile carcasses onsite, both of which had raven -- very likely, based on the type of hole, a raven hole from the beak in the carapace. So these juveniles were depredated by ravens.

MS. GULESSERIAN: Did you find a deteriorated adult burrow on the project site?

DR. KARL: There was a deteriorated adult burrow on the project site.

MS. GULESSERIAN: Did you find two sets of bone and carapace fragments on the project site?

DR. KARL: Along the southern border just inside the plant site there were two groups of immature tortoise bone fragments which were greater than four years old, and very likely based on their proximity, may have been the same.

MS. GULESSERIAN: When you say they're
greater than four years old, did you do testing to
determine that they were greater than four years
old?

DR. KARL: No. But there is a standard
that is used by desert tortoise biologists. And
it's fairly easy to tell qualitatively from a
number of factors if a tortoise has died within
the last year, or if it has died more than four
years previously.

MS. GULESSE: What are those
qualitative factors? Are they described anywhere?

DR. KARL: Under a year or over four
years?

MS. GULESSE: Well, you say that
they are greater than four years old, so --

DR. KARL: Um-hum.

MS. GULESSE: -- what did you find
that made them greater than four years old?

DR. KARL: Tortoise bones that are
greater than four years old tend to be, they
disarticulate very easily. The edges tend to be
crumbly, even to the point of being powdery.
The bone has a scaly appearance to it
and it's flaky. And scoots, if they're present at
all, on an older carcass like this, would be, in
most cases, -- it really depends on where the
carcass might be, but this one was groups of
fragments. So in most cases the scoot would not
be adhered to the bone any longer, and there would
be the annuali on the scoot would be peeling to a
great extent.

MS. GULESSERIAN: Are you aware of the
FSA's conclusion that desert tortoise might occur
within 429.5 acres of the project site that
supports disturbed saltbush scrub and desert wash
scrub?

DR. KARL: Yes.

MS. GULESSERIAN: Is this potential
habitat for this species?

DR. KARL: No.

MS. GULESSERIAN: What is the basis for
your conclusion that the plant site does not
provide habitat for desert tortoise?

DR. KARL: Most of the plant site is
barren. The only place where there are shrubs is
in the wash, which is highly degraded. There's a
little bit of lepidospartum. The patches of
shrubs in the wash are separated by distances of
1875 feet, 760 feet, and it goes down. But there
are broad stretches where there is no vegetation
in this wash.

The lepidospartum is pretty much the
only species there. And so it provides some
cover, but very very patchy.

At the north end of this wash it's a
soil, and it's completely inundated by Russian
thistle, which is a noxious exotic species.

On the 369 acres of saltbush scrub in
the northwest site, as Dr. Leitner so eloquently
stated, it is a monotypic stand of saltbush. Now
that is not a natural habitat. A natural all-
scale scrub habitat would include a number of
other species.

The other thing that's very important
and it seems to be overlooked a great deal is that
habitat is not simply the vegetation. It's not
simply the shrub species that are present.

Shrub species composition is merely one
aspect of habitat. Species evenness, species
richness, the height of the shrubs, the
topography, the microtopography, the hydrology,
the soils, the substrate, those are all very very
important features.

And in that area, in the northwest,
where there's regrowth of saltbush scrub, the
soils, in fact, are very fine, they're very compacted. They show a lot of evidence of standing water, which isn't really a great thing for a burrowing animal.

And, in fact, if you look at the soils analysis for the AFC, it identifies this as Rosamond clay loam, saline, alkaline. That is not supportive of desert tortoises.

MS. GULESSERIAN: Did you just say that there's standing water on the project site?

DR. KARL: I said that it's cracked, so it was indicative of standing water. It's very silty soil which holds water.

MS. GULESSERIAN: In your rebuttal testimony you state that there's little scientific information statistically correlating habitat qualities to desert tortoise population densities and recovery potential.

DR. KARL: That's true.

MS. GULESSERIAN: This is exhibit 326. And you also stated that published papers are almost nonexistent and the handful of unpublished papers either provide detailed analysis correlating habitat variables in localized area, or failed to conduct an in-depth analysis.
So, if there's little scientific information and published papers are almost nonexistent, how can you now say that the habitat variables on the site mean that desert tortoise are not there?

DR. KARL: That's a very good question.

I did my masters thesis on the habitat associations of the desert tortoise in Nevada.

After that I spent the next 30 years assessing habitat and tortoise densities in California, Nevada and Utah.

So, --

MS. GULESSERIAN: So did you --

DR. KARL: -- I have quite a good idea about where tortoises reside and where they don't.

And I had the opportunity, and Judy would know this, too, we had the opportunity to look at tortoise populations when tortoise populations were high.

The current -- any current analyses of habitat are based on the current tortoise densities, which are very very low. Tortoise densities have declined dramatically in the last 20 years. And in many places where there is still excellent habitat there are very few tortoises.
So it's -- the newer studies would probably fail because of a very fine-grained approach based on current tortoise densities.

MS. GULESSERIAN: So in these years of research on desert tortoise population you're still saying there's little scientific information and barely any published papers correlating habitat qualities to desert populations.

Did you publish anything that would help us with the little scientific information that is out there?

DR. KARL: No.

MS. GULESSERIAN: Okay. Is it correct that published papers are generally subject to the rigorous scrutiny of peers in the scientific community?

DR. KARL: Published papers generally are.

MS. GULESSERIAN: Okay. Is it possible for desert tortoise to occur on barren areas located in between habitat areas?

DR. KARL: It's possible for a tortoise to walk across anything.

MS. GULESSERIAN: Okay.

DR. KARL: Including a road, including
asphalt. I've seen them on highways quite a
number of times.

MS. GULESSERIAN: So it's possible that
they would occur between different shrub
vegetations?

DR. KARL: Between -- you mean different
shrubs?

MS. GULESSERIAN: On barren lands
between different shrubs or shrub communities.

DR. KARL: There probably wouldn't be
different shrub communities in the same area, but
it wouldn't matter. Your question is would they
walk on barren land. Yes, they would.

MS. GULESSERIAN: Okay. Is it true that
desert tortoise sign, burrows, scats, carcasses
indicates presence and requires formal
consultation with Fish and Wildlife Service?

DR. KARL: Burrows, scat and -- there
were no scat --

MS. GULESSERIAN: Desert tortoise sign.

Does desert tortoise sign indicate presence and
require formal consultation with Fish and Wildlife
Service?

(Parties speaking simultaneously.)

DR. KARL: Desert tortoise sign does not
necessarily indicate present on the site. And you have to qualify the kind of sign. The kinds of sign that were found on the Beacon site were two juveniles, which were clearly depredated by ravens. They could easily have been dropped there.

And the bone fragments on the southern edge were on the southern edge. But again, any carcass, even an entire intact carcass could be transported to the site. So just because you see a carcass doesn't mean the animal died there.

So the burrow -- now the burrow is actually an excellent indicator that there probably are no tortoises on the site, because it was a deteriorated burrow. And tortoises have a tendency to use anywhere from, oh, two to 20 burrows every year.

And so if a tortoise were actually living there, using that site on a regular basis, it was part of its core use area, or even part of its home range, you would expect to see more burrows, scat and potentially even the tortoise.

So, there was only one deteriorated burrow and no scat, no other burrows. Scat and burrows, especially current burrows, are
suggestive that tortoises could be on a site.

MS. GULESSERIAN: So are you saying that there's no desert tortoise sign on the project site?

DR. KARL: On the plant site. I did not say there's no sign. I'm saying that there are no tortoises on the plant site.

MS. GULESSERIAN: Is there desert tortoise sign on the project site?

DR. KARL: Yes, on the project site.

MS. GULESSERIAN: Okay. Is it true the project area on the west side of state route 14 is habitat, is occupied by desert tortoise, and therefore consultation with Fish and Wildlife Service is required?

MS. LUCKHARDT: I object. That calls for a legal conclusion, asking whether consultation with Fish and Wildlife Service is required.

MS. GULESSERIAN: Are you consulting with Fish and Wildlife Service regarding the habitat, desert tortoise habitat, and desert tortoises?

MR. BABULA: I would object that anything with the Fish and Wildlife Service is a
separate permit. We have no in-lieu authority to
do permits, to cover permits from the Service. So
it's irrelevant to this proceeding.

HEARING OFFICER CELLI: What's the
relevance? Offer of proof.

MS. GULESSERIAN: I'd like to know
whether the Fish and Wildlife Service is
evaluating the applicant's biological resource
data on desert tortoise.

MS. LUCKHARDT: I just want to point out
the obvious, that the Fish and Wildlife Service is
here and so --

HEARING OFFICER CELLI: That's right.

MS. LUCKHARDT: -- why are you asking
our witness about --

(Parties speaking simultaneously.)

MS. GULESSERIAN: So it should be easy
to answer whether the applicant is consulting --

HEARING OFFICER CELLI: Objection
sustained.

MS. GULESSERIAN: -- with the Fish and
Wildlife Service.

HEARING OFFICER CELLI: Let's move to
the next. It's now 5:30, by the way. If you're
finished with your cross, we're going to take a
break.

MS. GULESSERIAN: I am with Ms. Karl.

HEARING OFFICER CELLI: Okay.

MS. GULESSERIAN: Dr. Karl, excuse me.

HEARING OFFICER CELLI: And so, well, you say that. Did you have further questions for Ms. Guigliano?

MS. GULESSERIAN: I do.

HEARING OFFICER CELLI: All right.

We're going to take a five-minute break. Everyone needs to be back in their seats at 20 to 6:00.

I just want to make mention of the fact that this is biology. We haven't even heard from staff yet.

MR. BABULA: We'll be short.

(Laughter.)

HEARING OFFICER CELLI: But you have three witnesses and it always takes a little longer than we think.

But I need to, in this five minutes, if you wouldn't mind, Ms. Gulessarian, really try to have everything crisply ready to go for your remaining five minutes or less of cross-examination of Ms. Gulessarian.

MS. GULESSERIAN: Yes.
HEARING OFFICER CELLI: Please. Thank you. Let's take our break now; take five minutes and come on back.

(Brief recess.)

HEARING OFFICER CELLI: So are we back on the record, is everybody here that needs to be here? It looks like everyone is here so now with that, CURE you are crossing Ms. Guigliano.

MS. GULESSERIAN: Thank you. Ms. Guigliano, is it correct that mitigation for impacts to burrowing owl is based on loss of owls?

MS. GUIGLIANO: Yes.

MS. GULESSERIAN: And does this require surveys as described in your rebuttal testimony, which is exhibit 325, pages 8 through 10?

MS. GUIGLIANO: Yes.

MS. GULESSERIAN: Did you survey the 23 miles southern segment of the Rosamond Community Services recycled water pipeline route?

MS. GUIGLIANO: All surveys, biological surveys for the Rosamond pipeline were done by the Energy Commission, not by us.

MS. GULESSERIAN: Did you survey the alternative southern pipeline route for the Rosamond Community Services recycled water
pipeline through the Air Force Base?

MS. LUCKHARDT: I think that's been asked and answered.

MS. GULESSERIAN: I asked before about the 23-mile southern segment, for clarification --

HEARING OFFICER CELLI: You may answer the question if you know the answer.

MS. GUIGLIANO: We did not do any survey associated with the Rosamond pipeline.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: For the project site, is it accurate that in 2007 two western burrowing owls were observed?

MS. GUIGLIANO: Yes.

MS. GULESSERIAN: Is it also accurate that in 2008 you surveyed other project areas and found three individual owls?

MS. GUIGLIANO: In 2008 we surveyed additional supplemental survey areas and found three owls in the buffer area.

MS. GULESSERIAN: In your rebuttal testimony to Mr. Cashen, he had testified that you failed to account for an additional owl identified at the site, and that mitigation should be for at least three pairs. You are familiar -- your
response, that it's not appropriate to assume there's different birds, correct?

MS. GUIGLIANO: You asked two different things. Something about a third owl in 2008?

MS. GULESSERIAN: Okay, I can go back. Are you familiar with Scott Cashen's testimony that required mitigation for two owl pairs fails to account for the fifth owl identified at the site?

MS. GUIGLIANO: The third owl at the site. Yes, I'm familiar with Mr. Cashen's testimony. But I don't agree that there's three independent sightings of owls.

MS. GULESSERIAN: Okay, what's your basis for not agreeing?

MS. GUIGLIANO: Each year during the protocol surveys we saw no more than two owls within the project area. And so in '07 there were two owls identified within the plant site. A third owl that was referred to was identified outside of the protocol survey in similar areas during pump testing.

In 2008 three owls were observed. Only one was in the plant site and one was in the buffer area, not in the plant site.
So, in no single year were there ever more than two independent sightings of owls during a protocol survey session.

MS. GULESSERIAN: Okay, can you clarify then for the record whether you went to the same area of the plant site in each year?

MS. GUIGLIANO: In 2007 the bulk of the plant site was surveyed, as were the transmission lines. In 2008 there was an 80-acre parcel that was within the original plant site area that was surveyed, so it's a section of the northern portion that's adjacent to the rest of the parcel. In addition to the 14-acre, which is adjacent to the site above the northern -- or above the access road from the west.

MS. GULESSERIAN: And so were the birds located in the same location each year?

MS. GUIGLIANO: Were the owls located in the same locations? In 2008 -- in 2007 it was in the northwest corner; in 2008 I believe it was also a sighting in the buffer on the north side. So it's likely that it could have been the same owl.

The other sightings in '08 were along the pipeline, not associated with the plant site,
and in the buffer.

MS. GULESSERIAN: Okay. I have no further questions.

HEARING OFFICER CELLI: Thank you.

Cross, staff?

MR. BABULA: Quick question.

HEARING OFFICER CELLI: Please make sure you identify who you're asking the question.

MR. BABULA: Okay.

CROSS-EXAMINATION

BY MR. BABULA:

Q Dr. Karl, is there -- you testified on the plant site there are only juvenile carcass and bone fragment. Is the applicant providing some sort of mitigation for tortoises that might transiently be on the site?

DR. KARL: Yes, they are. Because there is the possibility that, because there are tortoises in adjacent habitat, there is the possibility that a tortoise could occur onsite. So the project is providing 20 acres of compensation for -- well, it's 100 acres, because of the Mojave ground squirrel, it's 100 acres of compensation.

MR. BABULA: Okay, thank you. And then
for Ms. Guigliano, same question regarding burrowing owls. Is there mitigation for burrowing owls proposed?

MS. GUIGLIANO: Yes. Mitigation for burrowing owls is proposed assuming two pairs. And again that has to be clarified during the preconstruction survey, but they'd be relocated, includes 20 acres of offsite compensatory mitigation.

MR. BABULA: Okay. And is there also a requirement that before Beacon starts construction of any of these pipelines, whether it be -- well, especially the Rosamond pipeline, that there be surveys done?

MS. GUIGLIANO: That's our understanding, yes.

MR. BABULA: Okay. No further questions.

HEARING OFFICER CELLI: Redirect?

MS. LUCKHARDT: None.

HEARING OFFICER CELLI: Thank you. That closes biology then. No? I've got someone --

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: -- pointing to me shaking their head no. Pointing to staff.
(Parties speaking simultaneously.)

HEARING OFFICER CELLI: They're sitting here with three witnesses that we haven't heard from.

MR. BABULA: They just wanted to see what this is like.

HEARING OFFICER CELLI: I'm sorry.

MR. BABULA: Okay.

HEARING OFFICER CELLI: So with that, staff's correct.

MR. BABULA: Okay. Quick procedural question. I have emailed you regarding the backgrounds of Julie and Judy, because they weren't available I couldn't get you anything. In your order you wanted it before so I could give, have them just give a quick spiel on their backgrounds to establish. Or if everybody will stipulate since they are employed with the Service and Fish and Game?

HEARING OFFICER CELLI: So, are their résumés in the record yet?

MR. BABULA: No.

HEARING OFFICER CELLI: They're not, okay.

MR. BABULA: Because I had said I would,
because Judy was in Florida and not available and
I couldn't get anything from her. And Julie's
came in too late for me to --

HEARING OFFICER CELLI: The question is,
applicant and CURE, whether you'd be willing to
stipulate to the expertise of these two witnesses,
or do you want to hear a long, drawn out
recitation of all of the things that make them
expert in their fields.

Applicant, I'll let you go first.

MS. LUCKHARDT: We are happy to
stipulate.

HEARING OFFICER CELLI: Okay. CURE?

MS. GULESSERIAN: CURE will stipulate.

HEARING OFFICER CELLI: Thank you. So,
we will deem as stipulated that these experts are
experts in their field. And then you might want
to give a little quick one sentence on what
they're field is so that we know what we're
listening for.

MR. BABULA: Okay.

DIRECT EXAMINATION

BY MR. BABULA:

Q Why don't we start off with that.

MS. VANCE: I have a bachelors and
masters degree in biology with an ecology emphasis from CSU Fresno. And I worked for the Department of Water Resources for six years and then for the past five and a half I've been with the Department of Fish and Game supervising the Endangered Species and CEQA and Timber Unit. And now Program Manager over all of our regulatory programs for our 12-county region, which includes streambed alteration, FERC, water rights, and our special renewable energy unit.

HEARING OFFICER CELLI: And you're Julie Vance, right?

MS. VANCE: Correct. Sorry.

HEARING OFFICER CELLI: You're with CDFG?

MS. VANCE: Correct.

HEARING OFFICER CELLI: Which is certainly, that was way more information than we needed, because we've already deemed that you're an expert.

MS. VANCE: Okay.

HEARING OFFICER CELLI: So, Judy, we won't need your expertise, per se, either. We just need to know what your title is. That will help.
MS. HOHMAN: I'm a Fish and Wildlife biologist for the U.S. Fish and Wildlife Service. I've been working on desert issues in the Ventura Office since 1990, specifically desert tortoise. And I was one of the co-authors of the rule to list the Desert Tortoise as a Threatened Species under the federal Endangered Species Act.

HEARING OFFICER CELLI: Thank you.

MS. SPEAKER: You're clicking.

HEARING OFFICER CELLI: The record should reflect that the court reporter's tape recorder was clicking. I was not clicking.

(Laughter.)

HEARING OFFICER CELLI: With that, staff, please.

MR. BABULA: Okay. This is for Dr. Sanders. Please describe your overall conclusions regarding the Beacon project's impact to biological resources.

DR. SANDERS: Well, as you've already heard, most of the Beacon site is disturbed and supports little habitat for Mojave ground squirrel or desert tortoise. But we could not rule out the possibility of there being desert tortoise or Mojave ground squirrel occurring there.
So we consulted with Fish and Game and Fish and Wildlife Service; developed conditions of certification that would avoid or minimize any impacts to desert tortoise and Mojave ground squirrel, and also provided compensation. And with all those conditions of certification in the final staff assessment, staff concluded that any impacts to biological resources, including listed species, would be mitigated to less than significant levels.

MR. BABULA: In developing these conditions did you collaborate with Fish and Game and Fish and Wildlife?

DR. SANDERS: We did.

MR. BABULA: And then regarding the Mojave ground squirrel and the state-listed species, did you find that the mitigation was fully mitigating any impact?

DR. SANDERS: We did.

MR. BABULA: Okay. So I know you've read all the testimony and you've had your supplemental testimony; we've heard the testimony of Dr. Bias; we've heard all the testimony from the applicant.

So at this point is there anything else...
you'd like to add to the record regarding biological resources?

DR. SANDERS: Regarding also the testimony we've heard?

MR. BABULA: Right.

DR. SANDERS: Yeah. I just want to clarify one thing that Dr. Bias said, because I had the impression, and perhaps others did also, that there'd be 4000 acres of impacts associated with the Rosamond pipeline.

And I just want to clarify, and I think you're talking about indirect impacts for the most part, but I want to clarify that we studied an area that was 22 miles long, the point from the Rosamond water treatment plant to the point of delivery, 2000 feet wide. And we mapped vegetation in that area.

But actual impacts of the pipeline are going to be about 11 acres to the native plant communities, to creosote bush scrub and atroplex scrub. Only about two acres of that will be permanent, because it's a buried pipeline.

There's a 25-foot construction corridor that we used for the basis for that impact analysis. And that is being -- and we're assuming
that Mojave ground squirrel and desert tortoise could occur along the pipeline, because there's good habitat, especially in the northern portions of that pipeline.

So the same things that are in place for the same avoidance, minimization measures that are in place for the transmission line, where there is good habitat west of 14, are also in place for the Rosamond pipeline.

So all the same avoidance, minimization measures, having a designated biologist present when there's any construction, that's happening. We're also mitigating at a three-to-one ratio as for the habitat west of state route 14. And that's contained in bio-21, the Rosamond pipeline mitigation.

Also there are indirect impacts which we addressed in appendix A. All this is contained in appendix A of the FSA, all the things that I'm telling you about.

Staff did a reconnaissance survey, vegetation, mapping, assessment of impacts, and we've got measures in there, the same measures that apply to minimizing indirect impacts for the plant site are also in place. Weed control, dust
suppression, all the things that you would have to
do to protect biological resources, those also are
in place for the Rosamond pipeline.

So, staff has concluded that impacts to
biological resources associated with the
construction of that pipeline have been mitigated
to less than significant levels. Fully mitigated
to the listed species.

I have one more thing to add, and that
was I'm very sorry to all of you for my
inconvenient absence this morning. I know it
pushed us all back four hours in the queue.
Especially to my fellow biologists who thought
they'd be home by now. So, I'm sorry.

MR. BABULA: Julie Vance, would you like
to add any information and clarify some testimony
that occurred earlier?

HEARING OFFICER CELLI: That isn't
cumulative, of course. So basically anything new
that we haven't heard yet.

(Laughter.)

MS. VANCE: I just wanted to clarify
regarding the requirements of the California
Endangered Species Act, and what full mitigation
means.
CESA requires that the impacts of the taking be fully mitigated. It does not specify regarding the habitat. And the state definition of take is less broad than that in the federal Endangered Species Act. It's defined in section 86 of the Fish and Game Code, which is -- take is hunt, pursue, catch, capture or kill or any attempt to do so. So it's very much regarding the direct impacts to the animal, as opposed to habitat.

Now, for a fossorial animal like tortoise and squirrel, we do usually use habitat kind of as a proxy because you have to assume when you can't find all the animals when they're cryptic that you have to make some assumptions about where they are and how many.

However, we do evaluate them on a case-by-case basis. And in the circumstance where the habitat is quite degraded, we didn't, you know, just make an assumption that there's X impacts to, you know, a certain acreage and go with that.

We did look at how many animals we thought that particular habitat could support. So it wasn't only, you know, just as an example, impacting ten acres and therefore you mitigate
with 40. It was actually taking into account how many actual animal the habitat could likely support.

MR. BABULA: Judy, do you have anything you'd like to add based on the testimony you've heard today?

MS. HOHMAN: No, unless you want me to just reiterate.

HEARING OFFICER CELLI: Well, just to be clear, while we have these representatives there were some questions earlier, there was a question about the Endangered Species Act, California, and then there was something asked about the --

MR. BABULA: Whether they're consulting with the Service?

HEARING OFFICER CELLI: Yes. I'm just trying to remember. I guess maybe we'll hear about it on cross, but there was some need for clarification from USFWS.

MR. BABULA: I could ask. Is the applicant doing a section 10 consultation with the Fish and Wildlife Service?

MS. HOHMAN: Yes, they are. We're consulting with them on a section 10(a)(1)(B) incidental take permit.
HEARING OFFICER CELLI: Okay.

MR. BABULA: I have no further questions.

HEARING OFFICER CELLI: Thank you.

Applicant, cross, please. And if you remember exactly what those things were earlier that we needed their expertise on I'd appreciate it if you asked those questions.

MS. LUCKHARDT: I believe they've answered them. So, at this point I just have a couple of questions.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

Q  Ms. Vance, do you support the analysis, conclusions and mitigation contained in the final staff assessment and the revised conditions of certification? And when I talk about the revised conditions of certification, I'm referring to exhibit number 338.

MS. VANCE: Yes, I do.

MS. LUCKHARDT: And, Ms. Hohman, the same question. Do you support the analysis, conclusions and mitigation contained in the biological resources section of the final staff assessment and the revised conditions of certification?
certification? Again, I'm referring to exhibit number 338.

MS. HOHMAN: Yes, I do.

MS. LUCKHARDT: Thank you. I have no further questions.

HEARING OFFICER CELLI: Thank you.

Cross by CURE.

MS. GULESSERIAN: Thank you.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Ms. Sanders, can you describe your understanding of the length of the potential recycled water pipeline from Rosamond?

DR. SANDERS: It's total, I believe, 39 miles. And the southern 23 miles of that are what we surveyed.

MS. GULESSERIAN: Okay. For the southern 23 miles, is it accurate that there are two potential routes for the southern portion of the route?

DR. SANDERS: We considered just one of those routes. That was the one we analyzed. I don't know what the status of the two routes; someone else would have to answer that.

MS. GULESSERIAN: Okay.
DR. SANDERS: There's another route inside Edwards Air Force Base, but we didn't analyze that.

MS. GULESSERIAN: Okay, so for clarification the FSA does not analyze the pipeline route through the Air Force Base?

DR. SANDERS: Correct.

MS. GULESSERIAN: Okay. Can you describe your understanding of the length of the potential pipeline from California City?

DR. SANDERS: I believe it's 17-point-what, 6 miles, is that correct? Yeah. Oh, by the way, let me clarify. We do specify in the appendix A of the final staff assessment that there is an analysis being undertaken for that Edwards Air Force Base line.

MS. GULESSERIAN: Okay. Are you familiar with that analysis that's being undertaken --

DR. SANDERS: No.

MS. GULESSERIAN: -- by the --

DR. SANDERS: We refer to it, though, so that the reader can understand there is an analysis being undertaken for that alternative.

MS. GULESSERIAN: So if you've referred
to it in your FSA, let's look at exactly what you state about it.

MR. SOLORIO: Just wanted to note that Edwards did a FONSI on the segment going through the base. And that was docketed early on and is included as part of the analysis. So technically we did not analyze it, but we did refer to the fact that it was analyzed by Edwards, and therefore could be built, that particular segment.

MS. GULESSERIAN: Okay. So are you familiar with that document that the Air Force Base did for that segment of the pipeline?

MR. SOLORIO: I'm familiar with the federal form that they submitted to us and --

MS. GULESSERIAN: That was docketed on the website?

MR. SOLORIO: Correct.

MS. GULESSERIAN: Okay. May I enter this exhibit into the record? It was -- we have just established that they're familiar with the document. It's cited in the FSA. It was served to the parties last week as a potential exhibit.

What it is is is the -- it's docketed on the website. It's the Air Force Base's exemption from environmental review for this pipeline.
HEARING OFFICER CELLI: Okay, now, applicant, any objection?

MS. LUCKHARDT: No objection.

HEARING OFFICER CELLI: I remember seeing this come across docket some time ago. Okay, no objection. And we are at 638 in CURE's exhibits. So this would be exhibit 639.

MS. HEAD: Excuse me but for the sake of the transcript did Mr. Solorio mention that that's who was speaking?

MR. SOLORIO: If you want me to say it now if that makes it any clearer.

MR. BABULA: She has his card.

MS. HEAD: I just think it needs to be in the transcript so we know who was talking.

HEARING OFFICER CELLI: And what's your name, ma'am?

MS. HEAD: I'm sorry. I'm Sara Head.

HEARING OFFICER CELLI: Sara Head. That's who that was. And are you aware that that was Eric Solorio who was speaking? Yes. The court reporter is writing down the names.

MS. HEAD: Okay.

HEARING OFFICER CELLI: Is pretty much
aware of anyone who's sitting at the tables. And if not, she'll signal. Thank you for that. We were at exhibit 639. I'm going to need a copy of that.

(Pause.)

HEARING OFFICER CELLI: So CURE's exhibit 639 for identification, which is a request for environmental impact analysis signed by Keith Dias on August 21, 2009, with an attachment, requirements checklist, which is three pages. And on the back signed by Janet Lorraine, a declaration by Janet Lorraine.

MS. GULESSERIAN: That is a declaration that it's a true and correct copy of the printout from the docket.

HEARING OFFICER CELLI: Okay. Since there is no objection that'll be received into evidence as 639.

MS. GULESSERIAN: Okay, so is this -- sorry.

HEARING OFFICER CELLI: And it's now five after 6:00 --

MS. GULESSERIAN: Is this the environmental, sorry, document? I'll speed it along.
HEARING OFFICER CELLI: All right.

MS. GULESSERIAN: -- that you're referring to? The exemption from environmental review.

MR. SOLORIO: Yes, it is.

MS. GULESSERIAN: Okay. Besides this exemption from environmental review that the Air Force did, did you conduct any analysis of potential impacts, significant impacts, under CEQA for this segment of the pipeline route through the Air Force Base?

DR. SANDERS: Who is the question for?

MS. GULESSERIAN: For you.

DR. SANDERS: So the question is did we analyze other CEQA impacts?

MS. GULESSERIAN: Yes.

DR. SANDERS: I did not. I did the biology report.

HEARING OFFICER CELLI: That's Ms. Sanders who's speaking now.

MS. GULESSERIAN: And I think we answered this, but just to clarify, you did -- in the biological assessment did you analyze biological resource impacts from this segment of the route through the Base?
DR. SANDERS: No, we did not.

MS. GULESSERIAN: In the FSA did you analyze potentially significant impacts for the northern 17 miles of the route from Rosamond?

DR. SANDERS: If you mean about the same as we did for the T-line and for the plant site, yes.

MS. GULESSERIAN: Okay. Can you direct me to where your conclusions are regarding that portion of the pipeline segment?

DR. SANDERS: I don't know that we necessarily separated it out. It's entirely the disturbed roadbed, the shoulder of the road. So the mitigation measures that apply to the plant site, preconstruction surveys for owls, desert tortoise, apply to the proposed pipeline, as well.

There was no habitat to be mitigated for in that area because there was no native habitat. So it's not included for compensatory mitigation.

I didn't break it down by components of the project like that.

MS. GULESSERIAN: Okay, so in appendix A when we have mapping of the entire pipeline route, there is no similar mapping of vegetation type or occurrence of species for --
DR. SANDERS: You'll find that in the AFC.

MS. GULESSERIAN: So the applicant is the one that has information regarding the northern 17 miles of the pipeline route?

DR. SANDERS: Correct, and that's what we used for our analysis.

MS. GULESSERIAN: Okay. Is it correct that in the --

HEARING OFFICER CELLI: I'm going to give another three more minutes of this, and then we need to move on. This is still bio.

DR. SANDERS: Let me clarify that this analysis in appendix A, we carried over the analysis that we had in our FSA to appendix A, so we covered the entire alignment. It's just that we didn't go into detail discussing it since it had already been addressed in the body of the report.

MS. GULESSERIAN: In the body of which report?

DR. SANDERS: The PSA addressed it because at the time it was a gas pipeline. In the FSA it was abandoned as a gas pipeline, but the same impact would be occurring as a water
pipeline. So the impacts associated with pipeline construction were addressed.

MS. GULESSERIAN: So it was evaluated in the PSA, but wasn't carried over to the FSA?

DR. SANDERS: Yeah, it was. The FSA includes appendix A, which incorporated the analysis for the 17.6 miles of the northern pipeline.

MS. GULESSERIAN: Okay, so I've looked at appendix A and it says that, we did not evaluate the 17-mile portion of the Rosamond pipeline because it was evaluated by ESEP 2009. Are you referring to an evaluation by the applicant?

DR. SANDERS: Right, the applicant analyzed the impacts, provided vegetation maps, provided rare plant surveys. We used that in our analysis in the preliminary staff assessment. And the final staff assessment incorporates all the measures that the PSA did, as well. The PSA required avoidance and minimization measures based on the surveys done on the 17.6-mile pipeline.

MS. GULESSERIAN: Okay, I'm looking for the independent analysis of the northern 17 miles of the Rosamond pipeline segment in the FSA. And
if you could help me, direct me to where that is I would appreciate it.

HEARING OFFICER CELLI: -- question?

MS. LUCKHARDT: If it would help to clarify the record, exhibit 87 is the Beacon Solar Energy Project botanical and wildlife special status species 2008 spring survey report.

MS. GULESSERIAN: I'm at --

MS. LUCKHARDT: And that's the place at which the results of the survey effort on the gas pipeline are reported, at least from Beacon's side.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: And so I'm looking to find out where the evaluation by staff is regarding what Beacon has submitted to staff.

DR. SANDERS: Our analysis was in the PSA as to the impacts of construction of the pipeline, 17.6 miles. And this map -- the analysis in the PSA, and we used the information from the PSA to come to our conclusions in the FSA.

MS. GULESSERIAN: Okay, I'm going to move on. Is your assessment of potential impacts based on protocol surveys -- this is for the
miles of Rosamond pipeline -- is your assessment of potential impacts based on protocol surveys for desert tortoise and Mojave ground squirrel and western burrowing owl?

DR. SANDERS: Yes.

MS. GULESSEERIAN: You did --

DR. SANDERS: The ones conducted by the applicant, correct.

MS. GULESSEERIAN: You did protocol --

DR. SANDERS: No, no, I'm sorry --

MS. GULESSEERIAN: -- the applicant did protocol surveys?

DR. SANDERS: -- we relied on their results, correct.

MS. GULESSEERIAN: Okay. So you relied on results of protocol surveys for the 23 miles of the Rosamond pipeline segment?

DR. SANDERS: Excuse me, I apologize for that. No, we assumed presence for desert tortoise and for Mojave ground squirrel. And we assumed burrowing owls are likely to occur there, as well. (Parties speaking simultaneously.)

HEARING OFFICER CELLI: Is there anything else, because that is already in their testimony.
MS. GULESSERIAN: I'll skim through and see if there's any vital questions.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: Is it correct that staff found impacts to only 11 acres?

DR. SANDERS: That's correct, temporary impacts.

MS. GULESSERIAN: And you found direct -- those are addressing direct impacts?

DR. SANDERS: Correct, direct impacts.

MS. GULESSERIAN: Okay. Is it -- in table 5 you show that 11 acres --

DR. SANDERS: Table 5 of appendix A?

MS. GULESSERIAN: Yes. You show 11 acres of direct impacts to the creosote bush scrub and two phases of saltbush scrub. Are those the only plant communities that you're providing mitigation for?

DR. SANDERS: The other -- there is some creosote bush scrub and some saltbush scrub that was highly disturbed, so, yes, we're providing mitigation for the good quality habitat that we thought supported the Mojave ground squirrels or desert tortoise.

MS. GULESSERIAN: Okay. Is there any --
you have maps there that you're referring to which
are attached to appendix A --

DR. SANDERS: Um-hum.

MS. GULESSERIAN: -- that show a much
larger area of where this habitat is.

DR. SANDERS: Um-hum.

MS. GULESSERIAN: Where is the, where
are the maps or similar quantification of how it
got narrowed down to 11 acres?

DR. SANDERS: We describe in the method
system what assumptions we used to calculate
impacts. And we assumed a 25-foot corridor of
impacts, and we overlaid that on the vegetation
map to come up with that calculation you see in
table 5.

The permanent impacts are the ones that
were, I think, the booster station. It was some
pumping station, I can't recall, some feature that
wasn't going to be just part of the buried
pipeline.

MS. GULESSERIAN: Okay, --

HEARING OFFICER CELLI: That could be
found in exhibit 500.

MS. GULESSERIAN: Moving on, the 23
miles of Rosamond pipeline, the FSA states that 21
special status plants have the potential to occur in table 2.

Of those plants do you know how many flower outside of the July season, or the three days in July that you looked at the site?

DR. SANDERS: I don't know off the top of my head, but the flowering periods are the species that we considered. There's a table with that information, and we are requiring preconstruction surveys for those plants.

MS. GULESSERIAN: The FSA states that spring surveys would be conducted in spring 2010. Did this occur?

DR. SANDERS: I believe that was -- wasn't that revised? Yes, that was one of the revisions -- the copy I've got is the old copy, but I think that was one of the conditions that was revised.

HEARING OFFICER CELLI: And given that spring 2010 started yesterday, that's not a lot of time.

MS. GULESSERIAN: Okay. So the information from spring surveys is not in the FSA yet?

DR. SANDERS: Spring surveys, 2010
surveys is definitely not in the FSA.

MS. GULESSERIAN: Okay. If special
status species plants haven't been surveyed or
mapped is it possible to have direct impacts on
those species?

DR. SANDERS: That was a concern of
ours, so we worked with Mr. LaMoreaux, I believe
is how he pronounces his name. He said he had
sufficient flexibility in the way the pipe could
be aligned. He can shift it, and he can shift the
construction of work, can shrink it to 16 feet.
So we concluded that if we found a special status
plant occurrence along the pipeline we could avoid
it.

You do understand it's going down a dirt
road? Most of the area that's been disturbed is
already just a dirt road.

MS. GULESSERIAN: Can you clarify who it
is you just referred to?

DR. SANDERS: Oh, excuse me, one of the
co-authors, Carolyn Chainey-Davis was the botanist
who conducted the surveys and did the vegetation
mapping.

MS. GULESSERIAN: And so just to
clarify, did you just say that there's enough
flexibility to move the pipeline?

DR. SANDERS: Apparently so, apparently you can shift it enough --

MS. GULESSERIAN: So wouldn't that change --

DR. SANDERS: -- to avoid an occurrence of --

MS. GULESSERIAN: Wouldn't that change your analysis of the narrowed down only 11 acres are going to be impacted, have direct impacts? Wouldn't that change that analysis?

DR. SANDERS: No. If you're within a 25-foot-wide corridor and you can shift it within that corridor and shrink it to a narrower pipeline construction zone, that wouldn't change the analysis.

MS. GULESSERIAN: Well, are there any maps that show where this 11 acres specifically is, or is it just your table 5?

DR. SANDERS: These maps show the distribution of the plant size and it shows the path of the pipeline.

MS. GULESSERIAN: Right. And it shows much more than, it's not the number in front of me, but much more than 11 acres being potentially
impacted.

I think you heard Mr. Bias' testimony that it shows potential impact is 4,000 acres of plant communities.

DR. SANDERS: That was the part that confused me.

MS. GULESSERIAN: And then it narrowed down to 11 acres. So I'm wondering where those 11 acres exactly are that you've calculated. At least, is it in the FSA?

DR. SANDERS: In the appendix A. Let me clarify. You're not asking about how the 4000 acres shrunk down to 11 acres? Are you asking that?

MS. GULESSERIAN: Well, that's what I asked earlier. And now we're back to it. If you found 11 acres is going to be impacted, only 11 acres is going to be impacted because you're just looking strictly at direct pipeline construction impacts only.

DR. SANDERS: Um-hum.

MS. GULESSERIAN: I'm wondering where those 11 acres are, and then when you --

DR. SANDERS: Okay, let me clarify.

MS. GULESSERIAN: -- shift the pipeline
to another area, how do you know that it's covered
within that very narrow mitigation or impact area
that you found?

DR. SANDERS: Let me clarify how the --

MS. GULESSERIAN: Without anything to
look at in that section?

DR. SANDERS: Let's make sure everyone
understands. The 4,000 acres is the area that we
mapped, vegetation, correct? So that's clear
enough. That's not an impact area, that's just a
1,000-foot-wide, or the 2,000-foot-wide corridor
in which we mapped vegetation.

Then within that we estimated a 25-foot-
wide corridor down the middle of that. And within
that we mapped impacts to native vegetation.

Now, there are more than 11 acres of
impacts. There was something like 90 acres of
impacts, mostly they're dirt roads.

So the amount that's a permanent impact,
the 1.84 acres or so permanent impacts, were the
areas that will be occupied by permanent
structures. And there's some flexibility in how
that can be arranged.

HEARING OFFICER CELLI: I'm glad we
clarified that, because that was already testified
to earlier. It's now 20 after 6:00, and I think that we've really got to move on.

So, if we can, please, take a look at your notes. See if there's anything -- we've been pretty generous in the area of biology. This started three hours ago. It was supposed to be an hour and 40 minutes.

MS. GULESSERIAN: If no surveys have been conducted what is the basis for the FSA appendix A statement that special status plants could potentially occur outside, but adjacent to the construction footprint, where roads abut undisturbed habitat and creosote bush scrub and saltbush scrub habitat? On page 4.2-150.

DR. SANDERS: You know, I don't have a page 4.2-150. Are you talking about the FSA or the appendix? I think I have different numbering.

That's correct. You could find special status plants adjacent to the construction footprint, and they would need protection. That's one of the reasons we're requiring surveys is so you can implement protection from inadvertent impacts. You fence them and you make everybody aware of them, and you stay away from them.

MS. GULESSERIAN: Okay, so do you know
yet where those special status plant species are located?

DR. SANDERS: No; you'd need surveys to find that out.

MS. GULESSERIAN: Okay.

HEARING OFFICER CELLI: We have surveys coming up, is that correct, in the spring of this year?

DR. SANDERS: That is up to the applicant, when they want to conduct their surveys. This no longer specifies it has to be in spring of 2010, the revised condition.

HEARING OFFICER CELLI: Very good. Is there anything else, Ms. Gulesserian?

MS. GULESSERIAN: What does the evaporation pond netting mitigate?

DR. SANDERS: Potential impacts from a couple different sources. One, birds can drink or forage from the pond water and it can have concentrations of toxic elements or salt, as in Harper Lake where there's some water fowl death from salt toxicosis. So it's keeping birds out of the water and any harm.

It's also preventing ravens from being attracted to the site, and then sticking around
and preying on desert tortoise juveniles nearby.

MS. GULESSERIAN: And how does it prevent ravens and other migratory birds from being attracted to the area?

DR. SANDERS: Well, I think they are still attracted. And I think we had some measures in there to also have some bird deterrence. But it keeps them from getting to the water.

MS. GULESSERIAN: Okay, thank you. I have no further questions.

HEARING OFFICER CELLI: Thank you. Any redirect?

MR. BABULA: No.

HEARING OFFICER CELLI: Thank you. So that takes care of biology.

MS. GULESSERIAN: We have other -- I have no further questions for Ms. Sanders.

HEARING OFFICER CELLI: You know, it's 20 after 6:00. We started at a quarter after 3:00.

MS. GULESSERIAN: Just a few questions of the agency.

HEARING OFFICER CELLI: What are the questions? I'd like to hear the questions.

MS. GULESSERIAN: Okay.
HEARING OFFICER CELLI: So maybe we can speed this up.

MS. GULESSERIAN: I would like to know from Fish and Wildlife Service what they define sign as. We were not able to gather from the applicant what the sign was, whether sign indicated presence of the species.

So, since desert tortoise is a federally listed species, that would be in the Fish and Wildlife Service's area of expertise.

HEARING OFFICER CELLI: We have testimony that sign doesn't necessarily mean that there's a presence. We've already heard from Dr. Karl.

MS. GULESSERIAN: I would like to know whether the Fish and Wildlife Service agrees or disagrees, then.

HEARING OFFICER CELLI: So, let's hear on that.

EXAMINATION

BY HEARING OFFICER CELLI:

Q Do you agree, did you hear Dr. Karl's testimony, Ms. Hohman?

MS. HOHMAN: Yes.

HEARING OFFICER CELLI: Do you agree or
disagree? Would you explain your position on the
presence of sign for desert tortoise?

MS. HOHMAN: I agree with Dr. Karl the
presence of sign in all cases -- can you hear me
now?

HEARING OFFICER CELLI: Please speak
right into it.

MS. HOHMAN: Okay. The presence of sign
is an indication that tortoises might be present
and might be using the area. It's not necessarily
an indication that there are resident animals at
the site.

MS. GULESSERIAN: Okay, thank you.

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q So it's an indication of presence, but
not an indication of --

MS. HOHMAN: Residency.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: I just wanted to
know if you had any further questions and what
those questions were.

MS. GULESSERIAN: Since I'm not able to
ask them, I just have to do a quick skim of them,
if you wouldn't mind.
Have you completed your review of the incidental take permit application?

MR. BABULA: I'm going to object to questions about that. This is not relevant to our proceeding, that's a federal action.

HEARING OFFICER CELLI: Where are you going with that, Ms. Gulessarian?

MS. GULESSERIAN: The Commission needs to determine compliance with LORS. The final staff assessment does not make a conclusion regarding whether there is consistency with the federal Endangered Species Act. And I'm trying to figure out whether we're done with that and we can correct the FSA, or whether it's still outstanding, so that the Commission can make a decision on this matter.

HEARING OFFICER CELLI: My experience has been in the past that biology has a table of the LORS, and it says whether there is compliance with the LORS. Is there any mention of compliance with the federal Endangered Species Act in the FSA?

MR. BABULA: Yes, it's in there.

HEARING OFFICER CELLI: That's what I would imagine.
MS. GULESSERIAN: If they want to not do anything further, that's fine with me.

HEARING OFFICER CELLI: My concern is that you're asking questions that are readily available. They're available to all parties equally. And it isn't covering new ground. So I just, I'm trying to get the most out of your cross-examination without having to belabor points that have already been made and re-cover ground we've already covered.

MS. GULESSERIAN: I have a question for Julie Vance, one question.

HEARING OFFICER CELLI: Regarding?

MS. GULESSERIAN: And that would be regarding Leitner's assessment of habitat for Mojave ground squirrel. And that would be, have there been high numbers of Mojave ground squirrel detected via trapping in areas not predicted to support Mojave ground squirrel based on habitat and soil type, alone?

MS. VANCE: Yes, there has.

MS. GULESSERIAN: Thank you. No further questions.

HEARING OFFICER CELLI: Thank you.

Redirect?
MR. BABULA: I have nothing further.

HEARING OFFICER CELLI: Okay. Now, the record is closed on biology. We will take a break now. There's pizza available out in the lobby, I guess. We need to continue to go forward.

What I'd like to do at this time is open up the podium for public comment. It's now 6:30 about. Let's see if we can get, how many people here are members of the public that wanted to make a comment? I've got a show of hands of three people.

MR. BABULA: We still have hazardous material --

HEARING OFFICER CELLI: Yeah, I understand that, but I'm going to get rid of some of -- there are people that have been staying, waiting around a long time to make public comment. I think they need to have an opportunity to do that.

I just want to say I'm not asking you to come up yet, I just want to see if you're here. Is Corky Corcoran here? Okay, stay here, Corky. Jack Martin? Jack Martin is gone. Kim Collins, are you here? That's fine, stay here.

Eleanor Owens, are you here? Not.
Wally Melendez, are you here? Okay, he's no longer here. And then Dawn Martin, are you here? Dawn Martin is here, also.

Okay. What we're going to do is the Chairman's going to stay up here and we are going to hear public comment. If people want to go grab themselves a pizza, they can do that. And we are going to get back on the record in about 15 minutes, and we will be taking evidence on hazardous waste.

We also stated that there was going to be public comment at 7:00 p.m. So if any members of the public are wanting to make a comment at 7:00, we'll give them that opportunity.

I also want to get online and see if there's anyone online. Galen is the only person let online, I'm clear.

So, with that, I'm going to open the mic for Lorelei Oviatt, she is here from the County of Kern Planning Department.

MS. LUCKHARDT: I'm assuming despite your comments a moment ago that public comment will be on the record.

HEARING OFFICER CELLI: Yes, public -- are we not on the record? We're on the record.
MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: Did I say we were off the record?

MS. LUCKHARDT: Yes.

HEARING OFFICER CELLI: I'm sorry, we're on the record. We never should have gone off the record. I'm sorry if I said that.

Ms. Oviatt, please.

MS. OVIATT: Thank you. I'm Lorelei Oviatt; I'm the Acting Planning Director of the Kern County Planning Department.

Supervisor Maben, who is the Kern County Board Member for the Second District, was here earlier this morning. He had to leave. He has delegated that authority to me to speak for the Kern County Board of Supervisors.

On December 1, 2010, the Kern County Board of Supervisors did review the Beacon Solar project in a public hearing. And did authorize us to represent to your Commission their position on this matter.

The first thing I'd like to note is that I have provided a letter to you with our comments. And in that letter I'd like to make sure that you are clear that we have the highest regard for the
work that your staff, specifically Eric Solorio, has done in working with the local agencies, working with my staff, and providing answers and feedback in a very responsive manner. And we'd like to commend you for his work.

And, as well, the applicant has been very involved with the planning department in attempting to answer our questions and provide information to the community.

We do support this project. We believe that the mitigation for water and other environmental impacts that we brought up earlier in the process have been addressed, with the exception of public services.

On January 15th we did provide to Mr. Solorio a letter, along with a backup of information, regarding our opinion that there is a deficiency in the public services analysis.

Due to the fact that we have done a comprehensive study of growth for the entire county, and provided that document, the capital improvement facilities plan, that shows what impacts would be on public facilities such as fire, sheriff, libraries, countywide protection, even if we received full taxes for development.
And that by 2030 there would be a need for these additional facilities.

As you know, under the California Environmental Quality Act, the impact on public services, this is only on facilities, not on staffing. We note that Kern County is a highly industrialized county. We have a lot of experience with industrial projects.

We understand they have an internal fire system, which you will be talking about during hazards, and may already have talked about. However, it is insufficient without the backup of the regional response teams, including the hazmat teams, the county coroner, the fire and sheriff investigation, and the 9-1-1 service.

We are proposing that this solar-thermal project, which will only be providing because of the tax relief that they receive from the legislature, $440,000. Your own final staff assessment indicates that if they could be reassessed they would be able to provide $4.2 million.

Our capital improvement facilities plan, which we have provided, shows that even with full taxes, even with the $4 million, it will not keep
up with the necessary facilities.

Therefore, the county administration office, directed by the board of supervisors, has asked that I request that your Commission put a condition of certification -- is that how you say it? Certification, sorry. It's been a long day -- that requires the payment of a public services mitigation fee for the specific categories of countywide public protection, sheriff patrol and investigation and fire protection at a not to exceed $1,060,439 a year.

How we came to those calculations in our backup materials is provided. You will note that the letter you received says $1.5 million. We have consulted with the county administrative office who has revised this down to $1,060,439 a year, the final amount each year to be determined by the Kern County Board of Supervisors at a public hearing, and paid by April 30th of each calendar year. The presentation to the board of supervisors to include a annually adjusted for inflation.

The intent of this will be to provide the board of supervisors discretion in regards to the amount of jobs that are being produced by this
project. And to look at other revenue sources that may come in that could offset the impacts of these facilities.

We want to be fair to this solar-thermal project, which will provide much-needed jobs and contribute to the 33 percent that's necessary for renewable energy.

Kern County is the center of renewable energy with our wind, our geothermal and our biodiesel plant, and we certainly are supportive of appropriately sited projects.

With that, we would ask that your Commission consider allowing staff to craft the language for this. And we look forward to any questions that you may have. We appreciate very much your coming out to California City so that our local citizens can testify in person.

Thank you.

HEARING OFFICER CELLI: Thank you, Ms. Oviatt.

Is Dawn Martin here?

MS. LUCKHARDT: Do you want us to respond or not at this time?

HEARING OFFICER CELLI: Well, this is public comment.
MS. LUCKHARDT: Fair enough.

HEARING OFFICER CELLI: This isn't an informational hearing. Usually in an informational hearing we let the parties sort of respond. I think that if you wanted to have a conversation offline, that could happen. But for our purposes this is an evidentiary hearing and we need to hear people's discussion of the evidence.

So, with that, Ms. Martin, please.

MS. MARTIN: My name is Dawn Martin, I live in Rancho Seco about three-eighths of a mile north of the plant site.

On the visual resources, the KOP-6 picture is from where visitors only, I'm not going to climb that mountain and look down on the site. And I don't have a plane to fly over it.

So, there's no one that lives up there. So it's only for visitors and hikers. They would only be there to see it one time, and not go back through.

Jawbone Station, it's for visitors only also. So both of those pictures do not include me. I live on the ground; I look straight across at this site.

I do believe we can live with it, but it
would be awfully nice to have a picture from the
ground, from where I live, to see what it might
look like in the future when it's built.

    We know light reflection from computers,
people working in the room and whatnot, is
distraction once in awhile. We know that sitting
there watching cars go by, they reflect every once
in awhile and it catches your eye. So light
reflection is sometimes disturbing.

    And so in that, I don't know exactly how
they would grade it to bring it down to a level
where it wouldn't be reflective to me. But that
would be interesting to know how that's going to
be done.

    The other thing is is on the soil and
water usage. Eight million cubic yards of soil to
be moved in five months, that's going to be a lot
of trucks, a lot of equipment moved in.

    And about 8100 acre feet of water to be
used in five months, that's a lot of water, very
fast. This is a lot of use of groundwater that's
disturbing to me because I'm the president of the
water association out there, and we don't use that
much water in a long time. We only use maybe 4 or
5 acre feet of water a year.
And is this a five-year project until
told the wastewater is going to be used? And in
that time how much water will be used a year to
get the plant running and over the 8,000 acre feet
of water?

HEARING OFFICER CELLI: Mr. Solorio, did
you want to speak to that?

MR. SOLORIO: Sure, I can address that.
Staff has recommended and left two alternatives
on the table for the applicant to select from.
That is either connected to the California City
tertiary plant or the Rosamond plant.

If they connect to the Rosamond plant
that water would be available for the volume, any
construction. If they decide to go with the Cal
City option, that will take five years to phase
in. So they will use groundwater and phase out
approximately 20 percent of the groundwater a year
for five years.

MS. MARTIN: Okay. So the 153 acre feet
of water per year, will that just be for what kind
of usage? Groundwater.

MR. SOLORIO: Again, if they went to
Rosamond then the 153 would be for operations, the
plant, for the steam turbine generator and the
majority for mirror washing.

   And likewise of Cal City. But the 150

wouldn't be there until the end of the five years.

MS. MARTIN: Okay, so all the

groundwater usage will end in five years?

MR. SOLORIO: Correct.

MS. MARTIN: Okay. I want to thank you

all for being here and answering our questions

and helping us out. And we would love to see this

project go forward.

HEARING OFFICER CELLI: And thank you

for your comments.

MR. SOLORIO: If I may, I just want to

clarify something. When you asked if all the

groundwater usage would end now, the 153 -- excuse

me, Ms. Martin.

MS. MARTIN: Yes.

MR. SOLORIO: Ms. Martin, I'm sorry, I

wanted to clarify my answer to you. When you

asked when all this groundwater use would cease.

If they connected to Cal City, the phase out would

cease, but they would continue to use 153 acre

feet a year going forward for plant operations.

MS. MARTIN: Okay, thank you.

HEARING OFFICER CELLI: Thank you for
MR. CORCORAN: Thank you. I would first like to thank the Commission for having this hearing out in the sticks instead of at the state capital. Let's the people know that our public servants are looking out for us.

I'm here as a resident of Cal City. And I am highly favorable for this project, for the jobs it will create, and the clean energy. We all need more renewable energy. And I have had business dealings with FPL and their incarnations at Harper Lake and Kramer Junction. And find them to be a highly commendable, environmentally conscious company and I think they are a very good steward of the land.

So I am very much in favor for the economy and the fact that the reputation of the people involved.

Thank you.

HEARING OFFICER CELLI: Thank you for your comments. And thank you for sticking around all day long, because I've seen you here. We have Kim Collins. Mr. Collins, please.

MR. COLLINS: Hello, my name is Kim
Collins; I live here in California City. I gave a
copy of a letter to the man in the back back
there. Did he give you guys a copy of this
letter?

MR. DAVIS: I've got them right here.
I'll give them your copy.

HEARING OFFICER CELLI: Thank you.
Because you gave it to the Public Adviser, we'll
get a copy.

MR. COLLINS: Okay. It's my letter that
I wrote and I emailed it and mailed it on
Wednesday of this last week. It's a one-page
letter. I'm requesting that it goes in the
official record. It's just a little one-page
letter in support of the project.

And I wanted to cover a few issues,
actually questions and maybe you can answer them,
or the energy people can answer them.

I'm curious, how much has Nextera Energy
spent to date on trying to get this project up and
running? Is that a substantial amount? Would
they care to comment?

HEARING OFFICER CELLI: What was your
question, sir?

MR. COLLINS: I was curious, to date how
much Nextera Energy has spent to get this project
to the point where it is today.

HEARING OFFICER CELLI: I'm sure they've
spent a lot. But they actually don't have to give
us that information. That's their private
business.

MR. BUSA: As one example, part of the
public record is we did purchase the property, and
that was in excess of $10 million-plus, just for
the purchasing of the property.

MR. COLLINS: The point I'm getting to
is the lady sitting next to me over here with SURE
(sic), and I see that she has a big stack of
papers on this table that SURE presented to the
Energy Commission, to the proponents and everybody
else.

And to me, personally, I think what
they're doing is kind of a travesty, and all the
paperwork that they're compiling and submitting to
all you guys. I think it's a travesty that this
organization is being allowed to submit all this
paperwork and wasting a lot of important time and
effort, and dragging this program on. And
stalling out the completion of your findings and
issuance of a permit to operate the plant.
I think this is a political travesty, myself. That's the way I look at it. What they're doing, I think it's really bad. The unions, environmentalists are allowed by California State law to submit so many papers. She has piles of papers over there.

And you guys there, you guys there, and you there have to answer and submit and do research and answer all these different questions and documents. And you have to provide people to testify. I think all it does is just drag on this whole process.

And, to me, I think this is one reason why some people really don't want to do business in the State of California. Because travesties like this are allowed to happen in our state.

Me, personally, I think it's a travesty on how much paperwork they're allowed by law to submit, all their different requirements that they're putting on the Commission, you know, and on the proponent. And requesting this and requesting that. I think it's a travesty.

And I had a question for Kenneth. I would like to say thank you for what happened with SURE. You not allowing their last-minute, all
their last-minute filings not to be a part of the record. Because I think it was a travesty what they did, try to file last-minute paperwork. Just another pile of, you said three inches tall. More paperwork for everybody to look at and compile and try to disseminate. I think that was a travesty and I'm glad that you didn't allow all that stuff to be submitted into the record. I wanted to thank you personally for that.

And Kenneth, I had another question, too, sir. Do you know a date when they might be actually issued a permit to start construction?

HEARING OFFICER CELLI: What I can tell you is this. Right now we're in the middle of evidentiary hearings. If all goes well we'll be done tonight.

It takes approximately 60 days. Because what's going to happen is there's a transcript that's going to be prepared. Based on this transcript the parties are going to create briefs, which are essentially argument position papers on how they feel about this or that, the issues raised.

After I get the briefs and when I take in all of the evidence, and there's a lot of
evidence to take in, and read anything new, it takes approximately 60 days to write the decision.

The decision is the Presiding Member's Proposed Decision. And Chairman Douglas, who's the Chairman of the Commission, happens also to be the Presiding Member of this Committee. Also, he's not here today, but Commissioner Byron will be the Associate Member.

Basically the opinion is presented and written by the Committee to the full Commission at a business meeting. And that usually lasts, that occurs probably within let's say 30 days of the date of the issuance of what we call a PMPD, the Presiding Member's Proposed Decision.

At that hearing if the proposed decision is adopted, then that's the date of the license. So we're looking at about 90 days out, maybe 100 days.

I just want to mention something else, too, just because it can't go without mention. The way our process is set up is we want to have maximum input from the public and interested parties, so that when the day comes if this project is licensed, that what we have is the best possible project.
And the way that we insure that is we have a Public Adviser, and we have a system that's designed essentially to beat the bushes to call out anybody we can who's interested in this project, so that those people will make comment. And so that when the final decision is made, every point of view has been allowed, accepted, considered, addressed.

And so I want to say that CURE provides an important dimension to the work that we do here. Because what they're doing is basically keeping the applicant and the staff honest. They're questioning; they look at the evidence.

You know, I have to tell you, Mr. Collins, if their investigation turned up something highly toxic out there that could have been poisonous to your community then you would have been very grateful to have those people here, as any of us would.

And so I just want to make the point that for our society to work, it takes both sides. And we want to hear from all points of view.

And, yes, it may seem inefficient and slow, but in the end we can say, well, we heard from everybody. And so that's what we're trying
to do. And for that we will have a better project, a better product and a better project.

And so while it may seem like a travesty if you're in a hurry to hurry up and get a project built, sometimes you need to stop and think that, yes, once that project's up, no one's going to rip it out for a long time. And if you're going to put it in there, you better make sure that we're not doing something wrong to some species or something, whatever.

So we want to make sure that there are no impacts; all the impacts are mitigated. And that's why we do it. And that's why they're here. And so actually they're a service.

MR. COLLINS: Another question. When you issue the final permit is Nextera prepared to, how soon after you get the final okay, how soon would they actually be moving some of that dirt?

HEARING OFFICER CELLI: I have no idea.

MR. COLLINS: Would they care to comment?

MR. BUSA: I just would comment that there are a number of months of prework before dirt gets moved. There are a lot of conditions. One comes to mind, like cultural studies that need
to be done for many months actually prior to us
moving dirt. So, you know, it wouldn't be before
the end of the year if we stuck to Mr. Celli's
schedule, maybe even a little bit longer.

MR. COLLINS: Okay, so possibly you
could start to move dirt early part of next year,
possibly?

MR. BUSA: At the end of this year or
early next year, yeah, that would be the earliest.

MR. COLLINS: Okay. In closing I'd just
like to thank you all for coming here from
Sacramento so you can hear what we, as the local
community, have to say. And thanks for Nextera
coming all the way from Florida to be here and to
take public comments and meet with all of the
local people, and meet with SURE sitting here, and
everybody.

And hopefully by next year they can be
digging up dirt and getting the project up and
running. Thank you for your comments.

HEARING OFFICER CELLI: Thank you for
your comments. Appreciate your participation.

I have Wally Melendez. Did Wally come
back? There he is. Come on down.

MR. MELENDEZ: Good evening, Mr. Celli.
HEARING OFFICER CELLI: Good evening.

MR. MELENDEZ: My name is Wally Melendez. I live in California City.

So, Mr. Celli, we're looking at maybe, I didn't hear it too well, but maybe around the middle of this year or later in the year we might start this project?

HEARING OFFICER CELLI: Did you give an estimate to the start time?

MR. BUSA: If you gave me a 90- to 100-day permit time, towards the end of the year or into early next year by the time we actually are moving dirt, with many months of prework.

MR. MELENDEZ: Okay. And from an article that was in The Valley Press, well, not The Valley Press, but I heard it here in this meeting, approximately 1,000 construction workers are going to be working on and off on that project at different times. And it's supposed to last for about five years, the construction?

MR. BUSA: The peak construction force, you're correct, is about 1,000 workers. And it's actually a little over two years, two years to 30 months of actual construction.

MR. MELENDEZ: Okay, about two and a
half years?

MR. BUSA: Yes.

MR. MELENDEZ: Well, I wish you luck with all your permits, applications, licenses and so on. I'm a master electrician and I ran for mayor two years ago. And I'm running for mayor this year, again.

And I'm just not running to run, I intend to win. So I hope that I'll be helpful with your project. And if you live around here, maybe you'll vote for me.

(Laughter.)

MR. MELENDEZ: So, Mr. Celli, what is the name of the secretary of the California -- what is it, Commission?

HEARING OFFICER CELLI: We're actually the --

MR. MELENDEZ: Energy Commission.

HEARING OFFICER CELLI: The California Energy Commission is a commission, it's not an agency where we're -- it's not a --

MR. MELENDEZ: It's not a department?

HEARING OFFICER CELLI: Not a department.

MR. MELENDEZ: Not a department, it's a
commission. So it has a Chairman.

HEARING OFFICER CELLI: That's right.

MR. MELENDEZ: What is the name of the Chairman?

HEARING OFFICER CELLI: Karen Douglas.

PRESIDING MEMBER DOUGLAS: I'm the Chair.

MR. MELENDEZ: Oh, Karen. Very nice to meet you.

(Laughter.)

MR. MELENDEZ: Very nice to meet you.

PRESIDING MEMBER DOUGLAS: It's a pleasure to meet you, as well.

MR. MELENDEZ: Thank you, Karen. Okay, I think that exhausted my questions, Mr. Celli.

Again, good luck.

HEARING OFFICER CELLI: Thank you.

MR. MELENDEZ: And, oh, one thing more. I don't know if you've been around here at night. The streetlights are almost negligent in the city. How can we get electricity from your plant to light up lights, streetlights, in this town?

HEARING OFFICER CELLI: Well, it has to be built first, for starters.

(Laughter.)
MR. MELENDEZ: And then maybe we might be able to siphon some off, is that what you're saying?

(Laughter.)

HEARING OFFICER CELLI: I don't know, but I think you might want to talk to FPL, Nextera.

MR. MELENDEZ: FPL stands for what?

HEARING OFFICER CELLI: I meant Nextera, formerly known as Florida Power and Light.

MR. MELENDEZ: Okay.

HEARING OFFICER CELLI: I want to thank you for your comments and wish you the best of luck in your run for mayor.

MR. MELENDEZ: Thank you, Mr. Celli.

HEARING OFFICER CELLI: Thank you. And just for the record, I pronounce my name Celli, it's Italian.

MR. MELENDEZ: Okay.

HEARING OFFICER CELLI: Like many cellos.

MR. MELENDEZ: That's a good thing.

HEARING OFFICER CELLI: I know it's annoying but I insist on people pronouncing it correctly.
MR. MELENDEZ: I should have known.

HEARING OFFICER CELLI: I had Eleanor Owens. Did Eleanor Owens come back? That's great. I thought we lost you.

MS. OWENS: Not at all. My name's Eleanor Owens and I do not live here; I live in neighboring North Edwards. And I'm the proud owner of a home solar electric system, photovoltaic, started by my late husband. And do know how valuable it can be.

But my question, I just have a three-part question. When this project is up and running, who will own it, operate it and maintain it?

HEARING OFFICER CELLI: That would be -- well, Nextera is the applicant right now. And assuming they don't sell it to someone else, then it would be Nextera's project.

MS. OWENS: For all parts?

HEARING OFFICER CELLI: If they give it away to someone else --

MR. BUSA: And just to mention, since you are from North Edwards, you may be familiar we have a project over at Kramer Junction right now.

MS. OWENS: I do know that.
MR. BUSA: We are in partnership over there, but we are the operator and partial owner of that site called SEGS, over at 395 and 58.

MS. OWENS: Yes, I do know that. Thank you very much.

HEARING OFFICER CELLI: Thank you very much for your comments. Is Jack Martin still here?

MR. SPEAKER: No, he went home.

HEARING OFFICER CELLI: Michael, is it Seward?

MR. SELLARD: That's close.

HEARING OFFICER CELLI: Semard?

MR. SELLARD: Sellard.

HEARING OFFICER CELLI: S - e --

MR. SELLARD: -l-l-a-r-d.

HEARING OFFICER CELLI: -- l-l-a-r-d.

Sorry for the mispronunciation.

MR. SELLARD: That's okay. A lot of people do. Thank you very much for allowing us to speak as a community. You guys have driven a long ways and it's been a long day. I was here for most of the meeting this morning.

My name is Michael Sellard. I'm a resident of California City for the last five
years now. And I've enjoyed the desert and the
view. And I'm familiar with this ranch that this
proposed project is being proposed to be built at.
I followed this progress, very slow
progress, and labor intensive to get all this
done. I think these guys have done an admirable
job. And I've listened to the water people speak
and so forth. And I think for two different, not
exactly opposing views, I think they've worked
together cooperatively. And I'm delighted to say
that.

But if I don't speak my mind tonight,
I'm not going to sleep very good. And so here it
is. So be patient with me today, I was patient
with you guys this morning, listing to all this
chatter going on.

I wanted to write down a couple things
and share. What I heard today was rather
disturbing to me, it really was. It almost made
me cry in a way, as a Californian, as a resident
of this community.

CURE seemed to be groping about in the
darkness trying to come up with questions and
gasping for air almost of anything to do, it
seemed like they were wasting people's time. That
was my feeling I got. Again, these are my personal feelings.

I was wondering why they were putting so much effort into being negative energy towards this project. And so I kind of did a little research, And I don't believe a lot of what I see on the internet, but it gave me some balance.

I saw what their website stated as, you know, their message to the world. It sounded really good. Sounds really neat, you know.

Together the environmental and labor organizations can improve California's economy. That sounds good.

And the environment, well, that's really good. Making sure that conventional renewable power plants would be the best practices to protect our clean air, that's good, land, water, et cetera. Minimize the environmental impact to new plants, well, okay.

To me it was just kind of, it didn't seem to ring true with what I heard today and that bothered me. A lot of things bother me about politics. But, anyhow.

It just seems like it's -- I got the feeling it's manipulation and greed involved here,
as the root or the genesis of who they are. And that bothers me very very much.

I look at Beacon, you know, and Florida Power and Light. And I don't have any contracts with them, they don't know who I am hardly, you know, just a resident here. And I see that they try and work with people. They try and communicate. And I saw some good things happen. I didn't go to Sacramento because I couldn't go up there.

But it seems like an intervenor, I don't know why they're an intervenor, this group here. It doesn't seem right to me. I know it's American, it's freedom and all that stuff, and that's good, because things are wasting away, it seems like.

You know, if a project labor agreement was signed here, they would be shouting from the rooftops, how wonderful FPL is, how wonderful Nextera Energy is, and how they're good for the environment. They'd be just tickled pink.

I know that they're involved in a lot of places and a lot of energy projects here in California. And there was a guy named Richard Henry Lee, and he made a statement. This was in
The Sacramento Bee, it was just kind of interesting.

This is a quote, this is in February 2008. "For several years a group called California Unions for Reliable Energy has used CEQA to slow down or block power plants, including a geothermal plant in Imperial County."

"CURE is supported by various construction unions. It has a history of fighting new projects in California unless the applicant agrees to use union labor on the project."

Okay, what's new? "Labor unions are an even larger abuser of CEQA," he stated. "In recent years labor groups have used environmental lawsuits or the threat of such lawsuits to stop or slow down power plant construction, hospital expansions and housing developments."

"The union lawyers always seem to disappear once a developer has signed an agreement to hire only union labor."

"When BrightSourceEnergy went for their permit and they pledged to hire union contractors they quickly moved into their project in the desert. And very quickly they were underway, because CURE made no objection whatsoever to the
project."

This is a community of hard workers here in Cantil and California City. There's a lot of unemployment here. And it concerns me that -- I used to be a union worker at one time, a long time ago before I changed professions, so I have a little bit of understanding. And I'm pro-union, in a way, and I'm not in other ways. They were a good thing at one time. I won't get into my political viewpoint on that.

But I think they've really overstepped their bounds here. The construction that's going to happen there, which is, two and a half years I think was stated by this gentleman here, and about 1,000 workers. Except for the power block section, which takes highly skilled plumbers and fitters, welders, electricians, it's really a nonskilled job, or semi-skilled, at best.

And this community can really benefit from this power plant. It's needed in this community. It's coming, unfortunately a little -- it would have been nice if it had been a year ago, but that's the way things happen. We all know it would take time. I think most of the residents didn't think it would take this much time.

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But, anyhow, this community of hard workers can build that portion of the plant which takes assembly. And we can also build the water line, the recycled water from Rosamond and California City to the Beacon site in Cantil.

If CURE gets its way, through manipulation, in my personal opinion coercion, all the workforce will be out of town. There will be no jobs that will come to this community. Because none of the workers here, with possibly exceptions, belong to any of the CURE union shops. Most of those are in Los Angeles, I believe, and also up and down California, but in Bakersfield.

FPL will even have to pay per diem for each one of those workers, too.

I'm almost done, sir. Now, sir, thank you for not allowing CURE to enter in those three inches of papers into the record. I commend you for that. Thank you.

I've worked with many many attorneys in my business career, and I've always seen the trick of, in this case it was Thursday night, but usually it's Friday night at 4:59 an email comes in or a fax with a whole bunch of burdens now placed on the other camp. And I think it was very
unfair, because sometimes that brings confusion.

Not in this case, you have a very experienced developer here. They know what they're doing.

CURE is doing the same thing in other large energy projects like the ones in Roseville, Victorville, Romoland and in Sutter.

It works like this. If you agree early on with them, then your project will be built quicker and cheaper. And now all of a sudden they're your best buddies.

We are supportive, I speak of the community -- actually I speak for myself, and some people may not agree with me, but I think as a community we're supportive of this project. It's needed. It's in the Governor's mandate. It's in the best interests of human beings. It saves on carbon footprint. It's a good thing.

They're responsible. They've already got a whole bunch of plants around. I've seen some of those plants. I've actually been over at one a long time ago. And they're very professionally run and these guys are doing the right thing.

Now, FPL and Nextera Energy, from my

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viewpoint, is a proven major environmental
friendly energy producer and will treat the land
of Cantil with respect and very well. They will
do that. And I believe without anybody even
overseeing them, I think they would do that.

They'll actually improve the land and
the local environment from the existing abandoned
condition it's in today. You don't hear anybody
objecting to this plant, and people around here
speak their mind.

The Beacon project will bring good-
paying jobs to this community, but we need the
jobs. The Beacon plant will not come here to
simply take profits from the land and leave. They
are here to stay. They are one of the major
energy producers in the United States. And
they'll continue to be that way because of their
integrity and the way they do things. I've
watched them closely.

They are committed to energy companies
that was a good reputation and is committed to the
community and to solar project, as I said earlier.

They are a proven producer and they will be
responsible, again, towards the land.

They have proven themselves over and
over again. And their willingness to communicate
with other people that do not agree with them
possibly.

I am not for CURE for the following
reasons: They work on, in my opinion they work on
principles based on deception and are
manipulative. I saw it over here clearly today.

In this case they will not probably
provide any local jobs to the community. CURE
will control its job effort from cradle to grave
on this project. And there will be no local jobs
after this plant is built, unless, of course,
someone again belongs to that union,

I encourage the CEC and yourself, sir,
to continue to work with Nextera Energy and to get
this permit in place. We need it as a people
group. As human beings, we need this. And change
is not easy, and these guys are making change. We
need to make this happen.

I would encourage Nextera Energy not to
bow down or cower to CURE, as it will hurt this
community and this project. I encourage Nextera
Energy not to bow down or cower to CURE, as it
will hurt California in future projects. Now,
again, this is my personal opinion, nobody has to

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agree with me, okay. I got this freedom to speak
and it's wonderful until it's taken away. Which
we're seeing daily, this is taken away, and it's
sad.

I would appreciate it if CEC would not
allow CURE to be an intervenor any more, because I
don't think that the foundation and the root in
their motivation is correct. That's my opinion.

HEARING OFFICER CELLI: Well, thank you
very much.

MR. SELLARD: I've got one more little
tiny thing.

HEARING OFFICER CELLI: Oh, I'm sorry.

MR. SELLARD: Thank you. What CURE does
is near blackmail in my opinion. What the people
in the industry call it is greenmail. It's
blackmail in disguise. And I think it's very
wrong.

Once again, let's all stand up and be
counted for doing things in the correct way, with
righteousness, making good decisions for our
environment and for our community.

Thank you very much.

HEARING OFFICER CELLI: Thank you very
much. I just am going to say that our licensing
process pretty much is designed to see whether
this proposed power plant is in compliance with
all the laws of the State of California, all of
the federal laws, all of the local laws. We make
sure that it complies with the California
Environmental Quality Act.

And if it jumps through all of these
legal hurdles, --

MR. SELLARD: Yes.

HEARING OFFICER CELLI: -- then they get
their license.

MR. SELLARD: That's good.

HEARING OFFICER CELLI: Who they hire is
their business decision. The California Energy
Commission does not involve itself in the running
of the business.

MR. SELLARD: I understand that.

HEARING OFFICER CELLI: We don't tell
them how to do that.

MR. SELLARD: I understand that. I
appreciate you guys being here very very much.
You guys have put in a long day. I thank you for
allowing me to speak my mind, so I'll be able to
sleep good tonight.

Thank you.

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HEARING OFFICER CELLI: Thank you very much. And we have more to go. So, it's now -- I have no other blue cards for public comment. So if there's anyone else who's here, a member of the public who wants to make a public comment, please do.

Then I'm looking on the website and we have nobody on the phone, so. You know, folks, the reason we come to these towns is so that you shouldn't have to call in. We're here so that you can come in in person and make a public comment.

And so we are very grateful for everyone's public comment. We will consider the public comment section closed for the evening, then. It's now 7:15 and we've heard from everyone, isn't that correct, Jim Davis?

MR. DAVIS: Yes.

HEARING OFFICER CELLI: That's correct. So I'm going to take a quick break, and can we start at 7:15. And we will start up with hazardous materials -- I mean, well, I've got 7:13.

(Laughter.)

HEARING OFFICER CELLI: We can take a
quick break.

(Laughter.)

HEARING OFFICER CELLI: So we'll start, say, 7:18, how's that. We're going to take five minutes and we will resume.

(Brief recess.)

HEARING OFFICER CELLI: It's 7:23 and counting. I want to take a little inventory of where we are, because by my calculations I've not taken in evidence on alternatives. We did take in all of your evidence on bio. We have taken in all the evidence on cultural. We're about to deal with soil and water, we took all of the evidence on soil and water.

We're about to deal with hazardous materials and waste management now. We have not taken in project description because, Ms. Gulesserian, you wanted to raise something about that, but I got the sense from talking to you that you weren't going to, you changed your mind, and maybe we can just take in project description? You can clear me up on that one.

MS. GULESSERIAN: Right, we don't have any questions on project description anymore.

HEARING OFFICER CELLI: Okay, and then
transmission system engineering is finished and
visual is finished.

So what I think we should do right now
is take in alternatives and project description.
And if I'm right about this, then the only thing
outstanding will be hazardous materials and waste.
Right?

MS. LUCKHARDT: Correct.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: Project description,
alternatives, hazardous materials and waste.
That's my list.

HEARING OFFICER CELLI: Okay. And
hazardous materials, or alternatives, we received
everybody's evidence except applicant's, I
believe. I don't think I took that in. Or did I?

MS. LUCKHARDT: No, you have not
received our testimony on alternatives. Would you
like me to move that at this time?

HEARING OFFICER CELLI: Please. A
motion as to alternatives by the applicant.

MS. LUCKHARDT: Okay. Applicant moves
exhibit 4 in the area of alternatives. Exhibit 4,
AFC section 4; exhibit 43, AFC appendix K-1;
exhibit 89, an email from Kenny Stein to Eric
Solorio dated 11/24/08.

Exhibit 100, the dry cooling evaluation; exhibit 121, the preliminary PSA comments; exhibit 127, the PSA comments on alternatives; exhibit 153, the comments on the CEC groundwater sampling program.

Exhibit 166, the project design refinements section 3.1; exhibit 167, the project design refinements section 3.1.1; exhibit 168, the project design refinements section 3.1.2; exhibit 169, the project design refinements section 3.2; exhibit 184, the project design refinements section 4.3.1.

Exhibit 185, the project design refinements section 4.3.5; exhibit 186, the project design refinements section 4.3.6; exhibit number 187, the project design refinements section 4.3.7; exhibit 189, the project design refinements figure 2; exhibit 193, the project design refinements figure 7.

Exhibit 221 is an email to the Energy Commission regarding the results of offsite well sampling, dated 8/11/09; exhibit 222 is an email to the Energy Commission with resubmittal of revised metals results from offsite sampling dated
Exhibit 224 is the RCR well data; exhibit 229 is the CEC well canvas; exhibit 230 is the CEC well canvas photos; exhibit 245 is the declaration of Dan Sampson on alternatives; exhibit 258 is the declaration of Gary Pratt on alternatives.

Exhibit 265 is the declaration of Janine Forrest on alternatives; exhibit 271 is the declaration of Jared Foster on alternatives; exhibit 287 is the declaration of Kenneth Stein on alternatives.

Exhibit 297 is the first declaration for Mike Flack on alternatives; exhibit 298 is the second declaration from Mike Flack on alternatives; exhibit 308 is the declaration of Sara Head on alternatives; exhibit 314 the declaration of Scott Busa on alternatives.

There's a second one as well -- Scott Busa. And then exhibit 317 is the declaration of Scott Stern on alternatives.

HEARING OFFICER CELLI: Thank you.

CURE, any objection to the receipt of any of that evidence?

MS. GULESSERIAN: No objections.
HEARING OFFICER CELLI: Staff, any objections?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you.

Exhibits marked for identification as exhibits 4, 43, 89, 100, 121, 127, 153, 166, 167, 168, 169, 184, 185, 186, 187, 189, 193, 221, 222, 224, 229, 230, 245, 258, 265, 271, 287, 297, 298, 308, 314 and 317 are now received into evidence.

And lastly we have project description.

MS. LUCKHARDT: Okay, at this point the applicant moves our exhibits on project description, beginning with exhibit 2, AFC section 2, exhibit 3, AFC section 3; exhibit 5, AFC section 5.1; exhibit 23, AFC appendix A; exhibit 45, AFC appendix K-3; exhibit 103 -- no, we're not moving exhibit 103, I apologize for that.

Exhibit 126, the PSA comments; exhibit 246, the declaration of Duane McCloud on project description; exhibit 280 is the declaration of Kenneth Stein on project description. And exhibit 310, which is the declaration of Scott Busa on project description.

HEARING OFFICER CELLI: Any objection, CURE?
MS. GULESSERIAN: No objections.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objections.

HEARING OFFICER CELLI: Thank you. And exhibits marked as 2, 3, 5, 23, 45, 126, 246, 280 and 310 are received into evidence. Number 103 was withdrawn.

MS. LUCKHARDT: Correct.

HEARING OFFICER CELLI: With that we are moving into the area of -- I guess we'll do hazardous materials first, or waste?

MR. BABULA: I kind of had it as a panel because most of the comments dealt with HTF fluid and that kind of crossed both disciplines. Either it was leaking or was already in the ground and what are you doing with it.

And, again, we agreed to resolution with the applicant so this would be CURE's burden.

HEARING OFFICER CELLI: That's correct.

So you have another witness, I see, Ms. Gulesserian.

MS. GULESSERIAN: Yes, we do.

HEARING OFFICER CELLI: So I would ask that he please rise and be sworn.

Whereupon,
MATTHEW HAGEMANN
was called as a witness herein, and after first
having been duly sworn, was examined and testified
as follows:

HEARING OFFICER CELLI: Please state and
spell your name.

MR. HAGEMANN: Matthew Hagemann,
H-a-g-e-m-a-n-n.

DIRECT EXAMINATION
BY MS. GULESSERIAN:

Q Whose testimony are you sponsoring
today?
A My testimony.
Q Do you have any changes to your sworn
testimony?
A No.
Q Are the opinions in your testimony based
on your professional experience?
A Yes.

MS. GULESSERIAN: I was going to
summarize qualifications and experience, or we can
stipulate to his expertise to testify on this
matter.

HEARING OFFICER CELLI: We've received
his --
MS. GULESSERIAN: Résumé as --

HEARING OFFICER CELLI: -- résumé. Is there any objection to this witness testifying as an expert by applicant?

MS. LUCKHARDT: No objection.

HEARING OFFICER CELLI: Staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Thank you. So stipulated. You don't need to give us any information about all the articles you've written, all of the colleges you went to, all that. We deem you an expert.

BY MS. GULESSERIAN:

Q Okay. Can you please summarize your principal findings from your investigation.

A Yes. I found that potential spills of heat transfer fluid, thermanol VP1, which I'll just refer to as HTF, would be larger than estimated and it would result in significant unmitigated impacts to people, wildlife and the environment.

And would result in potential and likely exposure to toxic levels of contamination that would be harmful to health and to wildlife.

Groundwater may also be significantly impacted.
I found that potential spills may be much more dangerous than analyzed by CEC Staff, resulting in significant unmitigated impacts because spills at similar facilities operated by the applicant in this proceeding have not been reported in a timely fashion, putting workers, motorists and local residents at potential risk.

For example, I believe it was March 2005, a 9,900-gallon spill resulted in a vapor cloud that traveled 3500 feet south to be visible on highway 58 and resulted in the closure of that highway by the California Highway Patrol. This is in my rebuttal testimony dated March 8th. And I made the measurement, myself, off of Google maps.

Also worst case, potential spills could result in approximately 500 truck trips for one spill alone, on the order of 30,000 gallons, as seen at the SEGS facility in Kramer Junction.

That would have to be transported from the area to hazardous waste landfills resulting in impact on traffic and potential exposure to people and the environment at the place of disposal, which would likely be Kettleman Hills.

Spills will generate non-RCRA hazardous waste, both free-standing or free-product HTF,
which is HTF in a waxy state at ambient temperatures. And that will present some interesting exposure possibilities to workers, to responders to spills.

The HTF contaminated soils will be placed in a land treatment unit on the site without any provisions currently for testing. We know that at the SEGS facilities, without testing the material has been placed in the land treatment unit and has later been found to be in excess of 10,000 mg/kgm, the criterion by which DTSC established it to be a hazardous waste in 1995 for the SEGS facilities.

So we believe that a similar process here where no testing is currently provided in the AFC or the FSA or any conditions of certification, would result in placement of this waste in the land treatment unit on a low permeability surface, not a nonpermeable surface, which would also include a liner to comply with California and possibly federal hazardous waste regulations.

Spills will generate free-standing liquid hazardous waste, and no provisions are currently made in any of the documentation I've reviewed to handle these liquids at the Beacon.
Okay, in layperson terms what does this mean?

Well, I've had to put a story together on the basis of what I've seen at the Kramer Junction facility. And what I've been able to gather there is that the workers who respond to spills address the spills on a visual basis.

That they go in and they can obviously see the free-standing HTF is piled up on the ground surface. So that is vacuumed up into a vacuum truck and taken to a recycling facility at the SEGS III through VIII, or III through VII, excuse me, at Kramer Junction. So that's one issue, just dealing with the piled up HTF on the ground surface.

Then I think the workers visually assess where the spill has extended within the array of the parabolic troughs. And then that soil is excavated and moved to a land treatment unit where it has limited capacity. And some of the material must be excavated and moved offsite without testing.

And then a week later or maybe ten days later on the basis, again, this is all in the
testimony I provided in November of 2009 as an attachment. You can look through the reports that I obtained from the Regional Water Quality Control Board. These were not in the possession of the California Energy Commission compliance division.

But what I found there is that the site is later sampled, is grid sampled, and so then they excavate further to remove material that would be above 10,000 mg/kgm criterion for disposal. So that's one aspect of what it would mean in lay terms.

The other thing I found is that the response at the SEGS facility has not been in compliance with CERCLA requirements for notification, emergency notification. And that, I think, is a significant issue because it would hinder a proper emergency response.

It could expose the community, the motorists and response personnel to significant public health risks, and could further expose the environment to contamination and hazardous materials as a result.

Q Have you reviewed the FSA hazardous materials conditions of certification?
A Yes.
Q: And based on the conclusions you articulated is that your understanding that these conditions address your findings?
A: No.
Q: Why not?
A: Well, the hazardous materials section of the hazardous materials conditions of certification require several things. That they would only use the hazardous materials that would be listed in the AFC; that there would be a hazardous materials business plan that would need to be prepared that would comply with county requirements; to develop a safety management plan; to provide site security for construction and operation. And to provide for hydrogen gas storage cylinders and provide for isolation valves and pipe loops to isolate HTF leaks.
Q: So why don't those address your findings that you've made?
A: Well, principally because, again, no provisions for addressing pure phase or liquid or free-standing HTF. And no provisions for testing the material at the point of the spills origin to insure that it's properly handled.

That is before you more it to the land.
treatment unit you need to know if it is above 10,000 mg/kgm. You cannot take that and put it into a land treatment unit that has no liner and is low permeable. It needs to be impermeable. And then you also need to know how to handle the massive volumes of the material so that it can be sent to the proper disposal facility. So, none of that was in the AFC or the conditions of certification.

Q Have you reviewed the FSA's waste management conditions of certification?

A I have.

Q Okay. We probably don't need to go over them again, but we can. If asked questions can you explain whether those conditions address the findings that you've made?

A No, again free-standing HTF is not addressed. Placement in the land treatment unit without testing is not addressed. Transport of free phase material offsite and disposal is not addressed. Or the provision for recycling in a treatment facility onsite is not addressed, either.

I will note that at the SEGS III through VII facilities where there have been 10,000-gallon
spills, 30,000-gallon spills, again the 10,000
gallon spills in 2005, 30,000-gallon spills in
2007, that material was sent to a recycling
facility onsite.

I'm not sure that recycling facility's
in compliance with state, federal, county law, to
be honest with you. I don't know if it is,
because it could be a waste that's then taken and
then treated onsite without proper permits.

So I don't know in the FSA for the
Beacon plant what they plan to do with the free-
standing HTF. That is, do they plan to construct
a similar recycling and treatment facility at
Beacon. Or do they plan to send it offsite.

So those are my principal concerns.

Q Okay. Did you examine the rebuttal
testimony of staff?

A Yes, I did.

Q Okay. Do you know what I'm talking
about, staff's testimony?

A Yes.

Q All right, by Geoffrey Lesh, on the need
to more tightly specify isolation valve
requirements in response to Mr. Celli's question
at the prehearing conference, or it was an earlier
conference. And it was attached --

HEARING OFFICER CELLI: It was a status
conference.

MS. GULESSERIAN: Thank you.

BY MS. GULESSERIAN:

Q -- as exhibit 504. Do you have any
points regarding staff's supplemental statement?

A The issue of how effective isolation
valves will be in preventing future leaks -- and
leaks are acknowledged by staff and by the
applicant, that they will occur -- I don't know.

I have no basis to understand how effective those
isolation valves will be in preventing leaks.

And, in fact, the applicant's rebuttal
testimony would indicate that isolation valves are
a source of leaks. Although I do see in the
record that there are a number of other potential
sources of leaks including -- let me just cite, if
I could -- because this is not in the record.

It's research I did prior to the testimony here
today. And that was --

MS. LUCKHARDT: Now, it's not in the
record? So is it in your rebuttal? Is it in an
attachment?

MS. GULESSERIAN: Thank you for
clarifying.

HEARING OFFICER CELLI: Excuse me a moment. Is there an objection?

MS. LUCKHARDT: Yeah, I'm objecting if it's new.

HEARING OFFICER CELLI: Okay. And is this a basis of an opinion?

THE WITNESS: No.

HEARING OFFICER CELLI: Okay.

THE WITNESS: It's not opinion, it's fact gleaned from an attachment to my November 12 testimony.

MS. GULESSERIAN: It is in the record already. It's an attachment to your testimony. It is a summary of attachment from your opening testimony.

THE WITNESS: Yes. I think it's attachment 2, which is a long --

HEARING OFFICER CELLI: That would be 615, Spill Report SEGS III through VII. Is that what we're talking about, 1987 through 2008?

MS. GULESSERIAN: That's correct, exhibit 615.

BY MS. GULESSERIAN:

Q A summary of your findings regarding
your review of exhibit 615.

HEARING OFFICER CELLI: While he's looking, let's -- how much more do we have on direct?

MS. GULESSERIAN: We're almost done.

THE WITNESS: It's attachment 2 to my November 12 testimony.

So, in that attachment I documented these releases for just two years worth of time from the sources.

In February 27, 2007, a 1,000-gallon spill from a heat collection unit. March 27, 2007, a 35-gallon spill from twisting of oil pipe assembly. January 9, 2006, a 75-gallon spill from a packing port on a double ball joint assembly. February 16, 2007, a 30,000-gallon spill from a valve stem in 18-inch HTF pump bypass valve. 2/15/06, a 400-gallon spill from a heat collector element piping torque tube. And December 30, 2006, a 50-gallon spill because a valve was left open by a worker.

So I don't see in there isolation valves assisting greatly in reducing the frequency and number of leaks.

BY MS. GULESSERIAN:
Q Thank you. Did you have an opportunity to review Duane McCloud's rebuttal to your testimony?
A Yes.
Q And can you summarize briefly any points you have regarding the applicant's rebuttal testimony?
A Yes, Mr. McCloud does not address the worst case potential significant impacts from HTF spills. He does not testify to show that valves are the only source of potential HTF spills. And Mr. McCloud's testimony shows that the project involves responding to and handling liquid HTF before it contaminates the soil, that the spills may be so dangerous to safe access to stop the leaks is impossible. And that mitigation is required, but has not yet been identified.
Q Did you review the applicant's witness, Michael Flack's rebuttal to your testimony?
A Yes.
Q Summarize briefly any points you have regarding that aspect of the applicant's rebuttal testimony.
A Mr. Flack's testimony shows that neither the project nor staff addressed HTF spills at the
point of their origin. And Mr. Flack's testimony
is inconsistent with the AFC and the FSA when it
states that soils will be staged on impermeable
materials.

Q Okay. What is your understanding of
these issues?

A The project only proposes to test HTF
contaminated soil after it's moved to the land
treatment unit. And that LTU, the land treatment
unit, will incorporate a liner -- excuse me, it
will not incorporate a liner or leach collection
and removal system, but will be constructed with a
prepared base consisting of two feet of compacted,
low permeability, lime-treated material.

Q Does a low permeability surface
constitute an impermeable surface for temporary
accumulation of hazardous waste?

A No.

MS. GULESSERIAN: No further questions
for this witness.

HEARING OFFICER CELLI: Staff, cross?

CROSS-EXAMINATION

BY MR. BABULA:

Q The basis of most of your testimony
seems to be what happened at the SEGS facilities,
is that the case?

A  My testimony here tonight?

Q  Right.

A  Well, I would say I used the experience there to -- an analogous facility that is half the size of the Beacon Plant. Well, I should say at the SEGS facility it's 600,000 gallons of HTF or maybe 700,000 gallons.

Beacon proposes to use 1.2 million gallons, or I've also seen in the FSA is 2.4 million gallons.

So, yes, I use the experience there of a facility which is sized at half or a third the size of the Beacon facility.

Q  And do you know when approximately those facilities were built?

A  I do know that SEGS started, I think, construction in '86 or operation in '86.

Q  So, is there -- well, let me put it this way. This project would have to be constructed in 2011. Is it true that it's comparable, can you compare with this project being built now and the information known and the technology known today, to a facility built 20 years ago or so?

A  To the best of my ability, the piping
detail is not included, as Mr. McCloud had testified in his rebuttal testimony. So we don't have the ability to look at design diagrams for the piping system.

What I do note is that the Kramer Junction facilities have been retrofitted. For instance, flex tubing, which was used to connect the loops to the troughs, were replaced with what were considered to be more reliable ball joint assemblages.

So, and I believe those are the same assemblages that are proposed for use at the Beacon facility.

MR. BABULA: Okay. So that would be -- would you characterize that as a sort of an evolution process of trying to improve the facility?

A I did read at the SEGS facilities that they thought that the flex tubing was particularly prone to leakage.

Q Okay.

A And the flex tubing is not to be used at Beacon. And by the way, again, if they switch that material or that piping material out, so I don't think that Beacon is fundamentally different
than SEGS in that way.

Q Okay. You had indicated that you felt that the conditions of certification staff had put forth in the waste section didn't require testing, I think, was one of your statements, of the soil. And so I want to just point out waste-7 of the final staff assessment there seems to be in the verification it says, the project shall sample HTF-contaminated soil in accordance with USEPA version of test methods for evaluating solid waste. Samples shall be analyzed in accordance with USEPA method 8015 or other methods reviewed and improved by DTSC and CPM.

So there seems to be a testing mechanism in the condition and the verification. And in the condition, itself, it says the -- submit to the CPM and DTSC for approval. The applicant's assessment of whether the HTF containment soil is considered hazardous or nonhazardous.

And then it lists -- there's a litany of different things they need to look for -- look through.

So, waste-7, that's still not sufficient in your mind to address a potential spill or contaminated soil?
A I did not testify that no sampling would be required as a condition of certification. I said that no sampling would be required for the soil at the point of origin of the spill.

I think that's a very important point to make because based on the experience at Kramer Junction they've taken soil at the point of spill, placed it in a land treatment unit, tested it at some time later and found it to be above 10,000 mg/kgm.

And at that point I read nothing in the record that I obtained from San Bernardino County or the Regional Board to show that they then transported material offsite for disposal as it should be, because it was over the DTSC criterion.

So, that, I think, is a very important point. But I don't see the specificity in the condition of certification there to require the sampling before placement in an LTU which would not comply with hazardous waste regulations.

Q Okay. So, if DTSC and the CPM determine the HTF-contaminated soil is considered hazardous, it's subject -- to be disposed of in accordance with California's Health Code section 25203.

So, again, the issue you have is that at
the site of the spill that no --

A Right.

Q -- this is again the verification of the
waste-7.

A Yeah, I mean we think of this as another
site, not a solar plant, which is -- a site that
regulators just aren't used to regulate. If we
think of this as a refinery where there is above-
ground piping. By the way, that's going to be
double-walled and it's going to be piping which is
very tightly monitored.

If you have a spill of gasoline at a
refinery you don't go in and just scoop up the
gasoline-contaminated soil and then take it to a
land treatment unit, which refineries have. They
have land treatment units for treatment of the
material. But you cannot pick that up and then go
take it somewhere else while testing is pending.

So in this case I think what has
happened is that the regulators have allowed these
spills to occur without sampling at the point of
origin. And instead, what you would do if they
were regulated as in other facilities, is you
would go out to that spill site. You would set up
a sampling regimen to insure you put an outline
around the spill.

   You would stage the soils properly.

That is you would put them properly right into
trucks, or you would put it into some roll-off
bins. You would composite sample the material at
that point to characterize them for disposal at an
appropriate facility.

   So I just don't see that kind of
specificity in any of the documents I reviewed.

MR. BABULA: Okay, I have no further
questions.

HEARING OFFICER CELLI: Thank you. The
applicant. Ms. Luckhardt, cross?

MS. LUCKHARDT: I just have a few.

CROSS-EXAMINATION

BY MS. LUCKHARDT:

   Q You said just a moment ago, and I may
not have this as an exact quote because I was
taking notes, site regulators are not used to
regulating. Are you implying in that statement
that Beacon would be a site that regulators are
not used to regulating?

   A Well, I'll just look at, you know,
comparisons for example. The State of California
has 13 refineries. A long history of regulation.
They are used to regulating refineries. The
State Water Board has familiarity with that type
of a facility.

In this case, given we have, what, SEGS
I and II, we have SEGS III through VII, and we
have SEGS VIII and IX. And we have a few other
facilities in the state, I would say yes, that
regulators are not used to dealing with these
c kinds of facilities and with the material that is
used, particularly at sites where they use heat
transfer fluid.

Q Are you aware that some of the SEGS
facilities are regulated and licensed by the
California Energy Commission?
A Yes.

Q And so you're still saying that the
Beacon site is a site regulators are not
accustomed to regulating?
A Well, when I say that I probably am
thinking more the traditional regulatory bodies
which would be the Regional Water Quality Control
Board.

And I say that because the reports are
submitted concurrently to both the Energy
Commission and the Regional Board. Of course,
understanding that the Commission has the
authority here, granted under the one-stop shop
provision.

So, I'm speaking from the standpoint of
the traditional hazardous waste agencies like
DTSC, the Regional Board and the federal USEPA.

Q Even though they have had experience
with the spills that have happened at the SEGS
facilities?

A Yes, and also let me mention the county.
The county has authority that's been delegated to
them. And, yes, they have the experience in
responding to the spills.

In the case of the county, the county
did issue a notice of violation for the 2005
spill; for failure to notify.

So there is some familiarity, but again
it's not as if, you know, you've got 30,000 gas
stations throughout the state, or 13 refineries,
or five permitted hazardous waste landfills.

It's a very, an unusual kind of
facility. And when you talk to regulators and you
ask them about their knowledge of HTF, they don't
know what it is. They don't even know how to
sample. They don't even know if method 8015,
which is the USEPA method that you cite in the FSA, is an appropriate method to test for the constituents of HTF, biphenyl and diphenyl oxide or biphenyl ether, diphenyl ether.

So I'm saying yes, it is unfamiliar to regulators, these kinds of facilities.

Q Is HTF the same as gasoline?
A No.

Q You made an analogy related to refineries and spills of gasoline. Can you describe the differences between HTF and gasoline?
A Well, I'll just state the obvious. Gasoline contains benzene, a known human carcinogen. HTF does not.

At the same time HTF is a extremely hazardous substance, is recognized by the State of California as an extremely hazardous waste, if spilled. And presents risks to humans and the environment when spilled.

Q Are you aware of a requirement, a legal requirement that requires sampling of the location of the spill?
A Yes. It's a paradigm that issues under RCRA and Superfund, the same authority which has been delegated to the states, and in turn to the

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counties, that provides through regulation and
guidance, a methodology to sample at a spill site
to determine impacts to the environment.

Q I'm not asking whether there's a
guideline. I'm asking whether it's required.

A Yes.

MS. GULESSERIAN: I'm going to just
object to the label. We're not here to have him
present the legal analysis for the applicant.

HEARING OFFICER CELLI: That's true, you
know, that's --

MS. LUCKHARDT: That's fine.

HEARING OFFICER CELLI: -- something
that we can --

MS. LUCKHARDT: I can brief that.

HEARING OFFICER CELLI: The parties can
brief later, yes.

BY MS. LUCKHARDT:

Q And back to the differences between
gasoline and HTF, do you know if HTF is a RCRA
hazardous substance?

A No, as a matter of fact we don't, and I
was going to raise that in the testimony. It has
not been assessed.

We know it is a non-RCRA hazardous waste
in the State of California at concentrations greater than 10,000 mg/kgm.

We do not know if it's a federal hazardous waste. And that would require the USEPA to conduct its own series of tests, toxicity tests, to make that determination.

And I would put forward that that's a determination that needs to be made.

Q You've discussed the leaks that occurred at the, that you've looked at that have occurred at the SEGS facilities. And isn't it true that those leaks have occurred at flanges or flexible connections or valves?

A No. I stated otherwise in my testimony.

Q Can you point to where it is that it's somewhere else?

A I just testified on that tonight.

MS. GULESSERIAN: Yeah, we just went over that that was in attachment 22 of the testimony. And we summarized where those locations were that were not valves or flanges. That was in the presentation.

HEARING OFFICER CELLI: He read a list.

MS. LUCKHARDT: We're not aware of those being something other than fittings, valves or
flanges. So of that's what he testified to I'm not sure I caught where the locations were.

HEARING OFFICER CELLI: Mr. Hagemann, let me just ask you to summarize how they were different, both fittings and flanges, et cetera. Those samplings that you gave us of places where the breaks occurred in other locations.

MS. GULESSERIAN: That's a question for the applicant. I mean based on the attachment that's been submitted, the locations of the spills are not noted at flanges and valves. And the rebuttal testimony says that that is where most of the leaks occur.

Based on the evidence in the record it's showing that the leaks occur elsewhere, as well. I don't have the number, but -- so, --

HEARING OFFICER CELLI: Well, I'm sorry, maybe I misunderstood. I thought that you had said that you'd actually gone through the list and stated where the breaks occurred.

MS. LUCKHARDT: That was --

MS. GULESSERIAN: Right. Well, he can read them again.

HEARING OFFICER CELLI: I just wanted to, just to speed things up and say, okay, if...
there were -- I forgot the characterization Ms. Luckhardt made, but she said flanges and --

MS. LUCKHARDT: Valves and joints.

HEARING OFFICER CELLI: What other places did these breaks occur at?

MS. LUCKHARDT: I'm wondering if he can point to specific locations where it states that it occurred somewhere else.

HEARING OFFICER CELLI: Can you do that, Mr. Hagemann?

THE WITNESS: Yes, I'll repeat. And again, it's an attachment to my November 12 testimony. It's pretty much chronological in that testimony, those attachments.

February 27, 2007, --

MS. LUCKHARDT: Okay, hold on.

HEARING OFFICER CELLI: The witness is ready with the information.

THE WITNESS: Yeah, it's -- I don't have it referenced to the pdf of this 439-page document but I'll just read. And these descriptions would be pulled straight without any -- as quotes from the documents generated by FPL, or their consultants.

February 27, 2007, a 1,000-gallon spill

February 16, 2007, 30,000-gallon spill from valve stem in 18-inch HTF pump bypass valve. February 15, 2006, 4000-gallon spill from heat collector element piping torque tube. And December 30, 2006, 50-gallon spill because valve was left open by a worker.

And let me just say that this was just a partial review. I just started at the top and went through and listed all that I had seen. So, one was a valve, on the 30,000 gallons.

HEARING OFFICER CELLI: Well, it sounds like a couple of them were valves. And there was a valve stem.

THE WITNESS: Well, one is a valve that was left open.

HEARING OFFICER CELLI: Right.

THE WITNESS: That's a worker error.

MS. LUCKHARDT: A ball joint, I believe.

HEARING OFFICER CELLI: So a lot of them were joints or that sort of thing. Thank you for that. Moving right along.
MS. LUCKHARDT: I have nothing further.

HEARING OFFICER CELLI: Thank you. Any redirect, if necessary?

MS. GULESSERIAN: No, no redirect.

HEARING OFFICER CELLI: We're going to move on now. That was hazardous materials, is that correct? And --

MS. GULESSERIAN: And waste management. We covered both of them.

HEARING OFFICER CELLI: Oh, excellent. So I've already received the evidence from CURE. I think we're going to turn next to staff, unless you're going to point the finger again at the applicant.

MR. BABULA: The applicant, why not.

HEARING OFFICER CELLI: All right, they're pointing at the applicant again. And we have not taken in the applicant's hazardous materials and waste management exhibits, so maybe we should do that now and then you can get into direct.

MS. LUCKHARDT: Okay. Beginning with hazardous materials applicant moves exhibit 10, AFC section 5.6; exhibit 116, the preliminary PSA comments section 2-D; exhibit 135, the PSA
comments on hazardous materials; exhibit 172, the project design refinements section 4.1.4; exhibit 179, project design refinements section 4.2.3.

Exhibit 248, declaration of Duane McCloud on hazardous materials; exhibit 262, declaration of Howard Valentine on hazardous materials; exhibit 266, declaration of Jared Foster on hazardous materials; exhibit 303, declaration of Russ Kingsley on hazardous materials.

HEARING OFFICER CELLI: Any objection by CURE to the hazardous materials evidence coming in, Ms. Gulesserian?

MS. GULESSERIAN: No objection.

HEARING OFFICER CELLI: Staff, any objection?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Exhibits marked for identification as 10, 116, 135, 172, 179, 248, 262, 266 and 303 are received into evidence.

MS. LUCKHARDT: Moving on to waste management, applicant moves exhibit 20, AFC section 516; exhibit 32, AFC appendix D; exhibit 40, AFC appendix I; exhibit 48, AFC appendix K-6; exhibit 68, response to CEC data requests 54.
through 57 with attachment DR-56.

Exhibit 97, the Beacon waste stream quantities, revised table 5.16-6; exhibit 145, the PSA comments on waste management; exhibit 175, the project design refinements section 4.1.8; exhibit 182, the project design refinements section 4.2.6.1; exhibit 208, project design refinements attachment 8.

Exhibit 253, declaration of Duane McCloud on waste management; exhibit 263, declaration of Janine Forrest on waste management; exhibit 268, declaration of Jared Foster on waste management; exhibit 276, declaration of Jim Fickerson on waste management; exhibit 291, declaration of Mike Arvidson on waste management; exhibit 304, declaration of Russ Kingsley on waste management.

Exhibit 332, rebuttal testimony of Duane McCloud on waste management. And exhibit 333, rebuttal testimony of Mike Flack on waste management.

HEARING OFFICER CELLI: Any objection from CURE?

MS. GULESSERIAN: No objection.

HEARING OFFICER CELLI: Any objection
from staff?

MR. BABULA: No objection.

HEARING OFFICER CELLI: Exhibits marked for identification as 20, 32, 40, 48, 68, 97, 145, 175, 182, 208, 253, 263, 268, 276, 291, 304, 332 and 333 will be received into evidence.

And before you ask any questions I think we've now received all of applicant's testimony, is that your understanding?

MS. LUCKHARDT: We're going to run a double-check.

MS. GULESSERIAN: I wanted to clarify that when we moved to enter our exhibits in at the beginning, that that was sufficient for purposes of each issue area, and that we didn't need to go through it again.

HEARING OFFICER CELLI: They're all received, all of them. I have, just to be clear, CURE, we've received exhibits 600 through 638; 636, I believe, was the one that is still pending, okay?

MS. GULESSERIAN: I also have 639, which was --

HEARING OFFICER CELLI: You're right, 639. I was looking at that one, I thought. But
that's the, 639 was the request for environmental impact analysis. So those are now received and they're in evidence.

For applicant we've received exhibits 1 through 336; and then we withdrew 103 and 212; and received the -- after 336, what is your highest number, Ms. Luckhardt?

MS. LUCKHARDT: 339.

HEARING OFFICER CELLI: Okay, so 336, and then we received the biological resources, was that what it was?

MS. LUCKHARDT: Yeah, those were the --

HEARING OFFICER CELLI: That's 338.

MS. LUCKHARDT: Yeah, the additional --

MR. BABULA: Should be bio, soil and water, bio and cultural.

MS. LUCKHARDT: Yeah, 337 are the revised recommended conditions of certification soil and water-1 with appendix I.

HEARING OFFICER CELLI: That's 337.

MS. LUCKHARDT: 337. 338 are the revised conditions of certification for biological resources; and 339 are the revised conditions of certification for cultural resources.

HEARING OFFICER CELLI: Very good. And
those now have all been received into evidence
with the exception of two withdrawn exhibits.

MS. LUCKHARDT: Right. And just to
confirm, so then 198, which is a biology exhibit,
was received into evidence. If not, I move it at
this time.

HEARING OFFICER CELLI: Well, at this
time I'm just going to say that the record should
reflect that we have received into evidence
exhibit 1 through 339, except exhibit 103 and
exhibit 212.

MS. LUCKHARDT: That is correct.

HEARING OFFICER CELLI: And they're all
deemed received, so everybody's exhibits are in.
Staff's 500 through 506 are in the record so I
think we're good on housekeeping now.

So, with that, if you wouldn't mind
calling your first witness.

MS. LUCKHARDT: Okay. And you want me
to dispense with the formalities at this point.
Is there any question about, is there any need for
me to qualify these two gentlemen as experts?
Their résumés have been previously filed.

HEARING OFFICER CELLI: Have they both
been sworn in? I know Mr. McCloud was sworn in.
MS. LUCKHARDT: Hey, Mike, have you been sworn in?

MR. FLACK: Yeah, I was sworn in.

HEARING OFFICER CELLI: Okay, is there any objection to Mr. Flack or Mr. McCloud testifying as experts by CURE?

MS. GULESSERIAN: No objections.

HEARING OFFICER CELLI: No objection from CURE.

MR. BABULA: No objection.

HEARING OFFICER CELLI: No objection from staff. So you may proceed.

Whereupon,

DUANE McCLOUD and MICHAEL FLACK were recalled as witnesses herein, and having been previously duly sworn, were examined and testified further as follows:

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q Okay, at this point, Mr. McCloud, do you agree with Mr. Hagemann's comments that the type and leakage of HTF spills at SEGS should be anticipated at Beacon?

MR. McCLOUD: No, I do not. I think we touched on it very briefly, the SEGS units go back
to a very long history. There has been a
tremendous amount, even through the series of SEGS
units of evolution of design, of evolution of
safety features.

And that evolution has continued. It
will continue into Beacon. We're going to walk in
the door of Beacon with 20-some years of lessons
learned as far as incorporation of design.

So I think that it's -- there's
definitely going to be a significant change,
significant improvement, significant modification
in what types of leakages we see at Beacon.

MS. LUCKHARDT: And Mr. Hagemann claims
that spills of HTF may result in significant
impacts to humans, wildlife and the environment.
To your knowledge have workers or the public been
harmed from the HTF spills at SEGS?

MR. McCLOUD: No, they have not. HTF,
by its nature, is a very contained product from
the perspective of, it actually was referenced
earlier, kind of gets thick at ambient
temperature, or even solidifies up.

Spills, when we've had them at the SEGS
facilities, have been contained onsite. There has
been, with the exception as was mentioned
previously with smoke from some spills, we've not had a spill that's gone outside the site that's impacted any outside waterway, wildlife, etc.

Likewise, as far as impact to humans we've never had any kind of serious medical case related to an HTF spill at the SEGS facilities.

MS. LUCKHARDT: And have all the spills at the SEGS facilities been cleaned up?

MR. McCLOUD: Yes, as soon as the situation is identified, as soon as a spill is identified it's addressed and cleanup process begins immediately.

MS. LUCKHARDT: And then you heard just a moment ago Mr. Hagemann talk about spills involving gasoline. Can you describe the differences you would see between gasoline and HTF?

HEARING OFFICER CELLI: I'm going to, if I may interpose my own objection, I don't know that that's really relevant here, because we don't really need to know. You don't speak to gasoline. There won't be gasoline at Beacon, right?

We understand gasoline is very toxic.

MS. LUCKHARDT: I didn't bring it up.
HEARING OFFICER CELLI: But I think he was just using it as an illustration to make a point, but I don't think we need to take the time to talk about it.

MS. LUCKHARDT: Okay, that's fine then. Your discretion.

Okay, you know you were just talking about the design improvements. Were there design improvements from the first SEGS facilities to the later SEGS facilities?

MR. McCLOUD: Yes, definitely. In fact, there was a reference made, it's in the testimony previously, about the largest spill that ever occurred at any of the SEGS unit a few years ago. That actually occurred on one of the Kramer units. It was due to a valve failure; the valve actually blew its stem.

By the time the Harper Lake units were designed, that valve -- actually that entire piping setup and process configuration no longer existed.

So, going from mid '80s into designs that actually took place in the late '80s, there had already been significant changes in design to address safety concerns as well as unit
efficiency.

MS. LUCKHARDT: And then you just heard the list that Mr. Hagemann added of leaks on the SEGS facilities. As you were listening to that list were any of those leaks from straight pipe sections?

MR. McCLOUD: No. Actually everything that was identified was either some type of fitting or, in some cases, they were actually heat collection tubes. There was nothing in that list that was a straight pipe run such as a header or a primary feeder line.

MS. LUCKHARDT: So Mr. Hagemann's suggestion that you use double-walled piping, would that resolve any of those leaks?

MR. McCLOUD: No, it would not. We've never had a leak in any of the SEGS units on a straight line header of line of any significance.

MS. LUCKHARDT: Okay, the material safety data sheets list potential hazards and toxicological data from exposure, chronic exposure to HTF. Does this automatically lead to the conclusion that a spill of HTF may result in significant impact to the environment? Either way you guys can pick.
HEARING OFFICER CELLI: Just identify who's speaking.

MR. FLACK: Mike Flack's going to answer. The MSDS talks about the various health risks. And chronic exposure would not be one of those, given chronic, by definition, means repeated exposure over a long duration.

If there would be a risk there would be an acute risk due to handling of the material upon its release. And the SPCC operational waste management plan that's required, via conditions, and the worker health and safety plan that's required via conditions, would specify personal protective equipment to manage that risk.

MS. LUCKHARDT: And are those plans required by the conditions of certification?

MR. FLACK: Those plans are required and SBC specifically is a LOR for this type of oil. It's required under via the water waste discharge waste discharge requirements listed in appendix H of soil and water-1.

It's also listed in appendix E and F. The operational waste management plan is condition 6. We were talking specifically about identification of the waste and its
characteristics. That's waste condition 7, which specifies that we need to get DTSC approval before we can, site-specific DTSC approval before we can manage the material in terms of its characteristic.

MS. LUCKHARDT: Do the Energy Commission conditions of certification require staff review of these plans?

MR. FLACK: They do. They actually require the CPM review. And DI, as I mentioned, waste 7, DTS review for that particular condition in terms of what's considered a hazardous or nonhazardous waste.

MS. LUCKHARDT: And, Mr. McCloud, just to clear up this point. Will Beacon include an onsite installed filtration system?

MR. MCCLOUD: There is no plan of installing such a system at Beacon. Actually I referenced previously, changes that were made between Kramer and Harper, that was one of them. The Harper plants do not have any type of onsite permanently installed filtration system.

It is the practice, if there is a very large spill, to in order, in the interests of waste minimization, to recover part of that free
fluid. That was actually previously mentioned.

At Harper, as would be the case at Beacon, if such a spill occurred, mobile equipment would be used to recover that spill, that free liquid in order to minimize the amount of soil contamination.

MS. LUCKHARDT: And Mr. Hagemann just made a comment about whether recovery of the HTF was hazardous waste recycling. Can you comment on that?

MR. McCloud: In his -- actually the question's been asked. Currently DTSC does not consider that to be recovery of a hazardous waste; and that would include Kramer, where we actually have an installed filtration system. Where we would simply be talking about pulling a product, or a part of the plant off the ground and putting it back it came from, in this case.

MS. LUCKHARDT: Now your company operates some of the SEGS units, correct?

MR. McCloud: Yes, we do.

MS. LUCKHARDT: So -- sorry, I didn't mean to cut you off.

HEARING OFFICER CELLI: You know, as long as you did, because I was going to ask a
question and then you started your question, but it still bothered me. I just want to make sure I heard what you said just now correctly.

MR. McCLOUD: Um-hum.

HEARING OFFICER CELLI: I started to make a note that DTSC does not consider, and I wasn't able to type fast enough, but it sounded like you were going in the direction of saying that HTF is not --

MR. McCLOUD: No, no, not at all. Not at all. I'll clarify myself if I misspoke. Does not consider recovery of free HTF as a hazardous waste recycling or anything like that. Simply a recovery of a, essentially part of the operating part of the plant.

HEARING OFFICER CELLI: With the expectation that you're just going to -- I mean how would that work? If you don't mind my asking, but this is going to be out in the desert, a sandy area; even though you're going to cover the ground with all that polymer. I just wonder, doesn't it pick up a bunch of other materials?

MR. McCLOUD: Well, first of all, when it's released most of all the compounds are gone.

We noted the light cloud, and Mr. Hagemann's
testimony correctly stated that you end up with a wax-like substance. So what you're left with is mostly very long chain hydrocarbons. Things are not very mobile in the environment. Think of it as a tar-like substance, okay.

That can be vacuumed up directly and filtered to filter out the particulates. What is residual, as Mr. Hagemann noted, needs to be sampled, removed and sampled to insure that it didn't migrate into the environment very far.

It wouldn't be expected to migrate very far based on the nature of the material once it's released.

HEARING OFFICER CELLI: Thank you very much.

MR. McCLOUD: You're welcome.

HEARING OFFICER CELLI: You cleared up that mystery for me.

MS. LUCKHARDT: Based on your operation of the SEGS units, is handling an HTF spill an unknown event?

MR. McCLOUD: Well, I'd kind of like to say it was, but as has been pointed out in testimony, there have been, you know, numerous HTF spills over the years. It's something that the
plant is well versed in how to handle. There are very specific processes that are followed when an HTF spill occurs.

And it's something that's, while undesirable, is certainly something that our people are well trained in doing.

MS. LUCKHARDT: Mr. Hagemann expresses a concern about proper notification in case of spills. Do the required plans address the notification requirement?

MR. McCLOUD: Yes. The final -- a number, several plans, but will include specific notifications required if an HTF spill does occur. Those procedures are in place at the existing SEGS units, and they're continuously refined and updated.

HEARING OFFICER CELLI: Are they noted in a specific condition of certification?

MR. McCLOUD: The spill pollution control and countermeasures plan that's requested as a LOR. It's a requirement for oil, it's part of the oil management. And then that's in appendix E, F and H.

It's required. There's several conditions in waste sections 6, 7 and 9, where
we're asked to do plans that require notifications
of -- I'm sorry -- operational waste management
plan.

HEARING OFFICER CELLI: Thank you. I
just needed to know where I could find it.

MR. BABULA: Ken, some of those are
actually in the soil and water section, so you may
not have the right --

MR. McCLOUD: Yeah, we're jumping back
and forth. Thank you.

MR. BABULA: Soil and water also
contains components. So E, F and H appendixes of
soil and water have a whole bunch of conditions
regarding waste discharge requirements and so
forth. So you're going to find stuff in there, as
well.

HEARING OFFICER CELLI: I appreciate
that. I'm sure later when we get to briefs we'll
talk about that kind of thing because we are going
to need to know where to find that information.

MR. BABULA: It's only a 1,000-page
document.

HEARING OFFICER CELLI: I'm sorry,
please go ahead.

MS. LUCKHARDT: Do you agree, based on
the experience in the spills at SEGS, that regulators are not used to regulating a substance?

MR. McCLOUD: No. In the case of the SEGS facilities regulators involved in as far as regulating those facilities are, I believe, have a very good understanding of the product and understanding of what it means to manage the HTF at the site.

MS. LUCKHARDT: Turning to the items attached to Mr. Hagemann's testimony. Does the timeline contained in his exhibit 629, which is a letter to Mr. Joe -- I'm going to try this -- Kowsky (phonetic) from Mr. Dan Brake describe an immediate response by the facility to address the leak?

MR. McCLOUD: Actually, yes, it does. If an HTF leak does occur, the single and most important action is to stop that HTF leak; prevent it from any contamination or any spreading beyond where it is.

And then, you know, as soon as it's physically possible, the cleanup operation. That is actually described in that letter.

MS. LUCKHARDT: Is it in Beacon's self interest to reduce the number and amount of
spills?

    MR. McCLOUD: Yes, definitely. Not only
    just purely from an environmental standpoint,
    which is obviously the most important reason. But
    also from an operational standpoint. If spills
    occur, even if it's a fairly minor spill, it, by
    definition, represents part of the project or part
    of the plant that's not available for service.

    And it's clearly in the best business
    plan of the plant to keep everything going,
    everything performing.

    MS. LUCKHARDT: And, Mr. Flack, in your
    professional judgment, are the notification
    requirements that are contained in the hazardous
    materials management plan and spill prevention --

    MR. FLACK: Pollution control and
    counter-measure.

    MS. LUCKHARDT: Thank you. And the
    worker safety and health plan -- worker health and
    safety plan adequate to address potential spills
    at Beacon?

    MR. FLACK: They are. And I'd add that
    there's an emergency response plan required for
    the project, as well, if I'm not mistaken. So,
    there's notification requirements for this type of
material.

MS. LUCKHARDT: There was a comment that was made by Mr. Hagemann about soil without testing. Can you address that comment?

MR. FLACK: I can try. I think what he was trying to get at is the material should be characterized before it's managed, if I'm not mistaken. And what his argument was, was the material shouldn't be excavated and moved to the LTU; rather it should be moved and placed on plastic or some type of impermeable material. In this case I would say plastic is mostly done, some 60 mil type plastic is usually used.

Sampled for characterization. And what I mean by that is it should be sampled to the DTSC criteria. The first thing would happen in the project is once the material is released, by waste condition-7 and what was written in the report of waste discharge, a sampling program would ensue such for material that had accumulated, such that we would be able to sample it. And then provide that sampling information to the DTSC for a determination of what would be hazardous or nonhazardous.

Because the formulation of HTF hasn't
changed, we said in the AFC that it would probably be similar to the 10,000 mg/kgm guide that the DTSC has used before. Though noting that the DTSC specifically stated that they would have to have a site-specific determination.

So what we would do once that was done was if there was a subsequent release, the material would be excavated, piled onto plastic; covered; and sampled for characterization.

At that point in time it could be determined whether or not it could go to the LTU or not if it was above 10,000 mg/kgm, it would be hauled offsite.

MS. LUCKHARDT: And then Mr. Hagemann made a comment about liners at the remediation area. Can you respond to that?

MR. FLACK: There was actually two comments. There was the comment in my testimony about an impermeable surface, and what I was getting at was what I just mentioned Is we would take the material; put it onto some plastic material prior to characterization.

With regard to the LTU, we designed the LTU consistent with Title 27 requirements, under the report of waste discharge, we need the review
of the Regional Water Quality Control Board and the staff.

That particular facility has operated without problem, as I understand it, for those 20-plus years at the SEGS facility.

So it is a clay material. It is impermeable in a sense that the material resides there for like about four to six months. So there isn't much of an opportunity for this material to migrate. In fact, the material, itself, once it's released as noted, wax-like substance, it doesn't tend to move in the environment much. Particularly vertically through a clay.

HEARING OFFICER CELLI: Any further examination?

MS. LUCKHARDT: Is there anything else either of you would like to add?

MR. FLACK: I'm just going to say a lot of the questions that Mr. Hagemann had were good specific questions regarding how waste is managed and characterized.

If I look at the FSA and the conditions of certification, there's several sections that have specific plan requirements. Those specific plan requirements will detail the procedures and
the protocols for management of this waste
material if it's released.

So I would say it's in the conditions.

SPPC and operational waste management plan are two
things that need to be done, and will specifically
address many of his concerns, I believe.

MS. LUCKHARDT: The witnesses are
available for cross.

HEARING OFFICER CELLI: CURE, cross?

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Mr. McCloud, in rebuttal you described
the design for Beacon. Are those SEGS facilities
laid out in sections like those proposed for
Beacon? In other words, you put in your rebuttal
testimony that the solar field is separated into
four to ten sections.

MR. MccLOUD: That's correct.

MS. GULESSERIAN: Is that the same as
the facility layout for Beacon?

MR. McCLOUD: You asked if Beacon was
the same as Beacon.

MS. GULESSERIAN: Excuse me. Are the
SEGS facilities laid out in sections like those
proposed for Beacon?
MR. McCLOUD: Not like Beacon. They are laid out in sections, however.

MS. GULESSERIAN: Okay. In your rebuttal testimony you stated that -- well, go back to that design. Can you describe the design of the Beacon project in a little bit more detail?

MS. LUCKHARDT: Are we talking about something that's already in the documents? You're asking him the design --

(Parties speaking simultaneously.)

MS. LUCKHARDT: -- to describe the --

MS. GULESSERIAN: Okay, you're --

MS. LUCKHARDT: -- design of the Beacon project?

MS. GULESSERIAN: Just a minute. Okay, we'll get there. In your rebuttal testimony you stated that leaks most often occur at valves and flanges. Where do spills otherwise occur? If they're most often at valves and flanges, where else?

MR. McCLOUD: Other fittings.

References were made to ball joints previously. Again, connections at BHCE tubes, themselves. Again, at fittings and joints.

MS. GULESSERIAN: In your rebuttal
testimony you stated that as much as 115,000
gallons of HTF is contained between isolation
valves in the main header and east/west laterals
that supply each section.

In a failure of a valve on the main
header or east/water lateral section, is it true
then that the maximum potential spill may be
115,000 gallons of HTF?

MR. McCLOUD: No, it's not. Because a
valve failed does not mean that the entire
contents of the pipe it's connected to are
immediately going to shoot out into the
environment.

In the event of a failure on the main
header, the plant would immediately begin to be
shut down. It's essentially de-pressurizing the
plant. So that the driving force for the HTF to
leak is immediately turned off.

MS. GULESSERIAN: Okay. And so what
would the maximum potential spill then be on that
main header?

MR. McCLOUD: I cannot answer that.

MS. GULESSERIAN: Okay. Do you consider
a vapor cloud from an HTF spill that requires
shutdown of a state highway to constitute offsite
transport?

MS. LUCKHARDT: Are you looking at offsite transport of the product, itself? Can you provide some more specificity of what you're asking?

MS. GULESSERIAN: Sure. I'll refer to their rebuttal testimony to be more specific.

(Pause.)

HEARING OFFICER CELLI: Maybe we can come back to this question.

MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: Move to some other area of questioning.

MS. GULESSERIAN: With that question. Well, actually, --

HEARING OFFICER CELLI: Unless this is your last question?

MS. GULESSERIAN: Okay, you were describing what the practice is to recover free liquid in the event of a spill. Is it correct that you're saying it's going to be vacuumed up?

MR. McCLOUD: Essentially, yes.

MS. GULESSERIAN: Okay. And where is it going to be vacuumed up from? From right where it spills?
MR. McCLOUD: Right where it spills, yes.

MS. GULESSERIAN: Okay. And what is it vacuumed into?

MR. McCLOUD: It will go into a truck, called a suck truck, but a vacuum truck.

MS. GULESSERIAN: Okay. And where does that truck then go?

MR. McCLOUD: It would take the product, return it to one of the storage tanks, HTF storage tanks in the system. So we would return it back to the system.

MS. GULESSERIAN: And do you just -- you return it directly into the system? Or do you filter it of this sand and dirt or other contaminants?

MR. McCLOUD: There is typically a strainer on the suction side of the vacuum truck, so that the dirt or sand or whatever is, for the most part, left behind. Again, it's a process with free liquid, so we're not trying to pull mud out, and pull the HTF out of everything. So it's simply the free liquid that's sitting on top that's clearly free liquid.

MS. GULESSERIAN: Okay. So is there a
filtration facility?

MR. McCLOUD: No.

MS. GULESSERIAN: Okay, so it's on the back of a truck?

MR. McCLOUD: Yeah, it would be in the line of the truck, on the back of a truck.

MS. GULESSERIAN: So your filtration is occurring on the back of the truck. And then the HTF is being put directly into a tank?

MR. McCLOUD: Correct.

MS. GULESSERIAN: Back to the offsite release. You said that, in your rebuttal testimony, that this spill --

MS. LUCKHARDT: Where are you, just so we can have it?

MS. GULESSERIAN: I'm on exhibit 332, page 3.

MS. LUCKHARDT: Thank you.

MS. GULESSERIAN: That this large spill nonetheless resulted in no offsite release of HTF and all contaminated soils.

So, my question was, offsite release, was do you consider a vapor cloud from an HTF spill that requires shutdown of a state highway to constitute -- I'll correct my question -- an
offsite release?

MR. McCLOUD: It's an offsite release, it's not an offsite release of HTF.

MS. GULESSERIAN: Okay.

MR. McCLOUD: Smoke, it was an offsite release of smoke that evolved from the HTF release. Maybe it's semantics, but --

MS. GULESSERIAN: I'll move on in the interest of time, but I might have to return to Mr. McCloud.

HEARING OFFICER CELLI: Appreciate it.

MS. GULESSERIAN: Mr. Flack, in determining whether free-standing HTF from an HTF release is or is not non-RCRA hazardous waste, where will the HTF be sampled following a spill?

MR. FLACK: Determining the non-RCRA. So this is after we vacuumed up the free liquids for recycling?

MS. GULESSERIAN: Uh-hmm.

MR. FLACK: So what's residual then is what's residual in the soil. I would imagine the SPCC plan would specify a sampling protocol for sampling the soil in a manner that would characterize what was removed, both in terms of what stockpiled via the removal. And then to
verify that the material had been removed from the soil in a manner that would suggest a clean removal.

MS. GULESSERIAN: So are you saying that there's no -- you are vacuuming in every instance and there's no free-standing HTF?

MR. FLACK: That's correct.

MS. GULESSERIAN: Okay.

MR. FLACK: Because a liquid, you can't manage a liquid hazardous waste.

MS. GULESSERIAN: Okay. And then with the resulting soil that's left underneath, where are you testing that to determine whether it is or is not a non-RCRA.

MR. FLACK: You would remove probably to visual initially, and stockpile the visual on plastic. You'd then sample the stockpile via composite methods or methods that would be approved through the SPCC plan.

That would characterize the material via the DTSC process, whether it was going to be sent to the LTU or taken off as hazardous waste.

You would then return to the excavation and you would sample the excavation in a manner that confirmed that all the material was removed.
So you would sample the in-place soils.

There's a two-part process there.

There's a part to characterize the material that was excavated for taking it to the LTU or not. And then there's a second process which means you would sample the soil to confirm its removal from the environment.

MS. GULESSERIAN: In the application for certification and the testimony that's been filed in this proceeding, the description of the handling of contaminated soils states that the soils will be moved directly to the land treatment unit.

Is there -- could you point to me where you've included in your project this process for moving the soil to a plastic?

MR. FLACK: We haven't done that because I'm giving you the plans that are required, the SPCC plan, the operational waste management plan, or where that's going to be discussed in detail.

MS. GULESSERIAN: So?

MR. FLACK: Which is a requirement of certification.

MS. GULESSERIAN: Why are there no provisions for handling the spilled free-standing
HTF included in the application or the report of waste discharge? That have been filed so far in this proceeding.

MR. FLACK: The report of waste discharge was written specifically to manage the waste. It wasn't a spill pollution control and countermeasures plan. It was a waste management plan to look at the residual. It excluded the management of the free-standing liquid.

MS. GULESSERIAN: So the report of waste discharge excludes the management of handling free-standing HTF?

MR. FLACK: Because it's a recycled material.

MS. GULESSERIAN: Okay. Could I go back and ask a question about this plastic area where the soils are contained. Where is that located?

MR. FLACK: Actually you take the material from where it was released and place it right next to -- stockpile it right next to where the release was. That would be the intent.

And, again, this would be something that we would write -- that would be written into the SPCC plan.

MS. GULESSERIAN: Okay. Is that -- I
guess, again, is that described anywhere in the application for certification for this project?  And if so, can you point to me where?

MR. FLACK: It's not described in there because it wasn't written to the level of detail in the application for certification. What was written was then the --

MR. BABULA: It's in the FSA.

MR. FLACK: -- I'm sorry, in the FSA, as well. And it was not -- is it in the FSA, Jared?

HEARING OFFICER CELLI: Actually this is testimony, it's not a conversation.

MR. FLACK: I'm sorry, you're right, you're right, I'm sorry.

(Laughter.)

MR. FLACK: To my knowledge it was not in the application for certification; neither was it in the report of waste discharge. Because we stated in the report of waste discharge that we would take the material up and move it into the LTU upon characterization. Okay.

So we did not talk about the free-standing liquids because at the time that was going to be a recycled material to be taken up and recycled into the process.
So what's residual, then, is what's contained on at the soil.

MS. GULESSERIAN: Okay, in the final staff assessment, and I can find the page, it describes that plastic sheeting will be placed on top of the contaminated soil in the land treatment unit. Is that what you're referring to when you talk about plastic?

MR. FLACK: That's one of the ways of managing the waste, correct. That was one of the statements.

MS. GULESSERIAN: Okay. And is that different than what you're describing today, tonight? The plastic that is placed on the soil somewhere near where the spill occurs?

MR. FLACK: There's ways of managing it. You take it out from the excavation area right where it's spilled and put it onto plastic; characterize it; then move it over. It still stays, and it's covered with plastic, in the LTU, as well.

MS. GULESSERIAN: What's the potential size of this plastic area where contaminated soil is.

MR. FLACK: Obviously it depends on the
size of the release, but you can put a lot of/plastic down for a large excavation of excavated
material. I've done it many times.

(Pause.)

MS. GULESSERIAN: Excuse me, this is
technical. I need some help.

HEARING OFFICER CELLI: How much --

MR. BABULA: I'm going to be quick if
that's your --

HEARING OFFICER CELLI: -- while CURE is
conferring --

MR. BABULA: We mainly want to clear up
a few things.

HEARING OFFICER CELLI: I just want to
know who we haven't heard from and how much time
are you thinking?

MR. BABULA: About five minutes. As
soon as she's done we're ready to -- but then I
don't know how much cross she's going to have.

HEARING OFFICER CELLI: I'd just note
that it's ten minutes to 9:00. We've all been
very patient and --

MS. GULESSERIAN: Okay, I guess --

HEARING OFFICER CELLI: -- you should be
winding down.

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MS. GULESSERIAN: I'm trying to learn about this plastic area that I've never heard about before.

BY MS. GULESSERIAN:

Q Is it -- can you describe to me a little bit more the thickness of this plastic material?

HEARING OFFICER CELLI: I'm going to -- I just want to say that, you know, we've seen loads of spills where they put that blue and black plastic over a mound of dirt of varying sizes. The sky's the limit on how big a size; it depends on the spill.

And rather than go into this area of how much, what size is the plastic and that kind of thing, I wonder if we could just keep it relevant to their testimony.

MS. GULESSERIAN: I'd like to have, get the facts in the record to determine whether they are meeting the statutes that I am aware of. So I just need to ask a few questions about what these facts are, because they're not.

HEARING OFFICER CELLI: Do you mind if I ask how few questions?

MS. GULESSERIAN: I'm almost done. It's just that this is new. Actually I didn't really
MS. LUCKHARDT: Well, I guess I just have a general comment at this point. We don't have a spill. We're not designing for a specific situation.

We're talking about the level of analysis that we need to conduct for a permitting level of this project. And I think that this level of detail is unnecessary at this point for, to determine permitting of this project.

HEARING OFFICER CELLI: Well, I'm just going to allow a few more questions. It is relevant and I'm going to allow her to just briefly ask a couple more questions, and then we've got to move on. So if we can finish this area, I would appreciate it.

MS. GULESSERIAN: Okay. Will the plastic be placed directly on the soil?

MR. FLACK: Echoing Jane's comment, this would be detailed in an SPCC plan. The intent of removing material from an HTF release would be to put plastic down on the ground and putting the excavated materials on top of the plastic temporarily, and then covering with plastic while you were characterizing the material.
Upon characterization of the material, it would be moved to the LTU. Set in the LTU and covered with plastic and staged for biological treatment.

MS. GULESSERIAN: Okay, thank you.

MR. FLACK: Does that make sense?

MS. GULESSERIAN: It makes sense. And just for clarification, the LTU, is it correct, that it's an unlined -- the LTU is an unlined --

MR. FLACK: No, --

MS. GULESSERIAN: As Mr. -- if you were listening to Mr. Hagemann's testimony, he described what he read in the FSA that it's on a clay, low permeable layer underneath?

MR. FLACK: The LTU is --

MS. GULESSERIAN: Does the FSA correctly describe --

MR. FLACK: The FSA is correct.

MS. GULESSERIAN: Okay.

MR. FLACK: And his testimony to what is absolutely correct.

MS. GULESSERIAN: Okay, thank you.

MR. FLACK: You're welcome.

HEARING OFFICER CELLI: I'm glad we cleared that up.
MS. GULESSERIAN: I have no further questions.

HEARING OFFICER CELLI: Thank you.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: In fact, I've almost lost where -- oh, cross of these witnesses by staff?

MR. BABULA: I have no questions.

HEARING OFFICER CELLI: Redirect?

MS. LUCKHARDT: Just a couple of questions here.

REDIRECT EXAMINATION

BY MS. LUCKHARDT:

Q Mr. Flack, you were just asked --

MR. FLACK: Sorry.

MS. LUCKHARDT: You were just asked about the liner and the land treatment unit. Do you have any concerns about how that is being treated as far as the compaction, that it's clay soil that's being used, or whether that should have an additional liner?

MR. FLACK: The LTU is designed under Title 27 requirements. And it will operate, there is a program to compact the clay. There's a program to manage the waste and sample yearly on

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an annual basis to confirm there would be no leakage through the clay liner.

Performance at SEGS would tend to suggest that this particular design works very well. The material, itself, isn't mobile in the environment. It's not going to leak, you know, come out of solution from the matrix it's bound in and leak through the clay. It just isn't that kind of material once it's released. So the design, itself, has shown itself to perform well. And we have the other thing that's important to understand, too, is the variable depth of the groundwater. In the area for the LTU it's about 260 feet to groundwater.

HEARING OFFICER CELLI: Next question?

MS. LUCKHARDT: Mr. McCloud, does the letter that is included as exhibit 629 describe a sampling protocol after a spill at one of the SEGS facilities?

MR. McCLOUD: Yes, it does.

MS. LUCKHARDT: I think I'm going to leave it at that.

HEARING OFFICER CELLI: No further redirect?

MS. LUCKHARDT: No.
HEARING OFFICER CELLI: Limited to the scope of the questions on redirect, any cross from CURE?

MS. GULESSERIAN: No further questions.

HEARING OFFICER CELLI: Any cross from staff?

MR. BABULA: No.

HEARING OFFICER CELLI: Thank you. Any further witnesses?

MS. LUCKHARDT: No.

HEARING OFFICER CELLI: Thank you. Now where we are is with staff, right? Have your witnesses been sworn?

MR. BABULA: They have not. They need to be sworn in.

HEARING OFFICER CELLI: We need to swear two more witnesses in. Please stand. Whereupon,

ELLEN TOWNSEND-HOUGH and GEOFFREY LESH were called as witnesses herein, and after first having been duly sworn, were examined and testified as follows:

HEARING OFFICER CELLI: Please state your names and spell them for the record.

MS. TOWNSEND-HOUGH: My name is Ellen
MR. LESH: I'm Geoffrey Lesh, it's G-e-o-f-f-r-e-y L-e-s-h.

MR. BABULA: Okay, thank you.

DIRECT EXAMINATION

BY MR. BABULA:

Q I'm going to start with Ellie, who is dealing with the waste and hazardous waste management.

So you just heard all this testimony, and I think there's some confusion or there seems to be we need some clarification on the process if there's a spill. So can you just quickly go through and try to address that comment and any other issues that come up?

MS. TOWNSEND-HOUGH: Okay. Ellie Townsend-Hough. I guess it's just important to note that as the technology has improved, the regulators have also improved.

We are working together with both the Regional Board and DTSC. And we also are working with staff in the soil and water area to establish ways to better manage any of the HTF spills.

And basically, as was described by the
applicant, it there's a spill there's a staging area, and then there is determination what goes to the land treatment unit.

Depending on what the Department of Toxic Substances Control establishes as a hazardous criteria, whether it's 10,000 mg/kgm, or something lower, wherever that cutoff is, whatever's nonhazardous, only a nonhazardous substance can go in the land treatment unit.

A hazardous substance, anything like greater than 10,000 mg/kgm, depending on DTSC's determination, would go to a class 1 landfill.

There has to be a staging area to determine what's hazardous and what is nonhazardous. Staff set up a series of data requests, and the data responses were addressed in the applicant's refinement. I think it's the supplemental document in the refinement.

There is actually a description how the waste would be handled. There is also a description that actually shows where the land treatment unit is. And it talks about the cutoff.

There is also descriptions --

MS. GULESSERIAN: I'm sorry, do you know what we're referring to here as far as an exhibit
goes?

MS. TOWNSEND-HOUGH: It's the refinement. I don't know the number of -- I think that's it, it's like the biggest document we received, the project refinements.

HEARING OFFICER CELLI: Okay, and so do we have an exhibit number?

MR. BABULA: It's one of the applicant's exhibits.

(Parties speaking simultaneously.)

MS. LUCKHARDT: That's broken up into a million different exhibits, because it's by subject areas, so.

(Parties speaking simultaneously.)

MS. TOWNSEND-HOUGH: It should be a section just under waste, and it talks about the land treatment unit and HTF spills.

Okay. And also in the Board's waste discharge requirements, the Board has described in their appendices, exactly how the waste is supposed to be handled, whether it's hazardous or nonhazardous.

We've gone -- what we tried to do is we've asked for a spill prevention counter control measure plan. We've also asked for a very
comprehensive operation management plan. We've asked for sampling. And all of these are in the conditions of certification. Conditions of certification-6, conditions of certification-7 and condition of certification-9.

So what we've tried to do is be very rigorous on the handling of the HTF spills.

MR. BABULA: In your opinion, based on your work in this area, your analysis, reviewing all the testimony, do you believe that this facility can operate in a safe manner to both human and the environment?

MS. TOWNSEND-HOUGH: Yes, I do.

MR. BABULA: Should I just --

HEARING OFFICER CELLI: Mr. Lesh, you might as well go ahead and ask your questions there.

BY MR. BABULA:

Q So, Mr. Lesh, let's see, now you were doing more of the engineering. You submitted supplemental testimony. We won't have to go over that, but are there are a couple areas that have come up that you'd like to address regarding some of the stuff that Mr. Hagemann has brought up?

HEARING OFFICER CELLI: I wonder if just
rather than invite an objection for a narrative we focus his testimony a little more on specifically what's needed in the record.

MR. BABULA: It's so easy to read it in the record, it's right there.

HEARING OFFICER CELLI: If you wouldn't mind. Just narrow the testimony.

MR. BABULA: Okay.

MR. LESH: The area that I want to focus on is the hazardous materials management, in which we are focused on maintaining control of any hazardous materials onsite. And maintaining their containment so that up until the moment they're released accidentally, then they become waste, hazardous waste.

But up until the moment of loss, like containment and leaks and those sorts of things is the area where I'm focused. And the purpose of the section is to prevent offsite consequences from releases that could impact the public.

So, with that in mind we review how the material is being contained, the specifications it's being held within, whether they're API or ASME codes, and what kind of secondary containment they have underneath their expansion tanks and
heat exchangers, et cetera.

Some of the comments that I think I need to address were the ones that came from Mr. Hagemann. Specifically recommended, you know, why not double-wall piping. And I concur with the applicant that where the leaks are occurring are in joints, flanges, valves, flex tubes, ball joints, things that you have to make and break, have lots of pieces in them.

The more of them you have the more potential you have for small leaks to occur, and they take diligence.

For the most part, these things don't offer an impact in the offsite public because the material that's leaking has low toxicity and low vapor pressure, low volatility.

The entire site -- and the solar field is bermed. Any leaks, even a big one, will not run offsite. Anything in the power block, where the big spill did occur when they blew a valve stem at one point, remains within the power block because it's also bermed separately, it has secondary containment areas. And in the event that you have a big spill, it gets cleaned up. There is no significant risk to the offsite
public.

For protecting onsite employees that's handled in our worker safety and fire protection sections, and it's covered by different sets of rules which come from OSHA through Cal-OSHA. In there we look at LORS compliance.

And between all these things we make sure that there is personal protective gear issued; that we have all the safety plans; the spill management plans; and the reporting plans to the appropriate agencies.

MR. BABULA: Just to summarize, based on your information and reviewing the applicant's information and all the testimony, do you feel this plant can operate safely with regards to HTF fluid?

MR. LESH: I do.

MR. BABULA: No further questions.

HEARING OFFICER CELLI: Thank you.

Applicant, cross?

MS. LUCKHARDT: I have no cross.

HEARING OFFICER CELLI: CURE, cross?

CROSS-EXAMINATION

BY MS. GULESSERIAN:

Q Mr. Lesh, I'm referring to your
testimony. You state that there's 1.3 million
gallons of HTF contained in the pipes and heat
exchanger, is this correct?

MR. LESH: To my recollection, yes.

MS. GULESSERIAN: Okay, is this what you
based your analysis of potential impacts on?

MR. LESH: Yes.

MS. GULESSERIAN: Before reviewing Mr.
Hagemann's testimony and hearing what you heard
today, were you aware that there is free-standing
HTF below a spill that involves a cleanup process?

MR. LESH: Yes.

MS. GULESSERIAN: Okay, can you tell me
where in the final staff assessment this process
is described and analyzed?

MR. LESH: It's not described in the
hazardous materials management section.

MS. GULESSERIAN: Is it analyzed?

MR. LESH: That would be results of a
spill, so it would be a waste issue.

MS. GULESSERIAN: Okay. I'm trying to
cut down my questions. I'm skipping some.

Before hearing what you heard today,
were you aware that there is a interim process, my
words for it, for handling contaminated soils
after a spill? By interim I mean some other --
this plastic staging area prior to placement in a
land treatment unit, for testing for hazardous
waste.

MR. BABULA: Is that Ellie's topic?
MS. GULESSERIAN: Hazardous materials, I
don't know who.

MR. BABULA: She's hazardous materials
once it's in the ground. He would be the piping
and leaking.

MS. GULESSERIAN: Okay.
MR. BABULA: I don't know if you're
asking the right person.

MS. GULESSERIAN: Okay. Let me see if I
have any other questions for Mr. Lesh first.

(Pause.)

BY MS. GULESSERIAN:

Q Are you -- is it your area to analyze
the recycling of HTF that we heard about today?
Do you analyze recycling of hazardous substances?

MR. LESH: No.

MS. GULESSERIAN: Okay.

MR. LESH: Not specifically, no.

MS. GULESSERIAN: And did you analyze
the recycling of HTF as part of this project?
MR. LESH: No.

MS. GULESSERIAN: You stated that you analyzed 1.3 million gallons of HTF in the system. This is in your written testimony. Are you aware that in the soil and water section of the FSA staff states that approximately 2.4 million gallons of HTF will be utilized at any one time at the facility?

MR. LESH: I learned that today.

MS. GULESSERIAN: Okay. So it's safe to say that since it says 1.3, and you analyzed 1.3, you have not yet analyzed 2.4 million gallons of HTF?

MR. LESH: Given the material, the volume of it, provided the applicant does as they stated in their designs that they would have containment for that, plus rainfall, berming, secondary containment, it's low toxicity and low volatility, it would be still okay. That particular volume didn't come into the analysis. It's the way it's managed that comes into the analysis.

Unless it's something that has potential for moving offsite, which would be a more toxic material like ammonia or something, then the
volumes do become very important.

MS. GULESSERIAN: Okay, so when you said earlier that your analysis was based on 1.3 million gallons of HTF, you're now saying that it doesn't matter how much HTF is used at a project site?

MR. LESH: No, I didn't say that. But in this particular case I think the volume did change when the refinement came in.

MS. GULESSERIAN: So now there is an additional 1.1 million gallons of HTF on the project site?

MR. LESH: The design remains the same except for the volumes. But the design, the safety factors on the design remain the same. It would still be okay in this case.

MS. GULESSERIAN: Do you know whether the change of this additional 1.1 million gallons is more HTF in the piping? More stored at the site? What accounts for the change?

MR. LESH: I believe it's partly due to more expansion tanks in the system, which would have secondary containment underneath them. And the other details I don't know exactly.

HEARING OFFICER CELLI: The record
should reflect it's a quarter after 9:00.

MS. GULESSERIAN: I'll just ask a few questions of Ms. Townsend-Hough.

MS. TOWNSEND-HOUGH: Hough, like rough and tough.

MS. GULESSERIAN: Okay, thank you.

Townsend-Hough. Thank you.

Okay, in your testimony just now you stated that the soil is placed in a staging, you analyzed the soil being placed in a staging area, is that correct?

MS. TOWNSEND-HOUGH: Yes.

MS. GULESSERIAN: Okay. In the FSA, page 4.9-173, you state that a staging area is allocated in the LTU for storage of HTF-impacted soils while they're being characterized. Is that what you were referring to?

MS. TOWNSEND-HOUGH: Yes.

MS. GULESSERIAN: Okay. And do you believe that is the same or different than what you heard from Mr. Flack regarding the staging area in the middle of the solar field?

MS. TOWNSEND-HOUGH: I'll have to think about what he said.

MS. GULESSERIAN: Mr. Flack testified
that before moving the soil to the LTU staging area that you describe in the FSA they move the soil to a plastic sheet within the solar field. I'm adding that, I don't know, he didn't say it's in the solar field.

MS. LUCKHARDT: I would object to that characterization. I think that was simply an example of a place where it could be staged.

HEARING OFFICER CELLI: I will --

MS. GULESSERIAN: Well, if it's not staged there, she testified that that's where it's staged. Maybe we should --

HEARING OFFICER CELLI: I'm not sure of that. What the testimony was, was that there was plastic on the ground and that's where it was loaded up on prior to going to the LTU. Do I have that right? That's what I heard.

MS. GULESSERIAN: And did you hear the summary that Mr. Celli just provided regarding this plastic staging area?

MS. TOWNSEND-HOUGH: Yes.

MS. GULESSERIAN: Do you know where that is proposed to be located?

MS. TOWNSEND-HOUGH: On the plant site.

MS. GULESSERIAN: Okay. And did you
analyze that in the FSA? Did you describe this process or analyze it in the FSA?

MS. TOWNSEND-HOUGH: Yes.

MS. GULESSERIAN: Okay, could you show me where?


MR. BABULA: The second full paragraph.

HEARING OFFICER CELLI: While you're looking that up, can you give some sense of how much more there is, Ms. Gulesserian?

MS. GULESSERIAN: Less than --

HEARING OFFICER CELLI: I note that there's some intrepid character who has managed to get himself on the phones listing. So Mr. Call-in User Number 12, I know you're out there. Hang in there, we'll get to you.

I should say for the record, Mr. or Ms. Call-in User Number 12. We'll find out.

Any further cross?

MS. GULESSERIAN: Could you please read me, do you have it in front of you what you're reading regarding your analysis.

MS. TOWNSEND-HOUGH: Revised figure 7 in the Beacon project design refinement, attachment 6, page 8, presents a flow diagram of the
management and treatment of HTF-affected soil
proposed by the applicant.

    Spills of HTF at Beacon would be cleaned up within 48 hours, and the contaminated soil would be placed in the staging area of the LTU and covered with plastic sheeting.

    Samples -- how far do you want me to go?

HEARING OFFICER CELLI: There was your plastic sheeting, Ms. Gulesserian, that she just read for you.

    MS. TOWNSEND-HOUGH: Yeah, and I don't have the size of the plastic sheeting --

    MS. GULESSERIAN: Thank you very much.

    MS. TOWNSEND-HOUGH: -- in there.

    MS. GULESSERIAN: And so the contaminated soil would be placed in a staging area of the LTU and covered with plastic sheeting.

    Is that your analysis that you're referring to?

    MS. TOWNSEND-HOUGH: Yes.

    MS. GULESSERIAN: Okay. Is there any other analysis in the FSA of the staging of hazardous soils?

    MS. TOWNSEND-HOUGH: It's in soils and water; it's in the appendices --

    MS. GULESSERIAN: Okay.
MS. TOWNSEND-HOUGH: -- E, F and H. I know it's in the Water Resources waste discharge requirements also.

MS. GULESSERIAN: I have no further questions.

HEARING OFFICER CELLI: Thank you. Any redirect?

MR. BABULA: No.

HEARING OFFICER CELLI: Thank you. With that, we have received all of the documentary evidence from all of the parties, it's been received into evidence. We've heard from all of your witnesses on all contested areas.

We've received all the evidence on alternatives, biological resources, cultural, soil, hazardous materials, waste management. Project description, we did take that in. Transmission system engineering and visual resources.

At this time the record is closed. I'm happy to say that we were able to close the evidentiary record in one day. I want to thank the parties for your efforts. I know it wasn't easy, but I do appreciate everybody's working hard to make it happen.
The first thing I have to do now is ask if there is any further public comment to be added. If there are any members of the public who are present and wish to make a comment. I don't have any more blue cards. A showing of hands? I see no showing of hands.

Now I'm going to go back on the line and I'm going to un-mute call-in user number 12. Hello, call-in user number 12 on the telephone, can you hear me? Whoever's on the phone if you wouldn't mind speaking up, please.

Is there anyone on the phone line at this time? They went away, they hung up. I didn't mean to scare them.

(Laughter.)

HEARING OFFICER CELLI: Okay. So, there's no further public comment. The evidentiary record is closed.

The parties' opening briefs on all topic areas must be filed no later than 3:00 p.m. on Monday, April 19, 2010.

Reply briefs must be filed no later than 3:00 p.m. on Monday, May 3, 2010. Copies must be provided to the Committee, the Hearing Adviser and those on the proof of service and mailing lists.
The parties shall also provide
electronic copies of the above-referenced filings
to the Hearing Officer via email in Microsoft Word
format.

Now, I want to make a couple of things
clear. It's really incumbent upon the parties to
frame the issues. So I don't want to hear any
whining about I didn't tell you what to brief.
You know what the issues are and you're going to
brief them.

But I'm going to give you some hints.
We talked about visual and that was really between
staff and the applicant. You're going to want to
give the Committee a clear understanding of what
is a significant adverse impact with regard to the
brightness and the contrast, such that it supports
a finding of an unmitigable significant impact.
We're going to need to know what that is. We're
going to need to home in on that.

There was discussion in the transmission
system engineering about the 250 megawatts impacts
on the LADWP's T-lines. And there was some
discussion about changes in the nomenclature. I'm
not all that interested in that but I am
interested in addressing the questions that were
raised by CURE with regard to the impact studies. Water issues, I suppose, will be framed by CURE. In bio there was discussion for need of surveys and adequacy of mitigation. Ms. Luckhardt, I'm going to ask the applicant to respond to the comments from Lorelei Oviatt from Kern County in a brief. You know what I'm talking about.

Hazardous materials, there was much discussion about legal requirements with regard to sampling spills at the location and so forth. I think that it might behoove the parties to perhaps touch upon the regulatory underpinnings of hazard materials management.

A lot of, let's put it this way. A lot of the issues I think that were raised by CURE were responded to by the various parties as, well, there's a regulatory scheme that covers this, or there's a LORS or something like that.

I think if there's any open-ended questions about how hazardous materials, waste is going to be managed, then you better be able to point to the LORS that you're relying on, or the regulatory scheme that covers that question.

Mostly in the context of hazardous materials.
And then, of course, if there are any questions that are left open with regard to -- if there are any conditions of certification that address questions that were raised by the intervenors that I would appreciate it if you could direct our attention to those conditions.

Other than that, I need to -- I'm going to cancel the court reporter for tomorrow because we got through it tonight. Thank you very much for staying late. We do appreciate that. I want to thank all of you for staying late.

There will be no need for a WebEx phone number or calling in on WebEx, so we will not have a WebEx meeting tomorrow. This is the end of our evidentiary hearings.

And so with that, what we'll do next is I'll hand it over to Chairman Douglas, who will adjourn the meeting.

MR. BABULA: Can I just make a quick -- it's really quick.

HEARING OFFICER CELLI: Did I forget something?

MR. BABULA: No, no. I just wanted to thank our Project Manager Eric Solorio. I think that this project -- I don't think -- this has
been a two-year process, and I'm sure the applicant won't be sending him a Christmas card, but this project it looks a lot different from what came in. And I think if anybody has any questions about whether there's agency capture among the Commission, they take a look at what came in and what it looks like now, the FSA, there'll be some tremendous changes.

And most of that is because of the hard work of Eric and his ability to organize our team and get this information out there. And his diligence in pursuing it. So I just wanted to publicly thank him for that.

HEARING OFFICER CELLI: We join in that.

In fact, didn't they let you go for a little while there, and put you back on.

MR. SOLORIO: It's on a daily basis.

(Laughter.)

HEARING OFFICER CELLI: Chairman.

PRESIDING MEMBER DOUGLAS: All right, well, I'd like to thank everybody who has hung in there for a very long day and we're adjourned.

Thank you.

(Whereupon, at 9:26 p.m., the hearing was adjourned.)
CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2010.

s/s Martha L. Nelson

MARTHA L. NELSON,
AAERT CERT