COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )

Application for Certification for the ) Docket No.
Beacon Solar Energy Project ) 08-AFC-2
by Beacon Solar, LLC )

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

THURSDAY, AUGUST 19, 2010
10:00 a.m.

Reported by:
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Contract No. 170-09-002
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representing California Unions for Reliable Energy (CURE)
ALSO PRESENT

Dr. Robert Shearer (via teleconference)
Marie Ann Hogarth (via teleconference)
Jack Stewart (via teleconference)
Rosamond Community Service District

Frank
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PRESIDING MEMBER DOUGLAS: Welcome to this Committee Conference for the PMPD on the Beacon Solar Energy Project. I'm Karen Douglas, the Chair of the California Energy Commission. To my far right is Commissioner Byron, the Associate Member of this committee. To my immediate right, Ken Celli, the Hearing Officer for this case. And to my left is Chuck Najarian, my advisor.

Today's hearing is being conducted by a Committee of the California Energy Commission on the proposed Beacon Solar Energy Project Application for Certification. And the purpose of this conference is to discuss the comments on the PMPD, which were filed by staff and applicant.

Would the parties please introduce their representatives at this time. We can start with applicant.

MR. BUSA: Good morning, this Scott Busa with NextEra Energy Resources. I'm the project development manager for the Beacon Solar Energy Project.

MR. STEIN: Kenny Stein, environmental manager with Beacon.

MS. LUCKHARDT: Jane Luckhardt with Downey Brand, project counsel.

PRESIDING MEMBER DOUGLAS: Thank you. And staff?

MR. BABULA: Jared Babula, staff counsel.
MR. SOLORIO: Eric Solorio, project manager.

PRESIDING MEMBER DOUGLAS: Thank you. Intervenor?

MS. GULESSERIAN: Tanya Gulesserian with California Unions for Reliable Energy.

PRESIDING MEMBER DOUGLAS: Great. Are there any elected officials in the room or on the phone? Or public officials?

DR. SHEARER: Dr. Shearer.

PRESIDING MEMBER DOUGLAS: I'm sorry, please introduce yourself.

DR. SHEARER: This is Dr. Robert Shearer. I'm the vice president of the Rosamond Community Service District.

PRESIDING MEMBER DOUGLAS: Thank you. Anyone else, elected officials?

What about government agencies in the room or on the phone?

It sounds like we don't have any government agencies on the phone at this time. Is the Public Adviser's Office here? Jennifer Jennings from the Public Adviser's Office is in the room with us.

Very well, I'll turn this over to Hearing Officer Celli.

HEARING OFFICER CELLI: Good morning, Chairman Douglas and everyone, welcome back.

So what we have received as of today with regard
to errata and comments on the PMPD is that the applicant filed comments on the PMPD on August 12, 2010. And I have, I hope everybody received that. Then I received, staff's comments were filed yesterday, August 18. And I have some extras on the back table there if anybody needs to see them.

Ms. Gulesserian, I don't know if you have staff's comments.

MS. GULESSERIAN: Yes I do, thank you.

HEARING OFFICER CELLI: Okay. But if anyone needs there's a couple of extras in the back. Thank you very much.

CURE, are we correct that CURE has yet to file comments?

MS. GULESSERIAN: That's correct. We will be filing comments today.

HEARING OFFICER CELLI: I also have, and put in the back of the room, a draft errata that is very much of a draft, incorporating the comments that have been received. But I'm not sure if staff's, because they were received so late, we received them yesterday, so I have the feeling this is only going to be applicant's comments in what our secretary put together today.

So I would like to proceed as usual. We'll start with Applicant, go to Staff, listen to Intervenor CURE, then we will go to public comment. But we would like to hear from the parties on their position with regard to the
various comments and errata. So with that, applicant, please.

MS. LUCKHARDT: I'd just like to note that we just got a copy of what you put out this morning so we haven't had a chance to look at that. We filed our comments and so you have our initial comments on the PMPD. We received staff's comments yesterday.

I've handed out to all of the parties as well as I believe the Committee a response to staff's proposed changes to Condition of certification HAZ-2. In looking at what staff had requested in HAZ-2, which was the inclusion of a process safety management plan. In our evaluation of HTF and the constituents which it breaks down to we don't believe that a process safety management plan will be required under the standards that exist at this time.

So what we have asked and asked staff to consider, as well as the other parties, is whether they would be willing to accept a revision to their proposed language that instead of "will apply" is "may apply." That this standard may apply to the project. And that the project will consult with Cal-OSHA or the Kern County Environmental Health Services Department to determine if a process safety management plan is required. And that if one is required it will be provided but if it is not we will not provide it. So it's basically if the law requires that it be provided
the project will comply and if not the project will not.

ASSOCIATE MEMBER BYRON: Ms. Luckhardt, could you point us to right document and page so we can take a look at it and refresh ourselves with regard to this condition.

MS. LUCKHARDT: Okay. What I've handed out this morning is a document that is entitled Beacon -- it's about four pages in length. It is entitled Beacon Solar, LLC, Supplemental Comments on the Presiding Member's Preliminary -- it should be Proposed Decision regarding Condition of Certification HAZ-2. We'll try and fix that before that gets filed. Dated August 19th. And it's in response to what staff filed late yesterday. And it should be in -- our proposed changes to what staff proposed should show up in red on the document.

HEARING OFFICER CELLI: Okay. Now, I had a chance to go through your proposed revisions or errata last night. Let me begin by asking, are there any changes to the original August 12 proposed changes that you submitted?

MS. LUCKHARDT: No, we don't have additional changes on our changes.

HEARING OFFICER CELLI: Other than HAZ-2.

MS. LUCKHARDT: Other than HAZ-2, which was in response to what staff filed last night.

HEARING OFFICER CELLI: Which is in addition to. In other words, it is not changing something that is already
in here.

MS. LUCKHARDT: Right.

HEARING OFFICER CELLI: Okay.

MS. LUCKHARDT: It is not changing something that is already in here.

HEARING OFFICER CELLI: Let me go to staff first.

Staff, any comments on Beacon Solar's comments on the PMPD?

MR. BABULA: On the process safety management plan. We did note on our page 13 of our comments, this is where we introduced this, which had been noted in our prehearing statement. It's based on this process safety management Title 8, CCR Section 5189. So in principle we agree with the applicant's change because the basis of it is a belief by staff that it is required under this regulation.

We haven't been able to confirm with our technical staff yet on whether they would the applicant's proposed changes. But I believe in principle that it makes sense since the triggering effect is a belief that this section cited requires it. So if, in fact, OSHA doesn't require it because it doesn't meet the little summary here of a toxic, reactive, flammable then it wouldn't make sense to require the applicant to do it.

I propose that we extend possibly the comment deadline from 3:00 to maybe close of business today at 5:00 so we have time to check with our technical staff. I
believe Jeff Lesh is going to be here today. Rick Tyler is out. So we want to be able to run this by staff.

HEARING OFFICER CELLI: I saw Rick Tyler this morning.

MR. BABULA: Did you?

HEARING OFFICER CELLI: Yes I did. I just saw him walking by here.

MR. BABULA: We'll try to chase him down today as soon as possible to get this sort of sorted out.

HEARING OFFICER CELLI: Thank you.

MR. BABULA: Other than that I don't have any other comment.

HEARING OFFICER CELLI: Okay, great. Because I read -- I'm looking at page 13, Waste Management. Is that what we're talking about?

MR. BABULA: Above it. Where it says, Processes. The little column that's underlined.

HEARING OFFICER CELLI: Oh, got it. Thank you.

CURE, can we hear your comments on applicant's comments, please.

MS. GULESSERIAN: I just received this proposed change and I'm trying to look it over now.

HEARING OFFICER CELLI: Before you get to that let me ask you if you have any comment on the original set that came out on August 12?
MS. GULESSERIAN: On August 12. We are providing detailed comments in a comment letter this afternoon.

With respect to the August 12 comments, two areas that we will address, we are addressing are the verification for BIO-14 was subsequently changed. And it looks like staff put the correct verification in their comments so we would agree with this changes.

HEARING OFFICER CELLI: So you agree with staff's proposed verification in staff's --

MS. GULESSERIAN: As the most, yeah, as their most recently agreed upon verification between staff and the applicant.

HEARING OFFICER CELLI: Okay.

MS. GULESSERIAN: As in the record. So that 502.

HEARING OFFICER CELLI: Got it. So that's one. What was the other one?

MS. GULESSERIAN: Yes. And the other one is, which I'd like to address in some larger comments that I wanted to make today, is the proposal to add more findings regarding significant impacts from wastewater treatment facilities. We disagree that further findings should be made.

HEARING OFFICER CELLI: Okay. That's sort of a new topic. So what I'm going to do is go through hers --

MS. GULESSERIAN: Right.
HEARING OFFICER CELLI: Get through theirs. Then we'll talk to that.

MS. GULESSERIAN: Those are all the comments that I have at this point, thank you.

HEARING OFFICER CELLI: Thank you.

So anything further from applicant?

MS. LUCKHARDT: I'm just trying to locate specifically where the additional findings are so I can see whether we have got a response to that.

HEARING OFFICER CELLI: What as the area, Ms. Guesserian that those were related to?

MS. GULESSERIAN: Which one?

HEARING OFFICER CELLI: The added finding.

MS. GULESSERIAN: The applicant wrote about that in their, in their comment letter. They suggested adding to the Soil and Water Resources section some findings on Biological Resources, Cultural Resources, Traffic and Land Use.

MR. SOLORIO: Mr. Celli, it's page 17 of the applicant's comments and it goes into 18.

MS. GULESSERIAN: Thank you, Mr. Solorio.

HEARING OFFICER CELLI: Thank you.

MS. LUCKHARDT: There's a change on page six but that's a change from natural gas to propane, so that's not a concern.
HEARING OFFICER CELLI: So this was having to do with BIO? Not BIO, this is on page 309 of the PMPD. Okay. Let's hold that on the shelf for a minute and we'll get back to you on it, okay.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: Anything further from applicant on applicant's proposed changes?

MS. LUCKHARDT: No, because you're holding discussion on that.

HEARING OFFICER CELLI: Okay. Staff, let's go to you with regard to your proposed changes. If you could kind of give us the highlights.

MR. BABULA: I think they sort of speak for themselves. I think the majority of them are similar to applicant's. I don't really have anything really to add to this unless there's a specific question of something in ours. And I know it came in yesterday so you didn't have as much time.

HEARING OFFICER CELLI: I read them last night.

MR. BABULA: I was here until 10:30 last night.

HEARING OFFICER CELLI: Yes, I understand a lot of people were.

I noted as I was reading it that there seemed to be a lot of overlap. What I'm interested in knowing is, is there anything where you're pretty much opposed to
something, where there's a real departure from what the applicant was proposing here?

MR. BABULA: We're basically on the same page. It's just to check with Rick on this most recent change.

HEARING OFFICER CELLI: Okay. Applicant, anything on staff's proposed changes?

MS. LUCKHARDT: You know, in our review of staff's changes. You have our comments on HAZ-2. We've just done a quick check of the verification language on BIO-14 and we don't see a problem with using staff's verification language for BIO-14.

HEARING OFFICER CELLI: On your page 14?

MS. LUCKHARDT: On staff's page 16, applicant's page 16. We both propose verification language for condition of certification BIO-14.

HEARING OFFICER CELLI: BIO-14.

MS. LUCKHARDT: Right. Ms. Gulesserian just pointed out that the verification language may be slightly different. We just read staff's verification language and we're fine with using verification language for BIO-14, we don't have an objection to that. So that's fine, you can pull it from there to add a verification.

Our only other comment on staff's comments was the HAZ-2 question that we provided in redline.

So that's our comments on staff.
HEARING OFFICER CELLI: Thank you. CURE, please, on staff's proposed changes. Ms. Gulesserian, if you have any comments.

MS. GULESSERIAN: On staff's proposed changes, I don't have any general comments right now for their changes.

HEARING OFFICER CELLI: Thank you. Anything further from staff with regard -- other than the pending resolution of HAZ-2, anything further from staff on your proposed changes?

MR. BABULA: I do have one.

HEARING OFFICER CELLI: Okay.

MR. BABULA: I do have one slight change on, let's see, what am I looking at. This would be applicant's page 16, which is this BIO-22. The verification. We'd like to add, besides informing us that they want to use the in-lieu process, also to provide a copy of like the check or any money, some indication in the verification that they should provide us with a copy of the money that was transmitted for the in-lieu.

HEARING OFFICER CELLI: To the CPM kind of thing?

MR. BABULA: Right.

HEARING OFFICER CELLI: Okay. So page 16 of applicant's --

MS. GULESSERIAN: CURE will also be providing just some clarification language for that new condition, BIO-22.
HEARING OFFICER CELLI: Any opposition to BIO-22?

MS. GULESSERIAN: Not in principle but some clarifying language. Just a few words to make it, to make sure it's consistent with Senate Bill X8-34.

MS. LUCKHARDT: Do you have that language here?

MS. GULESSERIAN: I do. It is in the latter half of BIO-22. The part where it starts, to the extent. The way it was written by the applicant. "To the extent the in-lieu fee provision is found by the Commission to be ..." We would propose that we make that the same language as is in the verification that's referred to as the project's in-lieu fee proposal. So it would say, "To the extent the project's in-lieu fee proposal is found by the Commission to be compliant with CEQA and CESA." And then in the verification we would ask to add language regarding notification to the Commission and all parties that it is seeking a new determination.

MS. LUCKHARDT: It would be unusual that a verification and a condition of certification would require notification to all parties. That's something that doesn't appear in any other condition in the entire PMPD. So just at first blush we would be concerned about that condition requiring notice to all parties because it is not required in any other condition in the PMPD.

MS. GULESSERIAN: There are --
HEARING OFFICER CELLI: Let me ask you this. Did you make these points in your written comments?

MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: Okay.

MS. GULESSERIAN: So that it's clear that you have the language that we're proposing. This condition is also different than every other condition in the PMPD because the actual condition requires the Commission to make a finding. It's a late addition of a new mitigation measure regarding a future in-lieu fee program. And as the applicant wrote it, it's to the extent that the in-lieu fee provision is found by the Commission to be consistent. So since it's different than every other condition that's why, you know, asking the Commission to make a decision on the in-lieu fee proposal opens the door to having involvement of the public.

HEARING OFFICER CELLI: It's interesting because the Commission has to make a finding that the project is in compliance with all LORS. So I'm just wondering whether this language is redundant anyway because we have to make such a finding. In other words, you're saying, if found the Commission to be in compliance with CEQA and CESA requirements. Well, if there were a finding to the contrary we couldn't even proceed with that.

MS. GULESSERIAN: Well generally then we would object to a new condition regarding an in-lieu fee proposal
because there's nothing in the record about this issue whatsoever.

HEARING OFFICER CELLI: But the point is, if you take a step back and look at the big picture, what we're interested in is, is this impact mitigated. And this is now a potential alternative means of mitigation.

MS. GULESSERIAN: And this --

HEARING OFFICER CELLI: And, you know. So that's the big picture. That's really all the Committee cares about is, is there a mitigation for the impact? This provides a possibility for another means of mitigating. It's an alternative, right?

MR. BABULA: But one thing too is the Senate Bill does in itself say that that meets CESA requirements, the in-lieu program. And BIO-11 actually has a lot of elements already in the record that have, that are similar to in-lieu fee programs. If you look at BIO-11 it discusses issues such as third parties acquiring and the funding to a third party or to Fish and Game to acquire the land. Ability to aggregate monies with other things to get larger blocks of land. Stuff like that is already in the record and already in a existing condition.

I mean, Staff's perspective is BIO-22 isn't really necessary because it's already kind of conceived in BIO-11 in that if it's an available mitigation component that it's
already been determined outside of this process to be sufficient, it'll work. But that language, I don't have a problem with what CURE proposed with the proposal as opposed to a provision. I agree with the applicant though that the conditions aren't -- there's nothing in any condition I have ever seen that requires it going to parties.

HEARING OFFICER CELLI: We have notice provisions in everything that we do. But what I'd like to do, parties, is go off the record for a moment. So we will go off the record for just a moment.

(Off the record at 10:26 a.m.)

(On the record at 10:36 a.m.)

HEARING OFFICER CELLI: Welcome back. Thank you, thank you for indulging us.

Hello, Mr. Lesh, welcome back to Beacon.

The Committee discussed BIO-22 as proposed by the applicant on page 16 of applicant's proposed changes to the PMPD and the Committee has concerns. And I'm addressing these comments right now to the applicant because the Committee has some concerns. There's unusual language proposed by the applicant that the Commission needs to make a finding whether this new code section 2069 and 2099 of Fish and Game would be in compliance with CEQA and CESA. And we would like, if the applicant would, to create more of a record of the background of a request in your proposed
BIO-22, please.

MS. LUCKHARDT: Okay. You know, in looking at this, just to respond to your initial comment. What we attempted to do was pull language from draft conditions or conditions that staff had created for other projects, in an attempt not to create something that was brand new. Nonetheless, based on the discussion that we had today, we went back and looked at BIO-11. And condition of certification BIO-11 is the existing condition that requires the compensatory mitigation and the standards for that.

HEARING OFFICER CELLI: Excuse me, what page is BIO-11?

MS. LUCKHARDT: On page 269 through -- it's a long one. Through 274 of the PMPD.

HEARING OFFICER CELLI: Got it.

MS. LUCKHARDT: And that condition requires CPM findings and CPM approval of the selection. And so we would propose having the condition modified to provide CPM review and approval of using the in-lieu fee requirement as opposed to Commission findings and determinations. We also agree with the comments that staff made. This is coming, this request is coming out of Senate Bill 34. And Senate Bill 34 established an in-lieu fee program for renewable projects in the desert as a way of creating large mitigation areas and an opportunity to provide a
defined amount that would be charged for mitigation and a specific program that would in a way encompass and allow large blocks of land to be preserved.

Because when you have individual projects doing individual mitigation strategies -- and that's true, especially when you look at Beacon, which has a relatively small biological resources impact, a relatively small mitigation requirement for compensatory lands. And the program established by SB 34 is a program that will develop larger tracts of land that would enhance and meet a lot of the requirements of BIO-11 such as contiguous blocks of land that are included in the selection criteria of BIO-11 on page 270.

And Fish and Game has come out with a draft interim mitigation strategy that isn't final but it specifically includes the Beacon project. It's listed as one of the solar-thermal projects that have been evaluated as part of this program. And it describes and shows locations proposed or potential locations for acquiring these lands and has specific or the beginnings of the criteria that they would use to obtain the land, the goals, the mitigation strategies. Portions for improving the land. If there's a way in which that can be done to enhance the habitat value of it.

And so what we're responding to is basically a
change in law that occurred. It was approved by the
Governor on March 22 of 2010 and is now a new law that the
project feels would be appropriate to have applicable to
this project as well as the other solar projects that are
under review by this Commission as well as the photovoltaic
projects that are under review by the various other
gencies, whether it's the Bureau of Land Management or
otherwise.

In evaluating and looking at this the applicant is
not, I would say, wed to the language of BIO-22. We were
attempting to craft something that was consistent with what
we felt that staff proposed on other projects. Now that may
have evolved since then. And so the goal of what we were
trying to obtain with the introduction of BIO-22 was to
enable Beacon to avail itself of this program, which is now
a new state law and a new state program.

When we looked at it in comparison to the
requirements that are in condition of certification BIO-11
they were very similar. BIO-11 contemplates off-site
compensatory mitigation and off-site land purchase. It
contemplates and requires that the land selected be a
contiguous block of land located so it's a part of other
lands that are preserved. It's not just small acreage
sitting out by itself. Because the general theory and
understanding for mitigation is that it's better if you can
have larger blocks of land. It's better for the species and the habitat.

In fact, that was an issue that we went back and forth with with staff and staff's expert. And staff's expert absolutely insisted that the language in BIO-11 1C remain, which was, be a contiguous block of land located so that they result in a contiguous block of protected habitat.

And that is the goal. And we believe will be one of the things that will be obtained by Senate Bill 34 and the lands that are acquired as a result of Senate Bill 34.

And so we -- to our evaluation, based on review of what is evaluated in this PMPD, which is the use of off-site compensation land. That has been evaluated and we believe that Senate Bill 34's program, the in-lieu feel program, is roughly equivalent to the compensatory mitigation requirements that have already been evaluated in the staff assessment and included in the Presiding Member's Proposed Decision and included as BIO-11. So this is simply shifting the location and the mechanism with which we would obtain the compensatory mitigation lands.

HEARING OFFICER CELLI: Let me ask you, or maybe I should direct my question to staff. Ms. Luckhardt mentioned other projects. Are you aware of any other projects that have some similar or analogous language in their conditions?

MR. BABULA: I think the other projects do. But I
haven't worked on biology on them so I'm not -- Ridgecrest.

MR. SOLORIO: Yes, generally I am aware that the other projects, the other solar projects we're processing now do provide the alternative to utilize this in-lieu fee mitigation program. And I absolutely agree that it's entirely consistent with BIO-11 and the discussion of third parties. And the fact that CDFG and the Wildlife Service are the two resource agencies identified in approving the lands in BIO-11, they happen to also be the same agencies involved in the in-lieu fee program. Functionally you have the same outcome.

HEARING OFFICER CELLI: Thank you.

MR. BABULA: Also that program too, one of the advantages, it doesn't eliminate the other conditions. I don't want people to think, oh, they're just going to go write a check and ignore everything else. What it does is it allows for this $10 million fund to acquire lands now. So then as projects come on-line there's a pool of land that they can then buy into and pay back. So all the other conditions will still be in effect.

As they say, it's sort of changing the mechanism of acquiring specific land. As opposed to they themselves going out and finding a piece of land that meets all the requirements of BIO-11, there would be a land block that Fish and Game or another agency would have already have
purchased. Then they could say, okay, we want to pay into that and that will be our land and requirement mitigation.

HEARING OFFICER CELLI: Perhaps Mr. Stein or Mr. Busa, I just -- just so you know, Genesis is being published today. I just don't remember whether this is in there.

MR. STEIN: This is the exact language from the Genesis project. We had originally actually not wanted the language in there about the Commission having to make a CEQA finding. That was staff's attorney's language. In carrying that over and proposing it for Beacon we just figured that we would take staff's proposed language and bring it over here. It was not ours.

HEARING OFFICER CELLI: Thank you. I'll look into those.

And now I'd like to hear Ms. Gulessarian. You have been patiently listening.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: I'd like to hear your comments.

MS. GULESSERIAN: With respect to Senate Bill X8-34. The sole effect of the mitigation action is, which is some future plan developed as a result of X8-34. The sole result of that incomplete plan is to relieve the applicant of directly purchasing lands. It doesn't relieve the
applicant of its obligation to provide substantial evidence that its compensation lands comply with CEQA or CESA or the Warren-Alquist Act. It doesn't relieve the Energy Commission from any of its obligations.

HEARING OFFICER CELLI: So you --

MS. GULESSERIAN: In other words, the Commission still needs to make the findings of whether there's substantial evidence in the record that the projects, the Beacon project's in-lieu fee proposal complies with CEQA and CESA. There's no evidence in the record regarding this issue whatsoever in this proceeding.

HEARING OFFICER CELLI: Wouldn't that be mostly a legal call?

MS. GULESSERIAN: It is a question of fact whether the in-lieu fee proposal is satisfying CEQA or CESA. There is no plan right now that as --

HEARING OFFICER CELLI: I'd like to hear more about that.

MS. GULESSERIAN: Sure.

HEARING OFFICER CELLI: You've mentioned the incomplete plan.

MS. GULESSERIAN: Yes.

HEARING OFFICER CELLI: Can you give us a little record on that, please.

MS. GULESSERIAN: Sure. From what I'm able to
keep up with, there is currently some efforts to do a Draft Interim Mitigation Plan to try and set forth a program of identifying lands that would compensate for the impacts, the cumulative impacts of all of these solar projects. There's no evidence -- first of all the Draft Interim Mitigation Plan isn't in the record for this proceeding.

HEARING OFFICER CELLI: What stage is that at? Is this a regulation?

MS. GULESSERIAN: What stage? It's not a regulation, it's not proposed as a regulation, it's not proposed as a guideline. It is called a Draft Interim Mitigation Plan. There is no process by which there is a required public comment period. There is no process for responding to comments on the Draft Interim Mitigation Plan.

HEARING OFFICER CELLI: So what would you characterize --

MS. GULESSERIAN: There is also --

HEARING OFFICER CELLI: Is this a policy within CDFG? I mean, what is it?

MS. GULESSERIAN: I don't frankly know what it is and I'm waiting to find out whether the California Department of Fish and Game and the California Energy Commission and other agencies that reply on it are going to go through some sort of process for complying with CEQA and CESA with respect to the plan.
At this point all of the notices, which I have reviewed regarding the plan -- actually there haven't been any. You learn about it if you asked to be on a service list. Several environmental groups, various interest groups, many specific renewable energy companies have submitted comments on the Draft Interim Mitigation Plan.

The comments are -- they're opposed. There's several wind companies that are opposed to the Draft Interim Mitigation Plan as identifying lands that are not suitable as compensation. Several environmental groups have submitted --this is very general--have submitted comments on the Draft Interim Mitigation Plan that's wrought with problems. At this point it is, I suppose, some sort of working document.

We have no indication that it's been -- of what the process is going to be here on out. And so far there hasn't been any environmental review process for that plan under CEQA.

HEARING OFFICER CELLI: Is that what you had in mind, though? I don't mean to put words in your mouth. My notes show that you had a concern with the language about -- oh, you were talking about having some sort of a notice language in the proposed condition.

MS. GULESSERIAN: Right. It would sort of be like a modification to the conditions. Where if they decided to
come back with something different then they would notify
the parties that were involved in this proceeding. That's
what I thought I was reading from the applicant's proposal
because that's what the language actually says.

But that makes sense because this process that's
going on to try and find, try and create a program, is not
done and there's no indication that there is going to be an
environmental review process. So it's a decision on whether
there is an environmental review process on that plan or if
it's going to be done on a project by project basis.

At this point since we don't know, and this
proceeding has not gone through that environmental review
process, the language proposed by CURE would at least
preserve the opportunity to either do it here or perhaps the
state is going to do it there. Not really sure.

HEARING OFFICER CELLI: But it might be premature.
And what I'm thinking and I'm wondering and I'll just put
this out to the parties is, if the Committee just did not
adopt this proposed BIO-22 then the parties would be back in
the same situation they were initially, which is, they would
have to go find a compensation land.

I wonder if there is any comment on that? First
with the applicant.

MR. STEIN: I guess the state and a lot of parties
went through a great trouble to create SB 34 for the very
reason, for these ARRA projects, to come up with something better than just piecemeal mitigation. I'm kind of surprised that CURE is opposing this because it's actually a much better solution for mitigation. It's all the same agencies involved, and as Mr. Solorio pointed out, has a lot of the same criteria. It has the benefit of allowing for mitigation land to be done in a more landscape level.

HEARING OFFICER CELLI: Just the verification.

One of the concerns I have with this verification is it has no "by when" provision. In other words there is no "before construction" or "30 days" or "90 days" or anything like that. When was this election supposed to take place?

MS. LUCKHARDT: And if you make it consistent with BIO-11, which would be --

THE REPORTER: Your mic, please, your mic.

MS. LUCKHARDT: Sorry. I'm trying to keep them off in the previous, can't have too many mics on.

HEARING OFFICER CELLI: This is the new, updated Hearing Room B.

MS. LUCKHARDT: The new, updated hearing room. We can all leave our mics on?

HEARING OFFICER CELLI: Yes, I think we can.

MS. LUCKHARDT: Oh, fabulous. Okay.

You know, I'm trying to go back to BIO-11 and the requirements there as far as the timing.
HEARING OFFICER CELLI: Well there's an endowment fund prior to construction-related ground disturbance.

MS. LUCKHARDT: Yeah. So easily the funding could take place before whatever that was, construction ground disturbance or whatever --

HEARING OFFICER CELLI: Excuse me one second.
Rick Tyler just went walking out there if you wanted to go grab him. I'm sorry. Ms. Gulesserian's point --

MS. LUCKHARDT: I mean, that same language could apply to this. I mean, the difficulty we're dealing with is that this is a new law that provides a new program. And we understand that all of the details are not, have not been finalized at this point in time. My guess is that that may be why staff counsel in the other proceeding left in a Commission determination as opposed to a CPM determination.

So it's not that we're saying that we can't accept that. It's just it is different and unusual. We can add timing to the verification. I could generally assume that the timing would be that you would fund prior to construction. That's typically what is required of all mitigation requirements before you go to construction so I don't think there is a problem with funding prior to construction and paying into the in-lieu program. So I think that things like timing of funding we can lift from BIO-11 and that can be added and we wouldn't have any kind
of objection to that.

HEARING OFFICER CELLI: Would it be fatal to the project to go by way of an amendment later maybe as things gel with AB 34 (sic). I'm sorry, SB.

MR. SOLORIO: I would like to just make a suggestion here or comment, if you will. As it is right now BIO-22 is an either/or, either they can acquire the lands on their own or there is another door left open for them. And presumably that is once the program is established, once the Interim Draft Mitigation Plan becomes a final mitigation plan, which then legitimizes, if you will for lack of a better word, the whole SBX-34 intent, if you will. It's just an implementation mechanism to acquire the lands.

I don't understand it as purporting to be the CEQA review for the projects. In fact, I understand the mitigation strategy is to incorporate and adopt the mitigation land requirements from the decision documents of the respective projects that want to use the program. And as Jane points out, Beacon is identified in there.

So in other words, if they use the program, if it was established with a final document, a final mitigation strategy, and the applicant chose to use it, they would obviously need to make sure that it adopted the characteristics for the lands as described in here, which more than likely are going to be the same, contiguous to
other, you know, offset areas, et cetera.

It doesn't seem to me to be mutually exclusive and I don't think the Commission needs to make findings that in fact the interim draft strategy is adequate under CEQA. I think it's kind of out of place.

MR. BABULA: Yeah, I would agree. I don't even think that this bill is intended to have any real project-specific mitigation. What it's going to do is look at -- like for example if we in our document here had said, you have to acquire land that has a 10,000 foot mountain on it and that land wasn't acquired as part of 34, they wouldn't be able to go and use it because it doesn't meet the mitigation requirements in our document.

Now because the goal of 34 is habitat for tortoises and different things and that's what we have in here and it's the same agencies that helped develop the mitigation we have in here, presumably the lands acquired as part of 34 will, there will be ample land for them to be able to say, okay, we'll pay into it. It has lands that meet the needs of the specific conditions of certification in this document.

So my understanding is this is really just another, as Eric pointed out, an alternative if it's up and running in time. BIO-11 has a whole bunch of timing mechanisms in there. If it happens to fit into this and its
up and running and its there they could pay into it and it's

I got the land that meets are what our conditions are then

they're good to go. If not they'll have to acquire it on

their own. And again, we're not talking about, this isn't

like some of these other projects where we're talking about

5,000 acres of land, this is a much smaller plot of land.

MS. LUCKHARDT: I mean, we're talking about 115

acres of land in this instance so it's not a lot by

comparison. And the whole reason that we brought it up at

this point was to avoid the need to file an amendment and go

through the whole amendment process. You know, if there is

no other way to do it obviously that's an option. But it

seemed to make sense since the bill was out that we bring it

up at this point and at least consider whether it can be

added as a mitigation alternative to the compensation, The

individual compensation that is contemplated in BIO-11.

PRESIDING MEMBER DOUGLAS: There is one ambiguity

that I'm trying to understand in terms of what I'm hearing

from the staff and applicant. The ARRA mitigation program

-- the in-lieu fee program, excuse me, would obviously have

a set amount per acre price that participants in that

program would pay for their mitigation and so it would not

be -- so there is a distinction there if you want, if you go

into using that program. You would pay a certain amount per

acre. And that's potentially a little different than what I
might be hearing from staff and I'm trying to understand exactly what the staff is saying in terms of this just being another mechanism to meet the new mitigation requirement in Beacon.

MR. SOLORIO: I think you're referring to what they're calling the deposit document, which in that program development basically identifies the price per acre of the lands. And I would assume, I mean, when the Committee reviews or refers to BIO-11 1-A through H, that lays out the criteria for the lands. You know, provide moderate to good quality habitat, Mojave Ground Squirrel, contiguous block of land. They're very straightforward and I think easily -- not unachieveable. I can't imagine that this in-lieu fee program has not already made this the siting criteria for their lands.

But you are correct from what I understand. There is going to be a price per acre for Desert Tortoise habitat, Mojave Ground Squirrel habitat. It may be overlapping, it may not be. The applicant is still subject to hang that mitigation cost, whatever it is.

PRESIDING MEMBER DOUGLAS: So what I'm asking is, are you confident that the price per acre in the plan will be sufficient to acquire land of sufficient quality to mitigate the impacts of the project?

MR. SOLORIO: From what I understand, and I'm sure
the applicant can speak to this also, that's what's being debated right now in that working group is exactly how much the agencies re going to be able to charge the developers and whether or not they're going to be able to leave the door open and come back for more money if it's insufficient to acquire land for each project. You want to speak to that at all?

MR. STEIN: Actually I was just going to say that very thing. I mean, SB 34 is set out to require the agencies to ensure that the dollar amounts are sufficient to implement the mitigation. So that's just part and parcel to SB 34 is an in-lieu fee program designed to fund the mitigation.

MR. SOLORIO: There's two components to the funding. One where the SBX-34 can use NFWF as the implementation arm or it can use another NGO like Desert Tortoise Preserve Council, for instance, to acquire the lands. I'm not sure which one it is but I believe it's NFWF though where there's a five percent cap. Once they ask for the deposit they can only go back for five percent more. But what I understand is the other agencies are discussing now is it's basically an open door, they can come back for as much as they need. That's what is being negotiated. But, you know, it's a business decision that I'm sure will be, you know, well vetted.
PRESIDING MEMBER DOUGLAS: I am generally familiar with the interim mitigation program and I've got a copy of the draft upstairs on my desk and so I'm relatively familiar with it. And I strongly support the goals of the program, which is to make sure that mitigation is as effective as possible by consolidating it, by focusing it on critical corridors, key conservation areas and with the guidance of the agencies that have the most expertise in doing that. So I'm both familiar with and strongly supportive of the program.

The question that this is raising for me is the right way of bringing that program into our process, given the fact that it's currently just draft. And given the fact that we are moving, moving quickly, and the fact that it isn't currently in our record. So this is just raising issues of law and issues of fact. So we'll have to think about how to deal with it. And we are very interested in your input for how you think we can deal with it.

HEARING OFFICER CELLI: I also wanted to ask a question. Eric Solorio had mentioned basically a possible language that says something to effect of, if we put in BIO-22 as it stands right now something that says, pending or dependent upon the confirmation of this plan, this implementation plan that Ms. Gulesserian described then would that, I mean basically what I'm saying is, you know,
you have, apparently, this incomplete document or this incomplete process that's out there.

But do we have to wait around for this process to complete itself or can we create language that says, when this, as this process completes itself and when it does then if all of these conditions are present then this is an option that they could avail themselves of.

MR. SOLORIO: Yeah, that's precisely the point I was making. I mean, the first sentence of BIO-21 is, the project owner may choose.

I'm sure they, as prudent business people, they wouldn't choose to use a program that wasn't finalized yet.

ASSOCIATE MEMBER BYRON: Did you mean BIO-22?

MR. SOLORIO: Yes. I'm sorry. That --

HEARING OFFICER CELLI: But the language that you said was something to the effect of the confirmation, I don't even know how to speak to this.

But the confirmation of the implementation plan or subject to or something like that. I can't remember now.

MR. SOLORIO: In terms of, yeah, I think you were talking about you could add language in there, you know, if you want to go belt and suspenders in terms of making sure the implementation plan for this particular project that's tied also to a deposit document, in fact, incorporates, I mean, you could even copy and paste the mitigation land
criteria out of BIO-11 which describes this is what the
landscape is going to look like.

HEARING OFFICER CELLI: Yeah, I think you can
incorporate that by reference.

What I'm trying to cover, I just want to cover the
fact that you've got an inchoate plan out there.

MS. GULESSERIAN: May I make some suggestions?

HEARING OFFICER CELLI: Yes.

MS. GULESSERIAN: And I also wanted to address
since Commissioner Douglas recognized that it's a question
of fact, a few factual points that the applicant and staff.

I just want to provide my perspective on those
facts.

And first of all, CURE does not oppose, as the
applicant suggested, the use of a potential plan under SB
X8-34. We support it, that Senate bill and believe in its
goal of trying to target large swaths of land in order to
provide compensation for the loss of lands from these
projects.

So that said, the correcting questions of fact,
the Draft Interim Mitigation Plan does reference the Beacon
Project but it is not correct.

It's incomplete. It's outdated. It doesn't have
the mitigation that the Commission is ultimately proposing
to require for the project.
So, you know they've put in names of projects. But it's not an accurate document yet.

So to say that it's doing that analysis of the Beacon Project and including it is not factually correct.

Second, there's no, the applicant stated that the Draft Interim Mitigation Plan will be --

PRESIDING MEMBER DOUGLAS: Actually, let me, I'm sorry Tanya --

MS. GULESSERIAN: Yes.

PRESIDING MEMBER DOUGLAS: -- let me just ask you a question on that point.

MS. GULESSERIAN: Yes.

PRESIDING MEMBER DOUGLAS: My understanding is that the document was not so much required to analyze the Beacon project, in fact, not at all.

MS. GULESSERIAN: Right.

PRESIDING MEMBER DOUGLAS: It was required to, DFG was required to determine whether these projects were inconsistent with a future NCCP or future conservation plan for the area.

They looked at a very different level analysis that you would need to make that kind of finding as opposed to a full analysis of a project.

MS. GULESSERIAN: That's true. It's not analyzing the Beacon Project. And that's why we shouldn't rely on it
to do the analysis for the Beacon Project.

My, my --

PRESIDING MEMBER DOUGLAS: But we're analyzing the Beacon Project.

MS. GULESSERIAN: Right.

PRESIDING MEMBER DOUGLAS: And so that document is about mitigation or conservation of species. Mitigation but in the context of, what is the best way to, what is the best way to focus mitigation to achieve the maximum, to achieve good conservation?

MS. GULESSERIAN: Uh-hum. I think that I was responding to the applicant's suggestion that the mitigation plan addresses Beacon.

And my response to that fact is that is doesn't even include all of the mitigation that the Commission is requiring in its PMPD.

So to say that, for example, the Beacon Project is impacting, you know, 2,012 acres when the PMPD says it's impacting more you have a discrepancy in the facts.

PRESIDING MEMBER DOUGLAS: I understand that.

I'll just say I don't think that particular one is relevant.

MS. GULESSERIAN: Okay. Another thing I'd like to point out is that I disagree with the applicant that the Draft Interim Mitigation Plan or the final one that will ultimately be produced will necessarily have compensation
that is roughly equivalent to BIO-11.

I agree with the point that you made that it's my understanding that the program is going to have a set amount per acre. That's what it's going to be. It's going to be a set amount per acre that a participant can pay to relieve it of its obligations to buy the compensation land.

So I don't agree that if our, if the Beacon decisions conditions BIO-11 says you need to buy a mountain and there in-lieu fee proposal isn't buying a mountain but that's going to mean that BIO-11 doesn't apply, I don't agree with that.

Because it's my understanding that the purpose of the program is to avoid making those determinations and just to allow the fee to be paid.

ASSOCIATE MEMBER BYRON: While you're thinking, Madame Chair, there's a little bit of mischaracterization, I think, going on as to regards to what this proposed plan does. It's my understanding, I mean, we have a law in place. They're working on the plan. It's an interim document. It's playing catch up with the facts of all these cases. That doesn't make it inaccurate as Ms. Gulessarian indicates.

I'm much more interested rather than the legal aspects of all of this, if this plan, indeed, benefits Californians, and indeed, sets aside land and mitigates the
impacts of this and other cases then we should be very interested in the potential for its use as mitigation in this project and all our projects.

And that's, as a member on this and other cases, what I'm certainly interested in.

PRESIDING MEMBER DOUGLAS: I agree with you, Commissioner. I want to say that the reference I made to questions of fact is the fact that we don't know what's in the final plan and that's the issue.

So given that we don't know the full form of what might change between the draft and the final plan and we don't know exactly when the plan would be finalized.

The question that that raises for me is how do we use that plan at this point sitting here today with where we are in our process.

MS. GULESSEIRIAN: I have a suggestion. I only have three words that change from the applicant's proposal. I mean, we do not, we're not opposing outright the inclusion of a condition.

So we had proposed to the extent that the project's in-lieu fee proposal is found by the Commission to be in compliance with CEQA and CESA requirements would could also add, or to the extent that the Commission, you know, makes a determination that the, some future plan complies with CEQA or CESA.
I mean, we don't know what the process is going to be at this point but we can leave the doors open for at some point the Commission is going to make a determination on whether either this project or that plan complies with CEQA and CESA.

HEARING OFFICER CELLI: So your language was, to the extent the project's in-lieu fee provision --

MS. GULESSERIAN: Proposal.

HEARING OFFICER CELLI: -- proposal. And then the rest of the language remains the same?

MS. GULESSERIAN: Uh-hum.

HEARING OFFICER CELLI: Okay. Any further questions Chairman?

PRESIDING MEMBER DOUGLAS: No.

HEARING OFFICER CELLI: On BIO-22 or Commissioner Byron.

ASSOCIATE MEMBER BYRON: Just in case I wasn't clear, I'd very much like to make sure that the possibility of this provision for the use of in-lieu fee mitigation is included for this and all other projects, if indeed, we can do that in the decision then that would be my preference.

HEARING OFFICER CELLI: Thank you. Anything further from CURE on this point?

MS. GULESSERIAN: No, thank you.

HEARING OFFICER CELLI: Applicant?
MS. LUCKHARDT: I'm not really sure if we have anything further. I don't think we have anything further at this time although I do think it would be helpful if the Commission at some point made a general determination on the mitigation strategy.

HEARING OFFICER CELLI: Now our comment period is open until three o'clock today. And it's 11:16 by this clock.

And it might be useful if the parties could, perhaps, come up with some sort of language that sort of reflects these discussions, that talks about and accounts for the unsettled nature of the implementation plan in such a way that we could craft a condition that accounts for that and creates a performance standard. That would be a suggestion.

MR. SOLORIO: I would just like to note that the fact that the interim strategy is being developed shouldn't prohibit the Commission from including it as an option.

If that were the case then all these projects would not get the benefit that was intended by SBX 34.

And a quick comment regarding the per acre fee, that also includes the transactional costs, the enhancement costs and the endowment. So it is a comprehensive fee that would accomplish the exact same thing that BIO-11 is attempting to accomplish.
HEARING OFFICER CELLI: Very clear. Where we're at is with CURE now, CURE's comments on the PMPD.

MR. BABULA: Would you like us to just dispose of this Hazardous-2 now that Jeff entered the --

HEARING OFFICER CELLI: Oh, let's do that if you don't mind, Ms. Gulessarian. I'm going to go back to staff and let them take care of this HAZMAT-2 issue.

Now I have Beacon. For the record, we have received Beacon Solar's supplemental comments just regarding Hazardous Materials Condition-2, which is a three page document. Have you had a chance to see that?

MR. BABULA: Yeah, we've looked at it and we, I'll just let Jeff kind of state staff's view of this.

MR. LESH: Okay, basically in response --

THE REPORTER: Please identify yourself.

MR. LESH: Oh. I'm Jeffrey Lesh, L-E-S-H, with the Energy Commission.

HEARING OFFICER CELLI: No, this isn't a hearing, it's a conference. But we still expect you to tell the truth (laughter). This being a conference we'll just let you shoot from the hip today.

MR. LESH: Basically, we agree with the intent of the changes from the applicant or find them acceptable.

We would like to propose a minor simplification of the language that they proposed. That being that, there
being a question of whether PSM is going to be required.

We would say in this proposed condition that the project owners shall concurrently provide a business plan, and if required, a process safety management plan to the Kern County, et cetera, et cetera.

If required, I mean up here, insert, if required by the appropriate administering agency.

HEARING OFFICER CELLI: Do we, okay, wait a second. The project owner shall consult with the appropriate agency, it's either Cal-OSHA or, what is KCEHSD?

MR. LESH: That's the Kern County Environmental Health and Services --

HEARING OFFICER CELLI: Okay, so --

MR. LESH: -- Environmental Health and Services Department.

HEARING OFFICER CELLI: -- is that the total possibilities? It's one or the other?

MR. LESH: Yes.

HEARING OFFICER CELLI: In terms of the appropriate agency?

MR. LESH: Yes.

HEARING OFFICER CELLI: So we are saying, the appropriate agency. I could use that same parenthetical listing of the two and drop that in there for --

Okay, go ahead.
MR. LESH: Yes.

HEARING OFFICER CELLI: So, and if required by Cal-OSHA or KCEHSD, anything further?

MR. LESH: And then, again, I think, a couple of lines, about four lines down, again where it says, and if required, a process safety management plan.

HEARING OFFICER CELLI: Where is that?

MR. LESH: I'm looking at these comments, page two where it says, PMPD pages 185 --

HEARING OFFICER CELLI: Well, I'm in the red section there --

MR. LESH: Okay.

MR. BABULA: I think you start at the top with the first strikeout on the where it, can if you see here, on the top line. HAZ-2, the project owner shall concurrently, he's up here first.

HEARING OFFICER CELLI: Oh, okay.

MR. LESH: The actual condition language.

HEARING OFFICER CELLI: The project shall concurrently provide a business plan to Kern County Environmental. And after receiving comments from the KCEHSD and the CPM the project owner shall reflect all recommendations in the final document.

That remains as proposed.

MR. BABULA: I think actually the part that they
crossed out, and a process safety, didn't you have language that said, and if required?

HEARING OFFICER CELLI: Oh, I see what you're saying.

MR. LESH: And then down here, we don't need this.

HEARING OFFICER CELLI: All right.

MR. BABULA: He's actually crossing out this whole bottom part and just making the language up here. You want to --

MR. LESH: Okay.

MR. BABULA: Since this is a --

MR. LESH: We're crossing out this part and instead inserting, before this phrase whenever they say, process safety manual and will say, if required by the administering agency.

HEARING OFFICER CELLI: Okay.

MR. LESH: And then the same thing here, if required.

HEARING OFFICER CELLI: And to this period there and the rest of it --

MR. LESH: Yeah.

HEARING OFFICER CELLI: -- okay, thank you. I'm just going to clarify the record if I can. On page two of the applicant's proposed plan --

MR. BABULA: Can we show Tanya that? Can you show
her your marks.

HEARING OFFICER CELLI: Oh, perfect.

MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: There's, the sentence beginning PMPD, pp. 185 through 186, HAZMAT or HAZ-2, the proposal is to keep the language that's, the existing language, and not include the added language that staff put in in its entirety.

In other words, to take everything from, in addition the project owner shall to CPM for approval comes out. And then, after the, provide a business plan comma, if required, so about up to the first sentence, the project owner shall concurrently provide a business plan comma, and if required by --

MR. LESH: Yeah, by the two agencies.

HEARING OFFICER CELLI: -- by the two agencies a PSMP to the Kern County Environmental Health Services Department. The rest of the sentence remains the same except that the stricken language and, process safety management plan would --

MR. LESH: Would, to remain --

HEARING OFFICER CELLI: -- comes back.

MR. LESH: -- right before it we say, if required.

HEARING OFFICER CELLI: Again, and again, if required. Is that clear to everyone applicant?
MS. LUCKHARDT: I think the --

THE REPORTER: Mic please.

MS. LUCKHARDT: Are you also planning to make a similar change to the verification?

MR. LESH: Yes.

MS. LUCKHARDT: So that the verification, the additional red line at the bottom of the verification would go out then and then where the red line of, and process safety management plan has been stricken out, it would instead read, and if required, a process safety management plan?

MR. LESH: I agree.

HEARING OFFICER CELLI: What about the remaining language in the verification, the added language after, CPM for approval.

MR. LESH: Yeah, we're okay with that.

HEARING OFFICER CELLI: That remains.

MR. LESH: Yeah.

HEARING OFFICER CELLI: Okay.

MR. BABULA: Would you like us to put that in those, submit it in writing or do you have it enough that you're okay?

HEARING OFFICER CELLI: I would like to submit a clean copy, if you would, to Katherine Nicholls and myself.

MR. BABULA: Okay.
HEARING OFFICER CELLI: Today, so we can get that put in. Thank you for that clarification. Thank you both for being here today.

So we're back with, if that's everything on the HAZ-2 which I believe it is. So we're with CURE's comments. So we've tackled your concerns with regard to BIO-22 and, I believe, in BIO-11. And anything further from CURE with regard to comments on the PMPD?

MS. GULESSERIAN: Yes, thank you.

HEARING OFFICER CELLI: Please.

MS. GULESSERIAN: Thank you for the opportunity to comment on the PMPD today. It's clear that the Committee desires to move forward with approving the Beacon Solar Power Plant.

We've reviewed the PMPD very thoroughly and spent a lot of time preparing comments that are being filed today with corrections throughout the document including things that need to be corrected like CURE's final exhibit list is missing, some exhibits.

But that's just one example. We respectfully request that you look at the comments in detail and correct errors so that we can have an accurate representation of CURE's positions in this proceeding.

What I'd like to talk to you about here is one of our main comments would be that the document requires some
corrections so it's at least legally consistent and doesn't set a bad precedent for future siting cases.

The PMPD concludes that the wastewater treatment facilities are not part of the project and need not be considered in the environmental analysis of the project.

Instead, review of the upgrades will properly be performed by Rosamond and California City as the appropriate lead agencies under CEQA.

The PMPD’s analysis is, at times, very careful to focus on Beacon's proportional share of the impacts in order to conclude that that portion results in a less than significant impact.

However, the PMPD in other parts of the document are, makes conclusion that both the Beacon Project and, vaguely, the wastewater treatment facilities will not result in, for example, growth inducing impacts.

The conclusion is over broad and is inconsistent with what we understand to be the rationale of the decision which is to focus on the Beacon Project's portion of those proposed upgrades.

HEARING OFFICER CELLI: Can you just, do you happen to have a citation so we can be following along looking at it while you're talking?

MS. GULESSERIAN: There's many places in the document. I think we can look at page 11. I'm going to
talk about a couple of examples.

PRESIDING MEMBER DOUGLAS: And Tanya at page 400 are you calling, is everything that you are saying in your comments called out in your letters as well?

MS. GULESSERIAN: Yes, very specifically with highlighting our suggestions on the exact pages where the language should be stricken and then, perhaps, written in Beacon's portion of the proposed facility.

So we don't have conclusions that the facilities are being analyzed.

So the comment is that the Committee should either analyze the wastewater treatment facilities as part of the project which we believe is required by law or not draw conclusions regarding those facilities expansions since to do so would also violate CEQA's requirement.

We provide notice to the public that we're reaching conclusions on those expansions now in this decision.

As released it says, we are not reviewing the wastewater treatment facilities as part of the project.

So instead of concluding that the wastewater treatment facilities will or will not result in impacts the Committee should only conclude whether the Beacon Project will.

The wastewater treatment facilities expansions,
the definitions of those projects have not been finalized by their respective agencies and they remain unidentified in the PMPD.

For example, Rosamond's expansion throughout this proceeding changed from one existing flow of 1.3 million gallons per day to a 2.0 million gallon per day project and then at the last evidentiary hearing the testimony of Rosamond was that it's going to be another half a million gallons per day greater, 2.5.

So the record is not clear on what the proposed expansion is going to be. This is just one example of how those projects, those ultimate expansions are not yet defined.

Specifically because they weren't, well, because Rosamond said that they are going to be expanding at to greater than existing flows they, the representative testified that those larger projects, and this is a quote, would provide treatment for all of the existing flow and room for future growth.

So this goes back to the point that if we're going to result in a, if we're going to have conclusions that there are less than significant growth inducing impacts it means that we need to change those findings with regards to the entire expansions to just Beacon's portions share.

Now an example is on page 400. And it says, the
PMPD, it says, the proposed upgrade of RCSD Wastewater Treatment Facility is not an expansion of the wastewater treatment facility's capacity to process incoming wastewater and would not induce additional population growth.

We will propose language specifically in our letter that says, the Beacon's portion of the upgrade to RCSD provides Beacon with 1400 acre feet per water. That would not induce additional population growth. Rather than just saying that the proposed upgrade, since we don't know what it is.

Based on this rationale, the PMPD -- we recommend having the PMPD eliminate one of the bases for a finding that there is no growth-inducing impacts. And that is that the increased availability of tertiary treated water would not provide a source of public water to serve additional customers. The finding is inconsistent with nearly every water planning document in the state of California and documents in the record for Rosamond that show that developing tertiary treated water is a tool in the water conservation toolbox for reducing dependance on groundwater and State Water Project water in order to enable future growth.

If some language is left in regarding that issue we propose fixing it to say that the Beacon project's portion of the upgrades would not provide a source of public
water to serve additional customers.

HEARING OFFICER CELLI: And you have that in your written comments?

MS. GULESSERIAN: Yes we do.

HEARING OFFICER CELLI: Okay, good.

MS. GULESSERIAN: With CURE's changes the PMPD would properly limit its conclusions to be consistent with its rationale.

If the changes aren't made we request that the PMPD be revised and recirculated with an adequate description of the proposed project. The Commission is well aware of the public notice requirements and the requirement to have an accurate, stable, finite project description necessary to evaluate impacts and to inform the public about what the Commission is deciding today.

My second point is what I alluded to earlier and that is that we urge the Committee to reject the applicant's and the staff's proposal to add even more findings regarding potentially significant impacts form the wastewater treatment facilities. They can't have it both ways, either they are being analyzed or are not.

HEARING OFFICER CELLI: That was in --

MS. GULESSERIAN: In pages 16 to 17 of the applicant's comments they propose a number of suggestions on additional language that should be added to the PMPD. These
include findings that the wastewater -- Rosamond wastewater
treatment facility expansion is not expected to
significantly impact or lower traffic service levels.
California City's and Rosamond's wastewater treatment
expansions are not expected to cause significant adverse
impacts.

The Rosamond expansion will not cause any
significant impacts to biological resources. There is no
reason to believe any cultural resources will be discovered
during construction of the expanded Rosamond project.

Fugitive dust would be the main quality impact
from Rosamond's wastewater treatment facilities. These
issues were not analyzed in this proceeding. They go beyond
the scope of what we understand the PMPD to be limiting its
analysis to and we urge the Committee not to include that
proposed language in the decision.

MR. BABULA: Can I ask you a question on that?

HEARING OFFICER CELLI: Wait, wait, wait. Hang

on.

MR. BABULA: Okay.

HEARING OFFICER CELLI: I'm going to ask for --

we'll go around.

MR. BABULA: Okay.

HEARING OFFICER CELLI: I want to hear all of

CURE's points first and then we'll go around.
MS. GULESSERIAN: Thank you.

HEARING OFFICER CELLI: Just keep a note.

MS. GULESSERIAN: I'm almost done. I just wanted to say that the Commission doesn't need to do it, doesn't need to make those findings. The Commission is finding that Rosamond and California City are the appropriate lead agencies under CEQA for their projects and we don't need to trample on the local agencies' decision and statements that they are going to conduct environmental review for these projects.

It is clear the Committee wants to approve the projects. We ask that the Committee be faithful to CEQA and the Warren-Alquist Act and to limit its finding to the Beacon project's portion of the wastewater treatment facility upgrades. Thank you for the opportunity to comment today.

HEARING OFFICER CELLI: Thank you. I am going to turn first to applicant. Because I know staff has issues but you might get some more as we have discussions.

MS. LUCKHARDT: I'd just like a quick second to confer because this is the first time -- sorry. This is the first time we have heard, seen or in any way understood what CURE's comments would be on the PMPD. So if I could take a few moments to confer with the folks who are here today that would give us an opportunity to get our comments a little
together, our responses. As opposed to it entirely on
the fly.

HEARING OFFICER CELLI: You want to go off the
record for a few minutes?

MS. LUCKHARDT: Yes.

HEARING OFFICER CELLI: Go ahead, let's do that.

(Off the record at 11:38 a.m.)

(On the record at 11:51 a.m.)

HEARING OFFICER CELLI: Just to recap, what we're
talking about is where we're at in the process where the
final comments were with CURE, CURE made their comments.
We're listening to applicant's responses. We're going to
hear staff's responses then we will have public comment and
we will adjourn.

MS. LUCKHARDT: Okay.

HEARING OFFICER CELLI: If I may just have a --
we're just going to -- just quickly.

(A short, off the record discussion was held.)

HEARING OFFICER CELLI: Let's just proceed
forward.

MS. LUCKHARDT: Okay. With the understanding that
we have not seen CURE's formal written comments and we're
just replying to what we have heard today in this Committee
Conference.

In general Beacon agrees with the position taken
by the PMPD that the wastewater treatment projects are going forward regardless of Beacon. Nonetheless the analysis that is included in the PMPD regarding the potential impacts of those projects is based upon the reasonably available information at this time and the information that has been developed in the record, either in the hearing I believe in March or the hearing in June in this proceeding. And our comments that are included -- the additional information that we include starting -- the description starting on page 16 but include on page 17 of our comments refers back to the testimony that was provided in one of those two hearings, predominately in the June hearing.

But nonetheless that information is in the record. CEQA generally encourages the inclusion of additional analysis, whether it's required or not, if that analysis can help to enlighten the impacts and shows that the agency went through a reasonable evaluation of those impacts and evaluated the information that was reasonably available at the time.

The information that was provided by both staff and applicant, the Rosamond Community Services District and the City of California City is additional information on the potential impacts that could occur if either of those projects, either of the wastewater treatment projects, go forward. So it seems to us that it would be, that we are
simply taking additional information out of the proposed
decision, and potentially the final decision, that would
further inform the public about the potential impacts of the
expansion of either of those facilities.

Therefore, it is our position that that
information should remain in the decision, if nothing else
to provide additional information regarding potential
cumulative impacts of other projects that may occur in the
same time frame or potentially the same time frame as this
project.

HEARING OFFICER CELLI: So CURE's position was
that since there's a finding that those projects are outside
the whole of the project, shall we say, of Beacon, that this
additional analysis is unnecessary, if I'm properly
representing CURE's position. And your position,
Ms. Luckhardt, is that this is necessary language?

MS. LUCKHARDT: I believe that it supports the
findings that are included in the decision and that the
language improves the public's understanding of potential
impacts. And I also believe that it is supported by
evidence that was provided in the hearing and is not, it is
not something that is not supported by evidence.

HEARING OFFICER CELLI: The only thing that comes
to my mind as I read this is there's a sentence: "No
cultural resources were discovered during construction of
the existing facility and ponds and there is no reason to believe that such resources will be discovered during construction of the expansion.

Forgive me if I don't remember everything in minute detail but I just don't remember that in the record. And your citation as to Exhibit 519, which was what? Was that the testimony of LaMoreaux from RCSD?

MS. LUCKHARDT: It probably is but I don't have the exhibits memorized. I don't know if staff remembers what 519 is.

HEARING OFFICER CELLI: And also, you know, fugitive dust. I remember there was some discussion in his comments, in Mr. LaMoreaux's discussion about fugitive dust. And I just wonder.

MS. LUCKHARDT: Yeah, 519. Exhibit 519 is the Rosamond Community Services District wastewater treatment plant conversion to additional tertiary treatment capacity that was sponsored by staff and received in the March 22nd.

MR. BABULA: Yeah. Mr. LaMoreaux, the information that he testified to was they would be using some of their wastewater for dust suppression.

HEARING OFFICER CELLI: Okay.

MR. BABULA: So that's --

HEARING OFFICER CELLI: I remember that part. But in any event, I don't need to drag this out. I just wanted
to hear your position in terms of the necessity of the additional language.

MS. LUCKHARDT: It is always our concern and we are always nervous about what motives CURE may have in trying to take information out of the record. So we would ask that the Committee carefully consider the comments that CURE may make in light of a potential appeal.

HEARING OFFICER CELLI: And we have, we have still yet to see those comments and so we'll be mindful of that I'm sure. Anything further from applicant?

MS. LUCKHARDT: Not at this time.

HEARING OFFICER CELLI: Staff, comments as to CURE's comments?

MR. BABULA: Okay. Sorry for being late. I'm working on the Imperial Valley brief, which is due shortly. While I was writing it I was listening to the Calico hearing so I'll probably have the facts mixed up.

I think the main thing -- I'm not exactly clear why we can't have, CURE indicated you can't have it both ways. If the purpose of CEQA is to have an informed decision-making body and an informed public, including information that we went ahead and collected because CURE brought up some concern and I went forward and said, okay staff, let's take a look and try to add to the record. Even though our position was those upgrades are going to happen
anyway, that's been thoroughly vetted, we went ahead and said, okay, we're going to -- let's make the effort, collect some additional information.

In order to provide that information at CURE's request staff took a look at the project. So now that information is in the record. The decision-makers can make a decision and they can say, here's what we used. The public can look at that information and say, okay, the decision was made and this is the record.

Now if we took it out the decision might still be the same, but from the public's perspective, from the perspective of the decision-makers, it's a larger body of work to point to and say, the record is this, here's what we based our decision on. So I don't see why we would need to take it out, it just seems like it just bolsters. Where there is more information it bolsters the decision.

ASSOCIATE MEMBER BYRON: Mr. Celli, if I may make a brief comment.

HEARING OFFICER CELLI: Yes.

ASSOCIATE MEMBER BYRON: I found Ms. Gulesserian's comments to be very constructive. I think it's incumbent upon us to look at this additional language as to whether or not indeed it is reflected in the record before we put it in. Thank you.

MS. GULESSERIAN: And I'd like to just clarify.
HEARING OFFICER CELLI: Please.

MS. GULESSERIAN: That it is not just unnecessary
to include the language but it is not permitted under CEQA.
The PMPD notifies the public that those aspects of the
project are not being analyzed and will be analyzed by other
agencies. So to analyze and reach conclusions regarding
their impacts now would violate CEQA's public notice
requirements.

And then regarding the evidence in the record so
that we're clear. I put in our written comments the
substantial evidence that we have also put into the record
regarding those wastewater treatment facilities' potentially
significant impacts, including the Wildlife Agency's
identification of bio-resources on those sites. The air
permits from the air district. And it remains unresolved
after the last hearing of what the impacts are going to be
from those wastewater treatment facilities.

So those are three different reasons why I think
it's reasonable for the PMPD to reach the conclusion that it
reached by narrowly finding that the Beacon's portion of
those projects, those that have agreed to provide 1,400 acre
feet of water per year to this project would not result in
significant impacts. So we support the reasonable
conclusion of the PMPD.

HEARING OFFICER CELLI: Thank you for that
clarification.

MS. GULESSERIAN: Thank you.

ASSOCIATE MEMBER BYRON: And I just wanted to add one more thing. We look forward to your written comments. Hope we provide enough time for you this afternoon to complete them.

MS. GULESSERIAN: Thank you.

MR. SOLORIO: If I can make a quick comment?

HEARING OFFICER CELLI: Please.

MR. SOLORIO: I am not entirely clear on CURE'S position because I have heard in previous hearings, and I think I'm hearing it now, that it appears that CURE thinks the wastewater treatment facility upgrades should be part of the project, or analyzed as part of the project.

HEARING OFFICER CELLI: It appears that CURE has had a change of position in that initially that was CURE's position. But now CURE accepting that the PMPD is coming out and it's not part of the project, has a different view of what should be included in the PMPD.

MS. GULESSERIAN: We believe that the whole of the project legally includes the wastewater treatment facilities. But if the Commission wants to go the way of finding that they are not part of the project then it's the conclusions it has reached that it is only analyzing the portion of the project's -- only analyzing significant
impacts from Beacon's portion of the project is properly limited.

MR. SOLORIO: That's what was causing me heartache on the one hand, that the issue has been raised. Standing has been established by raising that issue in the hearings that it is part of the project. At the same time I hear CURE asking for language to be taken out of the PMPD which would inform the public and the decision-makers under CEQA.

And even if -- let's assume there's two different situations, either its part of the project or it's not. Assuming that the upgrades are not part of the project I still think you have very good reason to include the information that's there in terms of cumulative impacts analysis. You should absolutely consider other projects in the area and their cumulative impacts.

Now we don't, we're not aware of the Committee's rationale when they look at the facts and they look at the record but such findings about these other known projects in the area not having impacts could very well come into play when the Committee reaches a decision about whether or not there's cumulative impacts.

MS. GULESSERIAN: The PMPD can properly conclude that the Beacon project does not result in cumulative impacts. That's the correction we're making. Don't conclude that the wastewater treatment facilities do not
result in project impacts, cumulative impacts for the Beacon project.

HEARING OFFICER CELLI: That's reasonable and fair. I think that the point that Ms. Gulesserian is making is that we may exceed what's necessary by making a pronouncement on the impacts of the Cal City or RCSD's wastewater treatment facility. They are not part of Beacon. And therefore since it's not necessary to do any analysis on that which is not part of this project then, because that's a specific finding of the Committee, then there is no need or there may not be a need to delve further into the implications of their upgrades.

MR. SOLORIO: Understood. And I just wanted to point out that having that information in the record, if there was an appeal and the court looked to what could the decision-makers possibly have considered, for instance under cumulative impacts, those findings would support the findings that are currently existing under cumulative impacts. So it doesn't hurt anything to inform the public and to have a stronger record.

PRESIDING MEMBER DOUGLAS: I'd like to understand better, Ms. Gulesserian, why you believe it would be somehow a violation of CEQA to look at this information.

MS. GULESSERIAN: CEQA requires that the Commission provide notice regarding the project that it is
analyzing and it's going to reach conclusions on to give, not just the parties here but the public at large, notice that particular activities may occur in their communities.

So it would be improper because the premise of the project description as set forth in the first section of the PMPD explains that those projects are not part of the Beacon project. We believe findings cannot be made within that document that the wastewater treatment facility expansions will not result in growth-inducing impacts. That is a conclusion that is being made when it is not part of the project description.

HEARING OFFICER CELLI: But it was raised in the record.

MS. GULESSERIAN: It's not part of the project description for this project. It's not -- you're not notifying -- well let's just say. Let's say that there's somebody in Rosamond or California City that has the sewer expansion occurring down their street. They have a right to be notified of whether the Commission is making a finding regarding significant impacts related to that project before the Commission makes a decision.

So if it's going to be included as part of this project, which if the Commission desires to go that way then we agree that the wastewater treatment facilities are part of the project under CEQA, then we need to re-notice that
they are part of the project and then explain to the parties where the Commission is -- what the substantial evidence is that is being relied upon to make the conclusions that there are no significant or less than significant biological resource impacts, less than significant traffic impacts as suggested by the applicant.

And you had asked what --

HEARING OFFICER CELLI: What violations?

MS. GULESSERIAN: What violation? CEQA -- I can get out my citations.

HEARING OFFICER CELLI: I'll give you --

MS. GULESSERIAN: 21092 requires an adequate project description. CEQA also requires the Commission to provide public notice that includes the address where public comments will be accepted. A description of the proposed project, an explanation of the environmental impacts, and the comment period upon which comments will be received. So it all relies on, you know, what is the project that you're noticing to the public you are analyzing now.

PRESIDING MEMBER DOUGLAS: Right. But we're not the permitting agency so you're just raising a question about whether we can make a finding of fact based on information that we developed and vetted in our record about something that's not formally part of the project that we are approving. That's the question you're raising.
MS. GULESSERIAN: Right. We don't think you should make findings about projects that you're not analyzing at this time.

PRESIDING MEMBER DOUGLAS: Right. Not you don't think we should, you believe it's a violation of CEQA if we were to make --

MS. GULESSERIAN: To make findings.

PRESIDING MEMBER DOUGLAS: -- findings of fact that are not strictly within the project that we're approving.

MS. GULESSERIAN: Yes, regarding those projects.

PRESIDING MEMBER DOUGLAS: Is there -- I'll just ask applicant and staff if they have a view on that legal argument?

MS. LUCKHARDT: I think that our difficulty with the comments that are being made -- and I think we all understand here that the Commission cannot approve the wastewater treatment plant expansion. So we are not talking about there being no additional CEQA review of those projects. What we're talking about is an analysis that at least under cumulatives and other areas, other aspects of CEQA can take into account the impacts of other projects.

We agree with Ms. Gulesserian that this Commission cannot approve the wastewater treatment plan expansions. Nonetheless, this Commission did evaluate and did conduct a
reasonable -- the staff and the applicant provided an evaluation of the information that was reasonably available at the time.

And that information helps to further inform the public. We're with total agreement with what staff had said. It helps to further inform the public and provide anyone who is reading the decision with an understanding of the breadth of the analysis that was done in this proceeding. It was not limit itself from looking at the information that was available at the time.

This decision is not going to approve the wastewater treatment plants. The person who lives down the street where the expanded pipeline, wastewater pipeline, may proceed -- who may have a concern about it going down their street or in their neighborhood or otherwise would still have an opportunity and wouldn't be precluded from expressing that opportunity within the CEQA process that the agencies who are permitting the wastewater treatment plant expansions would go through.

There is nothing in this decision that would require that the individual, project-specific analysis that will be done by either of those agencies once they have the finial engineering for their projects, would not have an opportunity to evaluate that information, comment on that information under CEQA.
And I see nothing, nothing in the regulations that Ms. Gulesserian has mentioned, that would prohibit this Commission from including the discussion in the PMPD. And that's essentially what I have yet to hear.

I hear Ms. Gulesserian talking about the project description. We are not talking about changing the project description, we're talking about an evaluation of other projects that could occur near the same time, could be considered a cumulative impact, although their distance is a great deal from this project, and that this Commission has had developed before it and evaluated information in regards to those projects and what is reasonably available at this time.

Again, this is not a final decision on the wastewater treatment plant expansions nor is this Committee or this Commission interested in approving those.

HEARING OFFICER CELLI: So wouldn't it be akin to dicta? It seems to me that if -- let's just say we accidentally slipped into a PMPD some sort of statement that passed judgment on a wastewater treatment facility over which we have no jurisdiction. Then wouldn't that just be really something on the order of dicta and not a violation?

MS. GULESSERIAN: I believe that at some point in the future when these communities rely on your dicta that we have -- we have great respect for the California Energy
Commission and its findings. And when these local agencies
say, the California Energy Commission already found that the
expansion of our wastewater treatment plant will not result
in growth-inducing impacts, that is going to hold great
weight to those local communities.

PRESIDING MEMBER DOUGLAS: So your argument is
that our findings would have persuasive impact. Not
efficacy, not --

MS. GULESSERIAN: It would be --

PRESIDING MEMBER DOUGLAS: They would have a legal
impact.

MS. GULESSERIAN: Thank you. It has legal and
persuasive. And substantively would be --

PRESIDING MEMBER DOUGLAS: How does it have legal
impact? We are not approving these wastewater treatment
plants.

MS. GULESSERIAN: Because those communities --
let's just say, for example, that somebody believed there
were growth-inducing impacts from an expansion of Rosamond.
They might later decide to go with their maximum that they
said at the last hearing, a 2.5 million gallon per day
project. And there was a concern -- whatever. Even from a
different company, that there was going to be impacts to
their property in that area.

As a result of that the agency would say, you
should have commented on the decision that there were no
growth-inducing impacts, that the Energy Commission is
making today. And you're precluded from raising that
finding now. That's just one example. So the decision
would be whether someone needs to challenge those now.

Or I would say the better course is to not make
those decisions for the local agencies, keep the scope of
your decision to Beacon's share of the wastewater treatment
facilities so that we don't have to have a decision that's
over-broad now that, you know, would that could later raise
issues, like for example, regarding the statute of
limitations for challenging a decision that is related to
some future project.

PRESIDING MEMBER DOUGLAS: And what would you say
about the possibility that somebody living where they could
be impacted by the project might benefit from reading the
analysis in the PMPD because of the review that did occur
and the record that was developed on these questions?

MS. GULESSERIAN: Well we would -- I think they
will benefit in any case from whatever the Commission has in
its PMPD. If the Commission wants to make, the Committee
wants to make findings regarding various impacts we would
request that you look at our comment letter that shows you
the evidence that all came up at the last hearing that staff
did not look at regarding the biological resource, traffic,
air quality impacts from these facilities.

So if there's some additional information added to
the record we would ask that it be not added to the record
lightheartedly and that there be a thoughtful consideration
of whether staff evaluated the substantial evidence in the
record. Because we believe that did not occur on the last
day when all of that information was entered at the same
time.

Whatever the decision, the ultimate decision
includes we think that it is, it will be thoughtful and we
are hoping that it be accurate and narrowly tailored to the
power plant that's being approved here and the portion of
the wastewater treatment facilities that are going to be
providing the recycled water to the project. And we hope
that it gives the local community some comfort in knowing
that what the recycled water upgrades that will occur to
provide the Beacon project with 1400 acre-feet per year have
been, have been considered thoughtfully.

HEARING OFFICER CELLI: Okay, I think we've got an
adequate record on that. We've heard from applicant. Did
we hear from staff?

MR. SOLORIO: I'd like to make a comment or two if
you don't mind.

I appreciate the Committee focusing in on the
distinction here that the Energy Commission is not approving
the expansion of these facilities and that we have
explicitly identified those respective agencies who are
going to permit their own expansions. Rosamond has already
completed Phase I of its expansion. It's done, on-line.

This is the first instance I've ever heard of a
party or an entity having a problem with the depth of the
analysis as being too deep, too informative for the
decision-maker and/or the public. I find that interesting.

Aside from that I think the claims of somehow Cal
City or Rosamond being able to use our document don't
necessarily have a lot of merit. Because no matter what
ey they still need to comply with CEQA and go through a NegDec
or mitigated NegDec or EIR process. Sure, they can choose
to adopt the staff's FSA and/or the PMPD. But nevertheless
there will be proper notice to all the rest and some people
who would be affected. Thanks.

HEARING OFFICER CELLI: Thank you for those
comments. I believe we have heard from all of the people.

I want to thank you all for being here and for
your comments today. Applicant having the burden I just
wonder if there is anything, since you bat last, if there is
anything further from applicant that we need to hear today
at this conference? Before we get to public comment.

MS. LUCKHARDT: No, we have nothing further, thank
you.
HEARING OFFICER CELLI: Well thank you. Thank you all for being here.

I want to acknowledge that there are no members of the public here. We have an empty house pretty much except for members of the applicant's side.

I have on the phone Sara Head. Did you wish to make a comment?

MS. HEAD: No, I do not at this time.

HEARING OFFICER CELLI: Thank you. I have Marie Ann Hogarth. Did you wish to make a comment?

MS. HOGARTH: I don't wish to make a comment at this time.

HEARING OFFICER CELLI: Thank you. I have -- it looks like Jennifer Jennings hung up.

Jack Stewart at RCSD, you're on the phone, did you wish to make a comment, Mr. Stewart?

MR. STEWART: Yes, RCSD would like to make the following comment. Number one, we were under orders from Lahontan to expand our waste treatment plant from a secondary treatment to a tertiary treatment, which we have done, the first phase. We are required from Lahontan and from County of Kern to adhere to CEQA with full disclosure, full impact, full public notice, which we will do and are currently doing with additional studies.

We agree that the depth of the analysis that the
Commission staff has done has been very thorough, very complete and we will continue to utilize the information for public disclosure in the future.

We do not agree with CURE that by the Commission giving us incorporation of our expansion a blank check and a blank approval that we'll do anything to appease or assist or give approvals for our expansion. That's a local matter. That's not CURE's matter, that's not the Energy Commission's jurisdiction. That is Kern County and Lahontan. We will adhere to CEQA under Kern County, Lahontan and in our connections with the Air Force.

HEARING OFFICER CELLI: Thank you. Anything further, Mr. Stewart?

MR. STEWART: No, thank you. We appreciate the ability to comment.

HEARING OFFICER CELLI: Thank you and thank you for your participation today. I know that you have been sitting in and listening in on the entire conference so we are glad to have you.

I have Frank with no last name. Did you wish to make a comment, Frank?

FRANK: No thank you.

HEARING OFFICER CELLI: Thank you. And then I have an unidentified user on the phone. Do you wish to make a comment at this time, anyone who is left on the telephone?
Hearing none and there is no one here then I'm going to hand the podium back to Chairman Douglas to adjourn.

PRESIDING MEMBER DOUGLAS: I'd like to thank everybody for being here today. For lasting through virtually the entire lunch hour or I guess the first half of the lunch hour as we wrap this up.

We look forward to getting final comments before three today and look forward to moving forward with the final decision.

Thank you very much, we're adjourned.

HEARING OFFICER CELLI: Thank you.

(Whereupon, at 12:24 p.m. the Committee Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that I thereafter transcribed it into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2010.

JOHN COTA