EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
) Docket No. 99-AFC-8
Application for ) BLYTHE ENERGY PROJECT )
Certification for the ) (Blythe Energy, LLC) )

BLYTHE CITY HALL
ADMINISTRATION COUNCIL CHAMBERS
235 NORTH BROADWAY
BLYTHE, CALIFORNIA

TUESDAY, NOVEMBER 28, 2000
8:02 A.M.

Reported by:
Valorie Phillips
Contract No. 170-99-001

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Jonette Smith

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
P R O C E E D I N G S

PRESIDING MEMBER KEESE: We call this meeting back to order momentarily. The applicant and staff have indicated that they believe that they could be productive on the issue of biology in a brief workshop.

So, once again, we're going to give them -- this time it is a half an hour. They're going to be in the other room from 8:00 to 8:30 and then they will report back to us, and we will reconvene at 8:30.

The public is welcome to participate. They'll be in the other room. The only people who can't go there are Commissioners.

(Off-the-record workshop.)

PRESIDING MEMBER KEESE: We will call this meeting back to order. And I will note that Ms. Mendonca is here in the back row. Ms. Mendonca will be leaving at 9:00 this morning. So, if anybody cares to take advantage of Ms. Mendonca's services, or has requests for her, please try to catch her before 9:00.

Mr. Bouillon.

HEARING OFFICER BOUILLON: In addition,
if anybody wants to make any public comment at the end of this proceeding this morning, I'd appreciate it if they'd fill out the blue cards in the back that Roberta's holding up at the present time, and hand them to anybody up here and we'll make sure that you're called.

At this time we're going to proceed with the topic of biological resources, and we're going to take the staff out of order. As I understand, there's some corrections to their testimony. Ms. DeCarlo, you may proceed.

MS. DeCARLO: Thank you. Staff's witness for biological resources is Dick Anderson, and he needs to be sworn in.

Whereupon,

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

DIRECT EXAMINATION

BY MS. DeCARLO:

Q Could you please state your name for the record?
A My name is Richard Anderson.
Q And do you have with you a copy of your
testimony on biological resources, which consists of testimony filed in exhibit 53, the final staff assessment?

A    Yes, I do.

Q    And was a copy of your qualifications filed with the staff assessment?

A    Yes, they were.

Q    Do you have any corrections to the documents you're sponsoring today?

A    Do I have any what?

Q    Modifications or corrections?

A    Yes. I have some modifications based on a workshop, and requested modifications by the project applicant. Would you like me to go through those now?

Q    Yes, if you would, please.

A    I'm looking at the declaration of the testimony of Alice Karl, the biological consultant for the applicant. I'll give everybody a minute to get that together, if they have it.

On page 41 of her testimony there is a section titled, review of final staff assessment, in which there are a number of comments and requests changes.

We have just gone over all of those
changes and essentially are in agreement. In some
cases they are as requested by the applicant; in
other cases we have presented other options. In
other cases further information has arrived, so
the original staff testimony stands.

And I'll attempt now to kind of wind our
way through these. We will be referring from the
request by the applicant, which is Alice Karl's
testimony. And then the changes will be actually
made in staff's final staff assessment on
biological resources.

So, the first comment is on page 41 of
Alice Karl's testimony. She's requesting a change
or clarification for page 79 of the final staff
assessment.

So, on page 79 of the final staff
assessment, the last paragraph, in the middle of
that paragraph there's a sentence that starts:
However, Harwood's milkvetch is an annual species,
not a perennial."

I've crossed out the word "and" and
inserted the word "although" "this species flowers
from January to March" I've crossed out "and
would" and inserted "it may not have been
detectable during" and everything else is the
same.

The idea here was that they did look for this plant at the correct time of the year, but depending upon the warmth of the season and the length and the amount of rainfall, the plant may or may not be detectable during the whole flowering season.

And so there was a question about whether they were able to detect it if it had been there. And I think that that wording change satisfies their concern.

Q I'm sorry, Dick, if I may interrupt. You stated January to March, did you mean to say January to May?

A Yes.

HEARING OFFICER BOUILLON: Read that sentence again, please, Mr. Anderson.

MR. ANDERSON: "However, Harwood's milkvetch is an annual species, not a perennial, although" and not -- and is lost "this species flowers from January to May" and "would" is crossed out, and inserted "it may not have been detectable during the 1999 or 2000" and everything else is the same. So, it's very minor.

The second change has to do with page 86
of staff's final assessment, and it has to do with the drainages and the water courses, the Colorado River and riparian habitat.

There are a number of bird species that may nest in that habitat during the spring and early summer that the applicant had said they would do preconstruction surveys for in their mitigation measures in the AFC.

We discussed this in two workshops now, and it's been decided that if they don't construct during the time of the year that the birds would be there, which is nesting time, in other words if they're constructing in the fall, late summer, winter, there's no need to do preconstruction surveys because the birds simply wouldn't be there.

And so what I've done is I've included on page 87, under the same section, sensitive plant and wildlife surveys, but under staff's recommended mitigation, I've added a third paragraph in the middle of the page that says, special status bird species near water features (riparian areas) do not require preconstruction surveys provided construction activities in those areas are conducted during seasons when there is
very low risk of impact.

And the seasons for each species will be clarified in detail in the biological resources mitigation implementation monitoring program. Instead of listing a half a dozen possible species with dates here.

The next recommended change or comment references BIO-1, so in the conditions of certification in staff's final assessment, BIO-1, and then it's got 17.3, and I happen to have that same number on mine, because I downloaded it from our website. And so if you don't have that, you probably received a hard copy and your number system is a little more sensible.

But under the second heading, under BIO-1, the first heading is for proposed 76 acre power plant. The second subheading is for the El Paso natural gas pipeline connection, number 3.

It has to do with the details of what the biological monitor does in terms of desert tortoise. And Dr. Karl has gone to some length and spelled out in detail some clarifications.

But what we've done is we've just summarized -- this is just a summary sentence.

But this whole BIO-1, if you go back to the first...
paragraph, it incorporates by reference all of the mitigation measures in detail that were discussed by the applicant and staff. And so it does include that detail, it just doesn't -- we didn't create or duplicate several pages here.

So, it's incorporated by reference, and it will be represented in the biological resources mitigation implementation monitoring plan. In discussions earlier this morning I think that the applicant was satisfied with that.

Moving on to BIO-7 --

BY MS. DeCARLO:

Q I'm sorry, Dick, also with regards to number 3, BIO-1, did you want to insert "in or adjacent to"?

A Oh, yeah. Another recommendation was what Lisa DeCarlo just said, that adjacent to tortoise habitat it should be in or adjacent to, and that's excellent, we agree to that.

BIO-7 is the next issue. And there's a series of conditions here, BIO-6, BIO-7 and BIO-8 that have to do with water, the evaporation ponds, in looking for dead birds, monitoring water quality, and monitoring live birds, infecting invertebrates that may be bioaccumulating toxic
material if there is any toxic material
accumulating in the evaporation ponds.

BIO-7 is the one here that is mentioned
in that there's no end to the bird monitoring.
And that was not my intention. My intention was,
as the other four components, which are included
in BIO-6 and BIO-8, there's four components but
there's three conditions. BIO-8 includes two
components, water quality and invertebrate
monitoring.

BIO-7, I intended to add the same last
sentence that is on BIO-6, which is: This
monitoring shall continue for the first three
years of plant operations, and depending on the
results, could be discontinued at that time.

HEARING OFFICER BOUILLON: You're saying
add that to BIO-7, as well?

MR. ANDERSON: Yes. There are some
other changes in BIO-7. There was a request that
the bird monitoring could be done by the
designated biologist or the applicant wished to
put in competent person. That's not quite
detailed enough because we could have an
accountant who's a very competent person, but who
knows nothing of birds.
So we talked about this this morning and so I have added after the parenthetical phrase there, by the designated biologist. I crossed out "and" and put "or another biologist or birding expert familiar with, and that can identify birds of the area, and is approved by the compliance project manager."

Somehow we'll get these wording changes to you. I know it's a lot to try to scribble in. I think I'm done with that one.

And so there were some changes made in terms of the number of years and types of monitoring that should be done that I would -- I disagree with, and just would prefer it be monitored for three years, and then a decision made.

Each year obviously the data would be looked at to determine the types of use of birds and what's going on at the ponds. After three years there would be a final decision of whether there is a problem, or potential for a problem. And we could discontinue monitoring at that time if it seems reasonable.

The next comment has to do with BIO-10. And this is a request by the applicant to delete
BIO-10. BIO-10 had to do with during construction activities there will be a fence around the whole site that excludes tortoise from entering the site. They're slow moving, we're afraid they will be run over, crushed or killed.

And so the whole site will be fenced with an exclusionary type fencing for tortoise. There was interest in having large gaps in that fence, so that large pieces of equipment could be brought in during construction and sat down. And so this condition was inserted, created.

Since then, in discussions we've talked about the gates will be of adequate size to accommodate all equipment and materials. And the gates, although they move, will have fencing that goes down to the ground, doing the best we can. Tortoise exclusionary fence actually gets put down into the ground, because tortoises are diggers.

And so it's fine with us to delete number 10. And then, as recommended by the applicant, we would add a portion on temporary fencing to BIO-9. So the last sentence that says temporary fencing must be installed at any gaps if it will remain open over night, would be added to number 9.
I changed the wording just slightly, so BIO-9 would now, instead of ending with "of a problem being identified." would say, "temporary fencing must be installed at any gaps opened in the project site fence if these gaps will be left open overnight." It's very very similar.

Okay. BIO-13. This was an effort for compensation for the loss of tortoise habitat that had been left open. The exact amount was not determined, but the Desert Tortoise Preserve Committee had a representative working on parcel costs and endowment amount.

They have not submitted a written proposal yet, but have let us know by email that they have obtained enough information to propose that the cost would be approximately $1200 per acre, which would change the $131,155 figure to $92,580.

HEARING OFFICER BOUILLON: I'm sorry, what was that last figure?

MR. ANDERSON: $92,580. And so that represents $1200 per acre for 77.15 acres of lost habitat. And that $1200 includes the cost of purchasing the parcel, the short- and long-term administrative and management costs associated
with that upkeep, if there is some. And then an
endowment that would provide a small amount of
money for long-term management.

And that's the only change I'd like to
make to this one. Oh, excuse me, there's one
other change. In other words, in light of this
new information I think that the applicant no
longer cares about making the changes that they've
recommended. I would like to keep the BIO-13 as
it is, just with the dollar change.

And then there was a request and
verification for a change of not less, it says now
30 days, a change to 15 days. And I see no reason
why that's not acceptable.

That means the check would be provided
to the Desert Tortoise Preserve Committee 15 days
prior to the start of construction activities.

The next change has to do with BIO-14.
BIO-14 is on page 97 of the final staff
assessment. This one we may need to work out the
wording a little better, but my proposed changes
to this would read: To compensate for permanent
impacts to Harwood's milkvetch, the project owner
shall provide $25,000 to re-vegetate or protect an
appropriate area with Harwood's milkvetch. The
minimum number of viable plants to be installed or
protected will be 100."

Now, I've added some words there and I
think I just kind of skipped over where I added
them. But, I think there's too much here for you
to document, so you'll have to trust that we will
re-do it for you. Lisa, how would we do this?

MS. DeCARLO: If the Committee would
like, we could submit a --

HEARING OFFICER BOUILLON: What the
Committee will request, as you well know, requests
are demands, is clean copies of all of the BIO
conditions in a single format both in hard copy
and on a floppy disk.

MS. DeCARLO: And we will provide that.

MR. ANDERSON: To continue with BIO-14,
the minimum number of viable plants to be
installed or protected will be 100. On the land
conserved for the desert tortoise, appropriate
locations for plantings will be identified and
plantings carried out under the supervision of a
botanist with desert tortoise restoration
experience, working for the Desert Tortoise
Preserve Committee.

Alternatively, a donation in the amount
of $25,000 shall be given to the Rancho Santa Ana
Botanical Gardens for collection and preservation
of Harwood's milkvetch seeds if the mitigation
cannot be fulfilled on the desert tortoise
conservation parcel. Other appropriate
alternatives can be considered as needed.

What this means is the applicant would
provide a $25,000 check for mitigation for
Harwood's milkvetch. We would prefer that this be
used on an area that's protected and controlled
for natural resource purposes, such as the land
protected for the desert tortoise.

Since that parcel has not been purchased
yet, we are not certain that there will be
applicable appropriate habitat on the site. So
that would have to be determined upon
identification of the exact parcel.

If it's not possible to mitigate for
Harwood's milkvetch on that same parcel, then an
option would be for seed collection. And what
that means is that seeds collected then becomes
available for future projects for re-vegetation so
that Harwood's milkvetch populations can be
established in a number of places, the seeds are
already there and viable and waiting to be used.
Which often is a problem on projects, the wild seeds or natural seeds are not available. So it would be very beneficial also as an option.

And the last change, BIO-15, on the same page, 97, is essentially a duplication of a condition in the soils and water conditions of certification. Provided that condition is not requested to be deleted, this one can be.

HEARING OFFICER BOUILLON: I'm sorry, it's a duplicate of which one in soils and water?

MR. ANDERSON: There's a condition in soils and water that -- it may be 11?

MS. DeCARLO: It is 11.

MR. ANDERSON: Soils and water-11, that actually goes into more detail. This one is concerned essentially with the streambed alteration permit of Fish and Game.

Soils and water-11 talks about a number -- that permit and others. And so it incorporates this. And so staff has -- it's fine with staff if this one is deleted, as long as soils and water-11 remains.

BY MS. DeCARLO:

Q And did you also want to make some modifications to BIO-14 verification?
A    Yes. Verification for BIO-14 would now
say: Within 30 days of the start of construction
the project owner shall submit a plan to the
compliance project manager for review and
approval. Or the project owner will provide a
check to the Desert Tortoise Preserve Committee or
Rancho Santa Ana Botanical Garden, and a copy of
the check to the compliance project manager.

That ends the changes.

Q    Thank you. Did you want to summarize
your analysis?

A    Yes, unless you would like the applicant
to do that. But, yes, I can.

Q    Okay.

HEARING OFFICER BOUILLON: Well, before
you summarize your testimony, Mr. Anderson, I'd
like to ask each of the parties whether there are
remaining issues that need to be adjudicated, or
whether, in fact, there has been agreement.

MR. GALATI: There's been agreement on
all issues with those changes.

HEARING OFFICER BOUILLON: Okay, I think
we can then submit Mr. Anderson's testimony with
the modification he's testified to by way of
stipulation. Since he's here we don't need any
written stipulation on his part.

I'll propose a stipulation that the biological resources portion of the final staff assessment, as modified by Mr. Anderson's testimony today, be admitted into evidence without objection. Is that acceptable to you, Mr. Galati?

MR. GALATI: That's correct, that's acceptable.

HEARING OFFICER BOUILLON: Acceptable to you, Ms. DeCarlo?

MS. DeCARLO: Yes, it is.

MR. GALATI: I have one follow-up question --

HEARING OFFICER BOUILLON: Wait.

MR. GALATI: -- if possible. Sorry.

HEARING OFFICER BOUILLON: Ms. Garnica, do you have any objection to what I just said? Are you concerned with the biological resources, that's my question.

MS. GARNICA: No, I just wish there was as study that was done on people that live in the mesa like there was a study done on the seeds.

HEARING OFFICER BOUILLON: Okay. And I assume you have no cross-examination for the witness?
MR. GALATI: I just have one follow-up clarification question.

HEARING OFFICER BOUILLON: Okay.

CROSS-EXAMINATION

BY MR. GALATI:

Q And that is with regard to your changes to BIO-14.

A Yes.

Q Excuse me, I apologize, BIO-7, which deals with the monitoring of live birds. And your changes which would allow another qualified birder to be approved by the CPM.

And could that be somebody local, trained here at the college?

A Yes.

Q Okay. And if that person was qualified to identify birds in the local area, that would be a person that would be acceptable to the Commission?

A Yes.

Q Thank you.

A I hope I said when I went through this, or another biologist or experienced birder, which means that they don't have to be a biologist, but they have to be familiar with bird behavior and
identification of birds.

Q    Okay, thank you.

MR. GALATI: No further questions.

HEARING OFFICER BOUILLON: Does that conclude the applicant's testimony?

MS. DeCARLO: Yes, it does.

HEARING OFFICER BOUILLON: Okay. I mean staff's testimony.

MR. HANSON: May I speak on that? Is there public comment on stipulations?

HEARING OFFICER BOUILLON: No. We'll take public comments at the end all together. Well, if you have it strictly on this topic?

MS. HANSON: Yes, sir.

HEARING OFFICER BOUILLON: Come on up.

MR. HANSON: My name is Quenton Hanson; I work at Palo Verde College, Director of the Small Business and Economic Development Center, as well as a full-time faculty member in the Accounting Business Managements area.

I sat in at the meeting they had over in the other room there, and I brought up some objections, subject to the fact that the checks being made out here and so forth, are being sent to organizations in the western part of Riverside.
We're at the extreme end of the eastern end of Riverside County. In fact, ten years ago when the County drew up a map of this area, Blythe was located in the Arizona border, on the Arizona side of the border rather than California side of the border. That's how we get treated sometimes by our own County.

The point I wanted to bring up, and I emphasize very strongly, is I would like to see, since these environmental funds are coming from a project in this local area here, that part of this local fund be earmarked to come back to the local Blythe area.

And I can realize that with the elite resource you have in the rest of Riverside County, you may believe that all your experts are located over there. But just two weeks ago our chief biologist in this area, Mr. Anderson, who has a firm, has done extensive replanting of vegetation and so forth with the Indian tribe, had to lay off his entire workforce because he has no additional funding.

And what I'm trying to say is the funding is not getting back to the local area.
These environmental projects may be worthwhile and
good and so forth, but the money is not flowing
back to the areas that are directly affected.

While there may, in fact, be no tortoise
habitat here in the local area, I still feel there
should be some written stipulation that if at all
possible local resources, local employment and so
forth be directed to the local area here for these
studies.

And it just simply isn't right to draw
these funds and these resources from an area and
not return some of it back to our local area.

And I'm a big Blythe supporter, and I
believe that we should, in fact, have that
stipulation added here, that whenever possible,
local resources, local individuals be, in fact,
employed to satisfy these requirements.

And I'd like to see that in writing as
part of the agreement between the two parties
here. So that's my only statement that I make
here. Thank you.

HEARING OFFICER BOUILLON: Thank you,

Mr. Hanson.

Mr. Galati, you may present your
testimony on biological resources. And before you
do, let me ask the staff if you have any cross-

MS. DeCARLO: No, we don't.

HEARING OFFICER BOUILLON: I think we
can take it by stipulation then.

MR. GALATI: Great, I'll just have her
sworn so she can do that. And identify some
exhibits. If I could have Dr. Alice Karl sworn.

Whereupon,

ALICE KARL

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

DIRECT EXAMINATION

BY MR. GALATI:

Q Dr. Karl, could you please state your
name, address, and current employment for the
record.

A My name is Alice Karl. I reside at
31660 County Road 27, Woodland, California. I am
the consulting biologist to Greystone
Environmental for the Blythe Energy Project.

Q And have you previously submitted
written testimony in this proceeding?

A Yes, I have.
Q And is that marked as exhibit 2, testimony of Alice Karl, biological resources?

A I believe so.

Q Okay. I'd like you to -- are you sponsoring any exhibits as part of your testimony today?

A Yes. I'm sponsoring four exhibits, exhibit 1, the AFC and errata, section 7.12; exhibit number 20, the response to CEC data request numbers 9 through 26, and 135 through 139; exhibit number 21, the applicant's biological issues status update report docketed October 10, 2000; and exhibit number 22, the draft biological assessment.

Q And can you affirm your testimony under oath today?

A Yes, I can.

MR. GALATI: I'd ask that the testimony and exhibits be moved into evidence.

HEARING OFFICER BOUILLON: Any objection?

MS. DeCARLO: No objection.

HEARING OFFICER BOUILLON: Hearing no objection they will be admitted.

MR. GALATI: That concludes our direct
testimony. Oh, I'm sorry. I have to ask one question.

BY MR. GALATI:

Q With the changes that you've heard from the final staff assessment, do you think that there will be any significant environmental impacts, and the project will comply with LORS?

A No, I agree with staff's conditions of certification, and I don't believe that there will be any significant impacts, and that the project will comply with LORS.

MR. GALATI: Thank you. That now concludes our testimony.

HEARING OFFICER BOUILLON: That will conclude the topic of biological resources, pending receipt by the Committee of a clean hard copy and floppy disk of the proposed conditions.

We can now turn, I believe, to some matters that were partially left unfinished yesterday which I'd like to discuss.

Specifically the Mesa Verde community. We received, at the end of testimony yesterday a letter from the State Department of Health Services with regard to the use and occupancy of the community of Mesa Verde, it appears.
And I'd like to ask the parties if they've all had an opportunity to review that letter. First, staff, have you?

MS. DeCARLO: No, we have not.

HEARING OFFICER BOUILLON: Ms. Garnica, have you reviewed it?

MS. GARNICA: Yes, I've looked at it, yes.

HEARING OFFICER BOUILLON: Ms. Garnica, do you have any comments about that letter, the content of that letter?

MS. GARNICA: Other than it's five years ago, so life has been growing, even according to the FSA, where it indicates that. So I guess it's only fair to say that there are more numbers added to that, to the numbers calculated on that study that was done by the Public Health.

HEARING OFFICER BOUILLON: The community has obviously grown within the last five years?

MS. GARNICA: Yes.

HEARING OFFICER BOUILLON: Okay. Does anybody have any objection to the Committee taking judicial notice of the content of that letter, recognizing that, in fact, the data is, as
Ms. Garnica points out, almost five years old?

MS. DeCARLO: No objection.

MR. GALATI: No objection.

HEARING OFFICER BOUILLON: Ms. Garnica?

MS. GARNICA: No.

HEARING OFFICER BOUILLON: Okay. The Committee will take judicial notice of that, and it has been marked as exhibit number 55, and it will be admitted into evidence.

MR. GALATI: I would like to -- can I submit also something I didn't have yesterday as evidence, as the way that that study was done?

HEARING OFFICER BOUILLON: What is it?

MS. GARNICA: It's in respect to the testimony that was done yesterday. I have roughly 1000 signatures of farmworkers, and people who live on the Mesa Verde. I would like to submit that as evidence.

MR. GALATI: If I could see it first, I probably won't have a problem, but --

HEARING OFFICER BOUILLON: Yes.

MR. GALATI: -- if I could see that?

HEARING OFFICER BOUILLON: Is that one copy of it?

MS. GARNICA: That's one copy. That's
the hard copy.

(Laughter.)

(Pause.)

HEARING OFFICER BOUILLON:  I'll tell you what, why don't we take a five-minute break for the staff also to look at that document. And when you're both done, if you'd pass it up to the Committee, we'll take a look at it.

And then we'll reconvene and anybody that wants to can stretch their legs.

PRESIDING MEMBER KEESE:  Okay, take five minutes, look these documents over.

(Brief recess.)

PRESIDING MEMBER KEESE:  We're back.

HEARING OFFICER BOUILLON:  This meeting will come back to order.

I've been handed a thick packet that's squeezed together, about an inch-thick of a set of duplicate originals of what is basically a letter to Lance Shaw, Project Manager, regarding the Blythe Energy Project, signed by a great many residents of Blythe and Mesa Verde and the surrounding communities.

I've discussed this off the record with both staff and the applicant. Neither has any
objection to the admission of these as evidence.
They will be collectively marked as exhibit number
56. And received into evidence.

And I will make sure that both staff and
applicant receive copies of each of these. And,
Ms. Garnica, do you, yourself, have copies of
this?

MS. GARNICA: Yes, I did.

HEARING OFFICER BOUILLON: You
already --

MS. GARNICA: I took a copy.

HEARING OFFICER BOUILLON: -- have a
copy?

MS. GARNICA: Yes.

HEARING OFFICER BOUILLON: So I will
provide them to staff and to applicant upon our
return to Sacramento.

That, except for stipulation, I believe,
concludes the evidentiary part of this hearing.
I'd like to ask Mr. Hanson if you have any
additional public comment at this time?

MR. HANSON: No, thank you.

HEARING OFFICER BOUILLON: And we also
have in the audience a Jonette Smith. I
understand you may or may not have a comment about
MS. SMITH: I just had a question about the water.

HEARING OFFICER BOUILLON: Could you come forward, please.

MS. SMITH: My name is Jonette Smith. I live here. I live at 12458 West McKinley Drive in Blythe in what's called the Ballsberg Tract. We're less than two miles from the proposed site.

My question is what kind of testing will they be doing on the water that's used? I understand that their evaporation ponds for the birds. I just wondered if they were going to be doing any further testing --

HEARING OFFICER BOUILLON: Take your time.

MS. SMITH: -- such as for heavy metals, for any other kind of contamination of the groundwater. Because we use the groundwater right now for drinking.

HEARING OFFICER BOUILLON: Would either of the lawyers or Mr. Shaw care to take a shot at that?

MR. GALATI: I'm Scott Galati, represent the applicant. First of all, the ponds are going
to be designed in accordance with the Regional Water Quality Control Board standards.

We have a report of waste discharge that prevents the ponds leaking. They're also designed in a way that they will not over-top, even during flooding events.

So anything in the pond is not going to get out of the pond. That's number one.

Number two, we also have a condition of certification that requires us to test the pond, I think it includes metals, as well. And that that test be submitted to the Energy Commission compliance project manager for review.

And I believe that it's part of our annual compliance report. I believe it is at least yearly and I will direct your attention to the final staff assessment on soil and water. And if you give me just a moment I'll get -- okay.

It's the soil and water section and there are conditions of certification at the end. One of those requires us to test the ponds. I believe there's also some requirements in the biology section on testing the ponds.

Something else to understand is that the report of our permit from the Regional Water
Quality Control Board, which is called report of waste discharge, ROWD, requires testing, as well. So there will be extensive testing on the ponds. And they are designed and lined so that they won't have leakage into the groundwater.

Ms. Smith: So where is the wastewater going to go? Just into evaporation?

Mr. Galati: It's a zero discharge; it evaporates. And any sludge that is taken is collected and disposed of off-site. But the water, itself, we reuse it until we no longer can reuse it, and then it is evaporated. That's the purpose of the ponds.

Ms. Smith: Okay.

Mr. Galati: Stored evaporation.

Ms. Smith: So none of it is supposed to go into the groundwater?

Mr. Galati: Correct. And extensive measures have been taken, both by us and extensive requirements required by both the Energy Commission and the Regional Water Quality Control Board to insure that doesn't happen.

Ms. Smith: Okay. Thank you.

Hearing Officer Bouillon: Mr. Shaw, can you confirm most of that, at least?
MR. SHAW: Sure, and I'm not sure if I understood all of her question, but there's another part of it, the quote, sanitary wastewater. And that goes into a septic system and leach fields.

That's the water from cleaning hands and such, not plant water.

HEARING OFFICER BOUILLON: What we would call domestic use.

MR. SHAW: Correct, domestic use water.

MS. SMITH: And there will be no sewer?

HEARING OFFICER BOUILLON: Excuse me?

Does any other member of the public care to make any comment at this time?

Seeing no activity, we will turn now to the stipulations between the parties regarding the remaining testimony and exhibits.

It is my understanding that exhibits 1 through 48 are being offered without opposition by the applicant. And exhibits 53 -- does exhibit 53 include the supplemental testimony?

MS. DeCARLO: No, supplemental testimony is exhibit 54. And I also have a couple of additional declarations that I handed to the Committee earlier that I need marked.
HEARING OFFICER BOUILLON: And exhibits 53 and 54 are being offered by the staff, and there's no objection to them and they will -- all those exhibits will be received into evidence, including the exhibits and testimony.

MR. GALATI: No objection from the applicant.

MS. DeCARLO: No objection from staff, but could we also mark the additional declarations that I handed to you earlier?

HEARING OFFICER BOUILLON: Yes.

MS. DeCARLO: Okay.

HEARING OFFICER BOUILLON: I've marked those as a part of exhibit 54.

MS. DeCARLO: Okay, that's great, thank you.

MR. GALATI: I just wanted to make sure that the record reflected also that 50, 51, 52 were already admitted into evidence.

HEARING OFFICER BOUILLON: They were.

MR. GALATI: Okay.

HEARING OFFICER BOUILLON: By my notes. My records reflect that all exhibits that have been marked have been admitted into evidence. That will conclude the evidentiary
portion of this hearing.

We're going to need some briefs on several issues that we've discussed from time to time. I'm going to leave it to the parties to determine what specific portions need to be briefed, but I want them to pay specific attention to those areas about which there has been a controversy in these evidentiary hearings.

And not only, for instance, soil and water number 14, that may have been resolved, it may not have been resolved. But I need a clean copy of that.

In addition, the areas raised by Ms. Garnica, I want the parties to pay particular attention to her concerns.

And I've ordered an expedited transcript. We'll have at least yesterday's transcript available by Monday, at least via the web. And I'm going to request briefs by close of business on Friday of next week, which is December 1st.

PRESIDING MEMBER KEESE: That's Friday of this week. The 8th.

HEARING OFFICER BOUILLON: I'm sorry,

December the 8th. And then reply briefs, I think
also would be appropriate by December 15th, close of business.

Also, we have hearings scheduled tentatively for this Thursday at the California Energy Commission in Sacramento. That hearing is canceled.

MS. DeCARLO: I have one procedural question. The FDOC has not been moved into evidence. I'm not sure -- we were anticipating that Alan DeSalvio from the District would be arriving today. However, due to the Thanksgiving Holiday we weren't able to contact him directly. We do anticipate him to arrive sometime this morning. We can clarify that with staff in about ten minutes.

HEARING OFFICER BOUILLON: I think we can take that by way of an offer of proof at this point.

MS. DeCARLO: Okay.

MR. GALATI: We have an objection to that being admitted without Mr. DeSalvio's sponsoring that.

MS. DeCARLO: Okay, thank you.

HEARING OFFICER BOUILLON: So that we can accept the FDOC as exhibit number 57.
MS. GARNICA: Mr. Bouillon, I didn't catch that last statement on that date of the December 15th?

HEARING OFFICER BOUILLON: Excuse me?

MS. GARNICA: You had mentioned the date of December 15th?

HEARING OFFICER BOUILLON: Yes.

MS. GARNICA: That was --

HEARING OFFICER BOUILLON: That's for what we call reply briefs.

MS. GARNICA: Okay.

HEARING OFFICER BOUILLON: The way that works is that you will get --

MS. GARNICA: I thought that was December 8.

HEARING OFFICER BOUILLON: You will all file your briefs --

MS. GARNICA: Yes.

HEARING OFFICER BOUILLON: -- with all your questions, all your arguments --

MS. GARNICA: Okay.

HEARING OFFICER BOUILLON: -- on December the 8th.

MS. GARNICA: Okay.

HEARING OFFICER BOUILLON: Then you read
the other ones, and you reply to whatever they
said.

MS. GARNICA: Oh, okay.

HEARING OFFICER BOUILLON: Okay? They
will reply to you; you reply to them.

MS. GARNICA: Okay, and that's by
December 15th?

HEARING OFFICER BOUILLON: Yes.

MS. GARNICA: Okay.

MR. GALATI: If I could have just a
procedural clarification on the record. If we
handle soil and water and the changes to biology,
I'm assuming the record will be open until -- we
don't have to make a special motion to open the
record to have that evidence?

HEARING OFFICER BOUILLON: I have not
closed the record.

MR. GALATI: Okay, thank you.

HEARING OFFICER BOUILLON: If you have
agreed-upon conditions, that can still be
submitted as parts of your brief.

MR. GALATI: Okay, thank you.

HEARING OFFICER BOUILLON: But I do not
intend to take any more live testimony, nor hear
any controverted evidence.
All right, that concludes this hearing. We will adjourn. Once the briefs are received, we will issue a Committee's Presiding Member's Proposed Decision in due course. That's lawyer talk for as quick as we can get it done.

Thank you all for your participation. And in closing I want to express my appreciation to the City of Blythe, they've been most gracious hosts.

PRESIDING MEMBER KEESE: Thank you, all.
MR. GALATI: Thank you.
MR. GRATTAN: Thank you.

(Whereupon, at 9:30 a.m., the hearing was concluded.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, 2000.

VALORIE PHILLIPS

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