

MANDATORY STATUS CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification for the ) Docket No.  
Calico Solar Project Amendment ) 08-AFC-13C  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
THIRD FLOOR CONFERENCE ROOM  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

FRIDAY, MAY 13, 2011

10:00 a.m.

Reported by:  
John Cota  
Contract No. 170-09-002

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Tanya A. Gulesserian (via telephone)  
Adams Broadwell Joseph and Cardozo  
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Patrick C. Jackson (via telephone)

Gloria D. Smith (via telephone)  
Sierra Club

Wayne W. Weierbach (via telephone)  
Newberry Community Service District

Jeff Aardahl (via telephone)  
Defenders of Wildlife

ALSO PRESENT

Governmental Agencies

Greg Miller (via telephone)  
Bureau of Land Management

Bart W. Brizzee (via telephone)  
County of San Bernardino

Members of the Public

Cynthia Burch  
Katten Muchin Rosenman LLP  
*representing* Burlington Northern Santa Fe Railroad

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1 phone, Craig Hoffman and Kerry Willis.

2 PRESIDING MEMBER DOUGLAS: Thank you. Sierra  
3 Club.

4 MS. SMITH: Gloria Smith for Sierra Club.

5 PRESIDING MEMBER DOUGLAS: Thank you. California  
6 Unions for Reliable Energy.

7 MS. GULESSERIAN: Tanya Gulesserian with CURE.

8 PRESIDING MEMBER DOUGLAS: Thank you. Is anyone  
9 from Basin and Range Watch on the phone yet?

10 (No response).

11 PRESIDING MEMBER DOUGLAS: All right. Patrick  
12 Jackson, are you on the phone?

13 MR. JACKSON: Yes I am.

14 PRESIDING MEMBER DOUGLAS: Thank you. Newberry  
15 Community Service District.

16 MR. WEIERBACH: Wayne Weierbach with the Newberry  
17 Community Service District.

18 PRESIDING MEMBER DOUGLAS: Thank you. Society for  
19 the Conservation of Bighorn Sheep.

20 (No response).

21 PRESIDING MEMBER DOUGLAS: All right, not yet.  
22 They may show up. Defenders of Wildlife.

23 MR. AARDAHL: Yes, Jeff Aardahl.

24 PRESIDING MEMBER DOUGLAS: Thank you. All right.  
25 Are there any local, state or federal agency

1 representatives here in person or on the phone?

2 MR. MILLER: Greg Miller with the Bureau of Land  
3 Management, California Desert District.

4 PRESIDING MEMBER DOUGLAS: Did you get the name?  
5 I'm sorry, for BLM could you repeat the name, please.

6 MR. MILLER: Greg Miller.

7 PRESIDING MEMBER DOUGLAS: Thank you. Anyone  
8 else?

9 MR. BRIZZEE: Bart Brizzee from the County of San  
10 Bernardino.

11 PRESIDING MEMBER DOUGLAS: Thank you. Anybody  
12 else?

13 (No response).

14 PRESIDING MEMBER DOUGLAS: Very good. Let's see  
15 here. All right, I think we've gone through the  
16 introductions. I'll turn this over to our Hearing Officer,  
17 Kourtney Vaccaro.

18 HEARING OFFICER VACCARO: Thank you. We all met,  
19 it seems like it was so long ago because so much has  
20 happened in the meantime. But really it was not very long  
21 ago that we met for the Informational Hearing and site  
22 visit.

23 Based on the information presented by would-be  
24 intervenors and the parties at that time as well as members  
25 of the public and other agencies the Committee went ahead,

1 as you all know, and prepared and issued a scheduling order,  
2 a briefing order and a procedures order all in one.

3 I think everyone is familiar with that. It has a  
4 number of deadlines and it specifies that this will be a  
5 process that is pretty well-managed by this Committee.

6 I think the schedule that's attached tracks with  
7 what staff and the applicant indicated was the desired date,  
8 at least from the applicant's perspective, of a September  
9 2011 recommendation or decision of some sort from this  
10 Committee to the Full Commission.

11 There were important milestones that were set in  
12 the schedule; one of which was the important day of May 9th.

13 I think there was some foreshadowing at the  
14 Informational Hearing and site visit from the applicant that  
15 certain things that were requested by staff to be delivered  
16 by May 9th may or may not be delivered by May 9th.

17 And I think that's probably the starting point.  
18 Let's hear where the applicant is in reference to the  
19 deadline that was set for data requests, data responses and  
20 other reports and studies that staff had requested as well.

21 So I think we'll hear from the applicant first on  
22 that. We'll hear from staff. And the end of the day we'll  
23 hear from everybody in terms of progress or things that  
24 people believe progress should be made on and by when.

25 But the starting point, I think, are the data

1 responses and the studies that were requested.

2 MS. FOLEY GANNON: So in response to the data  
3 requests and as requested in the data requests, we submitted  
4 a letter on May 5th indicating the items that we thought we  
5 would not be able to provide on May 9th.

6 And those items were three items. One was related  
7 to the Glint/Glare Study. One is the hydrology studies and  
8 the other was the updated Report of Waste Discharge.

9 And on May 9th as indicated in the letter on May  
10 5th, we submitted all of the other responses to the data  
11 request on May 9th.

12 With regard to the items that have yet to be  
13 submitted for the Glint/Glare Study, we have identified  
14 Powers Engineers who is going to complete the Glint/Glare  
15 Study. We have a scope of work that we have gone through  
16 with them.

17 There was a site visit with CEC staff with Powers  
18 Engineers, with representatives of BNSF where they went out  
19 and discussed the scope of work. So that, we are finalizing  
20 the arrangements with Powers Engineers and they will, they  
21 are initiating the study. We are anticipating that that  
22 study, the initial phase of it will take about four to six  
23 weeks to complete.

24 There is a possibility that, as a result of the  
25 hydrology studies that are done, there may be some

1 refinements to the design of the project. And if those  
2 refinements are significant to the Glint/Glare Study there  
3 may be something that they have to re-run after that.

4 We're having them run the study on the layout as  
5 it's proposed. If there are changes to it, then obviously,  
6 we would have to update that study. But we're anticipating  
7 that the initial will done in four to six weeks.

8 For the Hydrology Study we have a scope of work  
9 which we have completed. We have given that to three  
10 different consulting firms, TetraTech, AECOM and Westwood.  
11 They are looking at that.

12 They are supposed to get us a response early next  
13 week, hopefully Monday. We anticipate having those  
14 arrangements finalized with one of those consultants next  
15 week.

16 We have asked that we have the studies done by  
17 July 1st. They've said, we're thinking six to eight weeks  
18 to have that completed. And then they will be submitted.

19 For the Report of Waste Discharge, that is  
20 something that URS is completing for us and that should be  
21 done by May 31st.

22 HEARING OFFICER VACCARO: Okay, thank you. A few  
23 things that you said beg a few questions, at least for me  
24 and perhaps for Commissioner Douglas and the advisors as  
25 well.

1           And I guess it's going back to what staff  
2 presented at the Informational Hearing and site visit and  
3 what we also have in the schedule.

4           Staff is saying, we think maybe around June 24th  
5 or so is when they might be able to put out their evaluation  
6 of the proposed project modifications.

7           But my understanding, I think everybody's was, is  
8 that a prerequisite to that was having all of this other  
9 data.

10          And, if I'm understanding you, if we're looking  
11 at, even if we count six to eight weeks from today; that  
12 puts us, I think, not quite before June 24th. That  
13 certainly puts us into a July timeframe and I think we  
14 understood from staff saying, if we get something on a given  
15 date it will just take us this many days or this many weeks  
16 to do our work.

17          So from what I'm hearing is that we're already  
18 looking at something that might affect September 11, or  
19 September 2011. Is that incorrect or correct?

20          MS. FOLEY GANNON: I think that's correct. I  
21 think that it could affect it. I mean, we are anticipating  
22 the longest lead time here is the hydrology studies.

23          HEARING OFFICER VACCARO: Uh-hmm.

24          MS. FOLEY GANNON: And it's important to recognize  
25 that the hydrology studies were actually a series of studies

1 and there will be things like there is the, the first study  
2 is the Infiltration Report. That's something that takes two  
3 weeks probably to complete.

4 We're anticipating that we will be able to give  
5 those to staff as we're working through the process.

6 So will not be like on, you know, June 24 there's  
7 a whole, you know, new document that is being presented that  
8 is going to speed the kickoff of all the analyses of any  
9 hydrology analysis that has to be done by staff.

10 So we recognize that there would be some, that  
11 there could be some slipping from, certainly from the June  
12 24th date. But we don't anticipate that it should be a  
13 significant, as in like things are starting, the analysis is  
14 all starting on June 24th.

15 I mean, we would anticipate that it would be like  
16 a, you know, maybe a two week delay. A two, three week  
17 delay is what we would anticipate.

18 PRESIDING MEMBER DOUGLAS: Let's hear staff's  
19 response.

20 MR. ADAMS: Well, staff when dates were calculated  
21 in our memo to the Committee figured we'd need 45 days as a  
22 fairly ambitious but realistic timeframe once we had all the  
23 relevant data to produce our analysis.

24 I'll let -- Craig are you on?

25 MR. HOFFMAN: Yes I am. This is Craig Hoffman. I

1 think as far as schedule goes, we did two different  
2 schedules within our Issues Identification Report.

3 One we put dates and the other we just put days.  
4 So I think, you know, I really relied on the applicant to  
5 tell me when day one truly begins.

6 Day one is when we have all the information and  
7 that's when our process begins. I don't see a change to the  
8 steps within our schedule.

9 So really it's whenever we have a complete Glint  
10 and Glare Study, whenever we have the complete, all the  
11 hydrology materials and whenever we have the revised project  
12 description for the roadways south of the railroad tracks.

13 I think that's when we start day one.

14 HEARING OFFICER VACCARO: Do you have any --

15 MR. HOFFMAN: Does that make sense to everyone?

16 HEARING OFFICER VACCARO: It does make sense. But  
17 I wonder if you could also maybe respond to what Ms. Foley  
18 Gannon had stated.

19 And it appeared as though the applicant, perhaps,  
20 had an expectation or assumption that staff would begin the  
21 evaluation process before receiving all of the reports.

22 And as I understood you, staff's expectation is  
23 that you're not really going to begin that evaluation until  
24 you have everything. Is that correct or could you sort of  
25 further respond to that?

1 MR. HOFFMAN: Yes please, this is Craig Hoffman  
2 again. Let me elaborate. Right now staff is currently  
3 analyzing this project based upon the information that's  
4 been provided in the data responses so far.

5 There's numerous sections that didn't have data  
6 responses or data requests. They're working on their  
7 analyses in many of the sections including Traffic and  
8 Transportation and Visual Resources are working on different  
9 portions of their technical sections.

10 Staff is working on this project. What we had  
11 identified though was that in order to have a complete staff  
12 analysis, the final piece of whatever information that is  
13 needed we'd consider that day one and that would finish off  
14 the analysis.

15 Soil and Water, it's going to be a section that  
16 requires a great deal of work. And so whatever the last  
17 piece of information for them, it sounds like that is going  
18 to be one of the critical timeframes.

19 They're working on their analyses right now but  
20 when they get the final piece of information it'll take them  
21 some time to incorporate that.

22 HEARING OFFICER VACCARO: Okay. I think I  
23 understood that. So just to be clear, the day one that you  
24 are referring to is really day one from the last report that  
25 you receive.

1           You're going to need probably about 45 days to get  
2 the analysis completed although you've already begun a lot  
3 of other work. And that, according to staff counsel, 45  
4 days is still pretty ambitious.

5           MR. ADAMS: That is my understanding. That the 45  
6 days is less time than we would ordinarily like for this.  
7 But we felt when we developed the schedule that it could be  
8 done given the project timeframe.

9           We are concerned about further reductions in that.

10          HEARING OFFICER VACCARO: Okay. And, I guess,  
11 just eyeballing a calendar right now, it looks to me that  
12 perhaps that final full staff assessment document report  
13 that we're discussing would not issue until probably about  
14 August based on the projected six to eight week time period  
15 to have those studies completed.

16          MS. FOLEY GANNON: I have one question and this  
17 probably is to staff. Again, when we're looking at  
18 hydrology studies which is the longest lead time; as I said  
19 earlier, there are a number of different pieces that are  
20 incorporated into that study.

21                 Some of which, I think, were in Soil and Water  
22 Conditions which everyone has recognized would not be  
23 included in the staff assessment; things like the 30, 60,  
24 90, 100 percent design. That's a compliance measure.

25                 And initially as this project was approved, all of

1 these studies were compliance measures. They were things  
2 that were anticipated to be completed after approval and  
3 that would be, you know, through the compliance meeting  
4 performance standards that were established.

5           So, again, I just, I would like to have a clear  
6 answer of what staff is anticipating is what needs to be  
7 submitted for the analyses that they feel that they need to  
8 do.

9           Again, because there are a number of different  
10 pieces in this and that's to me a little unclear. So it may  
11 not be six to eight weeks for the information that they, as  
12 again, as I said, the Infiltration Report certainly won't  
13 take six to eight weeks to be completed.

14           And so when -- we always talk about a Hydrology  
15 Report but there is no such thing as a Hydrology Report,  
16 it's a sequence of analyses that are being done. So if we  
17 could get some clarification on that, that would be helpful.

18           HEARING OFFICER VACCARO: Okay, before staff  
19 answers. We're hearing, we're actually hearing quite a bit  
20 of background noise. It sounds like that someone is  
21 actually at a drive through perhaps ordering something or  
22 maybe even (laughter) at a counter ordering something.

23           So what I would ask of you just to make sure that  
24 we can all hear what everyone is saying. If you could mute  
25 your phone so that we can't hear you. That would be ideal

1 because we hear all of your background noise as well. We  
2 actually just heard a train a few moments ago.

3 And I do ask though that you please don't put us  
4 on hold. That will cause some technical problems and it  
5 will also have us listening, perhaps, to the Muzak that  
6 might be playing on your system.

7 So, again, if you could please mute your phone  
8 until you need to speak we would greatly appreciate that.

9 So, Craig Hoffman and staff counsel if you'd like  
10 to please answer the question that was posed. I think that  
11 would be very helpful for applicant, staff and all the  
12 parties and the Committee to know what staff's expectations  
13 are.

14 MR. ADAMS: Maybe I could first respond generally  
15 and then let Craig answer more to the degree he has a  
16 response to the sequential release of different studies.

17 I'm not sure how that all fits together and  
18 whether staff can do meaningful analysis with just the  
19 Infiltration Study, for example.

20 We are aiming for a higher level of information  
21 than we had at the time of the project approval in December.

22 Events forced us to, you know, it relied more on  
23 follow-up studies and performance standards. While that  
24 might be a legally, defensible approach we think the process  
25 works best to get the information out, nail down the

1 uncertainties and the details so the Committee and  
2 Commission are informed, have all that information at the  
3 time of the project approval.

4 So that is our goal in asking for the, for  
5 information that may have in the original conditions of  
6 certification come post-certification.

7 Craig, can you address a more specific question of  
8 these different studies coming in sequentially?

9 MR. HOFFMAN: Sure, this is Craig Hoffman again.  
10 I think there is an opportunity for information to come in,  
11 you know, if it's at a time, I think that's helpful. Staff  
12 would have to understand what's coming in and when.

13 When we issued the data requests there were a  
14 number of pieces of information that our water staff had  
15 asked. And, you know, there's also the potential for staff  
16 to verify some of the studies to verify the information, so  
17 what could be in there.

18 I mean, 45 days after the last piece of  
19 information is not a lot of time. I mean, there's a lot of  
20 things that go into publishing a document but I feel like if  
21 anyone in is sitting back and going, 45 days means that  
22 staff has plenty of time to goof around; I don't agree with  
23 that at all.

24 We'll process this as timely as we possibly can.  
25 And if we could put out a document faster we will. We're

1 not going to hold on to anything.

2 But I thought that time schedule that we asked for  
3 and what we proposed in the schedules was, I think, very  
4 realistic.

5 HEARING OFFICER VACCARO: Okay, thank you. I  
6 think that that answers part of the question I think that  
7 staff counsel was asking you.

8 I think if we can redirect the conversation though  
9 back to, I think, the distinction that the applicant was  
10 trying to make and understand between, what's the  
11 difference; and I may not say this exactly as intended, but  
12 I think this is the gist.

13 We're in compliance right now on the project that  
14 was initially approved. There were things that were  
15 required for the compliance phase and there is some overlap  
16 between what was required for compliance and what THE staff  
17 is now saying is essential, critical path information for  
18 the analysis of the project modifications.

19 And I think that's the question that is on the  
20 table is maybe if we get more clarity on that. Is that a  
21 correct paraphrase or that something that you were getting  
22 at applicant?

23 MS. FOLEY GANNON: That's correct.

24 HEARING OFFICER VACCARO: So, can we answer that  
25 specific question? I don't think there's any quarrel with

1 staff needing appropriate time to do the thorough analysis  
2 that's required.

3 I don't think that that's what's at issue.

4 MS. FOLEY GANNON: That's absolutely right. We  
5 understand 45 days. We appreciate 45 days. We think that  
6 that makes sense.

7 We just want to make sure that we're providing --  
8 and we can provide a list of what we're doing and when we  
9 anticipate submitting that. And we can provide that.

10 And maybe that's the right way to do it unless we  
11 can have more guidance on this issue right now from staff.

12 HEARING OFFICER VACCARO: So as you sit here today  
13 staff is it a question you think you can answer or is it  
14 something that you think, you know, in order to give the  
15 most thoughtful, considered answer that that might be  
16 something that you need to think about a bit more and  
17 perhaps submit a response in writing.

18 MR. ADAMS: Well, I haven't even seen the  
19 applicant's list of these various studies that they're  
20 proposing to undertake in sequence and when they're  
21 proposing to submit each.

22 So, I think it's premature to talk about  
23 specifically which ones we might be able to fashion adequate  
24 performance standards for and deal with as part of the  
25 compliance issue.

1 I will say, you know, staff does not feel entirely  
2 comfortable to using last Fall's certification as a model  
3 moving forward just because there were very, very late  
4 significant changes in the project.

5 And, as I said earlier, we feel that we produced a  
6 legally sufficient document that adequately, that contained  
7 performance standards to satisfy CEQA under the  
8 circumstances.

9 We don't think that's the best way to go. And so  
10 this schedule was really an attempt to do it the way we  
11 thought it should be done moving forward.

12 That said, there may be some flexibility but I  
13 could not address that today.

14 And what that means then is needing to fashion  
15 performance standards that, you know, in lieu of having data  
16 and a more detailed project description at the time the  
17 Commission certifies or approves the amendment.

18 Maybe I'd just ask if Craig or Kerry wants to add  
19 because they're on the phone they might --

20 MR. HOFFMAN: This is Craig Hoffman on the phone  
21 again. I think if there's concerns about what's due and  
22 when and if what is sufficient we can definitely have a  
23 technical discussion with Casey Weaver and have a discussion  
24 with the applicant and verify what level of information is  
25 and clarify our data requests and get a better sense on when

1 things are coming in.

2 But I think without having that discussion I don't  
3 know that I could offer anything at this point in time.

4 That's really something that I would have to ask  
5 the technical water staff.

6 MS. FOLEY GANNON: So what we would propose is we  
7 will provide a list of what we are doing and when we think  
8 that they would be submitted and what we think is necessary  
9 for the analysis as has been described to us that you think  
10 you need; what we think is necessary.

11 And then we could get a response to that.

12 HEARING OFFICER VACCARO: And I think that's  
13 appropriate and I think workshopping it or in whatever  
14 fashion it seems appropriate to discuss that with the  
15 applicant, staff and the applicant; that's seems appropriate  
16 as well.

17 With that document as the basis you have a sense  
18 of when you might be able to submit that to staff. And  
19 also, of course, that would be something that would go out  
20 to the entire --

21 MS. FOLEY GANNON: Right, we would docket it.

22 HEARING OFFICER VACCARO: -- service list.

23 MS. FOLEY GANNON: I think we should be able to do  
24 it by -- the 23rd is the following, not next Monday but the  
25 following Monday, is that correct?

1 I think we could do it by -- the 23rd we have  
2 briefs due. Why don't we say the, why don't we say the  
3 25th.

4 HEARING OFFICER VACCARO: Okay.

5 MS. FOLEY GANNON: And we may be able to do it  
6 before then.

7 MR. BURKE: If I could interrupt real quick. This  
8 is Bob Burke from the Society for the Conservation of  
9 Bighorn Sheep. I apologize for the train blowing through  
10 Barstow (laughter).

11 HEARING OFFICER VACCARO: Thank you.

12 MR. BURKE: I did mute the phone but I got it late  
13 (laughter).

14 HEARING OFFICER VACCARO: Thank you. And it's  
15 good to know that you've now joined us.

16 We're still right now just hearing a bit about  
17 progress from applicant and staff. We'll certainly hear  
18 from some of the other parties in just a moment.

19 But, I think this is a good time to find out  
20 whether or not we do have a representative of Basin and  
21 Range Watch who has been able to join us on the telephone.

22 Okay, at this point it doesn't sound like it.

23 Okay, so I think we've exhausted some of the  
24 issues here about data response, data requests; at least  
25 those that were propounded by staff to applicant.

1 I think Mr. Jackson, the Committee owes you a bit  
2 of a report out I think.

3 You did submit a request to propound data requests  
4 on the applicant. And just so that you're aware, the  
5 Committee is carefully considering those requests and  
6 anticipates getting back to you very early next week.

7 MR. JACKSON: Thank you.

8 HEARING OFFICER VACCARO: But thank you for  
9 following the process and the procedure that was set forth  
10 in the Committee's order. That helps to ensure an orderly  
11 and efficient process.

12 Is there anything there that you think the  
13 Committee needs to know, in particular with respect to the  
14 requests that you've propounded?

15 MR. JACKSON: No, I think it's well founded; I  
16 think the information is necessary. And I think that if we  
17 can move rapidly on this I think it will be to the benefit  
18 of all the parties.

19 HEARING OFFICER VACCARO: Okay. Thank you. I  
20 think with that, why don't we, since we've got so many  
21 parties here and, I think, folks might have, at this point,  
22 some thoughts or some comments because as you are well aware  
23 there is some briefing that the Committee has invited on  
24 issues pertaining to the Commission's jurisdiction,  
25 licensing as well as lead agency jurisdiction as well as

1 some questions about environmental baseline.

2 We have, as you should know by the order that  
3 issued from the Committee, decided to take those matters  
4 together with Sierra Club's motion to dismiss as that also  
5 raises the jurisdictional issue.

6 So, I think if there are any areas of confusion  
7 with respect to that this is probably a good time to clear  
8 it up because the briefing is due in fairly short order.

9 So, I think what we'll do is we'll just, sort of  
10 round robin so to speak; we'll just hit each of the parties.

11 But it's just on the very discrete topic of whether or not  
12 there are any questions or clarification that's necessary  
13 with respect to the invited briefing.

14 We'll start with the applicant.

15 MS. FOLEY GANNON: I think the order was clear.  
16 We understand it.

17 HEARING OFFICER VACCARO: Thank you. Staff.

18 MR. ADAMS: We also think it was clear enough.

19 HEARING OFFICER VACCARO: Ms. Smith on behalf of  
20 the Sierra Club.

21 MS. SMITH: Nothing to add.

22 HEARING OFFICER VACCARO: Okay. Ms. Gulesserian  
23 on behalf of CURE.

24 MS. GULESSERIAN: We don't have anything at this  
25 time, thank you.

1 HEARING OFFICER VACCARO: Okay. Mr. Jackson.

2 MR. JACKSON: I'm still investigating the issue.

3 HEARING OFFICER VACCARO: Okay. Mr. Weierbach on  
4 behalf of Newberry Community Service District.

5 MR. WEIERBACH: Nothing to add at this time.

6 HEARING OFFICER VACCARO: Okay. Mr. Burke on  
7 behalf of the Society for the Conservation of Bighorn Sheep.

8 MR. BURKE: Nothing to add here at this time.

9 HEARING OFFICER VACCARO: Okay. And Mr. Aardahl  
10 on behalf of Defenders of Wildlife.

11 MR. AARDAHL: Nothing at this time.

12 HEARING OFFICER VACCARO: Okay. Again, the  
13 question was really very specific to the briefing. So now  
14 I'm going to go through and just sort of do this approach  
15 one last time to find out if there is any issue or topic of  
16 concern that anyone feels that they need to raise to the  
17 Committee.

18 That doesn't mean it will necessarily be resolved  
19 today. But if there's something of import that you believe  
20 the Committee needs to know today.

21 So, once again, we'll just use the same order.  
22 Applicant.

23 MS. FOLEY GANNON: We have nothing now, thank you.

24 HEARING OFFICER VACCARO: Staff.

25 MR. ADAMS: We have nothing else, thanks.

1 HEARING OFFICER VACCARO: Okay. Ms. Smith on  
2 behalf of the Sierra Club.

3 MS. SMITH: It appears to the Sierra Club that the  
4 Commission does intend to process this amendment so we  
5 anticipate filing a preemptory writ of mandate in state  
6 court probably within the next week or so.

7 HEARING OFFICER VACCARO: Okay, thank you for that  
8 heads up. Ms. Gulesserian on behalf of CURE.

9 MS. GULESSERIAN: No I don't have any questions or  
10 anything to raise right now, thank you.

11 HEARING OFFICER VACCARO: Again, Basin and Range  
12 Watch, anyone on the telephone line?

13 (No response).

14 HEARING OFFICER VACCARO: It does not sound like  
15 it. Mr. Jackson.

16 MR. JACKSON: Not at this time.

17 HEARING OFFICER VACCARO: MR. Weierbach on behalf  
18 of Newberry Community Service District.

19 MR. WEIERBACH: Nothing at this time.

20 HEARING OFFICER VACCARO: Mr. Burke on behalf of  
21 the Society for the Conservation of Bighorn Sheep.

22 MR. BURKE: Nothing at this time.

23 HEARING OFFICER VACCARO: Mr. Aardahl on behalf of  
24 Defenders of Wildlife.

25 MR. AARDAHL: Nothing at this time, thanks.

1 HEARING OFFICER VACCARO: Okay. Thank you. I  
2 think unless Commissioner Douglas has another question or  
3 comment I think maybe we could look to --

4 I think at this time we'll go ahead and take  
5 public comment. I am aware that we have a would-be  
6 intervenor in the room.

7 BNSF Railroad is here represented by Ms. Burch.  
8 If there's any comment that you would like to make.

9 MS. BURCH: Yes, I'd like to --

10 PRESIDING MEMBER DOUGLAS: Get her a microphone  
11 please.

12 HEARING OFFICER VACCARO: Yes, come closer or sit  
13 at the table, please.

14 MS. BURCH: A couple of concerns to bring to your  
15 attention now.

16 PRESIDING MEMBER DOUGLAS: Okay. If you can  
17 identify yourself for the record.

18 MS. BURCH: I'm Cynthia Burch with Katten Muchin  
19 and I represent the Burlington Northern Santa Fe Railroad.

20 We have been trying to work with the applicant to  
21 come up with scopes of work and consultants for the Glare  
22 and Glint Study and the soil and water studies.

23 And we were just notified the day before yesterday  
24 that they were going to go their own way.

25 And so we have now filed our petition to intervene

1 and I think it's important for you to know what we believe  
2 is the timeframe needed to complete the soil and water  
3 studies.

4 That we believe, strongly believe, are necessary  
5 to have staff review before they can give us an assessment  
6 of this project.

7 And if you will recall we attended the  
8 informational hearing back in April and we gave you a list  
9 of studies that, and they're posted on the docketed.

10 It looks like this if you remember it (holding up  
11 document). And I just would like for the record to tell you  
12 what we think they are up front and tell you how long we  
13 think it takes and tell you the interface we see with the  
14 Glare and Glint Study.

15 The first item that we all need is something which  
16 we have yet to see, which is a sufficient level of design  
17 for this project to begin any study. Okay.

18 So we want to raise that issue as early as  
19 possible. We know from our consultants that there is  
20 nothing that they could have worked from that's been  
21 provided thus far.

22 And at a minimum that generally takes about two  
23 weeks to produce if you're doing it in the level of detail  
24 that we would need here.

25 Then the Infiltration Report as Ms. Foley Gannon

1 indicated needs to be done. And the Infiltration Report  
2 here would require us to know where each pole is going to be  
3 placed, where any basins are needed, where all roadways are  
4 to be placed. Because what you're calculating is the change  
5 of permeability of the ground.

6 Our consultants -- you're calculating the change  
7 on the permeability to the ground.

8 And on a really rocket-docket schedule with the  
9 complexity of this project and the size of it, we're told  
10 it's going to take six to eight weeks to produce that  
11 document. Okay.

12 Then at that point we would hope to see a grading  
13 and drainage plan developed because we think at that point  
14 you need that to head into the DESCOP which is the next major  
15 deliverable under Soil and Water 1, which is a critical  
16 series of reports. That will take several weeks to produce.

17 The DESCOP needs to be produced which includes a  
18 hydrology analysis using FEMA modelling. That's required in  
19 Soil and Water 1.

20 And that is followed by the geomorphic and  
21 hydraulic analysis, the geomorphic and biologic analysis,  
22 the BNSF hydrology study, the geotechnical report, the Scour  
23 analysis, the pole foundation stability report, dam designs  
24 if basins are to be included and an evaporation pond  
25 construction report and a decommissioning plan.

1           At that point you have what would produce a draft  
2 basis of design report. And at that point you would know  
3 where you think you need to put the stormwater controls and  
4 therefore need to adjust your placement of solar technology.

5           And at that point you have a design that you can  
6 give to your Glare and Glint Study people to value whether  
7 those locations pose a problem. And that study will take  
8 about six to eight weeks at a minimum to perform at that  
9 point in time.

10           Once they come back with their conclusion you may  
11 need to reassess then your final design to go into your  
12 actual, not finals then but your next design to go into your  
13 30, 60, 90.

14           We don't believe we concur that you do not need  
15 the 30, 60, 90 to process staff's assessment. But we think  
16 you need everything to that point to develop a staff  
17 assessment.

18           And when you put these together you're looking at  
19 over 24, somewhere between 24 and 40 weeks because you are  
20 looking at not only the time to produce the reports but  
21 you're looking at staff's time to assess them.

22           As the current Soil and Water conditions are  
23 structured we are supposed to have an opportunity to comment  
24 on those reports. We think that's a very good idea because  
25 it allows comments to be submitted in a meaningful

1 timeframe.

2           And we'd like to see workshops which is something  
3 we asked for at the informational hearing.

4           So with that in mind we wanted to insert what we  
5 think is a significant reality check into the schedule here.

6           And we think it's realistic. We think it will  
7 lead to a much better product for us all to comment on and  
8 hopefully coalesce around. And that's what we're here to  
9 ask for today. So --

10           HEARING OFFICER VACCARO: I just have a question  
11 or two.

12           MS. BURCH: Surely.

13           HEARING OFFICER VACCARO: Thank you for your  
14 comments. And I guess I just want to bring this back to  
15 even before we had the informational hearing and site visit.

16           MS. BURCH: Uh-hmm.

17           HEARING OFFICER VACCARO: I think you had called  
18 me to ask what the procedure was and how things worked and  
19 some mechanics of intervening.

20           And I think at that time I strongly recommended  
21 that for BNSF to have a place at the table if that's what  
22 they wanted, to intervene early and also take the  
23 opportunity before the informational hearing and site visit  
24 to put some of these comments in the proposed time table in  
25 writing.

1           And I think I echo that. You did do the petition.  
2       We all received it, I think, yesterday.

3           But I also encourage you in addition to saying  
4       these things orally, it's important to also, perhaps,  
5       underscore some of the points in writing so that's something  
6       that we can see your fleshed out time table.

7           MS. BURCH: Okay. I have docketed this and I just  
8       didn't want to get -- we were trying to work behind the  
9       scenes to settle on these issues and come up with something  
10      that's workable for both parties.

11          So that's the reason why we delayed in  
12      intervening. And now we will be submitting things in  
13      writing for you. We will do that.

14          HEARING OFFICER VACCARO: And just as a point of  
15      clarification. When you're talking about, I think there  
16      might have been a phrase used like, go their, sort of going  
17      their own way or -- I'm just trying to understand that it's  
18      staff that will be taking a significant lead in evaluating  
19      the studies that are being prepared by the applicant.

20          Is BNSF also anticipating preparing its own  
21      independent studies or is your goal sort of the one that I  
22      think you've articulated now and again that you would like  
23      to have significant input as to the scope or some of the  
24      inputs into the study as it's conducted.

25          I guess I'm trying to understand that because I

1 got the impression that BNSF might even be interested in  
2 doing its own studies. I'm not sure.

3 MS. BURCH: We will be doing our own study.

4 HEARING OFFICER VACCARO: Okay.

5 MS. BURCH: And we are going to ask for, we're  
6 asking for workshops. There are models and steps in this  
7 process that we would like to have everyone have the  
8 opportunity to access so that we can continue on a timely  
9 basis to have our consultants following this process and  
10 providing input.

11 And so, we had hoped we would be working with the  
12 applicant knowing that ultimately it's staff's job to decide  
13 which way to go here and for them to recommend and then for  
14 the Commission to decide which way to go.

15 And as we've often mentioned we think BLM is a  
16 significant player in this. In fact, they should be  
17 conducting these studies and we hope to be working with them  
18 as well.

19 So, does that answer your question?

20 HEARING OFFICER VACCARO: It does, thank you. And  
21 just to be clear, the timeline that you roughly gave us just  
22 a few moments ago indicating serial studies that need to be  
23 done. I didn't get the sense that any of them were  
24 concurrent.

25 It sounds as though you were saying, this one

1 needs to happen first then this, then this, then this. And  
2 you had indicated a very lengthy period. I think that puts  
3 us almost to the end of 2011 with the completion of studies  
4 for maybe the Glint and Glare Study is even begun or  
5 completed.

6 So is that the proposed timeline that BNSF will be  
7 working on in preparing and completing the studies?

8 MS. BURCH: To understand, these conditions were  
9 adopted last December. They've been known since last  
10 October. And yet nothing has been done by the applicant to  
11 perform any of these.

12 And many of these could have been done. And if  
13 they had been done they would have been very helpful at this  
14 point in time, even if you had to alter them to conform to  
15 the new project.

16 But we are where we are. Okay.

17 Secondly, you're right. I want to echo what Craig  
18 Hoffman said. There are things here that can be done  
19 without waiting for -- in each of these areas, except for  
20 infiltration.

21 That absolutely is the first step. There's  
22 nothing that can be done until you get those results.

23 Once you get that you can begin portions of these  
24 other studies which will reach a point that if you don't  
25 have the results of the prior ones that we indicated you

1 can't conclude them.

2 And we've actually. in our timeline, calculated  
3 what we think is the time, the real differential between  
4 completing a report and going on to the next report. That  
5 will be in the timeline that we'll show you.

6 Let me give you an example on glare and glint.  
7 You can set up the models. You can do the research on  
8 literature.

9 There really isn't a utility-scale solar plant the  
10 size of this one that there is precedent for. So there's  
11 not a lot that can be done there.

12 But there is some little research we've already  
13 commenced. And those things can be done. We can set up the  
14 geology out there and show where, you know, where the hills  
15 are. But we're going to have to need the design and put it  
16 on at that six to eight week point after the first initial  
17 design is developed.

18 So, again, you can begin the Glare/Glint Study but  
19 you're going to have to pause. So when I hear that they  
20 think that they can have a Glare/Glint Study done in six to  
21 eight weeks and they're going to use, quote/unquote, the  
22 current design -- there's a lot of predicates missing to  
23 that statement. So.

24 HEARING OFFICER VACCARO: Thank you for the  
25 clarification. Okay, just looking again, do you have any

1 further comments or is that it?

2 MS. BURCH: Not at this time, thank you.

3 HEARING OFFICER VACCARO: Thank you. It doesn't  
4 appear as though there are any members of the public in the  
5 room here who wish to speak. Although I do have a fairly  
6 lengthy list of callers who are not identified.

7 On the phone line I don't know if there are any of  
8 those individuals whether you're representative of a public  
9 agency or a member of the public who might wish to make a  
10 comment at this time.

11 Not hearing any takers to that invitation so I  
12 think unless the Committee has anything else that they would  
13 like to add.

14 PRESIDING MEMBER DOUGLAS: No questions. I'll  
15 just verify. Nobody on the phone wants to make a public  
16 comment at this time?

17 MR. JACKSON: This is Pat Jackson. I have a  
18 question.

19 PRESIDING MEMBER DOUGLAS: Okay.

20 MR. JACKSON: Yes. At the informational hearing  
21 there was a -- it came up that the state could not cross the  
22 railroad tracks. Has that issue been resolved or what is  
23 the status on that?

24 PRESIDING MEMBER DOUGLAS: I'll ask that question  
25 of staff.

1 MR. ADAMS: I am not sure that it's been resolved.  
2 Craig, can you address that?

3 MR. HOFFMAN: Staff is allowed to cross the track  
4 at public crossings. We are not allowed to cross at Pisgah  
5 Substation Crossing or at Hector Road. We have to cross at  
6 public crossings and that's the resolution at this point in  
7 time.

8 MR. JACKSON: And to go with that. Who  
9 established the public crossings?

10 HEARING OFFICER VACCARO: You know --

11 MR. HOFFMAN: I guess I would say that there is a  
12 formal crossing down at Newberry Springs and my  
13 understanding is there is another crossing to the east.

14 MR. JACKSON: Where would that be?

15 HEARING OFFICER VACCARO: Okay, Mr. Jackson, I  
16 think at this point this is a topic, issues of access,  
17 issues of public access routes. All of those things are  
18 certainly issues that were raised in the initial proceeding  
19 and to some extent they are being surfaced by the proposed  
20 data request that you would like to propound on the  
21 applicant, which I have already indicated the Committee is  
22 carefully considering at this time.

23 So what I would ask is that we not go into the  
24 very substantive issues on topical matters. I think your  
25 threshold question was asked and answered which does, I

1 think, make all inquiring minds somewhat now satisfied to  
2 know that staff can access the property but staff can do it  
3 only by way of the public, the public roads.

4           So I think with that we are not going to go any  
5 further on that substantive topic. But if there are any  
6 other procedural questions that anyone has the Committee is  
7 certainly willing to entertain them at this time. Otherwise  
8 I think Commissioner Douglas was very close to adjourning  
9 this status conference.

10           PRESIDING MEMBER DOUGLAS: I was very close to  
11 adjourning. All right. So pausing again for adjourning the  
12 status conference. Is there any public comment? Are there  
13 any additional procedural questions?

14           MS. BURCH: Could I just ask for clarification.  
15 You will -- the workshop that you're envisioning for the  
16 Soil and Water discussion, you will include the parties?

17           PRESIDING MEMBER DOUGLAS: Workshops are publicly  
18 noticed.

19           MS. BURCH: For everybody, okay.

20           PRESIDING MEMBER DOUGLAS: All right. So with  
21 that I would like to thank all of the participants in the  
22 status conference and we are adjourned.

23           (Whereupon, at 11:00 a.m. the  
24 Status Conference was adjourned.)

25           --oOo--

## CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of May, 2011.

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JOHN COTA